

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 1st MARCH 2011

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[09:30]

The Roll was called and the Vice-Dean led the Assembly in Prayer.

QUESTIONS

1. Written Questions

1.1 SENATOR J.L. PERCHARD OF THE CHAIRMAN OF THE COMITÉ DES CONNÉTABLES REGARDING KERBSIDE COLLECTION OF METAL CANS AND TINS:

Question

Does the Comité des Connétables consider it unacceptable to burn an estimated 40 million used metal cans and tins in the Island's incinerator and, if so, will they agree to formally canvass the views of their parishioners over a proposal to introduce a monthly kerbside collection for metal cans and tins and if not, why not?

Answer

Whilst the Comité des Connétables may have been somewhat surprised to learn that an estimated 40 million used metal cans and tins are burnt in the Island's incinerator each year, it is difficult to say whether this is unacceptable without a more detailed consideration of the implications of this method of disposal compared with other options available.

At the request of their parishioners, some parishes have already introduced kerbside collection for metal cans and tins whilst in other parishes the parishioners have decided such an additional service is not required as alternatives such as bring banks are available. Any decision to formally canvas the views of parishioners over a proposal to introduce a monthly kerbside collection for metal cans and tins will therefore be taken following meetings with Transport and Technical Services at which time the parishes will be able to put forward a properly reasoned case.

1.2 THE DEPUTY OF ST. JOHN OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE FISCAL STIMULUS PACKAGE:

Question

Further to the Chief Minister's February press statement concerning the Fiscal Stimulus spend of £44 million, would the Minister advise the total amount spent to date, the amount remaining and whether any of that remainder will be redirected to other projects and, if so, provide details?

Answer

The following table details the Fiscal Stimulus Programme spend

Fiscal Stimulus Programme	£M's
Spend to date	22.1
Further Authorised Spend	16.1
Skills & Training – Statement of Intent	<u>2.2</u>
<u>Total Predicted Spend</u>	<u>40.9</u>

In a recent statement to the States Assembly, the Treasury and Resources Minister stated that he would return to the Assembly in the next few weeks to formally close the Fiscal Stimulus Programme to new applications. In his statement the Minister announced that he intended to use £2.2 million from the remaining Fiscal Stimulus funds to extend the Skills and Training programmes from October 2011 to August 2012. The latest figures for people registered as unemployed and actively seeking work in Jersey reinforced the need for this extra funding to enable the award-winning Advance to Work (AtW) and Advance Plus schemes to continue until August 2012.

The Minister will shortly be making a statement regarding the remaining funds to the Assembly.

1.3 SENATOR A. BRECKON OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE NUMBER OF STAFF ON RESTRICTED CLINICAL DUTIES:

Question

Would the Minister give details of the number of Consultants and/or Doctors and Senior Nursing staff on restricted clinical duties, and advise whether they are in receipt of full pay or reduced pay, broken down into –

- (i) the length of time each or any of the above has been placed on restricted clinical duties;
- (ii) number of any locums bought in to cover duties not being presently performed by the Consultants or doctors;
- (iii) the cost to the department of locums required to cover (ii) above;
- (iv) the number of any additional senior nurses bought in to cover any short fall in numbers caused by senior nursing staff on restricted clinical duties, as above, and costs?

Answer

There are currently four consultants and/or Doctors on restricted duties. All are on full pay. There are no Senior Nurses on restricted clinical duties.

- (i) The length of time that they have been placed on restricted duties varies from 5 months to 30 months. Note: This is longer than the 23 months previously reported, which was incorrect due to an omission of an earlier period of restricted practice, identified following further investigation, for one individual.
- (ii) As a result of (i) above, further analysis of both the number and cost of locums is being carried out and this information will be circulated at the next States sitting.
- (iii) There are currently no senior nurses on restricted clinical duties.

1.4 DEPUTY J.A. MARTIN OF ST. HELIER OF THE MINISTER FOR HOUSING REGARDING POMME D'OR FARM:

Question

Would the Minister advise the Assembly where the money was found to undertake repairs to Pomme d'Or Farm?

Were the funds diverted from the monies set aside within the last 4 Business Plans to refurbish La Collette Flats (works which tenants were told would start this year and have again been delayed) and, if so, when will La Collette flats now be refurbished?

Answer

The funding to undertake the planned refurbishment at Pomme D'Or Farm has come in part from the sale of assets approved under P.6/2007 and in part from a capital allocation from the Treasury. The funds have not been diverted from monies set aside to undertake the refurbishment of La Collette Flats.

The refurbishment programme set out in the 2011 States Business Plan indicates that a number of projects would be undertaken in 2011 including, Pomme D'Or Farm, La Collette Flats Phase 1 (High Rise) and Jardin des Carreaux. The business plan identifies that funding for these schemes will come from asset sales as well as from the capital programme and from Fiscal Stimulus.

Late in 2010 my predecessor was approached by the Assistant Minister Planning & Environment in respect of a strategic review which his Department wanted to undertake of a number of sites in the Havre des Pas area, one of which was La Collette Flats. It was agreed that consideration would need to be given to the outcome of that review before any significant works were committed to.

The economic climate has restricted asset sales and the comprehensive spending review has led to a reallocation of capital funding. These factors have required that the order of proposed property refurbishments be reprioritised for 2010, 2011 and 2012 with projects only advancing as and when sufficient funds accrue.

Taking into account the funding constraints and the outcome of P&E's Havre des Pas review the priority order for projects for 2011 is Clos Gosset, Pomme D'Or Farm, Jardin des Carreaux and La Collette Flats Phase 1.

What will be clear to all members is that the current method of funding such projects from asset sales cannot provide any certainty about the timing of refurbishment projects, is not sustainable and is not in my opinion at all appropriate.

Finding a long term mechanism for financing the Department and the long term maintenance and improvement of the stock is a key driver behind the Housing Transformation Programme, the output from which will be presented in a White Paper in June this year.

1.5 DEPUTY J.A. MARTIN OF ST. HELIER OF THE MINISTER FOR HOUSING REGARDING THE REPLACEMENT OF HEATING SYSTEMS:

Question

Can the Minister identify where the funding has come from to replace many good working heating systems with electric heating and state in which Annual Business Plans this money was included?

Would he also give the overall cost for all the estates that have been converted to electricity and also the projected cost for the estates that still need to be done?

Answer

1,799 heating systems will be replaced during the project. A significant number of these systems were already past their replacement date. In respect of many others tenants could not afford to run them because of the volatility in the price of oil and gas. Annual servicing and repair costs required the commitment of significant amounts of revenue every year.

The funding for the electric heating replacement project during 2010 came from two sources. The Fiscal Stimulus Fund provided £2,118,000 and the balance of the spend to date came from the Housing Department's revenue budget. Future funding will come from the Department's revenue budget. The programme and the costs associated with it were set out in the 2009, 2010 and 2011 Annual Business Plans.

The cost of works to date is

Mains infrastructure	£834,000
Installation and other works	£2,612,000
Total	£3,446,000

The projected cost to completion is an additional

Mains infrastructure	£835,000
Installation and other works	£4,263,000
Total	£5,098,000

The heating switch programme is being run in tandem with other projects to upgrade other building elements such as replacing windows and doors, improving loft insulation and adding either external wall or cavity wall insulation.

Completion of these programmes will deliver significant benefits for tenants including:-

- Improved reliability (the project includes the replacement of copper hot water cylinders with stainless steel items and a full electrical system check which includes the replacement of smoke detectors)
- Individual control over heating and hot water provision whereas in the past operating times were determined by the Department
- Opportunities to directly benefit from energy saving measures. Clearly each tenant's electricity bill will be dependant upon their individual energy usage.
- Greater stability in energy prices
- Potential cost savings (all the systems run on off peak tariffs and the replacement project includes other energy efficiency measures such as increasing levels of loft insulation)
- A single energy bill which is more transparent

1.6 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF H.M. ATTORNEY GENERAL REGARDING DISCIPLINARY PROVISIONS FOR LAWYERS IN PUBLIC SERVICE:

Question

To what extent, if any, are the provisions of Article 3 of the Law Society of Jersey Law 2005 replicated in procedures that apply to Lawyers in public service and, if there is no replication, what disciplinary provisions, if any, exist to deal with complaints from the public?

Answer

Article 3(4) of The Law Society of Jersey Law 2005 which was a 2006 amendment to the original law exempts the Law Officers and persons practising law as a Jersey Advocate or Solicitor in the course of their employment with the Law Officers' Department from a requirement that they must be members of the Law Society and subject to its rules and regulations. This exemption only applies to the Law Officers' Department and persons employed and practising as lawyers in other States Departments would be required to be members of the Law Society.

Article 32 of the Law specifically preserves the inherent jurisdiction of the Royal Court to exercise disciplinary control over its practitioners. This would include Jersey Advocates and Solicitors employed by the Law Officers' Department.

Some employees of the Law Officers' Department were admitted as solicitors or barristers in England and Wales or are professionally qualified by virtue of them being fellows of the Institute of Legal Executive and are not eligible, in any event, to be members of the Law Society.

The independence of officers employed in the Law Officers' Department is preserved by Departments of the Judiciary and the Legislative (Jersey) Law 1965. The consent of the Attorney General is required before a person employed by the Law Officers' Department could have his or her appointment suspended or terminated. These safeguards and legal protections are important to ensure that the work of the Law Officers' Department may be and be seen to be free from any Political or Executive interference.

All officers employed in the Law Officers' Department perform their duties for and on behalf of the Law Officers. As such, they are accountable to me for their actions. As Attorney General, I am accountable in the States and I am, from time to time, required to provide information about the work of the Law Officers' Department.

If a member of the public wished to complain that a member of my staff was guilty of professional or other misconduct, the matter should be reported to me so that I might decide how the complaint should be dealt with.

Staff employed in the Law Officers' Department are public servants and we are committed to providing a good service to the public. I expect all members of staff, whether professionally qualified or not, to maintain high professional and personal standards.

1.7 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF THE MINISTER FOR HOME AFFAIRS REGARDING THE DRAFT DISCRIMINATION (JERSEY) LAW 201-:

Question

When does the Minister propose to lodge the Draft Discrimination (Jersey) Law 201- in the Assembly?

Answer

I will not be able to lodge the draft Discrimination (Jersey) Law 201- in time for debate by the current States.

I had hoped to lodge a draft Law which would include Race as the first attribute, but have run into a number of difficulties, as follows:-

1. Firstly, there are procedural issues which will need to be decided in relation to the difference between the procedures relating to employment related matters and the procedures in relation to discrimination matters which are not employment related.
2. Secondly, there are issues in relation to whether the exceptions in relation to the Race attribute should follow the current UK practice or the previous UK practice (which is reflected in the current draft).
3. Thirdly, the central Home Affairs Department is a small department which has no special experience in this area. I have inherited this project from a previous Minister for Home Affairs who had a particular interest in this area, but it lies outside of the normal remit of Home Affairs (which is public safety related issues). I am in discussion with the Community Relations Trust, who have expertise in this area, and will need to take advice from them. Furthermore, the Department which had responsibility for the running of the current Employment Tribunal has changed from Social Security to the Judicial Greffe.
4. Fourthly, much of the resources in the Home Affairs Department have been drawn into major change projects which are required by virtue of the CSR process within the various services which make up the remit of the Home Affairs Minister. Those change projects are now a higher priority than this Law.
5. Fifthly, there are a number of high priority projects upon which I must focus between now and the end of July 2011, including:-
 - (a) the new Police Force (States) Law, which will amongst other things bring into existence the new Police Authority;
 - (b) the Repatriation of Prisoners Law, which will allow foreign prisoners to serve their sentence in their own country at no cost to Jersey;
 - (c) the new Fire Service Law;
 - (d) amendments to the Criminal Justice (Young Offenders) Law to enable youths to serve their sentence in Greenfields rather than the Young Offenders Institution at La Moye; and
 - (e) amendments to the Sex Offenders Law.
6. Sixthly, in any event the States have not voted any money for the implementation of this Law and it is unlikely that that will occur during the current CSR process.

The best that I can realistically hope to achieve within the term of the present States is to bring together the various interested parties with a view to determining a clear direction for this project which can be taken forward either by the next Minister for Home Affairs or by the next Chief Minister (in the event of the project being transferred to that Minister with whom it rightly belongs).

1.8 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF THE CHAIRMAN OF PRIVILEGES AND PROCEDURES COMMITTEE REGARDING THE DRAFT FREEDOM OF INFORMATION (JERSEY) LAW 201- AND THE MEDIA RELATIONS CODE OF CONDUCT:

Question

When does the Committee propose to lodge the draft Freedom of Information (Jersey) Law 201- and the proposition governing a code of conduct for the media (Media relations – Code of Conduct) in the Assembly?

Answer

The Committee has approved a revised draft Freedom of Information (Jersey) Law 201- and report, and is awaiting further advice from the Law Officers Department prior to lodging. As soon as the advice is received, and any comment resolved, the draft will be lodged.

Following discussions with the members of the Media Working Party, the proposition and accompanying report entitled: 'Media Relations – Code of Conduct,' is now in the process of being redrafted. The revised proposition will be considered at the next meeting of the Privileges and Procedures Committee on 8th March 2011, and, if approved, will be lodged shortly thereafter.

1.9 THE DEPUTY OF ST. MARTIN OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE HISTORICAL CHILD ABUSE ENQUIRY:

Question

On 8th September 2008 the States approved P.91/2008 as amended to permit the withdrawal of up to an additional £7,500,000 from the consolidated fund as a Contingency sum to meet anticipated expenditure identified by various Departments in relation to the Historic Child Abuse Enquiry. Will the Minister provide details of -

- (a) the money spent by the identified Departments between November 2007 and 8th September 2008 and when and how the money was spent?
- (b) the money spent from 8th September 2008 to date by each of the identified Departments and when and how the money was spent?
- (c) The sum of money requested by each of the identified Departments which is unspent to date?
- (d) Whether the Upex Inquiry was funded from the Historic Abuse Fund, and if so, who gave consent and when was consent granted?
- (e) Whether the Wiltshire Police Inquiry was funded from the Historic Abuse Fund, and if so, who gave consent, and when was consent granted?

Answer

- (a) and (b)

The question correctly states that on the 8th September 2008, the States approved an additional allocation under Article 11(8) of the Public Finances Law. The Minister assumes that the Deputy wishes to extract the sums that were approved after the approval of additional monies in contrast to the amounts prior to the additional States' authorisation.

The difficulty the Treasury has in answering the precise questions in terms of dates is that accounting returns are completed internally on a quarterly basis. In order to answer parts (a) and (b) separately it would be necessary to look at each individual transaction. The Minister has provided the information as fully as possible to assist the Deputy in the time available.

The majority of this information has already been disclosed in public Ministerial Decisions. The answers also include funding reimbursed from the £4.25 million approved by the States in P83/2009.

Breakdown by Department

Home Affairs

Period	Category				Total (£)
	Staff	Forensic Fees	Travel Accommodation and Expenses	Other	
up to 30th June 2008	1,559,000	343,000	423,000	254,000	2,579,000
1st July to 30th September 2008	397,000	263,000	390,000	18,000	1,068,000
1st October to 31st December 2008	622,000	-44,000	231,000	66,067	875,067
2009	1,582,705	7,610	556,712	158,488	2,305,515
2010	485,500	1,200	187,300	4,600	678,600
Total (£)	4,646,205	570,810	1,788,012	501,155	7,506,182

T&R (Property Holdings)

Period	Category						Total (£)
	Staff costs	Security costs	YHA costs	General Building and Maintenance	Other	Less Income	
up to 30th June 2008		0	0	0	0	0	0
1st July to 30th September 2008	0	0	0	0	0	0	0
1st October to 31st December 2008	8,867	24,514	22,373	33,940	7,234	0	96,927
2009	18,243	1,188	0	10,311	6,584	-11,058	25,266
2010	0	0	0	0	0	0	0
Total (£)	27,109	25,701	22,373	44,251	13,817	-11,058	122,193

Law Officers' Department

Period	Category			Total (£)
	External Jersey Advocates	UK Legal & other Advice	Witness Costs	
up to 30th June 2008	165,786		0	165,786
1st July to 30th September 2008	283,074	30,204		313,278
1st October to 31st December 2008	440,770	6,619		447,389
2009	1,021,274	49,598	48,210	1,119,082
2010	348,348	11,753	8,016	368,117
Total (£)	2,259,252	98,174	56,226	2,413,652

Chief Minister's Department

Period	Category						Total (£)
	Comms Unit	Consultancy plus expenses	Camera equipment	Banner displays and artwork	Travel and Accommodation	Miscellaneous	
up to 30th June 2008	0	45,409	398	660	582	369	47,417
1st July to 30th September 2008	3,583	0	0	0	0	0	3,583
1st October to 31st December 2008	32,087	0	0	0	0	0	32,087
2009	0	0	0	0	0	0	0
2010	0	0	0	0	0	0	0
Total (£)	35,670	45,409	398	660	582	369	83,087

Economic Development Department

Period	Category					Total (£)
	Production Fees	Surveys	TV Campaign	Mailings	Less funds from Tourism Development Fund	
up to 30th June 2008	20,080	6,750	390,000	36,998	-243,828	210,000
1st July to 30th September 2008	0	0	0	0	0	0
1st October to 31st December 2008	0	0	0	0	0	0
2009	0	0	0	0	0	0
2010	0	0	0	0	0	0
Total (£)	20,080	6,750	390,000	36,998	-243,828	210,000

Education Sport and Culture (Jersey Heritage Trust)

Period	Category	Total (£)
	Jersey Archive	
up to 30th June 2008	0	0
1st July to 30th September 2008	0	0
1st October to 31st December 2008	0	0
2009	135,000	135,000
2010	0	0
Total (£)	135,000	135,000

Health & Social Services

Period	Category						Total (£)
	Staff costs and Overtime	Professor Upex Inquiry	Psychology Assessment Team support	Costs Associated with Aviemore	Support for Care Leavers	Other	
up to 30th June 2008	5,000	37,000	1,000	46,000	0	35,000	124,000
1st July to 30th September 2008	1,000	0	13,000	0	0	15,000	29,000
1st October to 31st December 2008	7,000	0	13,000	65,000	0	32,000	117,000
2009	62,300	0	77,300	50,100	0	179,600	369,300
2010	25,590	0	48,320	6,710	47,740	42,410	170,770
Total (£)	100,890	37,000	152,620	167,810	47,740	304,010	810,070

Summary

Period	Department							Total (£)
	Home Affairs	T&R (Property Holdings)	Law Officers	Chief Minister's	EDD	ESC	H&SS	
up to 30th June 2008	2,579,000	0	165,786	47,417	210,000	0	124,000	3,126,203
1st July to 30th September 2008	1,068,000	0	313,278	3,583	0	0	29,000	1,413,861
1st October to 31st December 2008	875,067	96,927	447,389	32,087	0	0	117,000	1,568,470
2009	2,305,515	25,266	1,119,082	0	0	135,000	369,300	3,954,163
2010	678,600	0	368,117	0	0	0	170,770	1,217,487
Total (£)	7,506,182	122,193	2,413,652	83,087	210,000	135,000	810,070	11,280,184

(c) Money was requested by Departments on a reimbursement basis, based upon actual expenditure incurred. Therefore no Departments are in possession of unspent funds to date. All reimbursement claims from this Article 11(8) funding for all departments were made following assurances from the departments concerned that appropriate controls were in place to ensure that accounting officer responsibilities were being discharged, and that financial directions were complied with in respect of the expenditure.

The Deputy will recall that the Minister signed decision number MD-TR-2011-0007 on 24th January 2011 to formally return the £346,416 unallocated balance of Article 11(8) funding for the Historic Child Abuse Enquiry to the consolidated fund. The only sum now remaining is £150,037 to meet anticipated costs of the Home Affairs Department relating to the Enquiry in 2011 and a small contingency of £26,000. This sum is currently held by the Treasury pending requests from Home Affairs for reimbursement, based on the usual assurances.

(d) The Upex Inquiry was funded, at a cost of £37,000, from money reimbursed to the Health and Social Services Department in 2008 as that Department was designated as responsible for paying for the Inquiry. Based on assurances received, the Minister for Treasury and Resources gave consent for reimbursement of the expenditure on 18th August 2008.

(e) The Wiltshire Report was not funded from money allocated to the Historic Child Abuse Enquiry by Article 11(8) approvals.

1.10 THE DEPUTY OF ST. MARTIN OF THE CHIEF MINISTER REGARDING THE HISTORICAL CHILD ABUSE ENQUIRY:

Question

On 6th December 2010 when the Chief Minister made his statement in relation to the Historical Child Abuse Inquiry, he stated that in the very near future the Council of Ministers would formally consider whether any unanswered questions remained and report to the States. The Chief Minister said he would take note of the Deputy of St Martin's suggestion to consider inviting some of those Members who had shown a keen interest in the matter so there could be a combined way forward, but it would depend on the outcome of the Council of Ministers' views.

Will the Chief Minister inform Members whether the Deputy's suggestion was considered by the Council of Ministers and if it was, why it was not taken on board? If it was not considered will the Chief Minister explain why it was not considered?

Answer

I can assure the Deputy of St Martin that his suggestion was discussed by the Council of Ministers at meetings held on the 16th December 2010 and again on 27th January 2011. The Council of Ministers considered the suggestion very seriously but concluded that it was better for all States

Members to be made aware of the Council of Ministers views as soon as possible rather than a selected group who in the Deputy's words "had shown a keen interest in the matter".

1.11 DEPUTY T. M. PITMAN OF ST. HELIER OF H.M. ATTORNEY GENERAL REGARDING PRESIDING OVER COURT CASES:

Question

Will the Attorney General clarify whether a judge/magistrate having a link through family members to an individual who was a witness; a police complainant; or perhaps stood to gain either financially or otherwise in the event of a conviction would have to excuse him or herself from presiding over a case; further still, under what aspect of which law is this outlined, and does Jersey legislation on such matters differ from that in the UK?

Answer

The test for recusal is well established at customary law and follows the English common law: see Syvret v Attorney General [2009] JCA 181 for the Jersey Court of Appeal's consideration of the subject.

There is no general rule and each case must be determined on its own facts.

The Judge must first ascertain all the circumstances which bear on the suggestion he was (or would be) biased. The Judge must then ask himself whether those circumstances would lead a fair-minded and informed observer to conclude that there was (or would be) a real possibility that the judge was (or would be) subject to bias.

A fair minded observer is not unduly sensitive or suspicious. The assumptions that the complainant makes are not to be attributed to the fair-minded observer unless they can be justified objectively. The fair minded observer is the sort of person who takes the trouble to read the text of an article as well as the headlines. He is able to put whatever he has read or seen into its overall social, political or geographical context. He is fair-minded, so he will appreciate that the context forms an important part of the material which he must consider before passing judgment. But the fair-minded observer is not complacent either. He knows that fairness requires that a judge must be, and must be seen to be, unbiased. He knows that judges, like anybody else, have their weaknesses. The standing of the Judge and his oath of office are relevant considerations.

The question does not identify the nature of the 'link' between the Judge, his or her family and the third party. There is a myriad of possibilities and therefore it is impossible to comment. One can imagine many scenarios when any link is so tangential or insignificant that there is no difficulty in the Judge continuing to hear the case. In any event, it is a matter for a Judge to determine as and when the issue arises. If a party is unhappy with the decision, then there is a right of appeal.

1.12 DEPUTY T. M. PITMAN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE RATE OF TAX FOR 1(1)(k) RESIDENTS:

Question

The Minister has previously advised the Assembly that it is not possible to increase the rate of tax charged to 1(1)(k) residents granted such status in previous decades when much lower rates were in place. Will the Minister subsequently clarify whether those 1(1)(k) residents being granted such

status in the 1990s when the rate was as high as a £200,000 minimum were consequently able to pay smaller amounts as the rate later became reduced? If so, under which mechanism/Article of the Income Tax (Jersey) Law 1961 or other relevant law is this permitted?

Answer

A commitment made by a 1(1)(k) to pay a certain level of tax is not affected by subsequent changes to the minimum requirements.

When 1(1)(k)s apply for their housing consent they need to demonstrate to the satisfaction of the Housing Minister that their forecast income is sufficient to ensure they pay a tax liability of at least the minimum amount set at the time. These amounts are a policy decision set by the Housing Minister at a level to attract a certain number of applicants. Failure to meet the minimum agreed tax contribution could lead to the housing consent being revoked.

The amount of tax individuals actually pay is based on the Income Tax Law. All 1(1)(k) residents who applied before 2005 pay tax at 20% on all of their taxable income. 1(1)(k) residents who applied from 2005 onwards pay 20% on all of their Jersey source income and differential rates up to 20% on foreign income. The amount of tax payable by an individual therefore changes on an annual basis to reflect fluctuations in his or her level of income. Any policy changes made by the Housing Minister to entry criteria do not have retrospective application to 1(1)(k)s who have already committed to paying a certain level of tax.

1.13 DEPUTY T. M. PITMAN OF ST. HELIER OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE ESTABLISHMENT OF THE HARBOURS AND AIRPORT SHADOW BOARD:

Question

Will the Minister provide Members with a copy of the job description of the Chairman and Members of the Harbours and Airport Shadow Board and full details of how the financial package(s) were evaluated and by whom; and will he provide details of how many individuals applied for the positions, who oversaw the selection process and when this took place?

Answer

Details of the posts are to be found in the attached document.

In arriving at the financial packages the Department carried out research into comparative boards such as Jersey Finance Limited and other Shadow Boards in the past such as Jersey Post.

Following an advertisement in the Jersey Evening Post, there were 47 applicants. The recruitment process, overseen by the Appointments Commission, took place between 24th September - 4th October 2010. The appointment panel was chaired by the Chief Officer of Economic Development and comprised a representative from the Appointments Commission and the Chief Officer of TTS. States HR provided administrative support. The appointment panel made a recommendation to the Minister for Economic Development who confirmed the appointment of Shadow Board members in MD-E-2010-0193.

Working for Jersey Recruitment Information

POST: Shadow Board - Chair and Members
DIVISION: Jersey Harbours and Jersey Airport
DEPARTMENT: Economic Development
HONORARIUM: Daily rates circa £650 Chair and £450 members
CLOSING DATE: 10th September 2010

Thank you for your interest in this vacancy.

To apply, please send a CV with a full personal and career history in confidence to: workingforjersey@gov.je

Alternatively via post to;

Recruitment Co-ordinator
HR Business Support Team
Cyril Le Marquand House
PO Box 600
The Parade
St Helier
JERSEY
JE4 8UL

For an informal discussion please contact: Mr Mike King, Chief Executive Officer, Economic Development Department, Tel: +44 (0)1534 448102.

Please note from 3 June 2010

Shortlisted candidates will be contacted within four weeks of the closing date and will receive clear details about the date, time and location of the interview and the selection process. If you have not been contacted within this time you should assume that you have not been shortlisted.

May 2010



STATES TRADING OPERATIONS SHADOW BOARD

Introduction

Jersey Harbours and Jersey Airport are the island's strategic transport gateways that provide vital links to the UK, Europe and beyond. As such, they represent key components of the social and economic well being of the resident and business community.

Jersey Harbours is responsible for the '*administration, management, operation, financing, development and maintenance of the harbours of Jersey and their association facilities*'. It comprises of three business units:

- The Port of Jersey - the commercial port that handles car/passenger ferries from the UK, France, Ro-Ro and Lo-Lo freight operations and a small but growing cruise ship market,
- Jersey Marinas – comprising of 3 Marinas in St Helier and the Island's Historic Harbours
- Jersey Coastguard – providing coastguard services in Island waters

In 2009, the Port of Jersey handled 730,000 passenger movements, 500,000 tons of freight which represents c.99% of all goods consumed in the Island, demonstrating the strategic importance of this vital transport gateway.

Jersey Harbours receives no direct financial support from the States Treasury, indeed in recent times a significant return to the States has been made based on a percentage of profitability of the trading operation.

Jersey Airport is responsible for the '*administration, management, operation, financing, development and maintenance of Jersey Airport, its associated facilities and the Channel Islands Control Zone*'. Operations include commercial and private and general aviation plus air freight services.

In 2009, Jersey Airport handled 1.5million passenger movements through an extensive network of UK and European routes.

Jersey Airport receives c£4.3MM annual capital grant from the States of Jersey capital programme to cover partial costs of the airport capital programme.

May 2010

At present Jersey Harbour and Jersey Airport, which form part of the portfolio of the Minister for Economic Development are run as two separate Trading Operations defined in the Public Finances (Jersey) Law 2005 and subordinate Regulations. Each entity has a Chief Executive – the Airport Director and the Harbour Master / CEO who fulfil the role of Accounting Officer for their respective operations. Political oversight is provided by an Assistant Minister with delegated responsibility for all Harbour and Airport matters.

Jersey Harbour and Jersey Airport are operationally efficient Trading Operations with a broad and diverse customer and stakeholder base. As a result of rapid and continuous changes in the market place, both face significant commercial challenges which are being met by a root and branch review of operational and commercial activity which may result in a programme of major change.

In recent times, two separate advisory groups have been created to enhance effective management and governance of change and improvement by introducing private sector expertise to assist the respective management teams. The Minister for Economic Development has determined that this arrangement should be formalised by the creation of a single Shadow Board within a new governance structure.

In a statement in the States Assembly on July 6th, the Minister for Economic Development recognised the contribution that Jersey Harbours and Jersey Airport make to the economic and social well being of the Island:

"Jersey Airport and Jersey Harbours are both performing well, they are operationally efficient and suffer little or no operational down time. In this way they provide gateways to the Island to bring the goods and visitors on which the Island's economy depends, whilst providing vital transport links for all Island residents."

In addition, the Minister announced the formation of a Shadow Board and set a clear strategic objective of a root and branch review of governance arrangements for Jersey Harbours and Jersey Airport.

"Firstly, during 2009 and 2010, Jersey Airport and Jersey Harbours have increased the level of private sector involvement in the oversight of operations through the formation of two separate advisory groups. In the coming months, I plan to formalise this arrangement within a revised governance structure by the appointment of a single Shadow Board with a Chair and non-Executive members drawn from the private sector to provide additional governance to both airport and harbour operations."

and

"I have specifically asked that no stone is left unturned and no option should be ruled out including the full integration of Airport and Harbours into a combined trading entity, subject to States approval."

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Purpose and Aims

In the first instance, the Shadow Board will be expected to work with the management of Jersey Harbours and Jersey Airport to define the optimum operational and governance structure and make a recommendation to the Minister for Economic Development. Once this has been approved and any necessary structural and legislative changes are underway, the Shadow Board will assume a normal board governance role for both entities to assure viability and sustainability.

The majority of the Directors will be independent, non-executive Directors drawn from the private sector. It is vital the Minister and the management teams benefit from the ability and experience of a strong Chair and non-executive team, free of any interests or influences that could, or could reasonably be perceived to, materially interfere with the Director's ability to act in the best interests of the Trading Operations.

The key purpose of the Shadow Board is to facilitate governance processes to contribute to an informed view on the ability of Jersey Airport and Jersey Harbours to progress towards incorporation.

The key aims of the Shadow Board are to:

- In the first instance define the optimum operational and governance structure and make recommendations for change to the Minister for Economic Development
- Strengthen governance and good practice in all areas of Harbour and Airport operations
- Challenge and support the Executive Teams
- Develop strategy and business operations and ensure they are subject to rigorous independent commercial challenge in a manner which enhances governance at a pivotal time
- Protect the interests of Jersey Airport and Jersey Harbours in moving towards the Aims and Objectives agreed by the States of Jersey
- Undertake any other appropriate roles as agreed with the Minister for Economic Development
- Ensure the ability of the Trading Operations to meet the objective of being self-funding and sustainable,.

Shadow Board Composition and Governance

The Chair and other Members will be nominated by the Minister for Economic Development and appointed for a three year term of office.

The Shadow Board will be independent of the States of Jersey, however legal authority for both Trading Operations remains with the Minister for Economic Development and accounting officer responsibility will remain with the senior executives, at present the Airport Director and Harbour Master/CEO.

The Shadow Board will help to set the overall strategic direction of the Trading Operations and exercise oversight of all aspects of harbour and airport operational and commercial activity. Each Trading Operation currently has its own Executive Team reporting to the Accounting Officer. This Team has responsibility for delivering services in accordance with the policies set by the Minister on the recommendation of the Shadow Board and all aspects of operational management.

Role	Candidate
Chair (Independent Non Exec)	
Independent Non-Executive Director	With specific aviation experience
Independent Non-Executive Director	With specific maritime experience
Independent Non-Executive Director	
Independent Non Executive Director	
Chief Executive Officer Harbours & Airports	

Chief Executive Officer EDD*

*Acting as "shareholder representative" on behalf of the Minister for Economic Development

The quorum for a meeting will be half the number of members appointed, except as otherwise provided by the Minister. The Shadow Board will determine its own procedures.

The hours of service to be provided will be a maximum of 300 per annum which is the equivalent of 40 days. It is anticipated that the full Board will meet 4 times per annum. Members will also serve on Committees as appropriate.

Person Specification

- Considerable personal expertise
- A proven track record of professional success in own field
- Experience in managing budgets effectively
- Integrity and transparency in decision making
- Leadership
- Excellent communication and influencing skills
- A strategic perspective on the issues facing the two Trading Operations
- Commitment to ensure that the Island's strategic assets are protected
- Ideally resident in Jersey (although exceptions may be considered)

In exercising their functions, the Shadow Board member will:

- Have a duty to use care and diligence in fulfilling the functions of the office
- Demonstrate commercial reasoning in decision making
- Not take improper advantage or use the position for personal gain
- Not allow personal interests or the interests of any associated person to conflict with the interests of the Trading Operations

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- Undertake diligent analysis of all proposals received

The Chair will have:

- Experience of Chairing an organisation effectively during a period of change
- A track record of effective independent governance at a strategic level of a multi-stakeholder, public interest organisation
- A good understanding of the management of commercial airport or port operations.
- A professional accounting qualification, including experience as an Audit Committee Chairman
- Experience of Human Resource issues, including labour relations and experience as a Nomination and/or Remuneration Committee Chairman
- Knowledge of the structure and operation of the States of Jersey and the expectations of the community
- Experience of the effective delivery of major capital projects
- General commercial experience of substantial, customer-focussed businesses at a senior executive level

Sub Committees

It is likely that Shadow Board Committees will be formed. Their role will be to provide oversight and support for the delivery of the strategic direction so determined by the Shadow Board and approved by the Minister.

May 2010

1.14 DEPUTY T. M. PITMAN OF ST. HELIER OF H.M. ATTORNEY GENERAL REGARDING COMPLIANCE WITH THE PUBLIC ELECTIONS (EXPENDITURE AND DONATIONS) (JERSEY) REGULATIONS 2008:

Question

Would the Attorney General advise whether any of the 2008 election candidates, successful or otherwise, failed to comply with the Public Elections (Expenditure and Donations) (Jersey)

Regulations 2008 requiring that they provide full details of their campaign expenses, and if so, would he specify which roles they were standing for (e.g. Senator, Deputy or Connétable), who the candidates were and what sanctions they faced, having failed to comply? If none, what was the reason for this?

Answer

In April 2009 my predecessor answered the following written question from the Deputy:

“Question

Will H.M. Attorney General explain what legal action, if any, can be taken against a number of candidates (successful and unsuccessful but all ‘independents’) in the 2008 Deputies elections who, well into 2009, had still not supplied details to the Judicial Greffe, as required by law, of their electoral campaign expenses?

Answer

The Law regulating election expenses is to be found in the Public Elections (Expenditure and Donations) (Jersey) Regulations, 2008 (the “Regulations”), which came into force on 25th July 2008.

Regulation 4 of the Regulations provides that:

“(1) A candidate’s election expenses shall not exceed, in the aggregate –

(a) where the candidate ... is a candidate for election as Deputy or Connétable, £1,500; and

(b) 10 pence for each person entitled to vote in the election by virtue of Article 2(1), (2) or (3) of the 2002 Law.

(2) A candidate whose election expenses exceed, without reasonable excuse, the limit imposed by paragraph (1) is guilty of an offence and liable to a fine.”

Regulation 6 of the Regulations requires a candidate, no later than 15 working days after the day the Poll is held, to deliver to the Judicial Greffier a written declaration of his or her election expenses and donations of the specified kind received by the candidate. Paragraph (6) of Regulation 6 provides:

“A candidate who fails, without reasonable excuse, to deliver a declaration, or further declaration, in accordance with this Regulation is guilty of an offence and liable to a fine.”

Regulation 15 requires the Greffier to make declarations received by him under the Regulations available for inspection, free of charge, at the offices of the Judicial Greffe, during normal working hours.

The legal – as opposed to political - enforcement mechanism for these Regulations lies in the bringing of a criminal prosecution. Such a prosecution will be considered in cases where a file is prepared by the police and passed to the Law Officers’ Department, or alternatively to a Centenier, for a decision as to whether or not to prosecute.

The lodging of this question last week led me to make some enquiries of the Judicial Greffier. I understand there are two candidates from the Deputies’ elections, neither of

whom were elected, who have not yet filed a note of their election expenses as the Regulations require. I believe the Greffier is pursuing that matter to the extent he can. As far as I am aware, the Law Officers Department have as yet received no such police files for consideration in relation to the 2008 Deputies' elections."

In relation to the current question I have made further inquiries and am informed by the Deputy Judicial Greffier that one expenses return remains outstanding and that the candidate, who was unsuccessful, had left the island shortly after the election and remains outside the jurisdiction. As a result no investigation could be concluded and it accordingly remains the case that no investigation files have been received by my department.

The returns made remain available for public inspection.

1.15 DEPUTY M. TADIER OF ST. BRELADE OF THE CHIEF MINISTER REGARDING REMUNERATION TO THE MAGISTRATE DESIGNATE:

Question

Will the Chief Minister confirm the total remuneration that has been paid to the Magistrate Designate to date since his exclusion from sitting as a Magistrate, and whether any of that sum will be recoverable in the eventuality that the Magistrate Designate is found guilty of any of the charges against him?

Answer

The total remuneration which has been paid to the Magistrate Designate during the period 1 July 2008 to 28 February 2011 amounted to £341,945.78. This consists of basic pay and employer's pension and social security contributions.

Under long established States policy, none of this sum of money would be recoverable were the Magistrate Designate found to be guilty of the charges brought against him. Employees who are suspended or excluded from normal duties pending investigations and potential disciplinary proceedings receive normal pay, and this is not recoverable.

This long established policy is currently under review by the States Employment Board, particularly in terms of long term suspensions/exclusions.

I should explain that the Magistrate Designate is not an employee of the States Employment Board. He is, rather, an Office holder (appointed by the Crown).

1.16 DEPUTY M. TADIER OF ST. BRELADE OF THE CHIEF MINISTER REGARDING AMENDMENTS TO ZERO/TEN POLICY

Question

Will the Minister explain what alternative avenues, if any, were explored when coming to the recent decision to cease the 'deemed distribution' element of zero-ten, including whether any consideration was given to disputing the findings of the EU High Level Working Party and why this avenue was rejected?

Will the Minister state how long he anticipates it will take to hear from the EU/UK on whether the amended zero-ten policy will be acceptable?

Answer

As was stated in the States on 15 February 2011, there is always a need for a degree of flexibility in dealings with international bodies. In responding to the views expressed by the High Level Working Party, the Council of Ministers started from the firmly held view that the best interests of the Island are to be served by retaining the zero/ten business tax regime. Ministers wanted to give certainty to the business community as soon as possible, with all the benefits from the business growth that they believe this will foster. Ministers saw little prospect of achieving this through fighting to retain the deemed distribution regime so long as Jersey wishes to retain our voluntary participation in the Code Group process as part of our good neighbour policy towards the EU. Accordingly, the Council of Ministers reached a clear conclusion that repealing deemed distributions and having a zero/ten regime that equates with what Ecofin agreed in 2003 was Code compliant, would best serve the interests of the Island.

The Code Group is due to meet again in April and May. At the May meeting, the Code Group usually agrees the wording of its report to Ecofin for consideration at Ecofin's meeting in June. It is to be expected that the Code Group will comment in this report on Jersey's action to roll back the aspects of our tax regime that are considered to give rise to harmful effects. It is, however, not clear how ECOFIN will deal with the process of rollback and the extent to which our actions will be considered by them in the June meeting.

1.17 DEPUTY M. TADIER OF ST. BRELADE OF THE CHIEF MINISTER REGARDING JERSEY'S POSITION ON HUMAN RIGHTS VIOLATIONS:

Question

Does the Minister agree that if Jersey is to continue to promote and enhance its international identity and autonomy, as described in Section 15 of the Strategic Plan 2009-2014, it is important for Jersey, through the Chief Minister or the Assistant Chief Minister with special responsibility for International Affairs, to make its position clear on Human Rights violations in other jurisdictions?

Answer

I believe that Jersey's position on human rights violations in other jurisdictions is consistent with British foreign policy and with that pursued by other Western jurisdictions. In August 2010, the UK Secretary of State for Foreign and Commonwealth Affairs set out a values-based foreign policy, stating that *"We cannot have a foreign policy without a conscience. Foreign policy is domestic policy written large. The values we live by at home do not stop at our shores. Human rights are not the only issue that informs the making of foreign policy, but they are indivisible from it ..."* In this respect, Jersey and British foreign policy are aligned.

Furthermore, Jersey implements UN and EU sanctions or restrictive measures, which are often applied in order to develop and consolidate democracy and the rule of law and respect for human rights and fundamental freedoms. These sanctions include imposing travel restrictions, trade embargoes, restrictions on financial services and asset-freezes on certain individuals and regimes that are widely recognised to be engaged in conduct contrary to internationally accepted standards.

1.18 DEPUTY M. TADIER OF ST. BRELADE OF THE CHAIRMAN OF THE PRIVILEGES AND PROCEDURES COMMITTEE REGARDING UNCONTESTED ELECTIONS:

Question

Will the Chairman of the Privileges and Procedures Committee confirm how many uncontested elections have occurred over the past 10 years for each category of States Member; how many of these were in single seat constituencies and how many non-contested elections there have been in multi-seat constituencies for each category?

Answer

Deputies

Since 1999 there have been 20 uncontested elections for the post of Deputy and 51 contested elections (including by-elections). Three of the 20 uncontested elections were in multi seat constituencies; the remaining 17 were in single seat constituencies, as follows:

<u>Uncontested elections for Deputy</u>					
Year	Constituency	Number of uncontested elections	Number of uncontested seats	Single seat constituency	Multi seat constituency
1999	St. Clement	1	2	-	1
	St. Lawrence	1	2	-	1
	St. John	1	1	1	-
	St. Mary	1	1	1	-
	St. Ouen	1	1	1	-
	Trinity	1	1	1	-
	St. Brelade No. 1	1	1	1	-
2002	Trinity	1	1	1	-
	St. Saviour No. 2	1	2	-	1
	St. John	1	1	1	-
2005	Grouville	1	1	1	-
	St. Martin	1	1	1	-
	St. Ouen	1	1	1	-
	St. Peter	1	1	1	-
	St. Saviour No. 3	1	1	1	-
	Trinity	1	1	1	-
2008	Grouville	1	1	1	-
	St. Saviour No. 3	1	1	1	-

	St. Ouen	1	1	1	-
	Trinity	1	1	1	-
Total		20	23	17	3

Note: Certain parishes are split into districts for the purpose of the Deputies elections. If there is only one seat in a particular district, this is a single seat constituency; if there is more than one seat, it is a multi seat constituency. If a constituency constitutes an entire parish and there is more than one seat available in that particular parish, this constitutes a multi seat constituency.

Connétables

There have been 35 uncontested elections and 14 contested elections for the post of Connétable since 1999. There are no multi seat constituencies for the position of Connétable as there is only ever one seat available in each constituency.

Uncontested elections for Connétable

Date	Constituency	Number of uncontested elections
1999	St. Brelade	1
	Trinity	1
2000	St. John	1
	St. Lawrence	1
	St. Martin	1
	St. Mary	1
	St. Ouen	1
2001	St. Clement	1
	Grouville	1
	St. Saviour	1
2002	St. Brelade	1
	Trinity	1
2003	St. Martin	1
	St. Mary	1
	St. Ouen	1
2004	Grouville	1
	St. Helier	1
	St. Peter	1
	St. Saviour	1
2005	Trinity	1
2006	St. John	1

	St. Lawrence	1
	St. Mary	1
	St. Ouen	1
2007	St. Clement	1
	St. Peter	1
	St. Saviour	1
2008	St. Brelade	1
	St. Martin	1
	St. Ouen	1
	St. Saviour	1
	Trinity	1
2009	St. John	1
2010	Grouville	1
	St. Helier	1
Total		35

Senators

There were no uncontested elections for the post of Senator during given the time period.

The following table shows the number of times an uncontested election has taken place and the number of seats that have been affected:

Category	Number of occurrences	Number of seats
Deputies	20	23
Connétables	35	35
Senators	0	0

The following table shows the number of uncontested **seats** per year:

Number of uncontested seats per year

Year	Connétables	Deputies	Total
1999	2	9	11
2000	5	0	5
2001	3	0	3

2002	2	4	6
2003	3	0	3
2004	4	0	4
2005	1	6	7
2006	4	0	4
2007	3	0	3
2008	5	4	9
2009	1	0	1
2010	2	0	2
Total	35	23	58

The following table shows the number of uncontested **elections** per year:

Number of uncontested elections per year

Year	Connétables	Deputies	Total
1999	2	7	9
2000	5	0	5
2001	3	0	3
2002	2	3	5
2003	3	0	3
2004	4	0	4
2005	1	6	7
2006	4	0	4
2007	3	0	3
2008	5	4	9
2009	1	0	1
2010	2	0	2
Total	35	20	55

1.19 DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE SALARY OF THE POST OF HOSPITAL MANAGING DIRECTOR:

Question

What NHS hospitals, if any, were used for comparison purposes in fixing the contract payment for the Hospital Managing Director? Would the Minister specify the precise savings achieved by the Hospital Managing Director during his initial period in office to December 2010?

Answer

The contract with the Managing Director for the Hospital is a contract for services and not an employment contract. The value of the new two year contract was arrived at by taking the daily rate of the interim contract agreed in April 2010, which in turn was determined following a competitive recruitment exercise involving several agencies. The daily rate was that which the market determined to secure the level of skills and experience required by the Hospital. This was an immediate response to the urgent first recommendation of the Verita Report published in February 2010. A reduction in overall cost was achieved by placing the contract for services directly with the Managing Director's company rather than via the original placement agency thus eliminating the agency fee. This resulted in a saving of £76,000 over the 2 year period of the contract.

In arriving at the decision to extend the contract with the then interim Managing Director, alternative approaches such as a fixed term employment contract and a permanent appointment via open competition were also considered and benchmarked for cost. In arriving at a potential salary for a permanent appointment, consideration was given to the prevailing salaries in the Hospital sector in the UK for CEOs of small district general hospitals and Chief Operating Officers of large Teaching Hospitals. Professional advice was taken from an executive search firm retained for this purpose.

In 2010 some areas of hospital services were overspending on their direct service budgets. The forecast overspend was circa £1M. The main areas of financial pressure were around the rostering and utilisation of nursing staff in the medical wards, the utilisation of agency/locum doctors and increasing costs in some support services. Estates and facilities were also forecast to overspend due to pressure on maintenance budgets and overtime expenditure. Whilst many of these pressures remain, the Managing Director has assertively managed this problem to ensure expenditure has been minimised and controlled where possible and that where the expenditure could not be avoided, other lower priority expenditure was restricted so budgets could be transferred to the pressure areas. By combining the hospital under one manager, priorities between Surgical Services and Medical Services have been more effectively managed and ultimately enable a breakeven on Hospital budgets overall in 2010.

The Hospital Managing Director is directly responsible to the Chief Officer of Health and Social Services for the management of the General Hospital, the Ambulance Service and Estates & Facilities for the entire Department. This responsibility includes around 2,500 staff, revenue budgets of almost £100M and the care of many thousands of people who use the Hospital every year. This task is complex and demanding and can only be delivered successfully by someone able to change the culture and win the respect and trust of some very talented people. I know that the Managing Director would want me to point out that the myriad of savings achieved across dozens of budgets over the last 9 months have been delivered through the hard work of everyone in the General Hospital and not just by him.

1.20 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHIEF MINISTER REGARDING REDUNDANCIES IN THE PUBLIC SECTOR:

Question

Will the Chief Minister inform members what voluntary redundancy terms have been offered to public sector workers for 2012 and 2013 along with the terms that are on offer to the equivalent workforces in the UK and in Guernsey? Will he also state what terms will apply in the case of compulsory redundancies?

Will he confirm that the terms on offer locally are less than those available to UK and Guernsey workers and state whether this has arisen because we are in a worse economic and financial position than these two jurisdictions and, if not, what is the cause?

Will he also confirm that the target for redundancies over this period is 280 and if not, what is it? Will he further place this in the context of any overall target for job losses through non-replacement, outsourcing etc? What does he estimate will be the size of the total public sector workforce by 2014?

Will he also state whether there are any negotiations currently taking place over redundancies and if so in which sectors?

Answer

1. The terms agreed by the States Employment Board on 2nd February 2011 for Voluntary and Compulsory Redundancy are:-

2011 – 2012 Voluntary Redundancy terms

The revised VR terms, with immediate effect for 2011 and 2012 will be four weeks pay per year of completed continuous service, capped at 18 months pay. In addition the maximum salary for redundancy calculation purposes will be capped at grade 15/3 currently £83,018.

2011 – 2012 Compulsory Redundancy terms

The introduction of CR terms, with immediate effect for 2011 and 2012 will be three weeks pay per year of completed continuous service, capped at 12 months pay. In addition the maximum salary for redundancy calculation purposes will be capped at grade 15/3 currently £83,018.

2013 – Voluntary Redundancy terms

In 2013 VR terms will be three weeks pay per year of completed continuous service, capped at 18 months pay. In addition the maximum salary for redundancy calculation purposes will be capped at grade 15/3.

2013 – Compulsory Redundancy terms

No change to 2012 terms.

2. Clearly, in the UK public service, provision differs from service to service and organisation to organisation. For instance, the NHS and Local Government terms vary from the UK civil service redundancy terms. The recently revised Civil Service terms are as follows:

UK civil service voluntary redundancy

For each year of service one month's salary capped at 21 months pay

UK civil service compulsory redundancy

For each year of service one month's salary capped at 12 months pay.

Guernsey civil service redundancy policy is 5 weeks pay for every year of service up to a maximum of 20 years, i.e. 100 weeks.

The Jersey statutory arrangement is effective after 2 years service and allows for one week pay per year of service capped at the level of average earnings (currently £630 per week and reviewed annually).

The States Employment Board determined the new terms as it wished to more closely mirror the States provision to that provided by sizeable local companies within the Island. The previous terms were extremely generous and introduced at a time (mid 90s) when the financial climate was very different in Jersey. The terms had become out of kilter with other organisations and indeed the financial climate we now find ourselves in. Although not quite as generous as the UK or Guernsey Civil Service, the new terms are considered fair, reasonable and more affordable.

3. There is no target for redundancies. The 2012 and 2013 CSR savings proposals identified 177 posts which may be lost if the schemes were to be implemented as then planned. However, all measures will be taken to minimise the number of compulsory redundancies by offering voluntary retirement, redeployment, etc. Similarly, there is no target for job losses through non-replacement, outsourcing etc. Non-replacement of vacant posts will be used to manage post losses where appropriate and some proposals may involve some kind of alternative service provision but this will be discussed with staff and unions at the appropriate time.

There are no current negotiations currently taking place over redundancies. There are a number of CSR proposals which means this situation may change over the course of the year.

1.21 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE TAX REVENUE FROM NON-FINANCE COMPANIES:

Question

Will the Minister confirm that the income tax revenue from the profits of non-finance companies in 2007 was £82 million and that the total tax estimate for 2010 from non-finance companies (non 10% and utilities 20%) is £13.5 million, a reduction on the 2007 figure of £68.5 million?

Can the Minister explain to members why this revenue loss is so much greater than the estimate of £30 million lost revenue from the zero component of zero-ten previously given and will he state how this relates to the £10 million "cash flow" loss due to the abandonment of deemed distribution and attribution?

Will he further inform members how he proposes to re-coup some revenue from these zero rated companies and how his proposals will avoid ring-fencing either non-locally owned non-finance

companies or the previously exempt companies and thereby breaching the EU Code on Business Taxation?

Will he also explain what scope there is for local owners of zero-rated companies to “roll-up” dividends in the companies they own in order to convert profits into a capital gain? What powers does the Minister have under the Income Tax Law or elsewhere to ensure that any loss of revenue from zero-rated companies is minimised?

Answer

As the question is effectively four questions in one the answers are numbered as though the paragraphs in the question had been numbered one to four.

1. The figure of £13.5 million was provided to the Deputy in the answer to his oral question 6053 of 15th February 2011. In the time available it has not been possible to confirm the source of the quoted figure of £82 million or his resulting calculation. It would be helpful if the Deputy could confirm the source of this data, and do so in any future questions so that answers can be most helpfully provided.
2. In asking this question, the Deputy does not seem to appreciate that Jersey, and indeed the world, has just suffered one of the greatest recessions in recent history. As explained on numerous occasions, the reduction in tax revenues caused by the introduction in zero-ten was dealt with at the time through a number of measures including GST, 20 means 20 and reduction in spending. Since then, tax revenues have been further affected due to the decline in economic activity.

The estimated deferral of tax revenues from the removal of deemed distribution and attribution rules is not related.

3. The Deputy has asked the same question a number of times, including in oral question 6099 at this sitting, about what measures are being considered for raising revenues from non-financial services companies. I refer the Deputy to that response and the other statements made in the Assembly on this issue. Whatever measures are introduced, they will apply to relevant companies regardless of their ownership. In that way, the issues of ring-fencing referred to by the Deputy are not relevant.
4. The Deputy has identified a potential tax planning measure that taxpayers could attempt to employ in the absence of deemed distributions or other anti-avoidance measures. Jersey has a general anti-avoidance rules (Article 134A) which the Comptroller can invoke if a taxpayer has entered into a transaction for which the purpose or one of the main purposes is the avoidance of tax. In commercial transactions, for which the main purpose is unlikely to be the avoidance of tax, it is common for the purchaser of such companies to acquire the company on a cash-free, debt-free basis. In these cases, the vendor would be required to distribute the cash which should be a taxable event.

1.22 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING TAX REVENUE FROM THE 10 PER CENT COMPANY TAX RATE:

Question

Can the Minister confirm that those finance companies now rated at a tax rate of 10% previously paid tax at a rate of around 13.5% and that following the introduction of the 10% rate it is estimated that only £50.4 million of company tax will be paid by finance companies in 2010?

Will the Minister give members his estimate of what effective rate of tax this represents, given that finance profits in the years 2008 and 2009 on which this tax was paid were £1,520 million and £809 million respectively?

How does this effective rate compare with the effective rate paid by:

- a) Persons on marginal rate (27%) tax? and
- b) Those paying full-rate tax (20%)?

Will the Minister produce for members a table indicating the proportion of General Revenue Income (as given in Table 4, page 8 of the Financial Report & Accounts 2009) derived from

- i) company income tax? and
- ii) personal tax (income tax, impôts and GST)?

over the past decade and including the estimates of income for 2010 and 2011 as below:

Year	Total general revenue £m	Company Tax £m	%	Personal tax (IT + impôts + GST)	%
2000					
2001					
etc					

Answer

Deputy's question is effectively four questions in one the answer is numbered as though the paragraphs in the question had been numbered one to four. The various parts of this question seek to compare very different sets of data which will make any comparison virtually meaningless.

1 and 2. In the first part of the question the Deputy asks about taxes paid and profits earned by 'finance companies'. It should be remembered that for tax purposes a 'financial services company' which is subject to tax at 10% is defined by reference to specific regulations. The profits referred to for 'finance companies' are based on different criteria and the activities of some finance companies will be taxed at 0%. The figure of £50.4 million was provided to the Deputy in the answer to his oral question 6053 of 15th February 2011. It is presumed that 13.5% relates to the Deputy's written question 5291 of 20th April 2010 where he estimated a "maximum tax rate" of 13.4% for businesses in the finance sector – this estimate was not confirmed by the answer to that question. It would be helpful if the Deputy could confirm the source of the data that he has used in his question, and do so in any future questions so that answers can be most helpfully provided.

3. The third part of the question seeks to compare the effective rates of companies to the effective rates of individuals. This will again produce a meaningless comparison. The Deputy has asked

a similar question in oral question 6100 at this sitting and I refer him to the response to that question.

4. To gather the data requested in this question will take a significant amount of resource, in particular an analysis of tax revenues by taxpayer over a 10 year period. Given the significant changes that have been made to Jersey's tax regime in recent years, changes which were introduced to protect our economy in the face of significant international pressure, this data is unlikely to provide a useful comparison. The Minister believes that the Treasury's resources are better spent ensuring tax that is due is collected and ensuring that our tax regime continues to remain fit for purpose.

1.23 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE ADVANCE TO WORK SCHEMES:

Question

Following the announcement of further funding for the Advance to Work (ATW) schemes, (16 – 19, and 20 -24) will the Minister inform members for the years 2009 and 2010 -

- a) how many young people have had an ATW place?
- b) how many have subsequently found permanent employment? and
- c) how much in total has been spent on this scheme?

Will he further inform members why he has managed to attract only 270 employers out of a potential 6,210 Jersey businesses to join the scheme?

Answer

Funding for the programme was secured in September 2009 and the first young people started the course thereafter.

- A. 370 young people have had an ATW place.
- B. 142 have subsequently found permanent employment.
(This is the total number of people that have found employment - in some cases it has been contract work rather than permanent.)
- C. A total of £714,351 was spent on the scheme in 2009 and 2010 - £110,495 in 2009 and £603,856 in 2010

The ATW team members are working closely with local employers to encourage them to join the scheme.

- There are a number of other agencies in the Island who also are continually looking for valuable work placements. These include Workwise, Trident, Jersey Employment Trust, Highlands College and others and ATW work in partnership with all these agencies to ensure that their clients are not adversely affected by placements being lost to different schemes. We recognise that there is always a limit to the number of placements that any employer can offer across the variety of valuable schemes in the Island.

- Employers who are laying off their own staff due to the economic climate are often unable to take on trainees due to the impression this may give those staff losing their jobs.
- Placements are always specific to individuals needs and career aspirations and therefore we do not simply put trainees with any employer if the match is not right.
- ATW are continually attracting new businesses to support the scheme and many have offered placements to more than one trainee. Many businesses who have been involved with ATW in the past and used it as a useful recruitment tool have in fact recommended the scheme to other businesses.
- Many employers tell us that they barely have enough work for their own staff and therefore they would have little for a trainee to do if they were on placement. ATW are firmly of the opinion that placements need to be able to offer meaningful work and we do not want trainees getting disillusioned with a workplace where there is simply not enough work for them to do.
- Mentors spend a great deal of time networking with employers to gain new placements, but always ensure that there is adequate supervision in place and that the motives of the employer for taking on a placement are within the spirit of ATW before placing a trainee.
- ATW require any business taking a trainee to have employer and public liability insurance to ensure the trainee is covered whilst in placement which prevents some sole traders from participating in the scheme. (40% of businesses, 2,484 businesses are registered with the Population Office)

1.24 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE APPOINTMENT PROCESS OF THE HOSPITAL MANAGING DIRECTOR:

Question

Will the Minister advise members of –

1. The process that was followed in determining the salary of the Hospital Managing Director and the job titles of the person or persons involved in the process?
2. What oversight of the process did the Minister have?
3. Did the Minister sign off the remuneration package?
4. The break down of the remuneration package –
 - a. Is it strictly for salary costs?
 - b. Does it include payments into any pension scheme, and if so, what is the nature of that contribution?
 - c. Does the remuneration cover the cost of flights to and from Jersey?
 - d. Does it include accommodation costs in Jersey?
 - e. Does it cover payment to an agency, and in which case, how much?
5. The Minister stated that the Hospital Managing Director had already saved the hospital some £600,000 savings. Will the Minister outline what these savings are and their individual values?

Answer

1. The contract with the Managing Director for the Hospital is a contract for services and not an employment contract. The value of the new two year contract was arrived at by taking the daily rate of the interim contract agreed in April 2010, which in turn was determined following a competitive recruitment exercise involving several agencies. The daily rate was that which the market determined to secure the level of skills and experience required by the Hospital. This was an immediate response to the urgent first recommendation of the Verita Report published in February 2010. A reduction in overall cost was achieved by placing the contract for services directly with the Managing Director's company rather than via the original placement agency thus eliminating the agency fee. This resulted in a saving of £76,000 over the 2 year period of the contract. The contract was negotiated by the Interim Director of Human Resources for Health and Social Services.

2. The parameters for the negotiation were set following discussion and appraisal of the costs and benefits of a number of options by the Ministerial team for Health and Social Services. Discussions were held with the Ministerial Team on a number of occasions. There was assurance that the contract represented better value for money and that the Appointments Commission had approved the rationale for the appointment. The options were also discussed with the Chief Executive of the States. The Ministerial team was advised by the Chief Officer and the Interim Director of Human Resources for Health and Social Services.

3. Yes.

4. (a) The contract agreed with the Managing Director of the Hospital is a contract for services and not an employment contract. As such there is no payment of a salary.

(b) There is no payment into the States of Jersey pension scheme by either the Contractor or the Health and Social Services Department.

(c) There is no additional payment for travel expenses

(d) There is no additional payment for accommodation expenses

(e) There is no on going monthly agency payment. There was a one-off introduction fee of £28,000 which allowed the Department to avoid additional agency costs of £104,000 over the two-year period, thus saving £76,000, as indicated above and in Written Question 6077.

5. In 2010, some areas of hospital services were overspending on their direct service budgets. The forecast overspend was circa £1M. The main areas of financial pressure were around the rostering and utilisation of nursing staff in the medical wards, the utilisation of agency/locum doctors and increasing costs in some support services. Estates and facilities were also forecast to overspend due to pressure on maintenance budgets and overtime expenditure. Whilst many of these pressures remain, the Managing Director has assertively managed this problem to ensure expenditure has been minimised and controlled where possible and that where the expenditure could not be avoided, other lower priority expenditure was restricted so budgets could be transferred to the pressure areas. By combining the hospital under one manager, priorities between Surgical Services and Medical

Services have been more effectively managed and ultimately enable a breakeven on Hospital budgets overall in 2010.

The Hospital Managing Director is directly responsible to the Chief Officer of Health and Social Services for the management of the General Hospital, the Ambulance Service and Estates & Facilities for the entire Department. This responsibility includes around 2,500 staff, revenue budgets of almost £100M and the care of many thousands of people who use the Hospital every year. This task is complex and demanding and can only be delivered successfully by someone able to change the culture and win the respect and trust of some very talented people. I know that the Managing Director would want me to point out that the myriad of savings achieved across dozens of budgets over the last 9 months have been delivered through the hard work of everyone in the General Hospital and not just by him.

1.25 DEPUTY D.J. DE SOUSA OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE REVIEW OF MENTAL HEALTH:

Question

Would the Minister please inform members whether there have been any external and internal reviews in the area of mental health generally, what changes are being proposed, such as to the management structure of adult mental health and whether there are any staffing difficulties, such as in recruitment?

Answer

The most significant general review impacting on mental health services has concerned the establishment of the Community & Social Services Directorate within Health and Social Services.

Following consultation with key managers and staff it has been decided that Community Services will organise its multidisciplinary teams within age group "divisions" i.e. Children's Services, Adults Services and Older People's Services.

The impact on Mental Health services is that Old Age Psychiatry will be managed within the Older Persons division, whereas Adult Mental Health services will be provided within the Adults Services Division.

Each of these divisions will be lead by a Service Director. Following a recent interview process it was decided not to fill these posts permanently at this stage and they will be re-advertised.

To ensure robust management arrangements are in place, Acting Director Appointments have been made to the Service Director Posts for Older People and Adults, and a Children's Lead Manager is in place from previous arrangements.

The Managing Director of Community and Social Services has a full complement of senior managers in place in adults and older people's mental health services, although their configuration has been changed at senior level because of the reorganisation of services into age groups. He anticipates being able to fill the permanent Service Director positions when they are re-advertised and, with current acting up arrangements, considers that he has appropriate management arrangements in place.

Children's Mental Health services provided through Child and Adolescent Mental Health Service (CAMHS) will be located within the Children's Division of the Community and Social Services

Directorate. The Managing Director is giving consideration to what management capacity is required to fully support the clinical and professional work so well undertaken by this team.

A further significant area of consideration has been in the area of clinical advice and support to staff in Community and Social Services. It has been decided to appoint a Deputy Medical Director to enhance clinical input. Interviews for this post are being arranged.

Other reviews taking place within mental health services include a long term review of buildings provision focussed on re- providing services currently located on the St Saviour's site. Similarly consideration is being given to the relocation of mental health services provided within the General Hospital.

In addition to the above there are, throughout the year, reviews of individual cases and specific service areas are undertaken to provide organisational learning as to how best improve services in the future. From time to time external professional input is arranged to provide an extra perspective.

Areas which have received a priority focus include:

- Nurse Liaison Services
- Support to vulnerable adults, particularly those at risk of suicide.
- AIMs (Adult In-patient Mental Health Service) (2008/10). Peer review of Orchard House by Royal College of Psychiatrists and Royal College of Nursing.
- Nurse Staffing Review of inpatient areas (2007/8). Currently being reviewed and updated.
- Cooper 2010/11. Review of Community Forensic Service (Draft Report).
- National Memory Clinic Accreditation (2010) Royal College of Psychiatry.

There are long standing recruitment difficulties in Mental Health Services, particularly in relation to nurse staffing. This is part of a more general problem in relation to the recruitment and retention of nursing staff and is currently the subject of discussion with the States Employment Board.

1.26 THE DEPUTY OF ST. MARY OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING ROAD TRAFFIC ACCIDENTS ON BATH STREET:

Question

In the light of forthcoming debates on speed limits and on the North of Town Masterplan, one of whose proposals is the eventual treatment of Bath Street to become a calmed and narrower one way street with wide pavements and trees, and given the current discussions about the future of the roads around the new Town Park and pedestrian and cycling routes, will the Minister inform members of the numbers of accidents on Bath Street as follows:

	Killed	Serious Injury	Minor Injury
junction Gas Place / Bath Street			
junction Robin Place / Bath Street			
junction Belmont Road / Bath Street			

Bath Street between Gas Place and Robin Place			
Bath Street between Robin Place and Belmont Road			

Can the Minister further give the dates for the fatal and serious injury accidents as follows -

	Gas Place / Bath St.	Robin Place / Bath St.	Belmont Rd. / Bath St.	Bath Street from Gas Place	Bath Street from Robin Place
	junction	junction	junction	to Robin Pl.	to Belmont Rd.
Fatal					
Serious injury					

Can the Minister give details of what the serious injuries were?

Answer

Transport and Technical Services are provided with a version of the States of Jersey Police road traffic collision data base. The classification of injuries is made by the States of Jersey Police using the same definition as the UK Stats 19 system of road traffic collision reporting. Collisions are classified as non injury, slight injury, serious injury, and fatal, though when reporting killed and seriously injured accidents are often reported together as killed/seriously injured or KSI.

Between 2003 and 2010 the following collisions were reported in the States of Jersey Police road traffic collision data base. No Fatal collisions were recorded in the data base in this location during this period.

	Killed	Serious Injury	Slight Injury
junction Gas Place / Bath Street	0	1	2
junction Robin Place / Bath Street	0	0	2
junction Belmont Road / Bath Street	0	0	7
Bath Street between Gas Place and Robin Place	0	0	2
Bath Street between Robin Place and Belmont Road	0	3	5

The dates of the serious injury accidents were:

	Gas Place / Bath St.	Robin Place / Bath St.	Belmont Rd. / Bath St.	Bath Street from Gas Place	Bath Street from Robin Place
	junction	junction	junction	to Robin Pl.	to Belmont Rd.
Fatal	N/A	N/A	N/A	N/A	N/A
Serious injury	16/09/2005	N/A	N/A	N/A	2/04/2004 17/05/2004 16/06/2010

I am unable to provide details of what the injuries sustained in the collisions were. The road traffic collision data base provided by the States of Jersey Police does not provide details of injuries sustained to the individuals involved in any of the collisions recorded in the data base provided to Transport and Technical Services. STATS19 defines a "serious injury" as an injury for which a person is detained in hospital as an "in-patient" or any of the following injuries whether or not they are detained in hospital: fractures, concussion, internal injuries, crushings, non-friction burns, severe cuts and lacerations, severe general shock requiring medical treatment and injuries causing death 30 or more days after the accident.

1.27 THE DEPUTY OF ST. MARY OF THE CHIEF MINISTER REGARDING THE CIVIL SERVANTS' DISCIPLINARY AND CAPABILITY PROCEDURE:

Question

Following on from the answer to my written question to the Minister for Treasury and Resources on 1st February 2011 relating to professional competence of civil servants (6003), would the Chief Minister provide members with the text of "the relevant disciplinary or capability procedure" mentioned in that answer, or a clear reference to where this can be found?

Answer

The relevant documents in question are the Civil Service Disciplinary Policy and Procedure and the Capability Policy, which applies to all employee groups.

The Civil Service Disciplinary Policy and Procedure is to be found in Section C4 of the Human Resources Policy area of the States intranet site, Café Cyril, and the Capability Policy is to be found in Section C5 on the same site.

1.28 THE DEPUTY OF ST. MARY OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING A STUDY ON COMPARATIVE 'TOTAL TAX TAKE' IN COMPETITOR JURISDICTIONS:

Question

Would the Minister advise members whether his department (or any other department) has carried out a study into the total tax take which different household types at different income levels would pay in jurisdictions which could be counted as our competitors, and if so, can the Minister give members an exact reference to this study?

Answer

The most recent study covering these issues is the *Fiscal Strategy Review: Supporting Research* paper which is available on the States website at the following address:

<http://www.gov.je/Government/Consultations/Current/Pages/FiscalStrategyReview.aspx>

1.29 THE DEPUTY OF ST. MARY OF THE CHIEF MINISTER REGARDING THE ARRANGEMENTS FOR CEASING EMPLOYMENT DUE TO INCAPACITY:

Question

Would the Chief Minister explain to members the arrangements for civil servants and other public sector employees ending their employment due to incapacity of any kind, including but not limited to 'golden handshakes' and pensions?

Answer

There are a number of potential ways that employment can be ended due to some form of incapacity, which route was followed would depend on the circumstances of a particular case. In the event that the person becomes medically unfit, and this is supported through the independent Occupational Health Service as a medical retirement then the individual would receive a medical pension in accordance with the Scheme Regulations as set out under the provision for Medical Retirement. The cost of this would be funded from the pension fund and not met by the employer, but stringent conditions must be met. The employer would not make any additional payment.

There is provision under a new Voluntary Severance policy recently introduced by the SEB for management to agree with an individual that, in the interests of the public service because of incapacity of some sort, an arrangement may be reached for the employee to leave employment with a compensation payment. Such a payment may be agreed up to a maximum of six months pay plus contractual notice paid in lieu. This replaces the more costly scheme of Alternative Voluntary Early Retirement which was previously in place and which was occasionally used in these circumstances. Under the alternative VER terms an individual could have received their accrued pension immediately on leaving the organisation again in accordance with the Scheme Regulations. The new Voluntary Severance arrangements could be used in circumstances for example where an individual has a medical condition that falls short of the requirements for a full medical retirement but where the degree of incapacity is such that it impairs the individual's ability to fulfil the requirements of the job. It could also be used in the following cases:

Changes in Responsibility i.e. the responsibilities of a post have changed in some fundamental way and the postholder, a long serving member of staff, finds that s/he no longer has the appropriate skills or ability to perform these responsibilities adequately. In this case the postholder will need to have adequately performed his/her duties in the past, and it will need to be clear that the new demands of the job are beyond his/her capacity.

Long Service i.e. the postholder has been a long serving member of staff and has previously received no adverse reports with regard to the performance of duties, but the current standards of performance are now found to be inadequate but not to the extent that it would warrant disciplinary action.

Lack of Re-Certification i.e. if there is a regular process of re-certification for a member of staff which governs whether he can continue to perform his duties and the postholder fails this process through no fault of his own.

N.B. *In all of the above cases a person will be adjudged to be a 'long serving member of staff', if he has been employed by the States of Jersey for approximately 20 years. It would also be expected that adequate training and other support would be offered, and any opportunities to be redeployed would be fully considered before reaching an agreement to terminate employment.*

No cases have yet been agreed under this scheme.

There are no general contractual provisions for “golden handshakes” and pension benefits would be limited to those that an individual would be entitled to based on contributions made into the PECRS scheme during their employment, plus the transfer value of any pension they may have arranged to bring with them from a previous employer. Leavers would not be granted any additional pension over and above this entitlement.

1.30 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING COMPANY INCOME TAX PAID BY INDUSTRY:

Question

Until 2007 the Treasury published a breakdown of company income tax paid by industry. Will the Minister inform members why this no longer happens and also whether this data is still gathered but not published?

In the light of the move from a single rate of company tax to multiple rates does the Minister not accept that it is likely to be most useful to have this information to understand the sources of States revenues and will he undertake to restore the practice?

Answer

The analysis referred to by the Deputy was, in fact, a statement of tax charged by industry for a specific year of assessment.

The States has adopted Generally Accepted Accounting Principles (UK GAAP) under which the Treasury accounts for tax at the point of assessment.

There is a fundamental difference between tax charged for a specific year of assessment and tax accounted for in a financial year. It is not helpful to include information in a set of accounts that is calculated on a different basis to the accounts, regardless of the recent change in the tax regime.

1.31 DEPUTY J.M. MAÇON OF ST. SAVIOUR OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING PRICE PROMOTIONS ON ALCOHOL:

Question

Would the Minister advise whether licensed premises can hold price promotions which may encourage customers to drink to excess, and whether 6th category licensed premises (off licences) may hold similar price promotions on the same products? Are there any difficulties being experienced, and if so, does the Minister have any plans to address this situation?

Answer

The Licensing (Jersey) Law 1974 does not preclude price promotions for on or off-licensed premises. In practice however, pubs and other on-licences in Jersey do not hold 'happy hour' style discount drink offers. In June 1987 the Licensing Assembly, which issues licences for the sale of alcohol, stated that *'any kind of practice which encourages the taking of drink other than by buying it over the counter for the normal price, is something the Assembly does not wish to encourage'*.

While the Assembly chose not to impose a general condition under Licensing Law, it has been commonly accepted since that time that drinks promotions, happy hours and other types of inducement designed to make people drink more alcohol are not acceptable.

The policy was not applied to off-licences, which can discount alcohol for various reasons. The majority of shops which hold off-licences are not specialist alcohol retailers, but are general shops which sell alcohol as a part (often a small part) of their overall stock, and so alcohol may be discounted for commercial reasons, or as part of a wider sale which affects a range of products.

Whether or not on-licences and off-licences generally sell the 'same product' is not clear, given the different methods of operation. In the case of sealed alcoholic beverages being provided as off-sales from an on-licence, it may be that a product (for instance a bottle of beer) might be available at a discount from an off-licence at a given time but would not be available at a discount from an on-licence.

In a recent consultation, some on-licence holders indicated that they feel it would be appropriate for off-licences to be subject to a comparable limitation to on-licences in respect of discounted alcohol.

The Economic Development Department is currently working toward the development of new legislation to replace the Licensing (Jersey) Law 1974, and the intention is to regulate and codify rules regarding the sales of alcohol in a more accessible and effective manner. Issues such as this can be addressed in the development of the new law if necessary.

1.32 DEPUTY D.J. DE SOUSA OF ST. HELIER OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE MORALE OF HER DEPARTMENT:

Question

Is the Minister satisfied that the recent release of the salary of the Hospital Managing Director has not damaged the morale of her department, and does she consider that her and her Assistant Minister's amendment in the media has repaired any damage to staff morale?

Answer

It is often difficult to assess levels of morale, particularly in large and diverse organisations such as Health & Social Services. There are many variables that may impact upon staff morale including the working environment, staff vacancies, surges in demand for services and pay and conditions.

We are very fortunate in that we have highly motivated staff who work long hours in often difficult and demanding conditions. I am aware that there are issues of low morale in some areas of my Department. I know when I talk to staff of all grades that they are working extremely hard to deal with winter pressures and meet the demands of the comprehensive spending review which will see efficiencies of £3.7m this year in Health & Social Services. Some pay groups are also in sensitive pay negotiations at this time.

The recent disclosures regarding costs relating to contracting the services of the current managing director have inevitably lead to concern from some members of both staff and public during these straitened times. Levels of remuneration, especially for senior figures that are expected to lead and direct large complex areas of service should be subject to scrutiny.

The Assistant Minister and I have attempted to provide as much clarification on this issue as is possible and welcome the involvement of the Comptroller and Auditor General to review this issue further. It is my intention to seek to secure the highest calibre individuals, fit to lead in times of change so that the people of Jersey receive the services they deserve. I look to my Chief Officer and Executive Directors to advise me on these issues and the appropriate remuneration to achieve this goal.

I regret that recent misinformation about this issue and incorrect assertions about the suspensions of senior clinical staff have had an impact upon staff morale.

In previous answers I have referred to the recent Verita follow up report, which has pointed to the positive impact on patient services and staff working conditions that have resulted from the leadership of our Managing Director, his colleagues and our committed staff group. It is my belief that this will have had a positive impact on staff morale in building towards a positive future for our Hospital and our colleagues who work there.

[9:45]

2. Oral Questions

2.1 Deputy J.M. Maçon of St. Saviour of the Chief Minister regarding senior civil servant salaries:

Given the recent media coverage regarding the salary of a senior civil servant, which has provoked an angry response from the public, does the States Employment Board recognise the public disapproval of such high salaries and what actions, if any, will the board be implementing to address this issue?

Senator T.A. Le Sueur (The Chief Minister):

The States Employment Board does indeed recognise and understand the public concern over the issue in question. However, I must point out that the person in question in this case is not a civil servant and is not an employee of the States Employment Board. He does not have a contract for employment as such, but rather a contract for services. Salaries for senior civil servants employed by the board are determined by a combination of job evaluation and comparable market salaries in both Jersey and the United Kingdom. The board is currently reviewing the situation as a matter of urgency, as is the Comptroller and Auditor General, and we await with interest the report of the Comptroller and Auditor General before finalising our view.

2.1.1 Deputy J.M. Maçon:

In which case will the Chief Minister also comment, in his role as Chief Minister, what he will do regarding contract staff?

Senator T.A. Le Sueur:

The same rules will apply to staff employed under a contract but that is where they have a contract of employment as opposed to a contract for services.

2.1.2 Deputy R.G. Le Hérissier of St. Saviour:

Will the Chief Minister identify who passed this particular position even though it did not fall within the States Employment Board? Who passed it as meeting the criteria which he outlined?

Senator T.A. Le Sueur:

I am responding in respect of the States Employment Board. A decision to issue his contract of services was done by the Minister for Health and Social Services as part of her responsibility for that department. That is a straightforward matter of contract for services.

2.1.3 Deputy G.P. Southern of St. Helier:

Is it the norm in Jersey to pay salaries or to issue contracts worth almost twice the applicant's previous salary?

Senator T.A. Le Sueur:

Firstly, this is not a norm. In any case, the Deputy is comparing unlike issues. One is comparing a salary and the second is comparing with a contract for services, which is not the same thing, so clearly one cannot compare like with unlike.

2.1.4 Deputy A.E. Jeune of St. Brelade:

Would the Chief Minister be good enough to issue Members at a later date with the number of people who are employed under contract status of more than 6 months and at what bands of contract price they are able to achieve?

Senator T.A. Le Sueur:

I am happy to try to assist the Deputy and Members in this but I do remind them that there is a clear distinction to be drawn between a contract of employment, for which the States Employment Board could have responsibility, and a contract for services, which covers a whole variety of things, which is not within my remit and to collate that information will take some time.

2.1.5 Deputy A.E. Jeune:

If I may, a supplementary. Does it mean that these contracts are given out in an uncoordinated way?

Senator T.A. Le Sueur:

No, I think Members seem to be under a misunderstanding here. There are 2 sorts of contract. There is a contract for employment, and there is a contract for services. A contract of employment is an arrangement whereby a person can be employed on whatever length of time; a contract for services is not the same thing. A contract for services does not incur other costs such as pension costs or sickness costs. A contract for services means that a service will be provided irrespective of who provides that service and in what capacity under certain standards.

2.1.6 Deputy M.R. Higgins of St. Helier:

Although the Chief Minister is obviously explaining the difference between the 2, fundamentally in terms of the work that the individual does they are the same. The person is being employed to do a job, there must be a set of criteria laid down to do that job and I think the public would certainly be even more concerned if they believe the States are trying to get around their pay policy by using contracts of service. Would the Chief Minister give an assurance that he will publish details of all contracts of service so we can see how many there are and what value they are costing the taxpayer.

Senator T.A. Le Sueur:

I understand the Deputy's point but in many cases the work being done is the same but, as I say, there are no additional on-cost services when you have a contract for services, so it may well be that the price being paid for the overall contract is comparable with what would be paid for a salary and the time and the other on-costs which would otherwise be incurred. Clearly there is an issue here which is why, as I say, I am awaiting the outcome of the review from the Comptroller and Auditor General before changing or addressing policies that we would have.

The Deputy Bailiff:

I think the question, Chief Minister, is whether you would publish the contract for services.

Senator T.A. Le Sueur:

I have already indicated, Sir, that I will do my best to do that but contracts for services are quite difficult to collate and will take some time.

2.1.7 Deputy M.R. Higgins:

The other part of the question was asking the Chief Minister to give an assurance that contracts of service would not be used as a device to get around normal contracts of employment used by the States to try and hide it from the public.

Senator T.A. Le Sueur:

I would ensure that contracts for service are used to provide value for money for the taxpayer in a way which is in keeping with the principles that the Deputy is clearly wanting us to do, and which I agree with him are desirable principles.

2.2 Deputy R.G. Le Hérissier of the Minister for Health and Social Services regarding the appointment of KPMG as consultants to assess Jersey's Health and Social Services' policy priorities:

What alternatives were considered to the appointment of KPMG as consultants to assess Jersey's Health and Social Services' policy priorities and why were they rejected?

Deputy A.E. Pryke of Trinity (The Minister for Health and Social Services):

If I may say, this is not about policy priorities. This is the most important piece of work that Health and Social Services has carried out for a generation. Healthcare faces major challenges of continuing to provide safe and affordable services in an increasingly fast changing world. It is a significant piece of work and it must be done. The competitive tender process involved 6 international consultancy firms and followed a rigorous selection process resulting in KPMG being appointed. I look forward to sharing with Members and the public the Green Paper that will redesign our Health and Social Services for the future. [Approbation]

2.2.1 Deputy R.G. Le Hérissier:

Would the Minister not acknowledge that to employ consultants, some of whose time is simply to go around, for example, to agencies to collect very basic data about them, which is known by people already, is a very expensive use of precious time? Secondly, why was *New Directions* buried when it could have provided the foundations for much of this study?

The Deputy of Trinity:

New Directions - and I know the Deputy has been on about *New Directions* for a long time - was a strategy that is based on the foundations, and it was a good piece of work at the time, especially in relation to primary and second care. The long-term care White Paper was used to ... *New Directions* was used to input in that. But where *New Directions* came to a halt is because it could not ... it was weaker in design, a safe and sustainable hospital. As we know the current General Hospital is facing significant challenges to deliver a safe and affordable service and that is why it is so important that this piece of work is being done.

2.2.2 Connétable G.F. Butcher of St. John:

Could the Minister explain what the output from this piece of work will be?

The Deputy of Trinity:

The output for this work, which is going to be detailed - a lot of data analysis and is particularly high level work- is that we are going to have a roadmap fit for the next generations. It is going to lead us through what staff recruitment that we need and the capability and the capacity, but not only in the General Hospital, but also in the community and, as I said, and I pay no apologies for saying it again, it is the most important bit of work that we can do in our generation.

2.2.3 Senator S.C. Ferguson:

Was the tendering done for this project with the assistance of the Procurement Department?

The Deputy of Trinity:

Yes, despite what is said, I do appreciate the cost of everything and very much that it was done through the States of Jersey procurement process, and it was followed through that, and negotiations were fought hard and long to make sure that we got a very good price for it.

2.2.4 Deputy G.P. Southern:

Can the Minister point to what factors have changed since the commissioning of *New Directions* to require that a new initiative be taken?

The Deputy of Trinity:

Health and Social Services are facing major changes. There is some specialisation of consultants; there is our ageing demographics; there is staff recruitment and retention; and, on top of it all, there is the hospital estate and the Health and Social Services property in the States. Those are areas that are happening that we need to address. We cannot put our heads in the sand and think it will never happen. It is happening, it is a reality and we need to face it.

2.2.5 Deputy G.P. Southern:

Supplementary, please. Would the Minister point to any of those factors and say how they have significantly changed since the commissioning of *New Directions*?

The Deputy of Trinity:

New Directions only went as far as it was possible. As I have said, it did not address a safe and sustainable hospital for the future, that was a difficult piece of work; and especially this bit of work, along with all the other areas I have spoken to you about, is one that we are facing and we are going to take up and at least be done to face the future.

2.2.6 Deputy A.E. Jeune:

Is the Minister aware of the review, certainly of the Health Department, that was done in the mid-1990s and will that be looked at by this current KPMG review?

The Deputy of Trinity:

I am sure a lot of reviews have been done, especially in the past. I am not sure which specific one she is referring to but I am sure the Deputy will let me know. KPMG, along with Health and Social Services, are looking at every area within Health and Social Services and includes the community because the community have an important part to play in this because we will be relying on the community as we go into the future.

2.2.7 Deputy R.G. Le Hérissier:

Would the Minister explain why having appointed a whole raft of it appears, despite the controversy, excellent new managers with fresh new ideas, and having also retained the management level under them and not changed it, that the Health Department is replete with good management skills, good ideas, why has the work not been done much more at that level? Why was it farmed out almost immediately upon the arrival of a new management?

[10:00]

The Deputy of Trinity:

I am glad that the Deputy acknowledges that we have a good management team. I would totally agree with the Deputy, but let me make it absolutely clear, what has been done is highly specialised health economics and service modelling expertise, which any normal department ... and data analysis. This expertise is not usually found in a day-to-day management of a department, why should we have those experts in the department? This is a specialised feature for health economics and that is why we needed to bring in a consultancy firm.

2.3 Deputy D.J.A. Wimberley of St. Mary of the Attorney General regarding the investigation into an alleged pollution incident at La Collette:

Can the Attorney General state what advice, guidance or legal constraints were operating during the investigation by the Planning and Environment Department of the alleged pollution incident, which happened at La Collette during the construction of the incinerator on or around April 2009, which had the effect that the principal witness and the man whose job it was to ensure that the work was done properly was not interviewed during the investigation?

Mr. T.J. Le Cocq Q.C., H.M. Attorney General:

I am afraid that I am unable to answer the question at this time. This matter is still under active consideration by my department. No final decision has, as yet, been made. I am sure that Members will understand that at this stage it would not be right or appropriate for me to discuss this matter further. When a final decision is made I will provide more detailed information if it is then appropriate to do so.

2.3.1 The Deputy of St. Mary:

I just want to clarify that I am not asking about the decision itself, of course. But I am asking about the process and, in particular, not the process within the A.G. (Attorney General's) Department but the process as constrained by some kind of guidance that was applicable in the Planning and Environment Department. They seem to be saying: "We could not interview this person. The person who raised the alarm" and I am wondering what ... the question is ...

The Deputy Bailiff:

Deputy, one moment please. You cannot ask the Attorney General on a matter for which he carries no responsibility, which is what is happening in the Planning and Environment Department. If you would like to frame your question in such a way that he is responsible for it.

The Deputy of St. Mary:

That is exactly the point, it is one of these 2 stools questions. You go to the Planning Department, they say: "We cannot interview this person because we are under constraints. There are protocols, we cannot do that" and that is what I am asking what these protocols are. Is the A.G. aware of any protocols or guidelines that would emanate from his department that would constrain the investigation carried out by Planning and Environment, and I believe that question is rightly put.

The Deputy Bailiff:

Mr. Attorney, has your department issued any such guidelines of constraint?

The Attorney General:

I am aware of no guidelines or constraints issued by my department that relate, in general terms, to matters of this type of nature. There is guidance issued to regulatory departments when considering whether or not to refer a matter to the Attorney General, and that is available on the Law Officers' website to be reviewed. It does not, I think, contain any guidance relating to how or who should be interviewed.

2.3.2 Deputy P.J. Rondel of St. John:

Two weeks ago in this House I put a question to the Attorney General about this particular incident and he said hopefully we would get a response in the next several weeks. Is the Attorney General in a position to give us how many more weeks we have to wait, because we would like to get on with putting a close to this particular incident?

The Attorney General:

Other than to repeat the answer that this is a matter under active consideration within my department, I cannot be specific. The indication that I gave on the last occasion remains correct, as far as I am able to say, but I cannot be more specific than that.

2.3.3 The Deputy of St. Mary:

Just on a matter of general principle, would the A.G. agree, and I am sure the answer is going to be yes, that justice delayed - and we are talking about justice for the environment and for the users of the environment, which is all of us - is justice denied?

The Attorney General:

As a general principle, I do not think I could argue with that. I would also say justice hurried is often justice denied as well.

2.4. Deputy A.E. Jeune of the Chairman of the Health, Social Security and Housing Scrutiny Panel regarding hospital waiting times and hospital projects:

Would the chairman please advise what consideration his panel has given to hospital waiting times and to hospital projects - for example, information systems, with regard to Value for Money and benefits realisation - and if the reply is none, could he please explain why?

Deputy G.P. Southern: (Chairman, Health, Social Security and Housing Scrutiny Panel):

It is a great pleasure to be on the receiving end of the attentions of the good Deputy. So far since 2009 my panel - Health, Social Security and Housing - has held 8 hearings on health related matters and with the Minister for Health and Social Services. The latest was on 13th December 2010, and we discussed all sorts of matters, including the C.S.R. (Comprehensive Spending Review) Stages 1 and 2, voluntary redundancies, the maintenance of the physiotherapy services, mental health services, suicide data, Williamson implementation and the effect of pay and conditions on recruitment, the waiting list on the endoscopy services and primary care delivery, including computing requirements for the database for primary and linking with secondary primary healthcare. I also asked questions on 16th and 30th November, 6th December and 1st February on cancelled operations and waiting times specifically.

Deputy A.E. Jeune:

I thank the chairman for his reply.

2.4.1 Deputy R.G. Le Hérisier:

I am aware of the chairman's frustration perhaps that a lot of matters are under review, but I wonder whether he could switch the emphasis. He is well known for his reports on income support, and I wonder whether he might be prepared to switch the emphasis and look in greater detail at issues in the health service, albeit that some are, as we have on E.S.C. (Education Sport and Culture), the problem of they being under review.

Deputy G.P. Southern:

The problem is, indeed, that everything is under review in the health service. I am aware that we have been concentrating particularly on income support, a major initiative over the past few years.

We are, in fact, going to change our emphasis but we are moving on to housing, which we have neglected and we have not examined for some time. As the Deputy knows, the width of the brief that my panel has is extremely wide indeed.

2.4.2 Deputy P.V.F. Le Claire of St. Helier:

I wonder if the chairman can inform us as to whether or not private operations in the hospital that receive revenue are kept within the Health Department, or are they returned to the centre, as with housing rents? Will he be looking into those sorts of issues?

Deputy G.P. Southern:

I am afraid I cannot give the Deputy any information on that but I will endeavour to find out and see and get a response to him as soon as I can.

2.4.3 Deputy D.J. De Sousa of St. Helier:

Would the chairman not agree with me, as I sit on the panel, that it is a wide remit that we cope with and that we have, in fact, in this 2 and a bit years covered Social Security, we have covered Health with the dental review that I led myself, and that we are now doing Housing, so we are covering all remits.

The Deputy Bailiff:

If I may say so, Deputy, if an Assistant Minister put a supplementary question to the Minister the Assembly would be very unimpressed.

Deputy G.P. Southern:

If I may just respond to that plant; I think it was a cabbage.

2.4.4 Deputy R.G. Le Hérissier:

Would the chairman not agree that given the excellent report that was done 18 months ago on vulnerable children, under the leadership of Senator Breckon, of which the chairman was an active member, that there is a model there that if his panel is overworked he could well look to sub-panels constituted in large part of other members who could drive through some of these studies. We are all, in fact, guilty of not doing this to the extent we should. Will he not agree that this is a way forward and that Health and Social Services are of enormous concern to the population, and I think they would like to feel that there is some pressure being applied?

Deputy G.P. Southern:

I will bear the Deputy's wise words fully in mind.

2.5 Deputy P.V.F. Le Claire of the Chief Minister regarding the proposed new migration law:

Under the proposed new migration law coming to the States in May, will the 10-year qualifying period be replaced with a right for all to purchase a home if Jersey is their place of abode and, if so, what is the timescale for that to be enacted?

Senator T.A. Le Sueur (The Chief Minister):

No, it will not. The 10-year qualification will remain. A person will need to complete at least 10 years' residence before being able to buy a home as of right.

Deputy P.V.F. Le Claire:

I thank the Chief Minister for his answer.

2.6 Deputy F.J. Hill of St. Martin of the Chief Minister regarding the Napier Terms of Reference:

The Chief Minister stated that paragraph (d) of the Napier terms of reference was included in the Ministerial Decision he signed on 13th April 2011 but this paragraph was not part of the terms of reference set out in the final report; would the Chief Minister therefore give precise information about when this paragraph was removed?

Senator T.A. Le Sueur (The Chief Minister):

I refer the Deputy of St. Martin to the answer I provided on 18th January 2011, when I provided an extract of an email received from Mr. Napier confirming that he did not see the relevance of paragraph (d), as soon as it became clear that Mr. Power was willing to talk to him. With this confirmation Mr. Napier did not include the paragraph (d) in his final report but did make reference to the affidavit, which clearly demonstrates that he did refer to it as part of the investigation. As previously indicated, paragraphs (d) and (e) were not removed but inadvertently omitted when my Ministerial Decision was uplifted to the Livelink system on 13th April 2010.

2.6.1 The Deputy of St. Martin:

The Chief Minister mentions part (d) not being included but will the Chief Minister accept that part (d) was part of the recommendations or part of the terms of reference as agreed by this House way back when we had a debate, therefore it should have been part of the terms of reference in the final report? Will the Chief Minister say exactly when that was removed, was it on 9th April, because if it was then did he sign his Ministerial Decision without being told that part (d) had been removed?

Senator T.A. Le Sueur:

I have tried to make it clear that part (d) was not removed, it was accidentally omitted. It was part of the decision I signed on 13th April, it was not part of the decision which was reported to the States in R.39. The question was, does it have any relevance to the terms of the report of Mr. Napier and because of the information, which I have said elsewhere in my answers both today and earlier this year, Mr. Napier was satisfied he did not need to refer to paragraph (d) in his final report.

2.6.2 The Deputy of St. Mary:

The Chief Minister has told us that paragraphs (d) and (e) went to the Greffe on the last page, and were then inadvertently not printed as part of R.39. Can the Chief Minister explain how it is that paragraph (e) turned up in the terms of reference of Napier and his final report carries paragraph (e)? How did that get into the terms of reference if it was dropped to the Greffe?

Senator T.A. Le Sueur:

Because Mr. Napier was perfectly well aware of the original terms of reference.

2.6.3 The Deputy of St. Mary:

That reply is quite astonishing because the original terms of reference have paragraph (d) and paragraph (e) in them. Can the Chief Minister confirm that paragraph (e) without paragraph (d) arrived in the terms of reference, which Mr. Napier worked to, from his department? They did not reach Mr. Napier from the Greffe. They reached Mr. Napier from his department.

Senator T.A. Le Sueur:

Certainly, I can confirm they would not have arrived from the Greffe, they would have come from my department. I cannot say at this stage what caused Mr. Napier to write his report in the way he did.

[10:15]

2.6.4 The Deputy of St. Martin:

I find it difficult for the Chief Minister knows that he and I were supposed to have oversight of the review and for us not to have been told, I think the Chief Minister will accept, is not acceptable. Is he satisfied that when he signed his Ministerial Decision on 13th April that part (d) was not going to be included in the review as agreed by the States previously?

Senator T.A. Le Sueur:

No, when I signed the Ministerial Decision, which I have here, and which I circulated to all States Members last week, I was expecting to see part (d) and part (e) in the actual final review. The fact that part (d) was not in the final review of Mr. Napier did not cause me the slightest concern because Mr. Napier referred constantly in his report to the matters which related to part (d), and therefore any omission was of no consequence.

2.7 Deputy M. Tadier of St. Brelade of the Minister for Economic Development regarding complaints against the conduct of Jersey debt collection agencies:

Will the Minister inform Members how many complaints have been made to his department against the conduct of Jersey debt collection agencies over the past 3 years?

Senator A.J.H. Maclean (The Minister for Economic Development):

The Trading Standards Division of Economic Development has received a total of 22 complaints and inquiries relating to debt collection agencies in the last 3 years. Of those a total of 11 complaints could be said to be about conduct.

2.7.1 Deputy M. Tadier:

That is useful. Could I ask if the Minister has, of those 11 in particular, how many of those related to one company?

Senator A.J.H. Maclean:

I believe that all 11 related to one company. There are in fact 3 companies in this particular field and the 11 complaints are, I believe, relating to one of those.

2.7.2 Deputy M. Tadier:

If I just read a quote from an email I received yesterday night, and ask the Minister for his opinion, it is a very short quote: "I was recently contacted at my workplace by an employee of the company and without warning the person launched into a tirade of demands for immediate cash with a very real threat of legal action and police action if payment was not received that very afternoon despite the fact that I was not the person to whom that person should have been talking." Does the Minister agree that this kind of behaviour is completely unacceptable and could he say what safeguards there are in place to make sure that these 11 complaints against the same company do not grow?

Senator A.J.H. Maclean:

All businesses in Jersey have a responsibility to trade fairly and I would certainly agree with the Deputy, the email and contents of which he has read, assuming that is as said, are unacceptable behaviour. I would suggest that he has or directs anybody who has concerns about debt collection agencies or any business trading in the Island that is perceived to be unfair in the first instance to the Consumer Council. They have, I know, in the past... Senator Breckon has dealt with a number of issues in this particular area, and they are the agency to raise awareness and to best deal with such matters, certainly in the first instance.

2.7.3 Deputy M.R. Higgins:

Would the Minister elaborate on the level of complaints and context, and could he also confirm whether the debt collectors are licensed and if they are not does he think there should be a licensing scheme?

Senator A.J.H. Maclean:

I am not going to stand here and start going through the details of individual cases. There are a range of complaints which have been registered with Trading Standards. Trading Standards, as a matter of course, investigate each and every complaint that is received and they have spoken to the company in question about the range of different complaints in this particular area. As far as licensing is concerned, companies that are debt collection agencies are not licensed currently in Jersey; in the U.K. (United Kingdom) they would be. They are licensed in the U.K. under the Office of Fair Trading, under the Consumer Credit Act; that is not applicable in Jersey. The only other point that I would add is that we have just completed a consultation on the unfair trading practices potential legislation and, indeed, I will be bringing forward at the conclusion of that particular Green Paper, and that is an area where some additional protection to consumers would be most appropriately targeted.

2.7.4 Deputy M.R. Higgins:

If I could just come back on the Minister's question. I was not asking for specific examples for individuals, but I would like to know the type of conduct that has been carried out by these organisations.

Senator A.J.H. Maclean:

I am happy to circulate general details of the nature of the types of complaints anonymised to the Member if he would like.

2.7.5 Senator F. du H. Le Gresley:

I am aware from my previous job that there were many complaints about debt collection practices in Jersey and I urge the Minister, would he consider introducing regulation of people who wish to set themselves up as debt collection agents and also would he consider releasing a code of conduct modelled on the one that is issued by the Office of Fair Trading?

Senator A.J.H. Maclean:

I think the best way to answer the Senator's question is that we will progress the unfair trading practices legislation, we will see the assessment of that consultation and see if, indeed, that will provide some additional protection. Regulation is a more difficult area to deal with in this particular matter, but I do think the Senator raises a very valuable point with regard to a code of practice, and I think an area which is targeted with a code of practice would be useful. Indeed, there is a code of practice, which the Senator is probably familiar with, with regard to consumer lending, which was introduced about 18 months ago and has been quite useful. I think we could look at a similar model here, but I would emphasise that the first port of call and the most important, as we stand at the moment, is raising public awareness of challenges and issues in this area and the Consumer Council is the place to target as far as that is concerned.

2.7.6 Deputy M. Tadier:

I have got 2 but I think I will have to stick to the most urgent one. Can the Minister confirm that it is not best to go directly to Trading Standards because presumably anyone who goes to the Consumer Council is going to have to refer any complaints to the Trading Standards Department anyway, so can the Minister just clarify why one should not go directly to Trading Standards to make complaints?

Senator A.J.H. Maclean:

No, the Deputy is correct. It is quite appropriate to speak to Trading Standards to raise a complaint. The connection with the Jersey Consumer Council is quite simply that I am keen that if there is a problem in this area that public awareness is raised about such matters and clearly the Consumer Council would have that role.

2.8 Deputy T.M. Pitman of St. Helier of the Chief Minister regarding the number of States employees holding ‘managerial’ roles as opposed to ‘frontline’ staff:

Will the Chief Minister clarify what percentage of the total States wage bill is taken up by the salaries of those individuals holding managerial roles as opposed to frontline staff; further still what is the figure for those holding head of department roles or above?

Senator T.A. Le Sueur (The Chief Minister):

Due to the complexity of the information being sought by the Deputy, and a need to clarify definitions, it is not possible to collate this within the necessary timescale. The description of frontline staff, for example, is capable of different interpretations. I will however endeavour to circulate the information as soon as possible. In order to try to be helpful, I can confirm that there are 24 heads of department and chief officers. As a matter of public record these posts were detailed in R.132 of 2010, when I also set out their salaries. Their total salary bill in 2011 including base salary and employers’ pension and social security contributions will be approximately £3.6 million, which represents 1 per cent of the total States pay bill.

2.8.1 Deputy T.M. Pitman:

I appreciate the Chief Minister’s answer and I appreciate that he is going to get back with greater detail. Does the Chief Minister however know what percentage of managerial salaries are above the U.K. and may need possibly to have a pay freeze, as has been suggested for some public sector departments by his Minister for Treasury and Resources?

Senator T.A. Le Sueur:

I do not know the exact percentage of managerial salaries higher than the U.K. but I suspect it could be quite significant, and the reason for that is for a variety of reasons, but in order to attract the right sort of people with the right skills to do the right jobs in a way which is best for the Island. Clearly I understand the concerns which have been expressed by the Deputy and others, but I cannot at the moment confirm an actual percentage.

2.8.2 Deputy T.M. Pitman:

Again I appreciate the honesty of the Minister’s answer and perhaps could he come back in the future and let us know if any of those salaries are twice or more what people would be earning in the U.K.?

Senator T.A. Le Sueur:

I will take the perhaps twice or more as being a sort of yardstick to you, and will endeavour to do that.

2.9 Deputy S. Pitman of St. Helier of the Minister for Health and Social Services regarding the salary of the new Hospital Managing Director:

Will the Minister advise what benchmarks and evaluation process were utilised in deciding the salary of the new Hospital Managing Director; who supervised the process and, given that the figure provided to the Assembly was incorrect, would the Minister advise what the true salary is and who was responsible for the miscalculation?

The Deputy of Trinity (The Minister for Health and Social Services):

There has been a great deal of media coverage in this issue over the last few days, some of which is inaccurate. There are a number of questions tabled and I welcome the opportunity to setting the record straight. I refer Members to the written questions 6077 and 6082, and I hope this provides all the detailed background information Members require. In summary, the miscalculation arose when an estimate for December was wrongly calculated into an annual amount. It is not a salary, and I can advise that the process was supervised by the Interim Director of H.R. (human resources) and my Chief Executive Officer. There was an urgent need for a hospital managing director. This was the first of Verita's urgent recommendations. It is a vital position, designed to secure better value for money and a safer hospital, and I hope Members agree with that. **[Approbation]**

2.9.1 Deputy S. Pitman:

Firstly, could the Minister clarify what the actual pay award is? Sorry, I have not been quick enough to go through the answer to the question. If she could tell Members that. Also in times of tight budgets, could she tell us where this money has all of a sudden come from?

The Deputy of Trinity:

Let me put this in context. The hospital has a budget of £100 million. It has 2,500 staff, and looks after thousands and thousands of patients' lives every single day of every single year. It is an important role. The role is not a salary, it is a contract of services and that is the most important difference.

Senator J.L. Perchard:

A point of order, Sir, I wonder if the Minister could correct her inaccuracy about the size of the hospital budget.

The Deputy of Trinity:

The hospital has got a budget of around £100 million. The whole budget for Health and Social Services is approximately £170 million.

2.9.2 Deputy S. Pitman:

Could the Minister answer the questions that I put to her? Where has this money come from to pay this managing director and also what is the figure? What is his pay award?

The Deputy of Trinity:

It is not a pay award. The money comes from within our budget. This is a contract for services and it is a new 2-year contract and it is a maximum of £4,600 per week based on a minimum of 40 weeks per year.

The Deputy Bailiff:

The second part of the question was where is the money coming from.

The Deputy of Trinity:

Sorry, I thought I had answered that initially. It comes within the budget of Health and Social Services.

2.9.3 Senator P.F. Routier:

Can the Minister identify any areas where the new Hospital Managing Director has really made a positive difference?

[10:30]

The Deputy of Trinity:

Just to remind you that hospital services were overspending in 2010 budget on direct services. The forecast overspend was £1 million. The main areas of financial pressure are around rostering,

utilisation of nursing staff in the medical wards, and utilisation of agency, locum doctors, and increasing costs in support of services. Estates and facilities were also forecast to overspend. While some of these pressures remain the Managing Director has assertively managed this problem to ensure expenditure has been minimised and controlled wherever possible, and where expenditure could not be avoided low priority expenditure was restricted so budgets could be transferred to the pressure areas. He has made a significant difference in bringing the finance of the hospital under control.

2.9.4 The Deputy of St. John:

Given that the Minister claims that the new Managing Director has made a big difference to bringing the finances to the hospital under control, does this mean that she no longer requires the £5.3 million she applied to this House for from Social Security and, if so, will she notify the Minister for Social Security that this funding is no longer required? [Laughter]

The Deputy of Trinity:

I think Members are sometimes living in perhaps not the real world regarding health costs. Health costs are rising and will continue to rise. That is fact. The money requested from the Health Insurance Fund was to maintain the services and to grow some services, which we will have to do to maintain a safe and affordable hospital.

The Deputy of St. John:

Supplementary please, Sir?

The Deputy Bailiff:

No, I thought your last question hardly related to the original question [Laughter] ...

The Deputy of St. John:

She mentioned it, Sir, in her reply.

2.9.5 Deputy A.E. Jeune:

The Minister when initially responding to Deputy Shona Pitman's question spoke of the urgent need for this position. But I understood in the first half of 2010 that there was an urgent need and therefore we parachuted in an interim manager, and the understanding was that within that 6 months they would recruit a suitable hospital manager. The urgency was then not for a 2-year contract at the end of that, perhaps the Minister could explain why it altered.

The Deputy of Trinity:

Yes, it was an urgent need of Verita and we grasped that and got the Interim Director employed. But he has done such a good job, and regarding the budget and the forecast and the rostering of services and on-call that it is important that continuity continues because the hospital is under challenging times with the C.S.R. and also looking forward to the strategic roadmap. That is why we have got in place the 2-year contract of services. In fact, to quote Verita again, and I have it here: "The appointment of the hospital director looks to be very successful and he has quickly established a presence and developed good working relationships" and it is important that that continues for the next couple of years. [Approbation]

2.9.6 Deputy T.M. Pitman:

I fully appreciate that we need high value people, *et cetera*, but it is part of most job applications that you would be asked what your previous salary or contract was; was the M.D. (Managing Director) asked what his previous salary or contract was and we are reaching this doubling of salary nearly, as I understand it?

The Deputy of Trinity:

Can he repeat the question?

The Deputy Bailiff:

The question is given that he is providing a contract for services at a price, what inquiries did you make before making that contract and did you ask him what his previous salary was?

The Deputy of Trinity:

Yes, this is not something I do very lightly. The Ministerial team had had briefing papers, which looked at the different options and it was decided that this was the best way forward for the hospital. As I said, and I make no bones to apologise, the whole budget of the hospital is £100 million and it needs a level of experience and specialised skills, especially at this point of time, to take us forward for the next couple of years.

2.9.7 Deputy M.R. Higgins:

With respect, the Minister did not answer the question whether she was aware of his previous salary and took it into account.

Deputy T.M. Pitman:

I said that without moving my lips, Sir.

The Deputy of Trinity:

Was I aware of the contract of services regarding the interim? Yes, I was.

The Deputy Bailiff:

I think the question was whether you were aware of the Director's previous salary?

The Deputy of Trinity:

If the Deputy is referring to a previous salary in other hospitals, I cannot actually remember.

2.9.8 Deputy R.G. Le Hérisier:

Would the Minister not accept that given that the Assistant Deputy Minister, although a humble domestic chartered accountant, occupies both the Treasury and a Health role, and allegedly was put in there to be the hard man from Treasury, that his over enthusiasm for every item of high expenditure in Health is quite remarkable; would she not agree? [Approbation]

The Deputy Bailiff:

I disallow that question, it is not relevant to the [Laughter] ...

The Deputy of St. John:

Are you being very kind to Ministers, Sir?

2.9.9 Deputy S. Pitman:

How long does the Minister foresee this contract with the M.D. lasting? Also, given that civil servants have had to deal with below inflation pay rises year on year, and the most recent one in 2009, what message does she think this seemingly enormous and over-inflated pay award, what message does it send to them?

The Deputy of Trinity:

This is a contract of services. This is not a pay award. It is a pay award for a 2-year contract for 2 years. The task of running the hospital is complex and demanding, and can only be delivered successfully by someone able to change the culture and win the respect and trust of some very talented people. I know the Managing Director would want me to point out that the myriad of

savings achieved across all the dozens of budgets within the hospital over the last month has been delivered through a lot of hard work of everybody in the General Hospital and not just by him.

2.9.10 Deputy S. Pitman:

Can the Minister please answer my questions? How long does she foresee the need for this position and also what message does it send out, this over-inflated pay award? What message does that send out to civil servants?

The Deputy of Trinity:

I thought I had answered it. It is a 2-year contract. And the message to the staff that they are acknowledging, and it was a recommendation of Verita, that they should need a hospital director. I make no bones to say that the hospital is a very complex and diverse place, and everybody needs to work together and there are some challenging times and I know all the staff, led by a very skilled and experienced managing director, will take the service forward.

Deputy S. Pitman:

Sir, maybe you can put it in clearer terms because the Minister still has not answered my questions.

The Deputy Bailiff:

I think you have got about as far as you are going to go with this question today, Deputy.

2.10 Deputy D.J. De Sousa of the Minister for Health and Social Services regarding the extension of the Hospital Managing Director's employment contract:

Would the Minister inform Members of the process used in deciding whether to extend the hospital Managing Director's employment contract?

The Deputy of Trinity (The Minister for Health and Social Services):

It is important to note that the contract for the Managing Director of the hospital is a contract of services and not an employment contract. With regard to the rest of the question, the Ministerial team were advised by the Chief Officer and the Interim Director of Human Resources. I would like to draw Members' attention to the written answers 6082 and 6077, to Deputy Higgins and Deputy Le Hérisier respectively, as this provides further information on this issue.

2.10.1 Deputy T.A. Vallois of St. Saviour:

Under Recording of Ministerial Decision Guidelines it requires a Minister to make a Ministerial decision for contracts. Could the Minister advise why this was not carried out?

The Deputy of Trinity:

This is a contract for services of a particular person for the Managing Director of the hospital. If that is the case then I will look into it.

2.10.2 Deputy A.E. Jeune:

Can the Minister advise; during the 6 months of the interim contract was the post advertised and, if it was, where was it advertised?

The Deputy of Trinity:

I can confirm that during those 6 months the post was not advertised because there was so much to do within the hospital that it was important the interim settled in and tackled the areas within the hospital, and also with the C.S.R. that was taking place and the strategic roadmap, continuity is vital at this point in time.

2.10.3 Deputy A.E. Jeune:

I understand the hospital was very, very busy at the time; could it not have been passed to the Chief Minister's H.R. States people to deal with?

The Deputy of Trinity:

It is not just the role; it is having the right person in the right place at the right time. This is the most important thing that the Ministerial team felt, and even today I really feel that we have the right person at the right time to take especially the Health of... to make the hospital a safe and sustainable place for the future.

2.10.4 Senator S.C. Ferguson:

Would the Minister explain why there was no consultation with the Central Chief Officer of Human Resources in the Resources Department or indeed the Director of Procurement in the Central Department?

The Deputy of Trinity:

The appointment of the contract for services did go through due process. It was discussed within the Chief Officer of H.R. as well as the Appointments Commission, and the Chief Executive of the States of Jersey.

2.10.5 The Deputy of St. John:

Can the Minister give us details of how many staff within her area of responsibility earned more than £150,000 per annum, and will she consider her own position and do as Helier Clement suggests, fall on her sword? **[Members: Oh!]**

The Deputy Bailiff:

The first part of the question is disallowed, it is not relevant to the question which has been put, and therefore is not a proper supplementary. Are you going to fall on your sword, Minister?

The Deputy of Trinity:

I am sure my predecessors looking across the Assembly here when I say it is never an easy job. It is an important job and as a former nurse I believe passionately in the health and care of Islanders. **[Approbation]** I am not here to look back. I am here to look forward and to make sure that the structures and the right personnel are in place at the right time to deliver the best possible care for Islanders. That is my main aim. **[Approbation]**

Deputy M.R. Higgins:

This is another example of the Minister not answering a direct question.

The Deputy of St. John:

Will the Minister answer the question: will she or will she not fall on her sword?

The Deputy of Trinity:

Absolutely not. **[Approbation]**

[10:45]

2.10.6 Deputy S. Pitman:

I will say this very slowly: how long does the Minister envisage this contract with the M.D. lasting?

The Deputy of Trinity:

It is a 2-year contract of services.

2.10.7 Deputy A.E. Jeune:

A point of clarity on the last answer please. Is that effective from last November or when?

The Deputy of Trinity:

It is effective from 1st February.

The Deputy Bailiff:

I should have offered Deputy De Sousa the final supplementary.

2.10.8 Deputy D.J. De Sousa:

My final supplementary is this: originally this post was for an interim 6 months extended for 2 years; following on from Deputy Jeune, is there a guarantee that this will not be extended further?

The Deputy of Trinity:

There is nothing guaranteed in life. I have always said you cross the road and you never know whether you are going to get there. [Aside] This is the right person at the right place at the right time. I would like to think that in 2 years' time that the hospital would have moved forward to put in place a substantive Managing Director. But at this moment in time, I cannot give that guarantee.

2.11 Deputy M.R. Higgins of the Minister for Health and Social Services regarding the salaries and remuneration packages of the senior management team at Health:

Following public concern over salaries within the hospitals, will the Minister publish the salaries and remuneration packages of the senior management team in all areas of her department, including Social Services, listed by job title?

The Deputy of Trinity (The Minister for Health and Social Services):

In reality this is the responsibility of the States Employment Board. For clarity, I am very happy to refer the Deputy to R.72/2010, and here it is, which published details of senior salaries in pay bands.

2.11.1 Deputy M.R. Higgins:

Does the Minister not accept that while the public has got confidence and support for frontline hospital staff, it has very little confidence in the senior management of the department, which according to a recent P.A.C. (Public Accounts Committee) report did not even know the cost of an occupied bed, and that the public would like to be able to judge their performance against the remuneration levels?

The Deputy of Trinity:

The good Deputy is conflating a couple of different issues. The cost of beds, yes, we do not know; that is why it is important that the strategic roadmap identifies... and that is why Health economics is so vital and so important. Regarding salary paying, it comes under the States Employment Board and I will comply like any other Minister and every other department with that request from the S.E.B. (States Employment Board). But in that R.70 it did go by pay band and included all the staff over £70,000 wage packet in every department.

2.11.2 Deputy T.M. Pitman:

I am sure we are all getting confused because I certainly am. Could the Minister, in answering the Deputy's question, give a breakdown of how many of those individuals are contract for services and how many are salaries? I think that would help all of us.

The Deputy of Trinity:

At this moment in time I cannot because I do not have that information in front of me.

Deputy T.M. Pitman:

Can the Minister provide that at a later date, please?

The Deputy of Trinity:

Yes, I can provide that.

2.12 Senator S.C. Ferguson of the Chief Minister regarding the draft Migration legislation:

Will the Chief Minister explain why the draft Migration legislation has taken so long to come to the Assembly?

Senator T.A. Le Sueur (The Chief Minister):

I appreciate the concern over the time this has taken, however this is important and complex new legislation, which will affect nearly everyone in Jersey. As well as modernising 3 complex laws it will introduce a population register, registration cards and basic data sharing. Briefings for all Members will be held soon to explain this. It is therefore a big piece of work that has to be right for Jersey. As part of this, significant levels of consultation have taken place and great care applied. As I say, this is complex legislation and is important to get it right.

2.12.1 Senator S.C. Ferguson:

Given that we have an extremely busy schedule already with the Corporate Services Scrutiny Panel, will the Chief Minister give me an assurance that he will allow sufficient time for a considered Scrutiny Report before debating the law, and will not push for an early debate therefore not giving us sufficient time to do a proper report?

Senator T.A. Le Sueur:

I am anxious that Scrutiny should be able to have a considered view of this important legislation, and that is why I have ensured that they are fully engaged and kept up to the timetable in respect of this legislation. At the moment, the legislation is not in a state where it is fit to be viewed by the Corporate Services Scrutiny Panel and the sooner that work can be started the better. I do recognise the heavy timetable of work that panel does have to contend with, but I have made the timetable quite clear from my point of view for some months now.

2.12.2 Senator S.C. Ferguson:

With respect, the panel has been waiting and waiting and waiting. We have had promises of the legislation on several occasions and it appears now that we could well be in a position where the Chief Minister is going to push for this to go through, when we haven't had sufficient time to look at the law, which, as he says, is a complicated piece of legislation with quite a few implications.

The Deputy Bailiff:

Is there a question?

Senator S.C. Ferguson:

Does he not recognise that?

Senator T.A. Le Sueur:

I do recognise that and that is why last year the offer was made to the Scrutiny Sub-Panel to review a working draft of the law recognising that it had not yet been signed-off by the Law Officers' Department. The panel chose to wait until the law had been signed-off by the Law Officers' Department before commencing their review, but that is their choice and not mine.

2.12.3 Senator S.C. Ferguson:

They have, I understand ...

The Deputy Bailiff:

Senator, this would be your fourth question. You might at least have the decency to look at the Chair.

Senator S.C. Ferguson:

I am sorry, Sir. I am thinking very hard and looking at you just diverts my attention. Now I cannot remember what I was going to ask. **[Laughter]** We understand that considerable alterations have been made to the law following the review by the Attorney General and there have also, I understand, been additional changes and recommendations following its presentation to the Council of Ministers. It would have therefore been rather foolish to base a whole Scrutiny Report on something which has since been changed; would the Minister not agree?

Senator T.A. Le Sueur:

I think the important thing in any scrutiny of legislation, be it this or other one, is for the Scrutiny Panel to work in conjunction with the people preparing and drafting the law. The recent suggested changes and improvements made by the Council of Ministers are of a very minor and detailed nature and would not affect the overall thrust of the law, the shape of which has been known for some months now. Clearly the Senator is correct in that there are changes that have been brought in following a review by the Law Officers' Department, as is normal with any legislation but it would not affect the primary basis and principle of that legislation which, as I say, could, and I think perhaps would, have been better scrutinised at an earlier start. But that is entirely a matter I accept for the Scrutiny Panel themselves to decide.

2.12.4 Deputy G.P. Southern:

Can the Chief Minister assure Members that since this particular piece of legislation will give people access to particular public services, that all of those services will be defined in the legislation that it is bringing forward and that the legislation will not be subject to mission creep which would slowly accrete additional issues to the existence of this unique identifier?

Senator T.A. Le Sueur:

I am very well aware of the danger of mission creep. I will endeavour to ensure that all definitions required in the law are provided for. I believe they have been but only time will tell and Scrutiny and debate in this House will prove that right or wrong.

2.12.5 Senator A. Breckon:

In his original answer the Chief Minister said consultation had taken place; could he say who that consultation has taken place with?

Senator T.A. Le Sueur:

Not specifically but a variety of people. Mainly those concerned with the legislation and the application of this law, including members of the legal profession and members of the housing authorities, but I cannot be specific about actual names.

2.12.6 Deputy P.V.F. Le Claire:

Does the Chief Minister not recognise that in maintaining this stance of bringing the law forward for debate at the end of May, when we are in 1st March, is sending out a terrible signal about the value of Scrutiny and its opportunity to discuss with the public and consult with the public, about important laws that will affect us all? The confidential documents that we have been circulated are still in draft form. They are still waiting final sign-off on human rights grounds. Until we have a final document we cannot go out for consultation with the public because it is confidential. Will the Chief Minister not recognise that 2 months is hardly fair and equal arms of opportunity given that they have taken several years to bring this to date?

Senator T.A. Le Sueur:

I agree that this has taken several years, and that maybe it has clouded some people's memories because there has been public consultation going back to the year 2007, and it is as a result of that public consultation and the feedback from that consultation that the original legislation has been changed, improved, redrafted and now received the sign-off as far as human rights are concerned. All those things have been done over the 5-year timescale this has taken to come to the House. I am anxious that having taken all that time we do not delay still further, and that is why I am hoping that we can debate this before the summer recess.

2.12.7 Senator S.C. Ferguson:

Given that the summer recess is not until July then there is obviously some perhaps wiggle room in order to delay the debate so that we could get our Scrutiny Report finished effectively.

The Deputy Bailiff:

I think the question is, will you agree to defer the debate until the ...

Senator S.C. Ferguson:

Will the Chief Minister admit that there is a certain amount of scope for delaying the debate if we do not get our report finished as quickly as he would like?

Senator T.A. Le Sueur:

There is certainly limited scope. I suspect the legislation could take some time to debate, simply because of its complex nature, and I am anxious we do not have a sudden collection of important pieces of legislation all coming to the States in July and causing us, particularly the chairman of the Privileges and Procedures Committee, untold confusion in trying to set an orderly timetable. I therefore would like to see this at an earlier stage to ensure it has proper merit and time and due consideration given to this important legislation. But I take on board the Senator's concerns. It is important to get it right and I hope that we can make sure that both of these aims can be satisfied.

2.13 Deputy G.P. Southern of the Minister for Treasury and Resources regarding the replacement of lost income tax revenue from non-finance companies:

Unlucky for some. Will the Minister inform Members what mechanisms he has under consideration to replace the income tax revenue from non-finance companies lost through the replacement of the 20 per cent rate by the zero-tax rate?

Senator P.F.C. Ozouf (The Minister for Treasury and Resources):

I would refer the Deputy to the response to the oral question on 18th January 2011, in Hansard, which was substantially the same to the numerous occasions I have answered similar questions and made statements and also specifically to the debate on the Deputy of Grouville's amendment to the 2011 budget. So I have nothing further to add from those statements.

2.13.1 Deputy G.P. Southern:

In the meantime, the position with relation to Zero/Ten and deemed distribution and attribution has been resolved. Will the Minister state when he will be in a position to come to the House with measures to recoup this tax because this hole in our tax revenue is current?

Senator P.F.C. Ozouf:

There is nothing that has changed in relation to the statement of deemed distribution and attribution, and I am pleased the Deputy recognises the fact that this has now dealt with the issue. I have to be candid to the Deputy, while I do not mind answering questions my officials would be

better employed in continuing to research the appropriate measures to address this issue rather than having to spend time answering the same questions time over time again.

[11:00]

Statements on taxation matters happen at the budget. I have said that in the Assembly before, and I will say it again now. It is a matter that will be brought forward in the budget.

2.13.2 Deputy G.P. Southern:

Does the Minister accept that the figure from the 2007 financial report and accounts, that the tax lost or the tax in 2007 from non-finance sector amounted to some £82 million? Does he accept that figure and does he accept the loss due to zero-rate is of that order and not of the £10 million or £30 million that he is referring to in other estimates?

Senator P.F.C. Ozouf:

The Deputy is becoming a master of conflation, of dealing with suggesting 2 bits of information are somehow linked. It is absolutely clear the implications of the original introduction of Zero/Ten, the consequences of the economic downturn, which sadly has depressed our corporate tax revenues. I have answered oral questions, he sent me a barrage of oral questions in relation to ... I will attempt to answer them as soon as we can, all of the information on corporate tax revenue has been rehearsed and published in this Assembly many times and I do not think he is going to get anything new by point-scoring today.

2.13.3 Deputy G.P. Southern:

It is not point-scoring, it is a matter of fact. The 2007 financial report and accounts has a table that contains the tax revenue produced by industry, which shows that the non-finance sector was responsible for some £82 million worth of tax revenue. That is no longer accessed by this Government because of the zero rate. What is he going to do to replace that £82 million of missing taxation?

Senator P.F.C. Ozouf:

Again he conflates 2 completely different issues. Nothing has changed in relation to any information on corporate tax revenues since the debates that we have had on the introduction of Zero/Ten. He is conflating 2 issues about the potential deferment of revenue of deemed distribution and attribution, the issue of non-finance, non-locally-owned entities and the competitive issues that we lost revenue because of the need to move to a competitive 10 per cent special rate for financial services. There are a whole load of issues and you cannot stand here asking me questions in a way that gives the impression to the public that listens that the cost of Zero/Ten has been anything else than we have already said.

2.13.4 Deputy A.E. Jeune:

Given that a U.K. registered company does not pay taxes in Jersey under the Zero/Ten, would it apply to the hospital M.D.'s company if it was registered in the U.K. that we would not be getting taxes on that in Jersey?

Senator P.F.C. Ozouf:

I do not want to deal with any individual person's circumstances because I would not know, but I would just say 2 things, if I may. The first thing of course is all companies have a general rate of tax of zero and there is only a special rate for financial services entities regulated by the Financial Services Commission of 10 per cent and utilities at 20 per cent. Of course locally-owned businesses in terms of their current arrangement distribution on their personal tax return will need to make an appropriate return, and anybody spending a significant amount of time in the Island will of course have to submit a return to the Comptroller.

2.13.5 Deputy G.P. Southern:

In an attempt to get the Minister on to the real world, does the Minister accept the figure for £82.5 million for 2007 was the tax revenue produced by the non-finance sector, as given in the financial report and accounts?

Senator P.F.C. Ozouf:

Probably, but I do not carry the 2007 accounts with me, but it would also be important to point out that there has been a change in relation to the way that we report our accounts in terms of G.A.A.P. (Generally Accepted Accounting Principles) compliance and there is an important issue between the period of time when tax is paid and when it is due to be paid in relation to our assessment. He is shaking his head and looking as though he thinks he has made a point but he has not, there is nothing new in anything in terms of the information that he has asked me in oral questions today. Nothing new.

2.14 Deputy P.V.F. Le Claire of the Minister for Planning and Environment regarding the future of tidal power and renewable energy in this Island:

Does the Minister believe that the responsibility for the future of tidal power and renewable energy in this Island is best shared with the Economic Development Department? If so, will he confirm that all and any changes regarding responsibilities for energy and any future energy schemes will be lodged for States approval and not just agreed by the Minister?

Senator F.E. Cohen (The Minister for Planning and Environment):

Currently my department holds responsibility for formulating renewable energy policy. The expertise of the Economic Development Department will become increasingly important as we move towards a commercialisation strategy. Consequently, I intend to transfer the responsibility for some commercialisation elements of the energy policy to Economic Development at the appropriate time. However, a precondition of such a transfer would be that the Assistant Minister for Environment will continue to have some political responsibility in this area of work. This work will continue to be guided by the Tidal Power Commission so ably chaired by the Constable of Grouville, which I am intending to extend to incorporate other renewable technologies. While the Assistant Minister for Environment will retain some political responsibility in this area I cannot commit to bring every administrative change to the States, particularly in view of the savings and efficiencies required as part of the C.S.R., a programme by which, as Members will have recently seen, we have already made significant savings.

2.14.1 Deputy P.V.F. Le Claire:

Given that tidal power and renewable energy power is going to derive potentially a significant amount of jobs and revenue for his Island, is it not in the least democratic to ensure that those checks and balances that this Assembly brings to those institutions are first brought for the Assembly's approval before they are agreed with Ministers and their Assistant Ministers who have oversight? The Assistant Minister for Environment, as capable as he is, has no budget and no capability of stopping the powers of the Minister for Economic Development once they have them. Would he not agree that it is now time to institute an independent Energy Commission to ensure that the best interests of everybody in Jersey, and not just those of the business community and the utility companies, are for ever enshrined in this House's caretaking?

Senator F.E. Cohen:

It is a long question. In principle, if the States decided that an independent Energy Commission was their choice I would have no problem with that. In the meantime I think that the work done by the Tidal Power Commission, chaired by the Constable of Grouville, is proving excellent. The assessment is currently that up to 50 per cent of energy can in the long term - and I stress the long

term - be derived from tidal power sources. I do not think that it is necessary to bring forward to the States the matter of whether elements of this are transferred to Economic Development. Economic Development logically has the expertise to deliver in this area. The Department for the Environment does not.

2.14.2 The Deputy of St. John:

Could the Minister inform us how much to date has been spent by the Tidal Power Commission through his department, and what results, if any, have been achieved within this area?

Senator F.E. Cohen:

The cost of a survey to assess the tidal potential was approximately £50,000. The achievements so far have been quite remarkable. The Tidal Energy Commission has produced a report which has been presented to me. The reason that the report has not been made public is that there is a key sensitive area within that report that is currently being finalised in relation to access to the seabed and as soon as that matter is resolved I can assure Members that the report - and I stress it is excellent - will be distributed to Members and to the public. Thank you.

2.14.3 The Deputy of St. John:

Will the Minister share the information he has with the Scrutiny Panel for the Environment?

Senator F.E. Cohen:

Of course I will. I have made it very clear to the Scrutiny Panel that no documents are to be secret from the Scrutiny Panel. It is possible in some cases that confidentiality may be required, as in this case, but all documents are available from my department.

2.15 Deputy M. Tadier of the Minister for Housing regarding measures to eliminate the letting of substandard rental accommodation in the Island:

What measures, if any, does the Minister plan to introduce in order to eliminate the letting of substandard rental accommodation in the Island?

Deputy A.K.F. Green of St. Helier (The Minister for Housing):

The Deputy will be aware that the existing statutory powers in this area are limited and relate mainly to minimum standards in lodging houses. Soon the Residential Tenancy Law will give some protection to all tenants, but I have for some time held the view - and still hold the view - that more should be done and can advise Members that I have asked officers from my department to meet with officers from Health Protection Services with a view to seeing if we can introduce a system of minimum standards. Also, a fundamental part of the social housing transformation programme will focus on regulatory framework for all social landlords, including ourselves, and these proposals will be outlined in a White Paper which we will issue later this year.

2.15.1 Deputy M. Tadier:

I appreciate that currently we are limited as to what we can do to eliminate substandard accommodation. Does the Minister appreciate that the situation with, let us be frank, uninhabitable accommodation is particularly acute in the non-qualified sector? What will the Minister do to address this particular issue?

Deputy A.K.F. Green:

As I said, I am aware that there are problems there and I have always held the view that to require people to live in uninhabitable accommodation is unacceptable in any community, but particularly on this Island and I intend to do something about it. I need time to do that. We intend to have the Residential Tenancy Law back from the Privy Council soon. That will bring in some regulations and we will work with this.

2.15.2 Deputy M. Tadier:

Could I ask if one of the immediate steps the Minister would look to undertake is extending the depositor protection for tenants to cover non-qualified tenants? If not, what are the challenges in doing so?

Deputy A.K.F. Green:

The Deputy identifies an area that is a problem because the law only applies to tenancies and, as such, unqualified people cannot be tenants. So, this is an area that we need to work on.

2.15.3 Deputy G.P. Southern:

I do not know if the question has been answered, but when are we to see the rental deposit scheme in concrete form before this House, because it was passed in principle some time ago? How close is it to finalisation?

Deputy A.K.F. Green:

If my information is correct, I think this forms part of the Residential Tenancy Law, which is currently with the Privy Council.

2.15.4 Deputy M. Tadier:

The question relates to regulation. Can the Minister inform the Assembly how quickly he envisages being able to bring in a system, as simple as possible, of regulation for the whole of the sectors- both private non-qualified and qualified - whereby one simply cannot rent a room out or a property out unless one is registered, has paid a certain amount of money which will go towards inspection, and then a permit will be issued in order to be able to rent that property out?

Deputy A.K.F. Green:

The department has a massive piece of work in the social housing transformation programme and regulation will be part of that work, and I hope to issue a White Paper later on this year.

2.16 Deputy T.M. Pitman of H.M. Attorney General regarding prosecutions under the Data Protection (Jersey) Law 2005:

Does the Attorney General make decisions on prosecutions under the Data Protection (Jersey) Law 2005 in place of the Data Protection Commissioner when that individual is conflicted? Could he explain what the difference is between a regulatory and a criminal breach of the Data Protection Law?

The Attorney General:

The Data Protection (Jersey) Law 2005 is a complex piece of legislation and is difficult to summarise its approach in the ambit of an answer to an oral question. A regulatory breach of the law, for example, a contravention of one or more of the data protection principles under Article 40 is a matter for the office of the Data Protection Commissioner alone. In the event that the Commissioner is or may be conflicted such a decision would, as I understand it, be taken by the Deputy Data Protection Commissioner. Before taking action the Office of the Commissioner, or Deputy Commissioner as the case may be, can take legal advice, either from a member of my department or from the private sector. Where an offence under the law may have been committed, for example, a failure to notify under Articles 17 and 21, or unlawful obtaining of data under Article 55, my consent, under Article 61 of the law is required before any prosecution is brought. While the question of whether or not to bring a prosecution is ultimately one for the Attorney General, a decision not to prosecute does not prevent the Commissioner from then dealing with the matter on a regulatory basis. As a matter of good practice the Data Protection Commissioner will

consult with me when she is considering a possible breach of the law which might, in her view, result in criminal proceedings being instituted.

[11:15]

2.16.1 Deputy T.M. Pitman:

I thank the Attorney General for his very extensive answer. Could the Attorney General then subsequently clarify whether or not, as a States Member, if I were to receive documents belonging to a third party, receive them without their knowing and yet failed to notify the Data Protection Commissioner, would I be breaching either a regulatory or a criminal aspect of Data Protection law?

The Attorney General:

It is a difficult question to answer on the very bald statement of the potential facts. It seems to me that there may be no breach at all, or there may be a regulatory breach, or there may be a criminal breach, depending upon the detailed circumstances in which the information came into the possession of the individual concerned and what use was made of it.

Deputy T.M. Pitman:

May I just say, spoken like a true lawyer, thank you.

2.16.2 Deputy C.F. Labey of Grouville:

What means of appeal does an individual have against decisions taken or made by the Data Protection Commissioner?

The Attorney General:

Decisions of a regulatory nature taken by the Data Protection Commissioner can be appealed to the Data Protection Tribunal under the law, part 5.

2.17 Deputy G.P. Southern of the Minister for Treasury and Resources regarding the balance between personal and company tax revenues:

I am really looking forward to this one. Is the Minister satisfied that he has achieved the correct balance between personal and company tax revenues in the economy, following the full implementation of the Zero/Ten tax regime?

Senator P.F.C. Ozouf (The Minister for Treasury and Resources):

I suppose the first thing I should do is to remind the Deputy that as our economic advisers always remind us, companies do not pay tax. Their shareholders might but taxes might equally be passed on to customers in the form of higher prices, or their employees into lower wages. On that basis I would ask the Deputy what he considers to be the correct balance to be. So, the issue of the balance needs to be considered against keeping Jersey internationally competitive. We have undertaken last year a substantial review of fiscal strategy. I announced in the budget speech in December that a new Tax Policy Unit was being set up within the Treasury Department. This unit is currently conducting a further thorough review of all aspects of Jersey tax policy with a view to developing our long term strategy and of course maximising all revenues where we can.

2.17.1 Deputy G.P. Southern:

Does the Minister accept the data that I have circulated today, which suggests that personal tax over the past decade has doubled, while company tax and revenues from the companies have at least halved?

Senator P.F.C. Ozouf:

There is nothing new in any of that information circulated by Deputy Southern. In fact, I think it is quite useful because Members can look at it, and they can remind themselves of the difficult situation that the Island faced when needing to deal with the Code of Conduct view of our original taxation policy in relation to the exempt and non-exempt and the consequences of that to our revenues, which cost the Island £100 million, which of course was deferred later than the other Islands but we kept hold of that revenue as long as we could. Also, the impact of the economic downturn, which further impaired our revenues in 2009, 2010 and 2011. I certainly hope that our corporate revenues on the back of rising interest rates in subsequent years will rise from these levels.

2.17.2 Deputy G.P. Southern:

Can the Minister justify the fact that for 2011 the estimate for company tax is a mere £65 million, and for personal tax, which includes Impôts and G.S.T. (Goods and Services Tax), it is £436 million from the pockets of ordinary working people in Jersey?

Senator P.F.C. Ozouf:

He has obviously been practicing his lines in relation to this point-scoring issue. I am afraid I am happy to take responsibility for all matters in the Treasury and to the effective collection of income tax, but I am afraid I cannot atone for the competitive world in which we live, which caused a lot of the decline in our corporate tax revenue. The need to move to a 10 per cent rate was one of the most important contributors to the original £100 million deficit of Zero/Ten and I am afraid I cannot atone for the global turmoil which has seen our corporate tax revenues fall, but I am optimistic that we will see them rise in subsequent years.

2.17.3 Senator J.L. Perchard:

Does the Minister agree that the correct balance referred to by the questioner is in fact the balance and fiscal policy of the Council of Ministers and, more importantly, the balance of fiscal policy of the States of Jersey as a whole?

Senator P.F.C. Ozouf:

Absolutely. That is exactly right. I am simply the person who brings forward proposals on behalf of the Council of Ministers in relation to tax, and I would say one other thing in relation to corporate revenues. If this Assembly had not taken the sensible decision to move to Zero/Ten and also the economic policies of the past we would not over the last few years, which have seen many sensible decisions made, we would not be having any corporate tax revenue to speak of at all and we certainly would not be having the employment in the Island which underpins the important contribution in the revenue of income tax on personal matters.

2.17.4 Deputy M. Tadier:

Earlier the Senator made a statement that companies do not pay tax, that individuals do. Does the Minister confirm that that is simply an opinion, and in fact if we look back at Deputy Southern's statistics in the past, less than 10 years ago, company tax accounted for the majority of tax revenues in Jersey, so that is simply an opinion.

Senator P.F.C. Ozouf:

There are 2 things. First of all, it is not my opinion but it is the opinion of any credible economist that the Deputy would wish to question. Secondly, I agree. Corporate tax revenues in the early 2000s were very significantly higher than they are today and that was, it could be argued, revenue that we could not hold on to in the longer term because of competitive pressures outside of the Island in relation to needing to compete with a special rate of 10 per cent financial services, and all of the other things that we need to compete on.

2.17.5 Deputy M. Tadier:

Does the Minister not accept that it is an opinion which is held by right-wingers who are morally corrupt? Sorry, I meant to say in the morally corrupt and universally disproved theory of trickle down, which we know went out with the Thatcher years. In fact, does the Minister also acknowledge that the issue is that companies do not pay tax on their expenditure while people who pay tax themselves are liable for taxation on their expenditure, even if they spend all of their salaries?

Senator P.F.C. Ozouf:

I do not know who the Deputy speaks to - I have a suspicion I suppose - but in relation to economic advice I take the best of economic advice. The Island is served from the likes of individuals who serve on the F.P.P. (Fiscal Policy Panel) and I do not think that the comments that the Deputy made in relation to the economic advisers that the Assembly has, and I have, should be linked to the question that he raises. I am afraid the Deputy also lives in a parallel universe from me in relation to the need to compete. The Island needs to compete. We need competitive tax rates. We need good laws. We need stable government, but we need innovative departments like Economic Development to deliver business into the Island to continue to keep jobs on income tax, which provide the services that this Assembly wants to spend on and I think this comment shows that we are doing a fairly good thing. I would also say to the Deputies who are asking these questions, that our corporate tax percentage of total revenue in Jersey are the same as Jersey in the Isle of Man, if not a little ahead.

2.17.6 Connétable P.F.M. Hanning of St. Saviour:

The Minister has said how useful these figures are. Perhaps he could explain to us, if he can from them, the obvious increase in personal tax as the total has shown. A large proportion of that, I suspect, is going to be due to the increase in salaries and wages over the 10 or 11 years. If you take that out, can he tell us how much the increase in taxation is for personal tax?

Senator P.F.C. Ozouf:

I think the Connétable asks a very good question because of course it does need to be broken down. Jersey has been remarkably successful in upping the value of jobs in the Island. We have seen, in financial services particularly ever-increasing salaries because we have higher value jobs in financial services and that will be an important contributor to that. Also, the scale of other jobs in other sectors of the economy. I will see whether I can find some interesting and informative data in order to explain to the Constable's detailed question, but it is quite complex, what has changed in terms of policy, what has changed in terms of income levels and jobs in different sectors, but I will see what I can do.

2.17.7 Deputy M.R. Higgins:

Would the Minister accept that the competitive pressures around the world to which he refers are likely to further increase the share of tax paid by private individuals and reduce the share paid by corporations?

Senator P.F.C. Ozouf:

I certainly think that around the world there will be a move in the next couple of decades to governments getting revenue in order to fund their services from individuals and on consumption and indeed on property taxes too. That is generally the world in which we are moving. We are moving away from a world in which governments rely on corporate tax revenues. I suppose the only good thing that has happened in Jersey is that we have dealt with that imbalance of revenues. We now have effectively a more balanced taxation revenue stream. We have consumption tax, we have income tax and we are less reliant on corporate tax in the longer term, but of course as the Minister for Treasury and Resources and the new Tax Policy Unit we will do everything we can now and into the future to maximise corporate tax where we can, but I do not think there is any further imbalance that is going to happen because of what has happened in the last few years.

2.17.8 Deputy G.P. Southern:

Given that in answer to written question 22 the Minister said: “To gather the data requested in this question will take a significant amount of resource.” I am pleased to hear that the Minister will set one of his officers working on these figures and, before we get the spin that he puts on them, will he confirm that the general trend from doubling of personal tax and halving of company tax is in fact correct?

Senator P.F.C. Ozouf:

That question is a bit rich from the Deputy in calling spin when he has rehearsed his lines and trying to make points, which have already been discussed in this Assembly many times before about the balance of corporate and personal tax. So, there is no spin in relation to what I say. I say facts and I am asked to give information. What I also will do is I will attempt to direct my officials into the areas that are likely to get us more tax revenue in the longer term, and I do not want my officials wasting their time on rehashing data, which is only going to serve the purposes of Deputy Southern in point-scoring in this Assembly against me.

2.18 The Deputy of St. Martin of the Chief Minister regarding the termination of the Chief Executive to the Council of Minister’s employment:

It has been announced that in accordance with the terms of his contract the Chief Executive and the Chief Minister have agreed to a mutual termination of his employment. Will the Chief Minister inform Members whether the recent findings in the Napier Report influenced that decision?

Senator T.A. Le Sueur (The Chief Minister):

The findings from the Napier Report did not directly influence the decision of the Chief Executive to seek mutual termination; however, the overall level of personal comments and innuendo on the Chief Executive by a handful of States Members before, during and after the review was a factor that led to that decision.

2.18.1 The Deputy of St. Martin:

Will the Chief Minister inform Members whether any financial package will be arranged, and if so, what will it be worth?

The Deputy Bailiff:

Deputy, I am not sure that relates to the question, which was whether or not the recent findings from the Napier Report influenced the decision.

Senator T.A. Le Sueur:

The contract with the Chief Executive, which is a confidential matter, as I said in my statement, the mutual termination is in accordance with his contract.

2.18.2 Deputy M.R. Higgins:

Just pressing the Chief Minister on that a little further. Is the Chief Executive leaving on standard terms of notice? In other words, he has given 3 months’ notice, or whatever it is, and he will therefore receive 3 months’ salary plus holiday pay in lieu? Or is he receiving any enhancement whatsoever to the standard terms?

Senator T.A. Le Sueur:

As I said, the termination is in accordance with his contract.

2.18.3 Deputy M. Tadier:

Will the Chief Minister advise whether any pay-off was given - not to specify a sum - and whether that pay-off was paid for by the taxpayer?

[11:30]

Senator T.A. Le Sueur:

This is the third question which is not really on the original question, but yet again I can say that the termination is in accordance with the contract.

2.18.4 Deputy M. Tadier:

The point of my question, which is why I wanted an answer but I did not get it, was that clearly in the termination there will be a payment made and that will be footed by the taxpayer, so my question is, will the taxpayer, who is paying that money, be informed of how much money they are paying for that settlement?

The Deputy Bailiff:

Well, Deputy, if I may say so, the question is about whether the recent findings in the Napier Report influenced the decision to terminate the contract with the Chief Executive and any questions around how much money might or might not have been paid to the Chief Executive as a result of the termination of the contract do not arise; they are not relevant to the nature of the question. There is nothing preventing Members from putting different questions to the Chief Minister on another occasion, although it may well be they will get a similar sort of answer.

2.18.5 Deputy P.V.F. Le Claire:

It seems clear the Chief Minister is saying that the issue is that the Chief Executive Officer in his press statement has come to the end of a course of work, which the Chief Minister and his colleagues had outlined when the Ministerial government kicked-in and a new system of governance may be envisaged in the future, not necessarily with a civil servant at this level acting as a civil servant has done. Has the Chief Minister any information about whether or not the retiring Chief Officer will be replaced with a similar officer, or whether he has any ideas as to what will happen from here?

The Deputy Bailiff:

Now, that really does not relate to this question at all. Deputy Trevor Pitman.

2.18.6 Deputy T.M. Pitman:

I hope this one will. Given that the Minister has said that the Napier findings did not contribute to the decision of the officer to go, could he just give us some assurances that whoever replaces the Chief Executive Officer that some guidance will be given on good practice, not destroying notes and the possible negative impact that could have, because that was promised I think in the States some time ago.

Senator T.A. Le Sueur:

I would expect any replacement to adhere to the highest possible standards of public office.

2.18.7 Deputy M.R. Higgins:

The Chief Minister has already told us that the Napier Report had a slight influence, can he say whether the desire of many States Members to hold a Committee of Inquiry into Haut de la Garenne was also a factor in the Chief Executive's decision to leave?

Senator T.A. Le Sueur:

I do not believe it was.

2.18.8 Deputy R.G. Le Hérissier:

Would the Chief Minister tell the House, given his consideration of the Napier Report, what had been his learnings from that report?

Senator T.A. Le Sueur:

I am struggling to see the relevance of that question to the original question.

The Deputy Bailiff:

Well, I am struggling a little bit, Deputy. Can you explain how that relates to the question?

Deputy R.G. Le Hérissier:

Yes, because obviously it impacted indirectly or directly upon the role of the Chief Officer and it strikes me the validity with which the Chief Minister accepted that report, or did not accept it as the case may be, was a clear factor in the departure of the Chief Officer.

The Deputy Bailiff:

I thought the Chief Minister said that it was not an influential factor, but Chief Minister.

Senator T.A. Le Sueur:

I thought I made my answer short and clear, that the findings of the Napier Report did not directly influence the decision of the Chief Executive to seek termination.

2.18.9 The Deputy of St. Martin:

It is very much on the last point that the Chief Minister has given. The Chief Minister says it was not influenced by the decision, however the decision to go was as a result of the comments, innuendo, *et cetera*, following the Napier Report. So, would the Chief Minister not agree then really that the decision to go was influenced by the Napier Report?

Senator T.A. Le Sueur:

I said in my answer that the level of comment and innuendo before, during and after the Napier Review was a factor that led to the decision.

2.19 Deputy R.G. Le Hérissier of the Minister for Health and Social Services regarding the cost of the Interim Hospital Managing Director in December 2010:

Once more into the breach. Why was £26,000 estimated for the cost of the Interim Hospital Managing Director in December 2010? Was that sum paid? If not, why not?

The Deputy of Trinity (The Minister for Health and Social Services):

As I have made plain, this was an inaccurate estimate which was wrongly multiplied into an annual sum. My written answers set out all the facts and I have really nothing more to add other than to urge Members to support the Hospital Director in the delivery of a safe and sustainable hospital.

2.19.1 Deputy R.G. Le Hérissier:

Would the Minister then clarify the point in the memo from herself and her high-spending Assistant Minister that the response to the question included a sum of £26,000 for December 2010? This was an estimated maximum cost. How was the maximum and the minimum determined in those circumstances?

The Deputy of Trinity:

This was a direct result of a question asked of the Chief Minister regarding the department's salaries and, as I said, it was an estimated figure to give a figure to put into the written questions and it went back over the months that the Interim Director had been in place.

2.19.2 Deputy A.E. Jeune:

I heard the Minister for Health and Social Services earlier say that this was an annual sum that had been used. Could the Minister please tell us the annual sum of what, or for what that it was?

The Deputy of Trinity:

As I said, the estimate was wrongly multiplied into an annual sum and that was the figure that was wrongly put out.

2.19.3 Deputy A.E. Jeune:

Was that the £26,000 that was the wrong sum?

The Deputy of Trinity:

No, the £26,000 was the estimated figure that was put in as a request for the written question to the Chief Minister.

2.19.4 Deputy R.G. Le Hérissier:

At the risk of boring the Minister, could she explain to the House why a maximum sum was put in December, and how did it differ from the sums put in for the other months?

The Deputy of Trinity:

It was the maximum figure because at that time in December we had not had the invoice through, so that is the reason why it was an estimated figure.

3. Questions to Ministers without notice - The Minister for Planning and Environment

The Bailiff:

Very well, we now come to questions without notice and the first question period is for the Minister for Planning and Environment.

3.1 Deputy A.T. Dupré of St. Clement:

What are the policies of the Planning Department about advertising on the heritage buildings i.e. the Liberty Wharf where these commercial businesses are advertising sales, *et cetera*, on the railings?

Senator F.E. Cohen (The Minister for Planning and Environment):

The advertising on a listed building requires consent. In the case of Liberty Wharf I am dealing with the consents personally. The signs that are presently *in situ* are temporary signs that do not have formal consent and the proposal is to put some traditional flagpoles up in front of the building on which banners or flags will be flown with a specific provision that on Liberation Day the Jersey flag has to be flown.

3.2 Deputy R.G. Le Hérissier:

Could the Minister for the Environment, International Relations and U.P.V.C. (Unplasticised Poly Vinyl Chloride) windows inform the House how he spreads his time between his 2 main functions?

Senator F.E. Cohen:

Can I make it very clear that I am not a fan of U.P.V.C. windows to begin with, although I am a fan of the 2 other jobs to which the Deputy referred. The answer is I am having to work harder and I am doing my best to accommodate the tasks of both external relations and Planning and Environment and will continue to do so, but I am going home late at the moment.

3.2.1 Deputy R.G. Le Hérissier:

What is the approximate division of time?

Senator F.E. Cohen:

At the moment it is probably about 70 per cent planning and about 30 per cent external relations, but that is rapidly changing and I would imagine that relatively soon it will be 50/50.

3.3 Connétable K.P. Vibert of St. Ouen:

Over a number of years I have brought propositions to this House regarding the Plémont site and I am just wondering whether the Minister is in a position to maybe update the Assembly on where we are.

Senator F.E. Cohen:

Recently there was some confusion over the ownership of some of the land and consequently an application has been resubmitted. Having considered the recently resubmitted application I have decided that it constitutes a significant departure from the Island Plan and consequently merits examination by the inspector under the public inquiry provisions of the Planning Law. An inspector will be appointed shortly and the public and stakeholder groups will be invited to make representations. The inspector will report to me and make recommendations as to the determination of the application.

3.4 Connétable J. Gallichan of St. Mary:

Sir, can I just check, I am a member of the Planning Applications Panel, does that preclude me asking a question?

The Bailiff:

That depends whether you want to impress the Assembly. [Laughter]

The Connétable of St. Mary:

Very briefly, does the Minister consider that there should be a re-evaluation of the minimum parking provision, especially visitor parking for developments in the town area in the light of the expansion of the residential parking zones, which have had a consequential knock-on loss on on-street parking?

Senator F.E. Cohen:

The Connétable will be pleased to know that I have instructed the department to carry out a complete review of traffic and parking in the whole of the town, with particular reference to the north of the town, because I understand that Members do have some doubts about the deliverability of the concepts of reducing car parking requirements over the coming years, and we are going to revise our parking requirements based on current need and putting in place methods to encourage a reduction in car use, but planning for current need.

3.5 Deputy P.V.F. Le Claire:

I might impress the Assembly if I did not ask a question but nevertheless, is it the Minister for Planning and Environment, or is it the Minister for the Environment Department? Can I ask the Minister for the Environment Department if he has any plans in relation to the Green Zone for the forthcoming Island Plan that has not yet been announced?

Senator F.E. Cohen:

It is my proposal to bring forward an Island Plan that does not include significant rezoning of any green field sites or any countryside sites. I am proposing to replace those with a requirement to deliver affordable housing on publicly-owned sites being sites that are under the control largely of Property Holdings. By doing so there will be no requirement to significantly rezone areas of the

countryside but that does not mean that there will not be some very minor rezoning largely comprising infill sites.

3.6 Senator F. du H. Le Gresley:

Prior to the appointment of the Constable of Trinity, as chairman of the Planning Applications Panel, this post was previously held by an Assistant Minister. Does the Minister believe that his new Ministry for Environment will in the future require 3 Assistant Ministers?

Senator F.E. Cohen:

The Senator is shortly to join the Planning Applications Panel; does this mean that he is looking for an additional job? The answer to the question is no. No, I am pretty convinced that the Planning Applications Panel can continue to run with the Connétable as chairman, although indeed a future Minister may change that policy.

3.7 Deputy G.P. Southern:

At this time of financial strictures, what rationale does the Minister possibly have for changing the name of his department?

Senator F.E. Cohen:

The changing of the name costs absolutely nothing. As I have made very clear, even the letterhead paper, not that there is much, will be allowed to run out and will only be reordered when existing stocks run out. With a new name it is merely a matter of concentrating minds on the fact that we care for the built environment and the natural environment and that both the built environment and the natural environment are naturally subsets of the word environment. It is merely a refocusing of our attention.

3.8 Senator J.L. Perchard:

On this very subject, while on the face of it this name change is not significant, does the Minister agree to change the name of a department without the authority of the States is at best discourteous and possibly, at worst, contemptuous to Members?

[11:45]

Senator F.E. Cohen:

This was a request at some point by the House, so I certainly do not consider that it was discourteous. Certainly if Members have taken it as anything other than a refocusing of our attention I must apologise for that. I think it is a very positive thing and it seems that no matter how good something is someone will always complain.

Deputy P.V.F. Le Claire:

I wonder if on a point of order it would be appropriate for me to inform the House what occurred and which way it happened.

The Bailiff:

No, this is question time, Deputy.

3.8.1 Senator J.L. Perchard:

A supplementary, Sir. Something such as changing the name of a department surely should have the authority of this Assembly, and does the Minister not agree?

Senator F.E. Cohen:

We took legal advice on the matter and the Minister remains the same. It is simply the working title of the department. The department remains exactly the same. The Minister is still the Minister for Planning and Environment but the working title of the department will be the Environment

Department. We are not proposing any changes in the terminology and legislation. It is simply a working title or in the commercial world it would be a branding exercise.

3.9 Deputy J.A. Hilton of St. Helier:

Is the Minister able to tell Members when he intends to bring the draft Island Plan to the States for debate please?

Senator F.E. Cohen:

Was that the Island Plan that you referred to? Yes, the Island Plan is in the finalisation stages at the moment. I expect to take it to the Council of Ministers on 10th March and to lodge it shortly thereafter. I cannot give any guarantees as to when the Island Plan will be debated, of course, because we changed the law to allow States Members to lodge amendments and depending on the nature of those amendments it may be necessary to go through a further examination in public. If the amendments are minor it probably will not be necessary, but if they are significant it may well be so. Thank you.

3.10 The Deputy of St. Mary:

Let us see if this new name means anything. The man who was in charge of pollution when the incinerator was being constructed and who reported an alleged incident was not interviewed as part of the investigation by the Minister's department into that alleged pollution incident. Can the Minister explain how this can have happened, for the record, because on the face of it it is absolutely extraordinary? It was after all his job.

Senator F.E. Cohen:

The Deputy is being rather naughty because yesterday he asked me exactly the same question in a Scrutiny hearing and I am going to give exactly the same answer today. The matter is in the hands of the Law Officers and while the matter is in the hands of the Law Officers I have no intention of making any comment in relation to the alleged pollution incident.

3.10.1 The Deputy of St. Mary:

I am not asking about the rights and wrongs or whether it is true or not. I am asking about the process and what it looks like to outside people who are concerned about our environment. What does it look like? What message does it send when the person who reports an incident, the person who knows most about it is not interviewed as part of the investigation? Why was that so? That is a simple question.

Senator F.E. Cohen:

The answer is very simple, the matter is in the hands of the Attorney General and the Attorney General will be dealing with it in due course. He has many matters to deal with. This issue and whether or not there is a prosecution is entirely in his hands.

3.11 The Deputy of St. John:

I could put another question to that but I will not. Will the Minister give us the number of States Members who sit on his various quangos, whether it is the Planning Applications Panel, the Commission held by the Constable of Grouville for wave power and others, his 2 Assistant Ministers and the like, given this could influence any votes within the House depending on the number of Members he has control over?

Senator F.E. Cohen:

The answer to the question is a closely controlled secret.

3.11.1 The Deputy of St. John:

Can I come back on that please? Could he give us the actual breakdown panel by panel, including his 2 Ministers and I will not take a secret answer, as he has just given.

Senator F.E. Cohen:

I cannot answer immediately because I cannot remember. I will provide a written note listing all Members who are on my various different groups. Hopefully it will be circulated in the next couple of days.

3.12 Deputy M. Tadier:

What steps will the Minister take to allay the fears of environmentalist residents and at least one St. Brelade Deputy that the demolition, excavation and rebuilding of 2 houses at Petit Port, which are in the middle of an area designated as a zone of outstanding beauty?

Senator F.E. Cohen:

Firstly, I would like to begin by saying that I have absolute confidence in the Planning Applications Panel, who I believe do a sterling job and I believe usually make the right decisions. The issue of [Laughter] ... always, always make the right decisions. I am terribly sorry. Answering on the hoof is sometimes a problem. Senator Shenton raised this issue initially and I mustered Deputy Duhamel to review the landscaping proposals from an environmental perspective. No permit will be issued at all until he is satisfied that the natural appearance of the backdrop is protected with a natural landscaping scheme and that he has personally signed this off. Furthermore, I will be imposing a condition for a mini environmental impact assessment.

3.12.1 Deputy M. Tadier:

If I may have a supplementary. I am partially relieved to hear that, although I was on the understanding, reading the comments from Deputy Duhamel, that it was simply a recommendation about the background and that there was nothing he could do to enforce it. It is interesting the Minister is very supportive of the panel, does that extend to the decisions where in the case of Petit Port the decision is later overturned by the Royal Court saying that enough consideration was not given to the fact that the houses fell in the Green Zone where there is a presumption against development?

Senator F.E. Cohen:

Planning is always a subjective matter and I repeat that I have absolute confidence in the panel in all of their decisions. As far as Deputy Duhamel is concerned, to repeat, Deputy Duhamel will be asked to sign-off the natural landscaping proposal and no permit will be issued until Deputy Duhamel has done so.

The Bailiff:

I come to Deputy Le Claire, and given your statement earlier that you wished to inform Members about the Environment change of name, I just draw your attention to Standing Order 10(3) which says: "A question shall not be framed primarily so as to convey information rather than seek it."

Deputy P.V.F. Le Claire:

I think that has put a stop to the next one as well.

4. Questions to Ministers without notice - The Chief Minister

The Bailiff:

Very well, we come to the end of the first session of question time and we now come to the second question period which is for the Chief Minister.

4.1 The Deputy of St. Mary:

We have learned this morning that paragraph (e) of the terms of reference of the Napier Report was communicated to Napier by the Chief Minister's Department but paragraph (d) was not communicated to Napier by the Chief Minister's Department. Can I ask the Chief Minister, was it himself or his Chief Executive, or his Deputy Chief Executive who decided not to send paragraph (d)?

Senator T.A. Le Sueur (The Chief Minister):

Sadly, there is still a misunderstanding here. The terms of reference in full: (a), (b), (c), (d) and (e) were all known to Mr. Napier. His reports did not include paragraph (d) in his findings for reasons which have already been suggested, but there was no question of any malfunction or anything in this. The whole of the original terms of reference were known to Mr. Napier when he was appointed.

4.1.1 The Deputy of St. Mary:

Can I ask a supplementary? States Members and the public did not know that the terms of reference were anything other than (a), (b) and (c) because it had been left off the R. Mr. Napier's own report has (a), (b), (c) and the original (e), renumbered as (d), so how did Mr. Napier know that there were 5 terms of reference when he had 4, omitting (d), and the public had 3?

Senator T.A. Le Sueur:

Report R.39 contained 3 terms of reference. The original proposition contained the 5 and the 5 were known to Mr. Napier when he produced his report. We seem to be more hung up over the lettering of the terms of reference than the content of the report.

4.2 The Deputy of St. John:

In December I put a question to the Minister re the Health Reciprocal Agreement and he gave Members an answer that it would be in place by the end of December. Can the Minister tell us when it will be in place with the United Kingdom Government please?

Senator T.A. Le Sueur:

I am as disappointed as the Deputy of St. John that the agreement is not in place now. I understand that the agreement has gone through all the relevant U.K. channels and is only a matter of agreeing and signing, but clearly the U.K. Government officials are similarly under pressure, just as we are in Jersey, and that is being done at the earliest possible opportunity. I hesitate to give a second date when the first one clearly was not delivered. All I can say is I remain optimistic that it will not be long before that agreement is fully signed and in force.

4.2.1 The Deputy of St. John:

Supplementary, Sir. Given that a question was asked by Lord Kennedy of Southwark in the House of Lords on 17th January and the reply he got from the Parliamentary Under Secretary of State at the Department of Health, Earl Howe: "The United Kingdom expect to conclude a Reciprocal Health Agreement with Jersey in the first quarter of 2011." That being the case, how come the Minister and his Minister for Health are not up to speed on all these particular things? This is in the public domain. Will he please give us a reason why he is not up to speed with this area? This is a most important issue for many, many people within this Island, including my own family, where people are having to travel off-Island without insurance. Could the Minister please give us much better information?

Senator T.A. Le Sueur:

I am fully aware of the intention to conclude this agreement in the first quarter of 2011. I just said that I was hesitant to give a firm date, even if that was 31st March, when I have been proved wrong once. But certainly I confirm that the information contained in that House of Lords response is

consistent with the information which I have, and which the Minister for Health and Social Services also has and has endeavoured to convey to States Members.

4.3 Deputy P.V.F. Le Claire:

It could not have escaped anybody's attention that Libya has descended into an absolute state of chaos with Colonel Gaddafi and his security forces allegedly committing human rights atrocities of a despicable nature. Will the Chief Minister join with me and the Assembly in utterly condemning these types of actions and inform Members as to what actions, if any, are being conducted at the moment in respect of the Jersey Financial Services Commission in isolating any of these funds from this man's access in Jersey?

The Bailiff:

The conduct of foreign relations is not a matter for the Chief Minister but the second part of the question which relates to the Financial Services Commission perhaps just comes within the ...

Senator T.A. Le Sueur:

I am responsible for making Orders should sanctions be required and certainly at the moment Jersey is currently introducing restrictive measures against people involved in the former regime in Tunisia and is closely looking at the situation in Libya, which is still in an unfolding situation. So, yes, there is an indication that we will follow standards in Jersey at least comparable with Britain and the European Union.

Deputy M. Tadier:

May I ask a point of order, because I had a written question I think disallowed on the same grounds? Are the Chief Minister's comments correct, because he is responsible for imposing sanctions he can answer questions relating to international policy, or is that simply if they just relate to other sanctions or to funds which are held in Jersey *et cetera*?

The Bailiff:

The Chief Minister has to answer questions on matters for which he is responsible, which would include in appropriate cases the question of sanctions, but does not include the conduct of foreign policy on the Island because that is a matter which is conducted by Her Majesty's Government in the United Kingdom.

Deputy M. Tadier:

And if sanctions are being brought about because of the conduct of that international country then ...

The Bailiff:

Members are entitled to ask about sanctions.

4.4 Connétable J.LeS. Gallichan of Trinity:

Does the Chief Minister agree that due to public concern now is the time to undertake a review of all grades and salaries paid to all States employees?

Senator T.A. Le Sueur:

Certainly. Any review of senior salaries will have an impact on all grades of staff and that is certainly something which I would be happy to pursue, recognising that it is quite a significant task when we have something like 6,000 or 7,000 public employees.

4.5 Deputy T.M. Pitman:

Referring back to the Chief Minister's statement in February, I believe, does he now acknowledge that it was a grave error not to contact and engage with the Jersey Care Leavers' Association before announcing that the Committee of Inquiry promised by his predecessor would not happen?

[12:00]

Senator T.A. Le Sueur:

To the best of my knowledge, the Jersey Care Leavers' Association were informed at the same time as States Members of the decision. They were not that engaged as fully as they might have been, and that is something which perhaps is a matter for further discussion in the debate we are going to have later on in this session, but I certainly believe that any subsequent arrangements that we make in relation to potential inquiries into that should involve and engage members of that association and others.

4.6 Deputy G.P. Southern:

Could the Chief Minister, in his position as chairman of the States Employment Board, state when he will be opening negotiations with representatives of public sector workers over the Tribal report about terms and conditions?

Senator T.A. Le Sueur:

Those negotiations are already underway. A meeting was held quite recently at which representatives of various unions took part.

4.7 Senator J.L. Perchard:

Does the Chief Minister have any message of comfort to those 1,400 persons unemployed on the Island, and in particular the 350 young people who are unemployed?

Senator T.A. Le Sueur:

Comfort is one thing, but encouragement is perhaps more useful and I would encourage them that there are positive steps being taken in areas such as Advance to Work, in the fact that there are various parts of industry - including the hospitality industry - which have vacancies, which we welcome people to take up posts but it is a 2-way process. I am certainly going to offer them, and I think we should all be offering them whatever encouragement and support we can to improve through schemes like Advance to Work, but also they can also take advantage themselves of seeing opportunities that are available in the marketplace.

4.8 The Deputy of St. Martin:

It is a follow-on from the question about consultation from Deputy Pitman. Would the Chief Minister not accept that it would be better to consult with people before making any decision, rather than tell people after what the decision is and then consult with them? Surely consensus is one of the key issues if we are going to move forward with issues like Haut de la Garenne.

The Bailiff:

Deputy, I am sorry, you can come back to that question, but unfortunately we do not appear to be quorate. We are still not quorate. Can I invite Members to return to the Chamber? Right; Deputy of St. Martin, would you put your question again?

The Deputy of St. Martin:

I will see if I could try and repeat the second time. It is a follow-up from the Deputy Pitman about consultation. Would the Chief Minister not agree that it is best to consult with people beforehand, like those States Members who have shown an interest and the Care Leavers, before a decision is made, rather than discuss with them after when a decision has been made?

Senator T.A. Le Sueur:

I think there is always a question of balance, and certainly in this particular case I know that States Members were anxious to know as soon as the criminal proceedings had been concluded what the stance of the Council of Ministers was in respect of a potential Committee of Inquiry in order to advise Members at the earliest possible opportunity and to advise the public including the Care Leavers' Association. At the earliest possible opportunity a report was presented, and I accept on that basis detailed consultation before that was not done, because what the report was was a statement of the Council of Ministers' position as they saw the relevance of a Committee of Inquiry.

The Bailiff:

That brings the period set for question time, Questions without Notice, to an end. I give notice to Members that the Draft Public Elections (Amendment No. 4) (Jersey) Law 201-: amendment has been lodged by Deputy Southern. There is nothing under J. Under K, the Minister for Education, Sport and Culture will make a statement regarding Jersey Examinations.

STATEMENT ON A MATTER OF OFFICIAL RESPONSIBILITY

5. The Minister for Education, Sport and Culture - statement regarding Jersey examination results

5.1 Deputy J.G. Reed of St. Ouen (The Minister for Education, Sport and Culture):

On Wednesday last week the *Jersey Evening Post* released what was effectively a league table of G.C.S.E. (General Certificate of Secondary Education) results in Jersey schools, compiled by an individual using a large amount of data provided to him by my department. I had previously chosen not to do this because of the risks involved of using narrow statistics out of context. Exactly as predicted, and as a direct result of this reckless, selective use of percentages, considerable concern has been caused among parents, staff and pupils at the 4 States secondary schools. They have been stigmatised in precisely the way my policy sought to avoid. It is now essential that Members have the facts. I have already explained why it is wrong to use narrow academic criteria to judge our schools, but I think the point bears repeating. Jersey has a very different education system to that of the U.K. designed to meet the educational needs of all individuals regardless of ability or social background. Ours is a highly selective system, but overall our students still perform above the U.K. average. If the percentage for some schools is higher than the average, then simple maths tell you that to balance out the numbers there must be schools that score below that average. I repeat that overall the same proportion of our young people achieve the top academic milestones as in the U.K. They are just spread unevenly across our schools. Some people however have deliberately chosen to ignore this fact. They do not understand the significant negative impact of what they have done. The States education system has been required to adjust to demands placed on it by the States, parents and perhaps more importantly the pupils in our care. This is especially the case for our 4 11-to-16 state schools. These schools face significant challenges. Not only are they required to deliver an academic curriculum for the most able, but they are equally expected to support students who are more suited to vocational training and those with additional needs. These schools consistently provide the foundations of an academic education which allow students to access Hautlieu at 14 or 16 dependent on their ability. These schools are not failing, and to those who claim they are I say: "Where is your proof? Do you have evidence that compares like for like in a fair and honest way?" These schools are performing well and meeting the challenges set by our current selective education system. We know this because we monitor our schools more closely than schools are monitored in the U.K. We are not complacent and know that there is always room for improvement. We want standards to improve. However we do not support the name and shame culture that is being promoted by some. Parents need to know what is happening in our schools, but in a meaningful way. Information is already available at each school, and head teachers are more than willing to help parents make an informed

choice over the schooling that best suits their child. I want to be able to publicly recognise the performance of each school, and my department has been working on a new system of measurements that will achieve this. Working with experienced educationalists we are piloting a scheme that will compare results based on the amount of progress each pupil has made. This will be a far more meaningful indicator of how our schools are performing across the Island. It is right that there should be an open and honest debate on the future provision of education on the Island, and since I became Minister a number of major reviews have been undertaken to help inform that debate. These reviews are now complete and a Green Paper will be issued in April to allow everyone the opportunity to have their say. This has been my intention from the start and it is a commitment I aim to keep. I want to assure Members and the public that the education provided on the Island is good and we have much to be proud of. Teachers in our schools are well qualified with a wide range of skills and experience, fully committed to improving the learning experiences of the students in their care. So, is it wrong to celebrate the achievements of all Island students? Absolutely not; and I will continue to do so. In the Education Service we do not just pay lip service to the idea that we value everyone in our society. We genuinely, actively do. To achieve this requires a degree of sensitivity and understanding that so far has been lacking in the debate this past week. The Green Paper on Education will be published shortly. This will be the opportunity for the public of Jersey to have their say on this and many other aspects of education as part of an informed debate on the future of our service. Whatever the views of States Members, members of the public or the teaching professions, I will want to know what you think. I want to be part of a community that values the contribution of all individuals to our Island's prosperity regardless of ability. Working closely with the schools, my aim, and that of the department, will be to do all we can to make sure that each individual is provided with the best possible education for them to make a constructive contribution to the Island's economy and live fulfilled lives. I sincerely hope that Members share this view. [Approbation]

The Bailiff:

Now 10 minutes of questions.

5.1.1 Senator J.L. Perchard:

It is true that the 4 state secondary schools start with fewer academic students due to the 41 per cent the Minister mentioned the other day in his statement attending fee-paying schools, and at 14 years the transfer of approximately 15 per cent of students to Hautlieu. That said, my question is about the comparative performance of the 4 state schools who all operate within the same guidelines. Thanks to the *Jersey Evening Post*, we know that Les Quennevais students obtain 38 per cent.

The Bailiff:

Concisely, please.

Senator J.L. Perchard:

With respect, it is the core of students achieving A-star to C grades at G.C.S.E. including maths and English. Grainville students on the other hand achieved 18.3 per cent under the same criteria. The Minister asks in his statement where is the proof that any schools are failing. I say to the Minister, the proof is contained within his own now published results.

The Bailiff:

What is the question?

Senator J.L. Perchard:

So I ask how does the Minister explain the huge differential and why does he believe that covering up such a differential is in the public interest?

The Deputy of St. Ouen:

As I just explained to the Senator and others, determining and understanding the data that is provided from each school and recognising the different challenges that they face requires some thought and knowledge. That knowledge will come to the Senator and others if they accept my invitation, which I am considering offering to him to come and talk to my officers at the department to find out the facts, rather than coming to the unsubstantiated conclusions **[Approbation]** that he chooses to make on a regular basis. By the way, as a final, they are not my results that I produced. They are not my league tables; they are tables created by an individual who is not either involved in education on the Island or as an educationalist.

[12:15]

5.1.2 Deputy M. Tadier:

While I share many of the concerns of the Minister and reservations about the meaningfulness of these statistics and also the unintended consequences that these statistics may bring about, does the Minister accept that over the years his department has been putting itself in a vulnerable position making a rod for its own back in the fact that the statistics are published for the selective schools; and year on year we are told that these schools are doing so well, we have got 95 per cent pass rates. Hardly surprising for academics to get pass rates, but while holding back the exam results for the States schools. Does the Minister accept that that is a valid criticism and it is understandable that the public would be frustrated at the perceived double standards?

The Deputy of St. Ouen:

I do not believe that the public are frustrated in any shape or form, though the one thing that I do know, and the contact that I have had with parents, is that they are extremely frustrated by individuals who choose to select-out a particular group of schools that are providing education and good education to our children. With regards the Deputy's comments, I would refer him to, I think it was an extract from the Education and Home Affairs Scrutiny Panel Report on School Suspensions, where on page 78 of 88 - and this is one of the comments that they make, not myself - it speaks about the issue of league tables arose during the course of the Sub-Panel's review, and the comment made by the panel was: "It was unanimously believed that league tables would have a negative impact on the Island's secondary education system. Ultimately league tables could deter some parents from sending their children to certain schools. This would then have an even greater impact on the school." Those are not my words; they come from the Scrutiny Panel that the Deputy is part of.

5.1.3 Deputy M. Tadier:

So a very quick question. I stand by those comments. But the question which the Minister has not answered is why your statistics released for certain schools, the selective schools, are not released for the States schools?

The Deputy of St. Ouen:

We provide once a year an overall view of how our Island's children are performing. That is the policy of the department, and that is the policy that I currently operate. It is true that we need, and we recognise, the importance of demonstrating the effectiveness of each of our schools. As I said in my statement, we are working towards that. We are developing measurements that we can properly show and give the confidence that, whether it is States Members or the public, require about our schools. If we are going to make changes to our educational system then we need to do that as part of a process and a debate which will be included in the Green Paper.

Deputy M. Tadier:

If the Minister does not want to answer the questions, simply say so, but do not filibuster.

5.1.4 Connétable A.S. Crowcroft of St. Helier:

The Minister uses the word “reckless”, which seems to me very strong. Does he not agree that we as local parents and taxpayers have the right to know how our education system is performing in comparison with the U.K., given that many of our children will either be going to university there or indeed seeking jobs there?

The Deputy of St. Ouen:

I would like to just remind the Constable that we do provide that information. That information is readily available if anyone chooses to visit and discuss with the schools that they are choosing to send their children to. Therefore it is not a case of choosing to be secretive. It is just that you cannot just focus on one narrow selective measurement in determining the performance of the educational value of the school. [Approbation]

5.1.5 Deputy J.M. Maçon:

How apt. In the figures released, are N.V.Q.s (National Vocational Qualification) and possibly B-Tech qualifications included, and if not, does the Minister agree that when analysing our secondary schools, the range of qualifications that can be gained by individuals must be considered and not just G.C.S.E.s alone?

The Deputy of St. Ouen:

I thank the Deputy for an opportunity to deal with this matter. A to C is a figure that has been chosen within the U.K. We have in our 4 secondary schools a range of youngsters ranging from 85 per cent to 96 per cent of all youngsters in our 11 to 16 schools that take G.C.S.E.s and achieve 5 A-star to G passes or more in G.C.S.E.s. That is 85 per cent of our youngsters are successful in achieving 5 or more G.C.S.E.s at various different grades.

5.1.6 Deputy T.M. Pitman:

I am so excited there. Wise parents certainly do deserve to know facts. Does the Minister agree that wide improvements must be made rather than electioneering? It is important that some Members understand that to give a true picture of individual schools, a school with a demographic like Grainville, for instance, really they need to have the results taken into consideration of those young people who transfer to Hautlieu and do very well. That gives the true picture.

The Deputy of St. Ouen:

We have a very selective education system which everybody seems to choose to ignore at times. But it is the case, and it is developed over a period of time. We do have to be aware of the challenges that each school faces. It is not just about catchment areas. It is about the number of individuals that we require the schools to provide for. We have a full and total social inclusion policy that has been supported and currently is being supported by my department, and this Assembly that requires our 11 to 16s schools to provide for youngsters for whom English is not a first language, and those with additional needs. Last year for instance, there were 30 youngsters that arrived on our Island from non-English speaking families who were required to be placed within 2 of our 11 to 16 schools, because our responsibility is to provide education to all.

Deputy T.M. Pitman:

Is it possible to have a supplementary to that?

The Greffier of the States (in the Chair):

Very briefly; time is running out.

5.1.7 Deputy T.M. Pitman:

The Minister mentioned inclusion. Is it not the case that in the U.K. permanent exclusion rose as a result of basic league tables being applied to schools?

The Deputy of St. Ouen:

Absolutely. We do not have permanent exclusion here, and also I would just like to point out that in England, 12,000 children are missing from the education system and there are individuals that suggest that we should design and compare our model with theirs.

PUBLIC BUSINESS

6. Historical Child Abuse: request to Council of Ministers (P.19/2011)

The Greffier of the States (in the Chair):

I have lots of Members waiting but I am afraid the time has expired. The Minister was quite lengthy in his answers. That concludes the statement. We come now to Public Business. The first item is historical child abuse: requests to Council of Ministers, and I will ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion to request the Chief Minister and the Council of Ministers to reconsider their decision that a Committee of Inquiry to investigate any issues which remain unresolved in relation to historical abuse in the Island would not be appropriate.

6.1 Senator F. du H. Le Gresley:

I believe that future generations will look back on today as a very important date in the history of our Island. Today we have the opportunity as elected representatives of the people to do what is right for the children who suffered from physical, mental and sexual abuse within our childcare system over 4 decades. We know that abuse did occur in our children's homes. We know that 168 inquiries were received by the N.S.P.C.C. (National Society for the Prevention of Cruelty to Children) from alleged victims. We know that the police investigations resulted in 7 successful prosecutions. Faced with this indisputable evidence of historical child abuse I am sure that many Members will share my concern that the Council of Ministers has come to the conclusion that - and I quote from their report R.8: "A Committee of Inquiry would not meet the requirement to investigate unresolved issues in relation to the historical abuse in the Island as the issues have been reviewed." Members will be aware that the previous Council of Ministers led by the former Chief Minister, Senator Frank Walker, promised that once criminal proceedings were completed a full public inquiry would be held. The Council went so far as to draft a report and proposition which is included as Appendix A in the latest report, R.8. In order that Members are in no doubt that this was the intention and promise, I quote from R.27/2008 which was presented to the States on 31st March 2008: "It is almost inevitable that at the conclusion of the current criminal process there will still be a very large number of unanswered questions about the way in which children have been cared for in Jersey in previous decades. The Council of Ministers believes that the only way to ensure that there is total transparency in relation to this issue is for a full public inquiry to be held in due course, and the Council is hopeful that all Members of the States will share this view." The Council went on to say that the most effective way to undertake any such inquiry is through a Committee of Inquiry established under the States of Jersey Law 2005. At the first States sitting after release of R.27/2008, the then Chief Minister responded to a question asked by Deputy Shona Pitman about the timing of a Committee of Inquiry as follows: "We absolutely do all agree that justice is important and that is the most important consideration of all. But the victims are important here, and that is why we judged it necessary to propose at this stage a Committee of Inquiry should be established to ensure that all aspects of the child abuse issue are thoroughly investigated and seen to be investigated because only then will the victims have any chance and indeed will Jersey have any chance of closing the book on this very sorry and sad chapter in our history." For the current Council of Ministers to now renege on this promise is totally unacceptable, particularly for those Ministers who were members of the Council at that time this

pledge was made. I do not propose to examine in depth why it is clear to me that there still remain many unanswered questions about the way in which children in the care of the States were treated, as we will have the opportunity to do this when we debate the Deputy for St. Martin's amendments. However I do wish to say that when I first read R.8 I was astonished that the Council of Ministers had come to the conclusion that a historical inquiry would be "predominantly backward looking and of questionable benefit." For the avoidance of any doubt, this debate today from my perspective is not about the way the police handled the investigations into historical child abuse. Nor is it about current child care and child protection services. It is about the need for an independent and transparent inquiry to provide the people of Jersey and, in particular, the abuse victims with a better understanding of how those with political and managerial responsibility for children's homes failed to adequately protect children in their care. Members will recall that the Report R.8, along with numerous other papers appeared on our desks at the commencement of the States sitting on Tuesday, 1st February. I consider that it was discourteous to States Members for such an important document to be distributed in this way, particularly as we were then only allowed 10 minutes to ask questions of the Chief Minister after he made a statement in relation to this report, a statement that was not listed on the Order Paper and therefore gave us no time to prepare for. I believe we need to make a stand today and make it absolutely clear to the Council of Ministers that the decision whether or not to set up a Committee of Inquiry to investigate historical child abuse is for the whole Assembly to make. **[Approbation]**

[12:30]

The Council of Ministers now have the opportunity to defend their decision, an opportunity that would have been denied to them if I had not brought my proposition. In researching for this debate, I have been struck by the similarities with an investigation into allegations of abuse in a residential school and secure unit in Stevenston, Ayrshire, called Kerelaw. Kerelaw was opened in 1970 as a residential school for 72 boys and later became co-educational; a mixed sex secure unit was added in 1983. The school catered for some of Scotland's most challenging and vulnerable children. The school was closed in 2004 and an investigation was undertaken by Glasgow City Council. A report was published by the Council in June 2007, which outlined the scope of the investigation and the proposed changes in children's services. The report catalogued nearly 400 allegations of sexual, physical and emotional abuse from the 159 people. Following a lengthy police investigation, 2 members of staff at Kerelaw were convicted of physical and sexual abuse and one of physical abuse. However this was not the end of the matter, because a Minister in the Scottish Parliament with responsibility for children and early years called for further reports from the Glasgow City Council, and after further discussions the Council and Government agreed to set up an independent inquiry. When addressing the Scottish Parliament the Minister said he wanted the inquiry to secure a comprehensive insight into the circumstances that led to the abuse that occurred at Kerelaw. In a subsequent press release the Minister stated: "The young people who attended Kerelaw were among the most vulnerable in society. They deserved support and care that would help them overcome the challenges they faced in life and set them on the path to a positive future. It is unacceptable that this was not the experience for some pupils. These young people were let down. It is the role of government at local and national level to protect our young people. We owe it to those who have suffered abuse to examine fully and independently what insights we can secure from Kerelaw." I am sure many of you can see the relevance of this statement to the situation we now find ourselves in. Here in Jersey the police investigations have been concluded. We have had the Williamson Inquiry into issues relating to current child protection, and now the Council of Ministers Report R.8 has been published. What is missing is the Assistant Minister or Minister with responsibility for children calling for a fully transparent inquiry into historical child abuse. What Jersey can learn from the way the Kerelaw Inquiry was established is that when it comes to deciding on matters of such importance, the wishes of Parliament are supreme. The Council of Ministers have tried to convince themselves and States Members that the Williamson Report is a key consideration in deciding whether a Committee of Inquiry should take place. But Mr.

Williamson was only required to look at current child protection services. The terms of reference for Mr. Andrew Williamson were specifically to investigate and report on the following: “(1) the appropriateness of the policies, advice and procedures produced by the Child Protection Committee and the Health and Social Services, Education and Home Affairs Departments; (2) the manner in which such policies, advice and procedures are followed by the departments; and (3) the standards, experience and qualifications of staff at all levels and within all relevant departments, and to make recommendations as to any actions that are considered immediately necessary to ensure the highest standards of child care and protection; and [and I stress this] thereafter to inform any Committee of Inquiry which the States may subsequently constitute.” Members will note those last few words and ask if Mr. Williamson has finished his job. During the course of his work, Mr. Williamson conducted 65 interviews with complainants and also held meetings with current or former members of staff. Mr. Williamson and his colleague, Peter Smallridge, visited the following residential children’s establishments: Greenfields, La Preference, Heathfields and Brig-y-Don. On page 6 of his report he states: “It is important to state at the outset that I have seen no evidence of the institutional or systematic abuse of children in any of the visits to residential children’s establishments in Jersey. We acknowledge that present investigations into past practice on the Island may unearth a different picture, but as we are not involved in those investigations, it would not be appropriate for us to comment. Those matters are quite properly for the police to deal with.” The full allegations of abuse which came to his attention related to periods of time spent at Les Chênes or in the care of foster parents in the 1990s. These allegations were followed up by the States of Jersey Police. Mr. Williamson did not look into matters of historical child abuse at Haut de la Garenne. I would now like to talk about the importance of having an independent review and inquiry in order to bring closure for the victims of abuse. The following quote is taken from the foreword to a 2009 Report on a Systemic Review of Historical Child Abuse in Residential Schools and Children’s Homes in Scotland over the period 1950 to 1995 by Tom Shaw, a former Chief Inspector of Education and Training in Northern Ireland. Members will be already familiar with the following words, as they were included in an email they received yesterday from the Jersey Care Leavers’ Association: “Time and again in the course of the review, I came upon people, stories and records highlighting the need for us all to recognise and to keep reminding ourselves that children are the most valuable yet the most vulnerable group in our society. Our responsibility to respect them, to care for them, to protect them, to acknowledge and respond to their needs and rights can never be taken lightly or patronisingly. Wherever child abuse occurs it is intolerable, a self-indulgence in its ugliest form. Whenever it occurs where children are placed for safety it is even more despicable. Those who experienced abuse in the past need to be heard, to know society supports them in speaking out and that their experiences are recognised and addressed.” I believe that it is incumbent upon us as elected representatives of the people of Jersey to respond to the calls for a Committee of Inquiry from those who suffered abuse in our children’s homes over the last 4 decades. In the Chamber today are members of the Jersey Care Leavers’ Association who want the historic records to validate what they experienced and not for the past to be dismissed in a 21-page report, which appears to have been written and released without any consultation with the officers of the J.C.L.A. (Jersey Care Leavers’ Association). It is also important for current and former States employees who have responsibility for or worked in children’s homes to have the opportunity to have their say and to offer a forum for those who believe strongly that they have been falsely accused of being the perpetrators of child abuse. It is inevitable that some people, including some Members of this House, are fed up with hearing and reading about the Haut de la Garenne inquiry and the alleged cover-up of child abuse by the authorities, and that they articulate the need to move on. We see this mood in the Chamber when the Chief Minister fends off questions asked by those States Members who are justifiably seeking answers that should more appropriately be provided through a Committee of Inquiry. By the same token, ignoring or attempting to silence critics outside of this Chamber with vague or non-responses is not going to make the problem go away. We cannot remain in denial; we have to have answers. It may well be that a formal Committee of Inquiry set up in accordance with Standing Orders 146 and 147 of the

States of Jersey is not the best option, and that we need to look at how other countries such as Scotland and Ireland have dealt with these very sensitive matters. Personally, I still favour an independent inquiry, but if my proposition is approved unchanged I urge the Council of Ministers to work with the officers of the Jersey Care Leavers' Association so as to ensure that what is finally proposed as the way forward has their endorsement. During the debate today we will hear a lot about the cost of a Committee of Inquiry. Estimates range from £3 million to £10 million according to the Council of Ministers. Members will be aware that I have asked the Minister for Treasury and Resources if the money, which is currently some £8.25 million in the Criminal Offences Confiscations Fund, could be applied for the purpose of funding the cost of a Committee of Inquiry. Despite the Minister's pessimism in his comments on this proposition, I am more optimistic, particularly because in his written response to my question 6031 he states: "A final view could be taken when the terms of reference for any such Committee of Inquiry are published." I am also encouraged by the fact that the words "to ameliorate" appeared in the report that accompanied P.218/98, the Draft Proceeds of Crime (Jersey) Law, which was debated by the States on 15th December 1998. The use of funds in the Criminal Offences Confiscation Fund is set out in Article 24 in the Proceeds of Crime (Jersey) Law, and this is what the report said about Article 24: "One of the features is that criminal profits thus seized can then be turned against criminal activities and used to ameliorate their consequences." The definition of "to ameliorate" is to make something bad or unsatisfactory better. If a Committee of Inquiry into historical child abuse can help to bring closure to the victims of criminal activities, then I believe there are strong arguments as to why the cost of this process of amelioration can be taken from the Criminal Offences Confiscations Fund. I will conclude by saying that today we have the opportunity to unite behind those who suffered abuse while in the care of the State. I am pleased that the Council of Ministers has agreed to accept my proposition and that they acknowledge that the issue of historical child abuse is of such significance that it must be brought to a formal closure. I make the proposition.

The Greffier of the States (in the Chair):

Is the proposition seconded? **[Seconded]**

LUNCHEON ADJOURNMENT PROPOSED

The Greffier of the States (in the Chair):

Yes, I am sure Members would wish to adjourn. Could I just mention to Members before the adjournment some Members may have collected from their pigeonholes an amendment to the Public Elections (Amendment No.4) (Jersey) Law. Deputy Southern informs me there is a change to make to that; so any Members who have collected that, please destroy your copies and the Assembly will reconvene at 2.15 p.m.

[12:45]

LUNCHEON ADJOURNMENT

[14:15]

PUBLIC BUSINESS – resumption

6.2 Historical Child Abuse: request to Council of Ministers (P.19/2011) - amendment

The Greffier of the States (in the Chair):

The time has come for the Assembly to be reconvened. The Assembly is just now quorate and, therefore, first of all I will ask the Greffier to read the amendment of the Deputy of St. Martin.

The Deputy Greffier of the States:

Page 2: for the word “that” substitute the words “and lodge a proposition asking the States to establish”; for the word “any” substitute the words “the following”; delete the words “would not be appropriate”; and after the words “in the Island” insert the following questions: “(1) How have the Island’s children’s homes been run in recent decades? (2) What procedures were in place to recruit staff and how was the performance of staff monitored? Should other steps have been taken to monitor performance? (3) What measures were taken to address inappropriate behaviour from staff when it was discovered, and if those measures were insufficient, what other measures should have been taken? (4) How did those in authority at political and officer level deal with problems that were brought to their attention? (5) What processes were in place to assess the performance of the homes and what action was taken as a result of any problems that were identified? (6) Were there any mechanisms in operation to allow children to report their concerns in safety and what action was taken if and when concerns were voiced?”

6.2.1 The Deputy of St. Martin:

I was hoping we may get a few more Members into the Chamber because it seems a bit pointless making a speech about something if no one is going to be here to listen to it. Then, of course, they have then got to make a decision on voting. Anyway, I think we have about 30 people in the Chamber. It has been said that in any war truth is the first casualty. The historic child abuse investigation can hardly be said to be a war, but it certainly has been a battle trying to get to the bottom of what really happened, who did what, who was responsible and what was done about it. However, it has been apparent that a great deal of effort has been spent in making it very difficult getting answers to many of the questions that have been asked. It is also apparent that the investigation has been managed by a very small group of people who do not appear to be accountable or responsible for what they do or do not do, or indeed the money they have spent. The Council of Ministers’ decision as reported in R.8/2011 is just another example of how a small body of people can arrive at a decision without consultation with States Members or those directly involved. On 6th December 2010, when the Chief Minister made his statement and apology in relation to the historical child abuse inquiry, he stated that in the very near future the Council of Ministers would formally consider whether any unanswered questions remained and report to the States. Members may recall that I did suggest to the Chief Minister that it might be a good idea that indeed he consulted with those who had a close interest in the matter. The Chief Minister said he would take note of my suggestion but it would depend on the outcome of the Council of Ministers’ views. I wrote a written question and the answer has been contained this morning in answer to question 10. The Chief Minister says that my suggestion was considered but it was rejected. So, again, we keep having this “us and them” approach. The same could be said about consultation with those who suffered in any way, be it directly or indirectly. While understandably they are not all represented, there is one organisation which has been prominent in giving support and in particular to the many people who have been victims of abuse while in the care of homes run by the States. I am referring to the Jersey Care Leavers’ Association. Some of their members were in the Royal Square this morning and some are in the public gallery this afternoon. Why was that Association not consulted or, indeed, why could they not have been informed that the public apology was being given by the Chief Minister? Why did they have to learn of the apology via the media? I now turn to the amendments as drafted. I think Members may well find it difficult to understand what my amendment is, so I have circulated a note to all States Members. They will see really that the proposition is quite clear. That is, it is requesting the Ministers to reconsider. I think it is relatively straightforward and I think if one reads the Council of Ministers’ comments we will see that they are going to accept Senator Le Gresley’s proposition unamended. But we know that Senator Le Gresley did speak and I compliment him on his speech. I think it was an excellent speech. He spoke in support of the inquiry. But my amendment is quite clear. It is to request the Chief Minister and the Council of Ministers to reconsider their decision and lodge a proposition asking the States to establish a Committee of Inquiry to investigate the following issues which remain unresolved in relation to historical abuse in the Island. The 6 issues are those that were

listed in R.8 published earlier, which were also contained in R.27 of which the 6 issues were there. I maintain that none of those 6 issues have been resolved and that is why I am asking that when we do come to the vote they will be voted on singly so people have a choice of voting for which ones they want. Ideally, I hope they vote for the 6. We will also see at the bottom of the page there is mention of Deputy Tadier's amendment and that will obviously follow. Maybe if I start by going over the Council of Ministers' comments. I thank them for allowing us to have them over the weekend because it gave me an opportunity and no doubt Members an opportunity to read their comments. But if Members would like to look at it, there are the Council's comments. I have drafted them one to 5, but the first one says: "The Council of Ministers welcomes Senator Le Gresley's proposition as it offers an opportunity for significant debate on the need for a Committee of Inquiry." Well, again, we have another example where the Council of Ministers is following when indeed it should be leading. Why did it present its R.8 when it could have lodged a proposition asking the States to decide the way forward? Why was it left to the likes of 3 non-executive officers? We should have had the lead from the Council of Ministers. The second paragraph says the Council of Ministers claims that it and the public were seriously misled as to the size, scale and nature of the problems that were being uncovered at the time. I submit that there can be very few people who would disagree with me that during the Haut de la Garenne investigation the former Council of Ministers were running around like headless chickens and taking more notice of what the media was reporting about the Island than listening to what the police were saying. It is more apparent that the Council of Ministers were more concerned about the potential harm the publicity was having to the finance industry rather than helping the victims. Even now the Council of Ministers is trying to play down the seriousness of the abuse. There is no mention of the number of victims in the Council of Ministers' comments to my amendment, but in the fourth paragraph of the Council of Ministers' comments to Senator Le Gresley's proposition Members will see that it says the final police report identified 140 people had been identified as possible victims. That figure in itself is shocking and for the Council of Ministers to underplay the seriousness of the matter to my mind is a disgrace. Unfortunately, the Council of Ministers is again attempting to underplay the seriousness of the matter by indeed publishing figures which are inaccurate and short of the real number. I will refer to the document called Operation Rectangle, the press release which was published by the police in December 2010, and give the scale of the seriousness. We see that there were 533 offences; 274 were alleged sexual offences; 238 were offences of assault, ill-treatment and so on. There were 315 offences reported as being committed at Haut de la Garenne and 66 other homes and institutions, at 152 places, at places where children were fostered in private addresses. Again, I do not know what sort of figures we have to have to make it look as if it is serious. Indeed, we hear about the figures; I think 140 identified. Well, the police figures I have here say a total of 192 individuals were identified. Indeed, as a result of the complaints received 151 named offenders were identified, 41 other offenders were not identified, and so it goes on. So here we have the Council of Ministers saying: "Well, it is not really serious. We have all been misled. These figures are really made up." Well, I strongly disagree with that. In paragraph 3 again of the comments: "The Council of Ministers recognises the historic child abuse must be brought to a formal closure." Well, I can think of very few people who would disagree with that. However, it is apparent that the Council of Ministers cannot put the matter to bed soon enough, even if it means failing to honour a commitment. Members will note it is just like pulling a rabbit out of the hat, it has suddenly remembered about possible civil claims. The Council of Ministers says it would be preferable that if a Committee of Inquiry were to be commissioned it should take place after the civil claims have been addressed. So, again, clutching at straws. The Council of Ministers has managed to put off a Committee of Inquiry for 3 years and it is obvious to me that it has no intention of conducting a Committee of Inquiry or a review of any sort. It now raises civil issue claims as just another reason for procrastination. Members will note that the Council of Ministers has suddenly learned of a Scottish review system which is being trialled but has met with a great deal of disquiet from the Scottish survivors who feel that the Scottish authorities are ducking their responsibilities. The system has no teeth. So while many people may well feel they

can use that as a life belt, well, as far as I am concerned the system has no teeth. The Council of Ministers is clutching at straws by accepting Senator Le Gresley's well-intentioned proposition as it gives the Council of Ministers a double-headed coin. Whatever way the coin lands the Council of Ministers is bound to win. If the States rejects the proposition, the Council will stick with its original decision; that is to do nothing. If the States supports the proposition unamended, it will have a good reason to do nothing until all the civil claims are settled. I submit that the Council of Ministers have never had any intention of accepting Senator Le Gresley's proposition until my amendments came along the way. I would urge Members not to be beguiled by the Council of Ministers' simple and easy solution. I would refer Members to the Napier Report. That was a simple and easy solution. It turned out to be a cosy, in-house review, which I had predicted. Paragraph 4, the Council of Ministers said that the previous Council of Ministers, had they had the benefit that was now to hand it would never have proposed a Committee of Inquiry. Well, I do not know how it can say that, but the Council of Ministers say that in 2008 it was in response to the concerns and claims at the time which have now been proven to be largely unfounded. It lists the category of criminal matters which it claims to have been resolved. What is bizarre is that it states that the current Council of Ministers, States Members and the general public now know that the claims were false and have been shown to be false. I ask where is the evidence to substantiate such an amazing claim. I read out details of the police report which indicated the seriousness of the allegations.

[14:30]

I also submit there are a great many other victims who have not come forward because they feel ashamed or too frightened or genuinely believe that coming forward will make no difference, it is a waste of time because no one in authority wants to take notice or do anything about it. Now, I would ask to look at page 5 of the Council of Ministers' comments because there we see at the top of the page it notes that the Minister for Health and Social Security also presents some comments on behalf of the Children's Policy Group. The Minister does not inform Members who the group members are, but members are the Minister for Health and Social Security, the Minister for Home Affairs and the Minister for Education, Sport and Culture, all of whom, of course, are hopelessly conflicted. It should also be recalled that all 3 opposed the reviews of the hospital consultants and the Chief Police Officer's suspension so it follows it would automatically oppose a Committee of Inquiry which is going to look at anything within their remit. Members will have noted that nowhere in its comments has the Council of Ministers made any reference to the 6 issues outlined in my amendment. How convenient, but surely the Council of Ministers did not believe that its failure to comment on the 6 issues would go unnoticed. On page 8 of R.8 the Council of Ministers states that it gave serious consideration as to whether an inquiry is required and justified in 4 particular areas. Senator Le Gresley mentioned this morning the historic childcare, current childcare, prosecution process, the police investigations. By considering those 4 areas, the Council of Ministers has not just moved the goalposts, it has moved the stadium. By conveniently referring to the 4 areas it has ignored the 6 questions that the previous Council of Ministers had identified 3 years ago and they are not resolved to date. I will not waste States Members' time going through the 4 areas because I think that was covered this morning by Senator Le Gresley's excellent speech. I now look at the 6 issues which are either on my amendment or on the note which is before Members. The first one says: "How have the Island's children's homes been run in recent decades?" Well, the Kathy Bull and Andrew Williamson reviews did look at some of the homes or how some of the homes were run, but they did not concern themselves with any complaints and did not concern themselves with the way Haut de la Garenne was run. In fact, that had been closed 2 decades earlier. By far the largest number of complaints and allegations came from the former Haut de la Garenne residents. Their concerns have not been addressed; therefore, that issue remains unresolved. The second of the 6 issues is what procedures were in place to recruit staff and how was the performance of staff monitored? Should other steps have been taken to monitor performance? Again, while it could be argued that the Bull and Williamson reviews did include

some aspects of the running of the residential homes, they did not include Haut de la Garenne, nor did they look at the recruitment or the monitoring of staff performances. The police investigations were limited as to who was responsible for the actual assault, not who allowed it to happen. Given the large number of complaints, it is apparent that very little attention was given to the monitoring of staff; therefore, that issue remains unresolved. Number 3: what measures were taken to address inappropriate behaviour from the staff when it was discovered and, if these measures were insufficient, what other measures should have been taken? Well, as previously mentioned, the States Police concerned itself with the allegations of abuse, not whether any procedures were in place to address the reporting of inappropriate behaviour. To the best of my knowledge, I am not aware of any review being undertaken to investigate the issues above; therefore, that too remains unresolved. Number 4: how did those in authority at political and officer level deal with the problems that were brought to their attention? The issue of political and officer oversight is a key factor and it is not surprising the Council of Ministers wants to oppose any review of this particular issue. Who was told what, what was done about it, is an issue which must not be allowed to go unchallenged. It is inconceivable that so much abuse should have been occurring over such a lengthy period, yet no one has been asked to account for it. The Council of Ministers are being totally irresponsible by failing to address the issue. The world's media has alleged that Jersey has a culture of secrecy and cover-up. If it wants to provide evidence to substantiate their claim, they can do no better than try to claim that this matter has been resolved. Clearly, it has not. Number 5: what process was in place to assess the performance of homes and what action was taken as a result of any problems that were identified? Well, we were told that as a result of the Williamson Review procedures are now in place. So it must be apparent that they were not in place and the implications are quite clear: not in place and they certainly were not in place at Haut de la Garenne when it appears the abuse was rife. Therefore, again, that issue has not been resolved. The sixth one: were there any mechanisms in operation to allow children to report their concerns in safety and what action was taken if and when those concerns were voiced? This is another issue which has not been considered by the Council of Ministers. It does comment on a number of key findings from inquiries into residential homes in the U.K. but conveniently avoids commenting on key findings from inquiries in Jersey. The obvious reason is that no one has conducted any review in Jersey, neither is it intended to do so. It will be, of course, I hope for Members to decide whether they are content to leave this issue unresolved, but as far as I am concerned it has not been resolved. The historic abuse inquiry has never been about child murders but about the systematic abuse of vulnerable children while in the care of the States of Jersey and how it was allowed to happen. We cannot move forward until the States recognises and accepts that what has happened in the past is seen to be in an open and transparent manner in getting to the truth. It is all very well for the Chief Minister to admit that Jersey failed some children and offer an apology. However, those abused want justice not from those who abused them but from those in positions of authority who either allowed it to happen or were so incompetent not to notice what was happening to vulnerable children in their care. Many survivors were treated appallingly and their lives shattered for ever, and that fact has been acknowledged by the Council of Ministers, yet they want to brush the matter under the carpet. For the past 3 years there has been a growing unrest within the public of Jersey about the way the whole affair has been handled. To do nothing is not an option. A commitment was made 3 years ago and we should be duty bound to maintain that commitment. Many of the survivors are never going to let the matter rest until a full and independent Committee of Inquiry is held, and that is the least we can do for them. Now, there is concern about the financial and manpower implications. Members, though, will recall the public assurances given that all necessary resources would be made available to enable a full investigation to be carried out relating to the child abuse inquiry. That commitment was made by Senator Frank Walker at the time. It is now for Senator Le Sueur, our Chief Minister, to abide with that commitment. Therefore, the sum of money should have been set aside. If not, what does it say about the Minister's intentions? Funding is not really the proposer's problem because nothing new is being proposed. The money earmarked by the Council of Ministers in 2008 should still be available today because of the

commitment made. Members will look at my question 9 today and see that I asked how much money has been spent and which departments have spent it. It is quite clear to see there that whenever the Council of Ministers or any Minister wanted money for something, all they had to do was dip their hand into the pot of cash made available to them, and yet they do not seem to have the money for a Committee of Inquiry. I do not know and I do not think anyone knows exactly how much a Committee of Inquiry will cost, but it need not run into the many millions that the Minister for Treasury and Resources is claiming it might cost. Standing Orders require me to give a figure and I gave half a million. It could be a million, I do not know, but at the same time it does not have to run into millions. I have set out my case. A commitment was made to establish a Committee of Inquiry if the 6 issues were not resolved at the end of the police inquiry. I propose my amendments and I hope to hear what other Members have to say in rejecting this proposition or my amendments, but I certainly make the amendment and ask that I look for a seconder.

The Greffier of the States (in the Chair):

Is the amendment seconded? **[Seconded]**

6.3 Historical Child Abuse: request to Council of Ministers (P.19/2011) - Amendment (P.19/2011 Amd.) - Amendment (P.19/2011 Amd.Amd.)

The Greffier of the States (in the Chair):

There is an amendment to add a seventh question in the name of Deputy Tadier, and I will ask the Greffier to read that amendment.

The Deputy Greffier of the States:

On page 3, after point 6 insert the following point: “(7) Was a consistent and impartial approach taken when deciding on which cases to prosecute and was the process free from political influence or interference at any level?”

6.3.1 Deputy M. Tadier:

I will keep this fairly brief because the remit of this amendment is limited, and it is limited to deciding on whether or not, if we are going to go down the road of having a Committee of Inquiry, that should include a look at the prosecution processes, whether they were free from political interference and influence at any level. So it is not simply looking at Law Officers, it is also looking at politicians and civil servants because there have been allegations which are unsubstantiated that there was influence to try and affect outcomes. We all know how important it is that the prosecution process is free from political influence. We only need to look back at a recent example where a Minister who was thought to have exercised undue influence in a political process was removed from his office. So it is a significant thing to look at. I also need to compliment, I think, Senator Le Gresley who gave I thought a very good speech. He reminded us of the fact - and it is partly because I think he is a relatively new Member of the Assembly, he has a fresh pair of eyes - that we can become very jaded when we are talking about these issues which have been going on for 2 to 3 years, certainly since the new Members were elected. It is good to have that fresh pair of eyes and refocus the issue on what it is all about. It is to do with the children who were let down by our system over a period of time, some of whom may be here today but a lot of whom cannot be here or are elsewhere. So I think it is important to refocus on that because, as I said, one can become jaundiced or complacent and there are entrenched positions on both sides. I am going to start off simply by reading my report. I think it is a fairly clear argument for why I think this amendment should be adopted. Now, the Council of Ministers in its report R.8/2011 has set out its reasons for not pursuing a Committee of Inquiry. It talks of the prosecution process and states that the Council of Ministers is in no doubt that fair and impartial justice has been delivered. That is an opinion of the Council of Ministers and while this may be the case for the Council of Ministers and possibly for many or all other States Members, it is not true of the majority of those who directly or indirectly were let down by the States in the past. Indeed, their opinion for the most

part, from what I can gather, is that there most certainly is doubt that fair and impartial justice has been delivered. I should emphasise at this point that we are talking about doubt. There is an element in society who believe just as firmly as the Council of Ministers believe that there was no injustice, who believe that there definitely was an injustice, partly because they have different experience, perhaps, to the Council of Ministers. My argument is that there is reasonable doubt and grounds for this to be included within the terms of reference of a Committee of Inquiry. Whether or not this position is correct is another matter, but it stands to reason that those who were at the receiving end of the States' inability to ensure that they were protected when they most needed protecting, they are unlikely to trust that same state when it comes to matters of deciding which prosecutions to pursue.

[14:45]

R.8 goes on to say in July 2009 the then Attorney General also made a statement to the States Assembly in relation to cases where he had directed that there should be no further action. This is true and, indeed, the Attorney General did say that giving such detail about the decision-making process was unusual, but he did so given the great scrutiny of the historic abuse inquiry cases. While the statement will have been reassuring to many States Members and others, it is ultimately unverifiable in nature and from the perspective of those who remain distrustful of the system, it will ultimately been seen as: "Trust us, we know best." Indeed, in its recent newsletter, the Jersey Care Leavers' Association, which I think was circulated to all States Members, restated its position that they felt that they had been denied justice time and time again and had been ignored by the States of Jersey and that cases have been dropped at the eleventh hour when there was ample evidence to prosecute. Deputy Hill himself states in his report to his amendment: "The States may wish to consider whether the Ministers have done enough to restore and strengthen confidence of ordinary Islanders in our system of justice and whether the assurances so far given will be seen by the public at large as convincing and credible." He goes on to say: "If a significant amount of people, whether justified or otherwise, do not have confidence in the impartiality and integrity of the justice system, then that lack of confidence in itself is a significant problem." I will be discussing briefly the idea of perception and not simply about justice. Perception is key and that is why today we have the Greffier presiding because although there is nothing to stop the Bailiff or the Deputy Bailiff presiding, they realise that perception is important. They would open themselves up to allegations because they have been Law Officers in the past before their position and that is quite right that they do that to say any argument of perception is very important just as much as the truth which the Committee of Inquiry would be there to establish. There have been allegations as far back as the notorious radio exchange between former Senators Walker and Syvret when the suggestion was mooted that Jersey might be tempted to prioritise its reputation and business interests above those of the victims themselves. While even the mere suggestion of this is offensive to most of us, it is still something which needs to be looked at if the Committee of Inquiry is to be meaningful and comprehensive. Deputy Hill is quite correct in his report to draw attention to the fact that independence of the Law Officers in taking prosecution decisions is paramount and so I emphasise at this point that this amendment does not seek to question that but affirm it. This amendment seeks to include within the terms of reference of any eventual Committee of Inquiry to establish that, at all times during the process of decision-making, political interference of any kind was not attempted and that it was not carried out. So to conclude this part, the decision of whether or not to have a Committee of Inquiry is ultimately for States Members. However, if we are to have one - which I hope we do - it is necessary that it be comprehensive and meaningful and so must include an examination of the prosecution processes among other things. I just want to draw from 4 or 5 examples of why I think this amendment should be adopted. I have emphasised that there does remain doubt for some regarding the role of Law Officers in deciding which prosecutions to pursue. There remain allegations that there was political interference at different levels and, as I have said, that could have come from a variety of areas. It could be political interference and there have been allegations of officer level interference. While such allegations may not seem to have a basis for

some of us, it is reasonable to expect many of those who were themselves let down by the system - some more recently than others - to trust the authorities today, especially when it appears on the face of it that there was adequate evidence in some of these cases for prosecutions to go ahead which were subsequently not pursued. We hear comments from time to time and they are out there and they need to be listened to I think. For example, there is the question of the significant number of allegations which have some credibility, which will not be subject to criminal prosecutions. There has been no discussion about the oversight of the Board of Management of Haut de la Garenne which, in the past, had politicians on it. For example, if there were politicians on these boards, what was their role and were they aware of the problems at the home? If so, why were they not raised? Why was the alarm not raised? Was information kept from them or were they complicit, as some are alleging? So these questions need to be answered one way or the other I think if we are to have any closure for ourselves and those who experienced the blunt end of that abuse. I want to talk briefly about the risk of what happens when things are kept in secret and we will use a different example. We have seen the principle of open and transparent government is one that prevails today in Jersey in theory and elsewhere. Our Education Scrutiny Panel, for example, a long time ago asked that we have the exam result figures and that they should be given to us and then the department refused. They said: "No, we are not going to give them to you." Yet we find out that a member of the public can just ask for that information and it will be given to him rather than given to a Scrutiny Panel whose remit and sole purpose is to hold the Education Department to account. So we have this kind of system pervading and prevailing today within the last few weeks, and my point is that in this concept of moral hazard, there is a risk when one party is insulated from risk. They may behave differently than they would behave if they were fully exposed to risk. That is not to say that all decisions that are taken privately or in confidence are necessarily corrupt but it does have an effect potentially on the decision-making process if you know that your decisions are not going to be looked at. So let us look at the example of Blanche Pierre. It was not that long ago that many States Members and members of the public would talk about historic child abuse as if it was something that was relegated to 40 years ago when we were all being beaten with a cat o' nine tails and it was quite commonplace for us to have our knuckles rapped with rulers, which I accept was perhaps not 40 years ago but certainly I remember stories like that from my own father. But this is not something that happened so long ago. This was in the 1990s; at Blanche Pierre. We know that there was a systemic failure. We know that the avenues of reporting these incidents were not in place and that individuals - who I will not name in this forum but whose names are in the public domain - were allowed to be in a position of authority and of care for vulnerable children. If that was not bad enough, when this was flagged-up, they were removed from that care home and one of the individuals in particular was sent into another position where she could also look after vulnerable children, and this was as recent as the 1990s. There are clear questions that need to be looked into this issue. This was one of the cases which were dropped by the prosecution and there remain real questions surrounding this particular case. There is also the case of another couple who were allowed to foster children a bit further back. We know a Centenier was ready there with the prosecution and with the evidence to charge and there was a phone call from the Law Officers' Department saying not to charge. I am not saying there was anything underhand here but these are serious issues which need to be looked at because the answers are not forthcoming. My point is that why is it that politicians should be subject to transparency and to Scrutiny without the decision-making processes and legal advice, *et cetera*, and being subject, under certain circumstances I hasten to add, to that same Scrutiny? Then moving on, these are just a few examples and those who were most affected could also give their own examples. We have seen that there has been an allegation against the former Chief Executive - or I think he is still the current Chief Executive Officer - to do with an affidavit by Mr. Power in which he alleged that the Chief Executive Officer had said that if anybody wanted to pursue action against a certain individual at Education, then he would have to come through him. The Deputy of St. Martin, on that basis, asked for a Committee of Inquiry into all of these allegations to do with Mr. Power and the way in which he was removed and we have heard the first political thing - and it is

political and it was a political move from the Council of Ministers - was to negotiate: "Rather than having a proper Committee of Inquiry, we will go for an in-house inquiry" which the Deputy of St. Martin referred to. So that is the first one up to the Council of Ministers. Then that is not good enough. The Deputy of St. Martin and some of us would say: "Okay, we really do have concerns about this allegation - and it is only an allegation from Mr. Power - that there was undue influence exerted by the Chief Executive Officer and that there were conspiracies going on, so we have put in terms of reference part (d) to make sure that even though we have not got a Committee of Inquiry, we will go with this, we accept that but we really want to look at this issue. What then happens to part (d)? It gets lost somewhere and we do not know where it has gone. It is a typographical error and while of course States Members are not allowed to allege any improper action or are allowed to allege that a certain Minister might be telling the truth, to somebody on the outside, you can see that this is starting to look a little bit suspicious that this term of reference that is supposed to look at this suddenly disappears, it comes back to the House later, the Deputy of St. Martin, who is supposed to be overseeing the whole thing and being informed at every stage, is not being informed of this and it is just a coincidence. So we have got that part. I think all of these things taken together really do provide sufficient doubt, although not evidence of any underhand action, to merit these things being looked at. I think I will conclude by saying there has been much debate, and I am mindful at this stage to not want to wander into the main debate, but I think it is important to emphasise that there was child abuse that happened in Jersey care homes. It is up to us to ascertain to what extent it was systemic and to what extent it was covered up. The fact that it went unnoticed by the majority of society and also by the majority of politicians who were involved including, I think it has to be said, Senator Syvret who was here at the time - and he says it is because the systems of accountability were not in place - even he was unaware for the most part of his tenure. So these things do need to be looked at and my argument is quite simple. You may not agree with the Committee of Inquiry. If Members do not want a Committee of Inquiry, it is pretty academic whether you vote for this. I would ask you to vote for it so that we can have a debate about a meaningful Committee of Inquiry. I would suggest that it will not be meaningful unless we do look at this particular area because it is an area which the abuse survivors and those involved do feel is very important; it will not be meaningful otherwise. So I ask for the support of colleagues and I hope that we can pass the Committee of Inquiry in this amended form and I ask for that to be seconded, Sir.

The Greffier of the States (in the Chair):

Is the amendment seconded? **[Seconded]** I know these sorts of debates can be complex but I would just remind Members that, for the moment, the only matter for the Assembly is the amendment of Deputy Tadier about decisions to prosecute. Deputy Trevor Pitman.

6.3.2 Deputy T.M. Pitman:

It is quite interesting, at lunchtime, in the street, I bumped into an old school friend who is quite a long serving police officer and we were talking briefly about school and it came up about the time the careers master at the time threw him through and over 2 rows of chairs, and we were reminding ourselves about the time a master backhanded me across the face for the awful crime of talking in line right after games. He knocked my glasses off at the time. It was funny because the gentleman who did it just happened to walk past us. Very strange. Now I am big enough and you might say ugly enough to go and do something about it now but should we just leave it? Because I know there are other instances that happened like that at schools. Do we overlook them? Do we just move on? I can remember a lovely religious Minister for Education and this probably explains a lot of why I am like I am now.

[15:00]

I had very long hair almost down to my shoulders. There was the awful crime of talking in the library. He yanked my head back and banged my head on the desk. Now it might explain why I

am a left-winger or it might explain why I have not got any hair but there we go. Is that appropriate behaviour? You accepted it but does that make it right? Should it all be swept under the carpet? Yet that is minor to some of the things that we hear of. There is something very important that I forgot to say to you. I know it seems lunchtime is carrying on for some Members but I would just advise, especially the public and Members, that Deputy De Sousa was very ill this morning and she has had to go home ill. She did not want to miss this important debate. Most of what I want to say is for the Deputy of St. Martin's amendments. However, what I would like to focus on is Deputy Tadier's amendment - which I will of course be supporting - is so important because it focuses on the question of establishing whether or not there was any political interference at any level in the process of deciding and carrying out prosecutions. Consistently we have heard, over the time I have been in the States, from the Council of Ministers about how the most important thing to come out of all of this and similar things like at the hospital is to move on. Well, I have to say there may be a degree of truth in that. However, for the people who are really important in this issue - and some of them are probably sitting up there now - they can never, ever move on until these matters are fully investigated and transparently so. Some things, to put it into perspective, are more important than just money. None of us, in these times, want to waste money but what value do we put on innocent lives ruined? What value do we put on trust perhaps being restored, even if it is 30 years too late? That is all I really want to say at this point. As I have said, the Deputy of St. Martin, Deputy Tadier and the proposer Senator Le Gresley have made good speeches and really we could probably vote straight after this because the case is just so strong. The one thing I would like to finish on is to say that while I really deeply hope we can support this amendment of Deputy Tadier's, the Deputy of St. Martin's and the proposer of the main proposal, should it not be the case, having spoken to some members of the public, while it might not be possible under good governance to appeal to the Privy Council, I will be supporting some of these people and be appealing to Her Majesty the Queen to make sure that a proper inquiry is forced upon us and how embarrassing that will be. I will not be wasting time with trivial matters like getting rid of a few Senators. I am sorry but the speakers have been right. With the public feeling about this and how we do need a full and transparent inquiry, we will have a lot more signatures on that petition than for this trivial matter of the Senators. People deserve to be able to put this to bed if their lives have been ruined. Deputy Tadier's amendment is absolutely warranted and it deserves the support of every one of us. Are we happy that constantly in these things, the Council of Ministers decide and us, and we are voted by the public, and yet we are apparently powerless? There are people sitting up there who feel powerless and it cannot go on and I really hope the Council of Ministers will accept all of these amendments. Thank you.

6.3.3 Senator T.A. Le Sueur:

It is very difficult in a debate like this, as you said in your comments a few moments ago, to avoid straying into the main amendment itself while dealing with this particular one. In fact, most of the arguments which I have in respect of Deputy Tadier's amendments apply equally well to those of the Deputy of St. Martin's and so, hopefully, I need make the majority of my comments only once. I have slightly ambivalent feelings about the amendments proposed by Deputy Tadier because, as he says, if we are to have a Committee of Inquiry, it should be as comprehensive as possible and I think, on that basis, putting it crudely, the more terms of reference, the merrier. But being more serious, having opposed the principle of a formal Committee of Inquiry as set out by the Deputy of St. Martin, I have to be consistent and equally oppose the amendment of Deputy Tadier. In referring specifically to that of Deputy Tadier, I have a couple of comments and I will endeavour to focus on the main proposition and not ramble off talking about Napier or former police chiefs and things like that, and it concerns the impartiality and the objectivity of the Prosecution Service and I fear became very near to allegations that the Prosecution Service was biased in its operation. While I accept that the Law Officers can no doubt defend their own position quite robustly if the occasion arises, I think it is my duty as Chief Minister to also reinforce my view that the Prosecution Service has been scrupulously fair and, indeed, in this particular case above all, has been at pains to ensure

that the decision of whether or not to prosecute was taken after mature consideration, not just by those directly concerned but by an independent evaluation process as well. Any suggestion that cases have been dropped at the eleventh hour when there was ample evidence to prosecute I think is misleading. It may be one thing to say that there is evidence to prosecute but unless that prosecution has a reasonable chance of securing a conviction, then you are putting a lot of people through a lot of effort for an unproductive result. So I have absolute confidence that the Prosecution Service was properly administered. The amendment also talks about political influence and I accept that there is an allegation there which, again, I would refute, but on that basis, that could be a term of reference for such a Committee of Inquiry. But I have to then go back to the general principle of a Committee of Inquiry and the committee proposed, or envisaged rather, when the Council of Ministers back in 2008 put forward its suggestion - and I was a member of the Council of Ministers at that time as well so I do accept being a part of that - was that it would be a formal Committee of Inquiry set up under Standing Order 146 and the subsequent Standing Orders. A formal ...

The Greffier of the States (in the Chair):

You are straying quite largely back to the main debate. You set a trend that will encourage others.

Senator T.A. Le Sueur:

In that case, Sir, I will take note of what you say and say that, in view of the fact that the basic principles of a formal Committee of Inquiry are something to which I think Members have to consider very carefully, for the sake of consistency, I would equally oppose this amendment of Deputy Tadier but taking note of what you say, Sir, I will maintain my main remarks for the main amendment.

6.3.4 Deputy P.V.F. Le Claire:

I cannot really understand why the Chief Minister is opposing any of this really because I did say earlier in a speech pertaining to this issue that Jersey was really caught, like many jurisdictions were, historically, in child abuse issues. Unprepared, certainly, in some respects, in denial and vastly unaware to the issues that related to what had been going on within sunny Jersey. But what we need to do now - and as I said then - is recognise our mistakes at that time, which was not long ago. In fact, in all of the political lives of this current Assembly, these issues surfaced and I think it is really time in order for us to move on - and I think it is time for us to move on - that we need to commission a full and frank Committee of Inquiry with some actions at the end of it that allow us to deal with this in an open way and allow us to move on whatever the cost. Because certainly if we do not deal with it openly and honestly then we will never move on. Setting our own political involvements and memories to one side, what we cannot set to one side is that peoples lives - some now gone - have been significantly affected by the lack of provision of care within our establishments and we need to ascertain if we are going to have a Committee of Inquiry - which I certainly believe that we do need to have - that there was no political interference with the processes that were occurring at that time. I have confidence with the Law Officers and with the reasons for the cases that have been brought forward, and I accept the reasons for some cases having not been brought forward. As troublesome as those are, I do have confidence in the Law Officers but as they taught us ... and I do not mean this in any throwaway arguments that one might regard. I mean this in the most significant of matters. When in the Royal Marines, we were asked to trust in people. We were trained to verify that trust and when an officer stood in front of us that we knew was an officer and tried to persuade us that he should be allowed into the establishment but did not have his ID card on him, we would turn him away because we trusted that it was the same individual that we knew but we were trained to verify the facts of the matter with the requirement for him to have his ID card on him. It did not go down very well but the fact of the matter is when you get to those levels of verification, regardless of trust, regardless of who you know and regardless of their capabilities, for your duty to have been carried out properly - and it is

our duty today - we absolutely need to verify in this process that the States of Jersey, their officers, their legal advisers and everyone involved in this Assembly was not at fault and if they were, through an independent inquiry we need to identify in what ways they were. I do not believe that will be the case but unless we have a full, open and frank investigation, we will have no investigation whatsoever.

6.3.5 Deputy R.G. Le Hérissier:

The words have partly been taken out by that excellent summary by Deputy Reed. I would have phrased it differently because there is no doubt one of the collateral issues of this whole affair - and there have been many collateral issues - has been that a lot of our institutions have been found wanting. Although it may have merited its own inquiry, I would have made it into a more broad-ranging inquiry looking at the whole role of the Prosecution Service and whether indeed it was a service in need of reform and so forth, because I think that has happened with other institutions that have been involved in this particular matter. I think it would have been a better balance just to include what arose from political interference. It may well have happened. Similarly, I would have said you could argue that other institutions in the Island should also have been assessed in terms of their political interference because I do not think you can pick on one. There was a Professor of Small State Studies and he was asked about how effective a separation of powers in small states, quite recently by somebody when I was present and he said: "Well, they have got it all written down. It is all there and they have got the formal constitutions but because of the overlapping nature of the families and the groups that operate in these societies, in his view, they were not terribly effective." So you can draw what conclusions you want from that. So I would have said: "Make it broader and do not just impute political motives or do not suggest political motives necessarily. Deputy Le Claire made the speech, much as I respect Deputy Reed, particularly when he is going to reveal his exam results.

Deputy M. Tadier:

Could I ask for clarification because while both speeches were clear, it was not clear whether the Deputies are supportive or not?

Deputy P.V.F. Le Claire:

For the sake of clarity, I am supporting everything.

[15:15]

6.3.6 The Deputy of St. Mary:

It is nice to hear someone acknowledge an error immediately. Yes, this amendment. It needs to be said before the first contribution in this series of debates that I do not know personally any abuse survivors, but I do know someone who worked at Haut de la Garenne and I say that because sometimes this is seen as emotion versus reason, or it is framed like that. Can we afford the money, what is the emotional cost and so on, and I just think we have to be very careful. Why a Committee of Inquiry, why not just send it back to the Council of Ministers, is really the question for the next debate? Yet this amendment in amending the Deputy of St. Martin's amendment, so it is a little bit difficult to isolate just this particular term of reference that Deputy Tadier's suggesting to us, but I am going to do my best. One of the things that Deputy Tadier said, and I found that very interesting, was he quoted the comments of the Council of Ministers - I am not sure which of their comments it is - but he said that they said that a fair and impartial justice is being delivered. I think it is in their main comments or possibly the comments to the amendment. A fair and impartial justice has been delivered. Then Deputy Tadier said in response to that: "Doubt is the issue." The point is not whether we are making up our minds now whether that statement is true or not, but that there is doubt, and to his credit the Chief Minister did accept that. He said that of course there are different views. It is possible to hold different views and I do think it is very important that we grasp this fact, that on this issue of the Law Officers, there are 2 versions and of course all greys in

between. I am reminded of other areas in this whole discussion, for instance with the Wiltshire Police report, and it is quite clear that there are 2 completely different narratives about that report, and if you read detailed nuggets from Mr. Power about analysing what Wiltshire Police said and did not say, you see that there are 2 completely different views. You can argue that Wiltshire Police in leaving out certain aspects, for instance of the media coverage, painted a picture that was completely one-sided. That is the point, is it not? If there are 2 sides and we just say: "Right, we will close down the one side. We will not listen to that side. We will not even acknowledge that it exists" then we have a real problem. I want to just quote one thing from R.008, which is the Historical Child Abuse - Committee of Inquiry Report and on page 11, the Chief Minister writes, in addition, and I quote this because it shows a split in the mind and that in a sense is what we are dealing with. It is this trying to square 2 things which cannot really be squared: "In addition", the Chief Minister writes: "while the work undertaken in 2007 demonstrated the services within childcare were not failing, significant steps are being taken to ensure that current and future child care is of the highest possible standard." So, the child care system was not failing, but we are now going to invest significant sums of money to bring it to the highest possible standard. It is just about possible to square those 2 statements, but only with difficulty. They were not failing, Williamson and Kathy Bull report and we find that we need to spend over £3 million bringing them up to standard, but they were not failing. That is the kind of dichotomy, that is the kind of "well it is and it is not" and I think what Deputy Tadier is saying is: "Well, if it is and it is not, in the eyes of different people, then we cannot just not go there because it is uncomfortable, because it is difficult." So that is really the first point. The second point is that on this specific issue of the Attorney General's office, because obviously it is an office and going back a bit into this period, or going back not quite as far as this period, there have been serious doubts expressed. I think that if you take that on board, that serious doubts have been expressed about the functioning of the department and the way they have arrived at decisions, then again you have to think maybe we have to go into this uncomfortable area. If there was no corroborating evidence and Deputy Tadier was careful to say he did not know "yes" or "no" whether there was an issue. He just said that people felt there was an issue and so he was making sure that he was proposing that it be included in the terms of reference. Now, I have here the text of the lengthy article in the *Mail on Sunday*, which consisted of an interview with Lenny Harper. Now, I am sorry I do not have the exact date. Normally I do date these things precisely but I will try and find the date - no, I am sorry, I do not have the date - but the interview was about ... and it is very lengthy, and I do not think it is the kind of interview that scribble, scribble, scribble and then get it moderately wrong. I think it is quite a carefully done piece of work and it was based on Harper's High Court statement and it is an exclusive interview with the *Mail on Sunday*. I just want to highlight one or 2 things out of this document. Firstly, they relate to 2 things. One is to the culture which Mr. Harper is saying was the context for police work in general in Jersey, and then he also talks specifically about specific issues with the Law Officers' Department and the A.G. I am talking about how we come or how they come to decisions and the doubts that there might be. In terms of the culture: "The vast majority of cops on Jersey are honest and we owed it to them to bring to book the guys bringing them into disrepute, Harper says, but the response of the authorities was to suppress everything." Now, that is one of the accusations of abuse survivors that that is the response of the authorities and there is Harper saying that independently: "I joined the State of Jersey Police as Head of Operations in the rank of Chief Superintendent. Within weeks [this is in quotes] I realised that local politicians expected a degree of control over day-to-day operations that no U.K. police force would tolerate." Now, remember, this chap has a very high reputation and when H.M.I. (Her Majesty's Inspectorate) did their reports on the police service in Jersey, I think it was 2006, into the activities of particularly the then Chief Officer and the Deputy, who was Lenny Harper, they praised the work of those 2 in bringing the force to a modern way of working and rooting out any failings in the force. They received the highest praise for that, so that is the context of these comments. He then explains the system with the Honorary Police charging people and custody sergeants have to consult these volunteers and advise them of all evidence against suspects. Harper says: "Several times early in

my postings I had to protest to the Attorney General's legal advisers about a refusal to charge in cases where the evidence was overwhelming." Now again, that is one view against the other view. The experienced cop, the Attorney General's office, just pointing out that the issue is a real one. He then covers the extraordinary business and I remember reading this in the paper, in the *J.E.P. (Jersey Evening Post)* over days, about the arsenals of weapons and Harper's astonishment at this cultural phenomenon. On culture: "Harper raided the home of a police civilian employee, recovered a huge number of firearms", I mean, it makes me smile, but it is not really funny: "including an RPG7 rocket launcher, 7.60mm rifles, machine guns, revolvers and a missile launcher. The employee was eventually convicted of unlawful possession of a firearm and ammunitions, says Harper. He was also convicted at a Police Disciplinary Hearing of other offences, including falsifying records but to Harper's astonishment he was not dismissed." Now, again, I am going on about the culture here within which the proposer of this amendment is talking about whether we need to look at this issue in the context of the abuse inquiry: "Harper says he discovered 3 employees were using police money to buy computers for private use. The Attorney General's Department refused to take legal action and politicians defended the employees." Now of course, this is again Harper saying these things, but you are either saying that what he is saying is some kind of hyped-up fantasy, or you have to take these matters seriously. He mentions one or 2 other quite extraordinary cases and the A.G. did prosecute one person who was passing information on to outsiders. Then there is the case of the businessman who was being "paid in kind or otherwise to 16 to 20 officers" and that is in quotes: "A file was submitted to the Attorney General seeking the prosecution of the businessman and a key officer for bribery and corruption. No case was brought. I then decided to prosecute the officer for a number of less serious offences for which the A.G.'s authority was not needed. He was charged and convicted for these lesser offences. The Attorney General also agreed to charge the businessman, but he was granted a number of adjournments at court. A few days after I left the Island all charges were dropped and he was awarded costs." I only mention these pretty disturbing facts because when I read that article I was shocked and I mention them now in the context of this amendment, just to ram home the point, to make it unarguable that the proposer, in saying we need to go here, it may not be comfortable, it may be difficult. There may be a way of doing it that is not an open, adversarial court of inquiry, and we will talk about that no doubt on the main amendment and in the main proposition, about how the inquiry should look and how it could be framed, but we cannot just push this to one side. Remember we are talking about the abuse survivors and whether this area of prosecutions, and so on, was correctly handled, and without influence and so on. I am just bringing evidence that in other parallel situations there was serious doubt, and I put it to Members that therefore they have to be very, very careful if they do not support this amendment to Deputy Tadier's amendment. Thank you.

6.3.7 The Deputy of St. John:

Like the previous speaker, I believe we need to go there having seen evidence given to the public on television. I can recall sitting very uncomfortably with my family at home, at 6.00 p.m. one evening just before having our meal, and we saw the Deputy Chief Officer of Police with a little, what I call ice-cream box container of which there were some 6 or 7 teeth and bits of bone, supposed to be within this container, which really struck alarm bells in my head. I thought: "What are we doing?" Any officer worth his weight in gold would not cross-contaminate evidence. They would hold their evidence for themselves and obviously their department, and it would all be catalogued. It would not be shown in a plastic box to the media, going around the world on a television picture, and at that very moment in time I thought: "There is something wrong with this inquiry."

[15:30]

I spent many years as a Centenier in both St. Helier and in St. John and I have never, ever seen police officers, whether they came from the United Kingdom or from our local C.I.D. (Criminal

Investigation Unit) and the Crimes Unit, act in this way. In fact, if Members think back, from that day onwards the media walked away from this Island. We had a whole entourage of media here, with the satellite television units from around the world, and after that interview the media started leaving the Island. They obviously realised there was something totally wrong with the inquiry, the inquiry that was going on. This needs to be all brought out in any inquiry. We have to find out where things went wrong. People have been accused, people have been injured, some of them up in the gallery, over many years. We have to see both sides of it. We have to look at both sides of the sheet of paper and find out where it has all gone wrong. I am sure, like Jersey, like any other country that has its own institutions, whether it is in Europe, whether it is in Ireland, whether it is in Great Britain, there have been over many generations things happening within these institutions. Things do happen and have happened historically, and this needs to be put to bed once and for all. The only way it is going to happen is by having a full inquiry. We were promised one. I recall that particular week, or 10 days prior to that, the Chief Minister of the day, Senator Walker, gave an undertaking that there would be a full inquiry once all this was over. He would have obviously consulted his fellow Ministers of the day, of which our current Chief Minister was one. Why, several years later, the Chief Minister has not convinced his fellow Ministers to go ahead and put this to bed once and for all? People need a close to this. We need to know exactly where it went wrong, how it went wrong and, in particular, the way the police acted. Did they over-react? Was there somebody who was trying to make a name for himself just before he retired? We do not know, because when I saw that evidence, that particular day at 6.00 p.m., of that ice-cream container with those bits of evidence that should have been properly catalogued and filed, ready for any prosecution, there was in my mind, immediately there and then, things went wrong. We have to move forward and I will be supporting this amendment and other amendments and the main proposition for a full inquiry. Thank you.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the amendment?

Senator J.L. Perchard:

Can I just ask for a point of order, probably from the Attorney General? Should we - and I am inclined to accept this amendment and the Deputy of St. Martin's amendment - should we accept these amendments, the terms of reference for any inquiry have still to be established by this House in future, to encompass areas like the Deputy of St. John has just gone into. This is not a definitive version for the terms of reference, is that correct?

The Greffier of the States (in the Chair):

Well, it is a point of order and clearly matters would need to come back for ratification, but one would assume the Council of Ministers would take careful account of the decision of the States to set these terms of reference. It would not be worth the States spending the time today debating these terms of reference for the Council of Ministers to come back with completely different ones, but you are right that other matters could be added at that stage. Deputy Higgins?

6.3.8 Deputy M.R. Higgins:

I will be exceptionally brief because some very, very compelling arguments have been made for adopting this amendment. I know that from my watching of television news, of reading the papers and so on about this particular issue, there are still a number of outstanding issues that I feel have got to be resolved by a Committee of Inquiry. One that I do remember, which has not been addressed, was an allegation that was made very early on, that some of the people who had alleged abuse said that they had gone to the police with information about the abuse and yet nothing was done, and we have heard no more since. I think that alone is one reason why we should be again adopting this particular amendment. I shall be supporting it.

The Deputy of Trinity:

Just a question that I would like to ask of the Attorney General ... much has been said about 2 former police officers. If this amendment and this proposition did go through would the Committee of Inquiry have powers, or whatever, to bring those police officers back to Jersey?

The Attorney General:

I think the answer to that is “no”. A Committee of Inquiry has powers to summons people, but I do not think a summons from a Committee of Inquiry of the States of Jersey runs outside of Jersey. If someone is outside of Jersey, they simply do not have to respond to a summons issued by a Committee of Inquiry in Jersey. It has no ex-territorial effect.

The Deputy of St. John:

Could I ask the Attorney General a question? Given that we sign up to all sorts of agreement where people can be extradited from Jersey, do we not have reciprocal agreements with these other countries?

The Greffier of the States (in the Chair):

I do not think this is extradition, though.

The Attorney General:

I am not sure that extradition would help. Extradition, of course, only applies in answering to criminal charges not in any other kind of proceedings, and of course a Committee of Inquiry would be something set up by a Sovereign Parliament and I am fairly certain that there will be no ability to require someone who is not within the jurisdiction of that Sovereign Parliament, to come and answer to it.

The Deputy of St. Mary:

May I ask also, on the same subject, it may be the case that such a summons could not require anybody outside Jersey to attend, but they would be perfectly free to attend, would they not?

The Attorney General:

Yes.

The Greffier of the States (in the Chair):

Now, does anyone wish to speak on the amendment? Senator Le Marquand?

6.3.9 Senator B.I. Le Marquand:

Yes. I am going to speak solely on the amendment. I am going to speak at greater length later in relation to the Deputy of St. Martin’s amendment. In this Assembly I can often be heard speaking about the important constitutional principle of the operational freedom of the States of Jersey Police Force. Today I shall be speaking briefly about a second such important constitutional principle, which is that of the independence of the Criminal Prosecution Service; independence from the police, independence from the judges and independence from political interference. Those 2 principles, operational freedom of the police and independence of the criminal prosecution service are vital constitutional principles. I believe that Deputy Tadier accepts that. Indeed, he says that he wants to ensure that that independence has been preserved, but he does so firstly by questioning the truthfulness of the statement made to this Assembly by the former Attorney General. He says that the statement is ultimately unverifiable. I think that is a polite way of saying that we do not know if it is true or not. It is a very sad day in this Assembly when the truthfulness of the former Attorney General is questioned in this kind of way, but the remedy suggested is a full-blown public inquiry. Now that would mean that the Attorney General and his colleagues would be asked to explain the reasons for their decisions, and they cannot do that without that fundamentally undercutting the principle of independence of the Criminal Prosecution Service. If they are just being asked questions in relation to the system that existed, they are simply going to say exactly what they have

said before and there will be no means of going beyond that. If they are going to be asked detailed questions in relation to specific prosecutions, and the reason for that, then that would have the effect of bringing into the public arena allegations, which have been made against people who are suspects but who were never ultimately charged. That can simply not ever be a satisfactory process and Members of this Assembly need to think very carefully as to how that would work in practice and as to the dangers involved in that. Frankly, there are no reasonable grounds to disbelieve what has been said in written answers by the former Attorney General. The Deputy of St. Mary offers a statement made, apparently, by former Deputy Chief Officer, who he named in fact today as Mr. Harper, as being a reason to doubt that. Well, in my view, the opinion of that particular gentleman is hardly a credible source of information. This is the person who took colleagues on expensive outings to London, with expensive meals, which were totally unjustified in any way whatsoever. This particular officer, in my view, caused enormous problems in this Island, not just in this context, but in the context of the police force generally, and he is, in my opinion, an incompetent maverick and not in the least a credible person to be believed by this Assembly or anywhere else.

Deputy M. Tadier:

I am not disputing this but on point of order, is it relevant to this amendment?

Senator B.I. Le Marquand:

It is because this is being put forward as a star witness by the Deputy of St. Mary in this context. Indeed, it is unfortunate that the fuller version of the Wiltshire Report is not available today, as I had hoped, but it will be very, very shortly indeed, because the Members of the Assembly would then have seen what happened in relation to certain disagreements between this particular officer and the Prosecution Service. He effectively, in my view, was trying to usurp the prosecution role, which is not possible. It is a vital, constitutional principle not only that you have this independent investigation by the police, but that independent to that is this Prosecution Service. Indeed when Members see that, they will see that the criticism that is levelled by the Wiltshire Police Force in that connection and the failures of that connection, not just by that particular officer. First, there is in my view nothing here but bare suspicion. It is not right in my view that we should be going forward towards a public inquiry except where there is clear indication that there is cogent evidence and reasons why we should do so. It is no basis to go on what lawyers call a fishing expedition, hoping that somehow we will find something along the way. So that is why I am opposing this amendment to the amendment. I have one final comment, which was in relation to what my friend, the Deputy of St. John, was saying. He is basically taking the opposite view, of saying, well I think there is something wrong here and to get it cleared up once and for all time, let us have a public inquiry to show what happened, but in fact that is exactly, in my view, what the Wiltshire Report has done. A report produced by an independent police force which looks in great detail, and when the Deputy of St. John sees the additional detail I think it will probably satisfy him on this point. So, for the reasons I have given, I shall be opposing this amendment to the amendment.

The Deputy of St. Mary:

May I ask the Minister for a point of clarification on what he said? Can he confirm that Her Majesty's Inspectorate of Constabulary is on record as praising the officer I quoted for his conduct and track record, and that the A.C.P.O. (Association of Chief Police Officers) police reports found that all our recommendations were speedily implemented and that his conduct at the inquiry was adequate, if not good?

Senator B.I. Le Marquand:

I am very pleased to be able to deal with the first point which I had meant to cover. It is my understanding upon the basis of information provided to me that the particular report that is being referred to is not of great value because they were completed on a self-assessment basis. That is information that I have been provided, but I do not think reports into a police force, which are on a

self-assessment basis, are of very great value. Secondly, the matters from A.C.P.O. are not really terribly relevant. They have been well-rehearsed, particularly the conflict of interests of a particular senior officer from A.C.P.O. in relation to what he said, and also the Wiltshire Report will of course indicate areas in which advice was given but never put into the report at all because it was not well received.

[15:45]

Deputy M.R. Higgins:

Can I bring up a point of clarification for the Minister? First of all, many organisations use self-assessment but they are never used on their own. They are always subject to peer review or by inspectors ...

The Greffier of the States (in the Chair):

I am not sure this is relevant to the amendment to the amendment. We cannot keep pursuing this line. Is there anything you wish to add, Minister?

Senator B.I. Le Marquand:

No.

Deputy M.R. Higgins:

I must also say that I do feel that we are getting into an awful lot of character assassination here and one of the purposes of this Committee of Inquiry is to find out the truth.

The Deputy of St. Mary:

A point of order, and I am afraid it is a point of order. The ... well I am not afraid it is a point of order, it is a point of order. The Minister has just, I believe - hopefully inadvertently - misled the House. He has said that the A.C.P.O. made recommendations which were not put into the reports because they were not carried out, that has been flatly denied by the people on the other side of this debate, which shows that there is a debate, and I just wanted to ask him to retract that statement.

The Greffier of the States (in the Chair):

I am not sure it is a point of order.

Senator B.I. Le Marquand:

It is not a point of order, Sir, and I am saying that which the Wiltshire Report says.

The Greffier of the States (in the Chair):

The Minister stands by that.

Deputy M.R. Higgins:

The Minister has access to reports that the House has not had and that is grossly unfair.

The Greffier of the States (in the Chair):

Deputy, please. The Constable of St. Ouen.

6.3.10 The Connétable of St. Ouen:

I would first like to ask you if you might repeat your advice to Senator Perchard on whether what is in the amendment and the amendment to the amendment would then be binding on the Council of Ministers coming forward with an inquiry?

The Greffier of the States (in the Chair):

Constable, clearly the States would need to ... one could take a parallel with the October debate on the matter of 4-year terms of office and Senators. Clearly the P.P.C. brought back the decision of

the States but that did not stop Members amending it at that stage or seeking to amend it. Similarly here if the Deputy of St. Martin is successful and Deputy Tadier there would be 7 matters that the States had asked the Council to include in a position and one imagines the Council would largely follow that route but it would not stop other matters being added or deleted when the debate came.

The Connétable of St. Ouen:

I think that clears the situation because I had originally felt that there might not be a need for an inquiry but I am now convinced by Senator Le Gresley's proposition this morning that that might now be the way to put an end to this. But I was then concerned that the amendments of the Deputy of St. Martin, together with the present amendment which we are addressing would limit us to exactly that and I know that the 6 questions that the Deputy of St. Martin had and the seventh one which has now been added, or trying to be added, are questions which are some years old. I think that if the Council of Ministers is to accept Senator Le Gresley's proposition that they then need to start with a clean piece of paper and ask the questions which are relevant today. It may well be that some of these are relevant, it may well be they are all relevant but I think it is important for this House to know exactly what it is that we are trying to do today, whether we are trying to devise terms of reference or whether we are just suggesting points which should be looked at.

6.3.11 Deputy S. Pitman:

I am glad to be following shortly after the Minister because I have to say what a load of rubbish. Making more excuses to not bring officials to account, coming from somebody who felt the need to explain and demonstrate the difference between a skull and a coconut shell to the States Members. I would also remind the Council of Minister what else the former Chief Minister said, Senator Frank Walker, and Senator Le Sueur was the Deputy Chief Minister at the time, he also said that no stone would be left unturned. So clearly there are many stones left unturned and that is why we should be supporting this amendment and the amendments brought by the Deputy.

6.3.12 Senator J.L. Perchard:

I rise to speak immediately after the Constable of St. Ouen whose words were extremely wise and I hope Members consider them carefully. Whatever way we go on this amendment or the amendments of Deputy Hill there is no doubt the terms of reference for any inquiry have yet to be decided. These are certainly parts on the Deputy of St. Martin's shopping list and Deputy Tadier's shopping list. There are other areas that I believe need to be inquired into. I am sure all Members will agree there are incidents of this whole awful episode that need answers. To say that there should not be an inquiry cannot be something this House could support but we have responsibilities to ensure any inquiry is an efficient inquiry, it is timely and it is delivering some sort of value. So I say to Members, support this amendment, support the Deputy of St. Martin's amendments but reserve your right to consider the terms of reference or amendment the draft terms of reference that come back some time in the future.

6.3.13 The Deputy of St. Martin:

Yes, I am glad to follow another St. Martinese, albeit I do not live in St. Martin as they know. I think it is very important what Senator Perchard has just said because I think it is quite clear that we ought to understand what this afternoon is about. I purposely did not stray beyond the 6 because they, to my mind, are the promises that were made and I think that commitment should be made. But Deputy Tadier has decided, as is his right, as indeed it was the right for anybody else here if they had any other concerns. I certainly had some because I think ... I have not spoken to Senator Perchard about it but I am sure we would probably agree that maybe we ought to look at the role ... I know number 4 says look at roles of politicians but we may want to look a bit further. I think what I am hoping for this afternoon is the States will agree to having a Committee of Inquiry because we have this business where the Chief Minister is quite ... it does not matter what sort of things we get today, he is not going to have a Committee of Inquiry, no matter how much evidence

we have got. If you come to a debate with that point of view what a waste of time, might as well just go straight to the vote. But what I am hoping to do is persuade him, and indeed other Members are as well, that there is this doubt and until we get rid of this doubt we cannot move forward. I think that is a repeated message that is coming out. So what I would ask today is these are principles, let us get ahead with a Committee of Inquiry then if someone wants to come back with amendments they will. But unless we agree to a Committee of Inquiry we cannot go forward. But speaking particularly now to Deputy Tadier's, one note at the bottom of the sheet that I presented to all officers, I said this got very close to issue 4, which is part of the Council of Ministers' proposals from 3 years ago. What it really does is it goes a bit deeper. I think it is good that it goes a bit deeper because it also clarifies what we mean by officer. In this particular case this means the Crown Officers. So, again, if Members are minded to support the principle of a Committee of Inquiry it makes sense to support this particular amendment. While I am on my feet, I must say I am disappointed with the Minister for Home Affairs - we can smile about it - I really feel that it was rather unfortunate his attack on the former Deputy Chief Officer who is not here to defend himself. Also, I did ask the question about the Wiltshire Report. The Wiltshire Report is dead. It was meant for discipline purposes and all allegations have been dropped so therefore whether we are going to waste money on a redactive report is a complete waste of time because the allegations have been withdrawn. We have heard the Chief Minister say that the former police officer is innocent of all charges. So why waste money bringing forward a redacted report. If the Minister wants to do so then please publish the Metropolitan Police report with it and also Mr. Power's statement, but please do not come forward with something which is dead and buried. I hope Members will support Deputy Tadier's amendment.

The Greffier of the States (in the Chair):

If no other Member wishes to speak I will call upon Deputy Tadier to reply.

6.3.14 Deputy M. Tadier:

I think that has been a fairly concise but well-rounded debate and we have had different points of view there. Long may that continue. Let me see where to start off with it. There are some points that need to be addressed. I think first of all the point needs to be made from my perspective, from my colleagues' who are supportive of this amendment but also the Care Leavers themselves who may have been the potential litigants and the complainants in this whole area. There is not this naivety to the extent where one believes that every allegation is going to result in a conviction. We work within a hinterland where we know certainly allegations of abuse, for example of rape, we know statistically there is a very small amount of rape cases that end up in convictions. There are lots of reasons for that and that is not because, let us say ... I think it is about 10 per cent, is it not? Five per cent of rape cases that end up in convictions. That does not mean that only 5 occurred, that means that there is the burden of proof, it means that some drop the cases before they get to court. So I think we must not treat the abuse survivors themselves as being naïve. They are completely aware of these issues and about how the system works. There needs to be a sufficient burden of proof. But what we are talking about in these particular cases, where there is evidently, or there seems to be, enough proof in one case for a Centenier and, as the Deputy of St. John will know, Centeniers do not bring these things lightly. They make sure they do their homework before they bring charges. These are particularly different cases and it is not in every case that the abuse survivors themselves are being naïve. So let us put that out the window and let us not conflate the issues. The first arguments I want to refute are the ones from Senator Le Marquand. I was quite incredulous in some ways when I listened to him speak, that there was a certain dogmatism which came from Senator Le Marquand. The kind of dogmatism which made him the only person in the States Assembly to vote about the recent homosexuality laws that came to the House, to do with civil marriages, he was the only one there who would dogmatically stick to that point of view because he thinks ... he almost seems to believe in this kind of divine right that there are some things that cannot be questioned. The point I want to address, perhaps moving it back into the

realm of the sane, is to talk about this idea about the independence of the judiciary, the independence of the police force. Of course, I absolutely agree with that and I do reaffirm that this is exactly why I have brought this amendment. It is because that independence has been questioned and it has been questioned in a meaningful way that these are not simply allegations which a couple of troublemakers have put up, these are abuse survivors themselves who have been working through the prosecution process alongside Law Officers, alongside other lawyers and alongside the police. They have come to the conclusion that in certain cases they need an explanation. That is simply what is being asked for here. It is one thing to say that the independence must be maintained but it is another thing to say that a particular section of society, in this case the Law Officers, is beyond any scrutiny. That is simply all I am saying. There are, if we are honest, clearly implications for that and that will have to be put down ... the information which may be sensitive in nature will therefore have to be treated sensitively. It may well be that a Committee of Inquiry does need to take on certain pieces of evidence in confidence but it is quite right that as the police have been subject to a vast amount of scrutiny and as Senator Le Marquand himself said, it is absolutely key that the independence of the police is maintained. That has been questioned. It has been questioned by the Senator himself. It is quite right that that is questioned but there needs to be evidence and proof one way or the other. We have had the Wiltshire Report, *et cetera*, to look into allegations of malpractice in the police force, but can we seriously say that we are not going to do something ... it is not comparable, but to ask similar questions about the Law Officers and say we need to do that. The light is not simply being shone in the face of the Law Officers themselves, it is to do with the processes that surrounded it. Was there undue influence from anybody else? Did anybody try to coerce the Law Officers? As I have said, we know that we had a Minister who was deemed to have made an incorrect representation to the Law Officers and that was considered sufficient for him to be removed. Has that happened in other circumstances? That does not impute false motives on the Law Officers themselves necessarily. Which brings me to the point of Senator Le Sueur, he is ambivalent about it and I think if I have made the Chief Minister ambivalent then I have probably succeeded halfway in getting him to my point of view. I say what adopting this amendment does is it makes the initial amendment by the Deputy of St. Martin a lot better.

[16:00]

As I have said, whether one wants to adopt this Committee of Inquiry or not is irrelevant, but can Members imagine how bizarre it would be if we opted for a Committee of Inquiry but we did not look at this particular area. If we did not look at the area of the prosecution and we did not look at the area as to whether there was undue influence. It would be very bizarre. It simply cannot be done. I thought Senator Perchard put it very succinctly and one is always in a quandary when bringing amendments because there were tactics involved and I was told by some colleagues that I do not need to amend this at this point because you can bring it back later and we can add things later. I am very cautious to do that because you always have the allegation: "Why did you not put this in the first time around." So think the comments of Senator Perchard in this case are very sensible. What we are doing is setting out the broad terms of reference for what we would like to see included in any Committee of Inquiry. I think it is quite right, it has been said that every Member of this Assembly did have the right to consult and to bring their own amendments so I think to answer Deputy Le Hérissier, I have only brought this one but it is with the background of the Deputy of St. Martin having brought his 6 points already. My one just goes in to look at another area which I believe is of interest. Deputy Trevor Pitman talks about if we cannot get this through then we might need to petition the Crown, I think he said, or to petition the Privy Council. That is really good idea and I would suggest maybe he can ask Mr. Farnham to help him with that. He seems to have experience already. But it is not really something, seriously speaking that we want to do. We should be able to resolve this quite simply ourselves. We are a jurisdiction which enjoys a great deal of autonomy and I think we should protect that. This is something that can be resolved in this Assembly but with a public inquiry which would be seen to be truly independent. So what I would say to Senator Le Sueur and to others who have reservations is that I would be

jumping at this chance to prove what an excellent Law Officers' Department we have, which is independent, which has its integrity intact. In spite of the vicious attacks that we have seen in the newspaper, which remain to be substantiated by the likes of Lenny Harper. That is certainly one argument and I was quite interested to ... I think that is partly where the Deputy of St. John is coming from. He is saying that there were massive questions here that are still unresolved to do with the evidence. Sure, we must not forget that those individuals, the police officers that were involved, if they have been involved in the practices that were exaggerating evidence, for whatever reason, if that is politically motivated, if that is undue political influence than that needs to be looked at too. It covers the whole spectrum. I was doing some research to do with Hansard and where it came from, and it is relevant even though it does not sound so initially. In the U.K. before 1771 it was an offence to report any remarks that were made within the Parliament. Similarly today and an in camera debate, it would be an offence to go out there and publish remarks, and that is how they operated in those days. The reason I say this, it is interesting to see the complete shift from a secret society, if you like, which parliaments used to be, to a complete opposite where everything is transparent and done in the open. The Hansard came in later on, it was published officially around the turn of the 20th century. The point is norms do change, we may think it is unacceptable to ask questions of a certain department, of the Law Officers' Department, but society changes and I think in time we will realise that it is quite right that we do ask questions and that every department and every individual, like a politician has to be able to justify his advice. Senator Le Marquand will be, no doubt, mindful of the fact that the Freedom of Information Law does cover legal advice and in most countries there is a presumption that legal advice will remain secret but there is also a public interest test. So it is very rare. It is absolute privilege that it will remain secret. There is a public interest test in most cases and I think that is simply what we need to put here. But I would add the caveat, I am not asking for this kind of information, sensitive information, to be put into the public domain but what I do want it to be subject to is a fresh pair of eyes, an independent pair of eyes from those who are selected to be on a Committee of Inquiry simply to shine a light throughout the whole of the processes that have taken place on both sides because we have become so entrenched here frankly and it is really good to have people like Senator Le Gresley, as I have said, who can bring a slightly more fresh pair of eyes. But this is only going to be solved with a Committee of Inquiry. So in summing up I will say if we are to have any meaningful Committee of Inquiry, this needs to be included. I think we have got support, thankfully, from different sides of the Chamber. This is not something we can resolve. There will be these continuing allegations outside the Chamber if we do not resolve these issues in an even-handed and a sensible way. So I would implore Members first of all to accept this amendment and then to accept the amendment of the Deputy of St. Martin if they wish to. But either way I think it is a sensible amendment, it does improve on the initial one. I ask for the appel.

The Greffier of the States (in the Chair):

Yes, the appel is called for. On the amendment to the amendment in the name of Deputy Tadier, if Members are in their seats I will ask the Greffier to open the voting.

POUR: 27		CONTRE: 21		ABSTAIN: 0
Senator P.F. Routier		Senator T.A. Le Sueur		
Senator J.L. Perchard		Senator P.F.C. Ozouf		
Senator A. Breckon		Senator B.E. Shenton		
Senator F.du H. Le Gresley		Senator F.E. Cohen		
Connétable of St. Ouen		Senator S.C. Ferguson		
Connétable of St. Helier		Senator A.J.H. Maclean		
Connétable of Grouville		Senator B.I. Le Marquand		
Connétable of St. Saviour		Connétable of Trinity		
Connétable of St. Clement		Connétable of St. Brelade		
Connétable of St. Mary		Connétable of St. Martin		
Deputy R.C. Duhamel (S)		Connétable of St. Peter		

Deputy of St. Martin		Connétable of St. Lawrence		
Deputy R.G. Le Hérisier (S)		Deputy J.B. Fox (H)		
Deputy G.P. Southern (H)		Deputy of St. Ouen		
Deputy of Grouville		Deputy J.A.N. Le Fondré (L)		
Deputy J.A. Hilton (H)		Deputy of Trinity		
Deputy P.V.F. Le Claire (H)		Deputy K.C. Lewis (S)		
Deputy S.S.P.A. Power (B)		Deputy I.J. Gorst (C)		
Deputy S. Pitman (H)		Deputy A.E. Jeune (B)		
Deputy of St. John		Deputy A.T. Dupré (C)		
Deputy M. Tadier (B)		Deputy E.J. Noel (L)		
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

The Deputy of St. John:

Can I make a point of clarification or order or whatever? Given that this amendment has gone through, is the Chief Minister willing to accept the other amendment?

The Greffier of the States (in the Chair):

That is a matter for him. The debate resumes now on the amendments of the Deputy of St. Martin as amended. Does any Member wish to speak? Senator Le Sueur.

6.4 Historical Child Abuse: request to Council of Ministers (P.19/2011) – amendment (P19/2011 Amd.) - as amended

6.4.1 Senator T.A. Le Sueur:

I will begin by putting the Deputy of St. John out of his misery. No, I am not prepared to accept this amendment either and I think that Members need to think very carefully before jumping into accepting this amendment, despite some of the suggestions it is not particularly binding. I will come back to that later in my speech. I do understand and the Council of Ministers understands the concerns that many people have. Concerns which may not be of the magnitude that we expected in 2008 but concerns which nonetheless still exist. I do accept that there are some who will never be happy with anything less than a full-blooded formal Committee of Inquiry set up under Standing Order 146. My problem is in knowing how best to address the concerns and the need to ask the basic question: “What would be the primary purpose of such a formal Committee of Inquiry?” Because having determined the purpose one can then decide whether the inquiry should be a formal process or something rather more user-friendly. Of the reasons for having a Committee of Inquiry basically they would be to establish the facts of the situation, to learn from the events, to secure security benefits for those who suffered abuse, to restore confidence in our childcare services, to provide accountability and transparency. Of those 6 key areas, the one which has I think reached most prominence in recent weeks and is utmost in Members’ minds is that of the victims themselves and that of reconciliation and resolution of differences. If that is the expectation then our task is to see how best we can deliver it. I will be happy to have further discussions with the Deputy of St. Martin and Senator Le Gresley to see how the best way of delivering it could be put forward. My concern with this amendment is that we are getting quite prescriptive already in what should be contained in this Committee of Inquiry. I have been quite impressed by what I have read about other work in Scotland, such as that of the organisation, Time to be Heard, but that is not the only example, there are many others and I believe that it is only right that we should look at them and see what alternatives there are to a formal Committee of Inquiry. Members must appreciate that a full Committee of Inquiry is a significant undertaking. It will require the appointment of

individuals of stature and experience to act impartially in a quasi-judicial process, which is necessary if we are going to safeguard the interests, not just of the victims but of all parties involved in the inquiry. Hearings before a Committee of Inquiry are normally held in public and experience elsewhere has shown that this will require significant levels of legal support both to the inquiry team itself and to those called before it. I believe that process could be quite oppressive for some potential witnesses. Far from being of therapeutic benefit, it might have a detrimental effect in certain cases. There is also the difficulty which has already been mentioned over the interface between a formal Committee of Inquiry as a quasi-judicial process and the determination of possible civil claims by potential litigants who would also be witnesses before that Committee of Inquiry. Any discrepancy between the answers given in the Committee of Inquiry and those used in pursuing civil claims, evidence which in some cases will go back 40 or 50 years, may well prove detrimental to those civil claimants faced with a determined defence lawyer and would probably be better addressed by a different approach. Indeed all the indications for inquiries elsewhere suggest that a formal Committee of Inquiry is not the best way to proceed. So that brings me back to the primary question, what is the purpose of some form of inquiry? I am afraid the impression I get from some quarters is a desire to identify a scapegoat to see who can be blamed for past failures, to find some way of bringing people to book. The Deputy of St. Martin in his report says: "No one holding any position of authority has been taken to task. How can that be and how can we stand by and do nothing?" I repeat, there are better ways to deal with this than the route proposed by the Deputy of St. Martin. I take comfort from the words of Senator Le Gresley that he is open to other alternatives as well as that formal Committee of Inquiry and I am willing to engage with him and others to provide a suitable way ahead. Indeed I compliment him on his speech and the balanced approach which he has adopted and which I think we all need to adopt. I appreciate his reference to the inquiry in Kerelaw in Glasgow, which I agree does show many similarities with our issues, except that it relates to slightly more recent events. I would be happy to look at that possibility but I would point out to the Senator and to Members that the Kerelaw inquiry was conducted entirely in private and with the conclusions totally anonymised so that no former officers or members of staff were identified. As he says, that inquiry that started in 2007 is still ongoing 4 years later, and this might given another indication to States Members of the time which even a less formal approach would take. If a less formal approach takes that long I can just imagine how long a formal Committee of Inquiry could take.

[16:15]

In summary, I am happy to work with others to look at a whole range of options and that is why the Council of Ministers is prepared to support Senator Le Gresley, but we would not wish to be constrained by the more precise terms suggested by the Deputy of St. Martin. I have to say, in response to your ruling about this, that while, if this amendment were approved, the Council of Ministers would have power to add further terms, I would personally find it very difficult to remove any of the terms agreed today from our terms of reference because it strikes me that if Members approve them today and they were not put into the final terms they would need to be asked to be reinstated. So let us have no uncertainty about this, whatever we approve today is going to be the very minimum terms of a Committee of Inquiry, even if more are subsequently added and I fear that the imposition of those precise constraints within a formal Committee of Inquiry process is not the best way forward. It is certainly not the only way forward and that is why I am happy to take the proposition of Senator Le Gresley and accept that because if, having done that work with the Senator and others, we find the only solution is a Committee of Inquiry then I am sure that if I do not bring that back the Senator himself will do so. I think it is only right that we jointly, and with the advice, co-operation and consultation with other parties, look at those other options before constraining ourselves in the way which accepting this amendment would inevitably mean. Therefore, I urge Members to support Senator Le Gresley but to reject this amendment.

Senator F. du H. Le Gresley:

Could I just have a point of clarification on the Chief Minister's speech? I would be grateful - and I do not know if this is possible - if the Greffier could read out Standing Order 147 of the States of Jersey which refers to the conducting of Committees of Inquiry, if only because the Chief Minister said, and I am quoting him: "Hearings normally held in public." But I think 147 allows for hearings in private.

The Greffier of the States (in the Chair):

I do not think I need to read out the Standing Order, Senator, you have correctly summarised the position but I think the Chief Minister was correct to state that they are normally held in public but there is certainly provision to sit in private as necessary.

6.4.2 Deputy P.V.F. Le Claire:

I was going to say that it is perfectly reasonable to expect a Committee of Inquiry coming forwards to have an ability to interview witnesses to protect them from any unwanted publicity and to submit documents that are redacted in the final submissions of their findings. I am going to support these amendments and I am going to ask other Members to do so also because I do not believe a leopard ever changes its spots and the Chief Minister said he is happy to accept the lesser, in his view, authoritative restriction of Senator Le Gresley but we all know that he, along with his colleagues, kicked it out in the first place and that is why Senator Le Gresley had to bring one anyway. We all know from experience now, I have known it for a lot longer - I do not mean to be facetious - anyway how this Council of Ministers and how these politicians work. They are secretive, that is how they have operated for years. Not all of them; generally. They extend reports, they extend inquiries and they run them out into the long grass. It was noticeable in the Chief Minister's speech that some of these inquiries as referred to by him, are now going on for 4 years. What about the 5 year-old child that lived in Haut de la Garenne for 10 or 11 years of its life? How long did that child have to run out on a daily basis? Twenty-four years. The nightmare that that child had to endure ... so we have put up with 4 years of an inquiry, how many years did they have to put up with a nightmare?

6.4.3 The Connétable of St. Ouen:

I am still not convinced that we are sure where we are going. Deputy Tadier in the summing up of his amendment asked a question: "Why did we not get this in in the first round?" That was the question that he was asking, should it have been added to the 6 in first place. I think that he has asked the right question because the question that he has asked is one which has come to our notice since the end of the inquiry. It was not an obvious question when these other questions were set up. This is why I have every sympathy with the Chief Minister that we are tying ourselves, whether you like it not, to these 7 points and maybe others, which the Council of Ministers might bring and maybe others which other Members might bring. But we are today, if we go with this, tying ourselves to these and they are out of date. They are old questions, they may be relevant, I am not saying they are not, but they are not necessarily all the questions we need to get the answers we need. Deputy Le Hérissier said that we need a broader inquiry. I think from what he was saying we need other questions to be answered. So as much as I would like to support the Deputy of St. Martin, because I think this is right, these are some of the questions which need to be asked, I do not think that the Assembly should be tying itself to these 7 questions before it makes the decision to have an inquiry. I think today what the Assembly needs to do is support Senator Le Gresley. Yes, we have to have an inquiry, Council of Ministers take it back and come back with terms of reference which the Members can alter as and when they feel fit. But I think that this is putting the cart before the horse. I think we need to make the decision about the inquiry first and then come back with the terms of that inquiry.

6.4.4 The Deputy of St. Mary:

The difference between accepting this amendment and rejecting it is the difference between saying it will happen and saying it may or may not happen. I think Deputy Le Claire's point was well taken about leopards and spots. The fact is that the Council of Ministers first reaction or first statement on this matter was that they would not do it. They were not going to do it. So now we have to accept their word that when they go ... well, they have not given their word but they are implying that they will go back the 3 months and come back with a report that will say: "Yes, we will do it in this or that way." If we vote for this amendment we have at least set the marker that there will be an inquiry. I think it is possibly a little bit unfortunate that the phrase "a Committee of Inquiry" is in the proposition, I do not know how flexible we can be on that and whether that does tie us to the full bells and whistles and lawyers situation. But nevertheless the fact is that if we decide to set it up then we will have decided that and, as people have pointed out, the now 7 terms of reference would be the basis for the Council of Ministers deliberations. I really think we should look carefully at what the Constable of St. Ouen said about saying that we are tying our hands to those 7 and that certainly the ones being proposed by the Deputy of St. Martin were out of date in some way. I have looked very carefully at them and they seem to me to be as relevant now as they were when they were first written. I want to look at a few of the reasons why the Council of Ministers say we should not do this, because the position we are getting today, the implication of saying: "We will go away and look at this and we will even invite the Deputy of St. Martin and the proposer of the proposition to come and talk with us" is in contrast to their initial R.8 which was to say no. We do need to be very sure about why this is so important and why we do have to have an inquiry. I want to preface my remarks really, although I am some way into them, by saying that some of what I say will be in numbers and some of it will sound rational and almost cold. I think when we are talking about this it is difficult. When people get emotional in their speeches it is sort of easy to say: "Well, they are getting emotional", but on the other hand the way I put it to myself was - and I do not have any direct experience of this - and I would suggest to States Members that they think like this: "What would it be like if that was my daughter or my son?" Just hold that and then look at the arguments in that context because I think that does put a different complexion on it. The first thing that the Council of Ministers tell us is that it was a massive situation back in 2008 and it is not massive now. In various ways they say that in their documents. In fact, if you look at the language they use in their R.8, page 11, and this was their original statement on the subject, they say: "This has proved not to be the case and while any individual case of child abuse is serious, the scale of the issue has been shown to be very different to that apparently presented when the Council of Ministers made this commitment to a Committee of Inquiry. There is no question that the care system operating historically in the Island had failed certain children in the States residential care in a serious and unacceptable way." Had failed certain children. Then we compare that to the comments on the amendment - I am trying to find them if you will just excuse me - on page 2 where the Council of Ministers themselves say that the final police report identified 140 people who have been identified as possible victims. That is some children; 140 possible victims. Then in the next paragraph, these facts alone show the scale and complexity of a Committee of Inquiry or possible Committee of Inquiry. So it is big and it is complex and it only affects some children. I do have difficulty with that and I just would ask Members to remember that this is still a bad situation, and in the scale of Jersey, a little island with 90,000 people, the figures are really staggering. I just want to talk about the offences and the figures that were in the report of the States of Jersey Police when they concluded the inquiry. This is in the context of thinking that if there was a one case of rape or if there was one case of indecent assault we would not be sitting in here discussing for hours because those would be seen as aberrations, they would be seen as somebody, some individual, who had lost control or whatever and done those terrible things. It would be bad but we would not be sitting here. If you go back in the history a little bit, the reason the police started on this was that they were getting lots of accounts from different sources. From the sea cadets, from Victoria College, from Haut de la Garenne and children's care homes. They thought this looks like systemic, this looks like institutionalised, and then the question is: "How come? How come?" So just on the figures, and these have not been really spelt out; 533 offences. One

offence is recorded for either a single offence or series of similar offences against one victim under the national crime recording standards: 533 offences or series of offences. That is how big this event that we are talking about is.

[16:30]

Three hundred fifteen offences at Haut de la Garenne, 66 at other homes or institutions and 152 at fostering or in private addresses were reported. Then the police reported that the 8 people prosecuted of whom 7 were convicted, were prosecuted for a total of 145 offences which is 27 per cent of the total. A quarter have been, if you like, put to bed, have been resolved. But I have done some work on those figures because they did not quite seem to stack up, and in fact they do not. I have written to the Minister for Home Affairs and his Chief Officer to ask for clarification. In fact the figure that looks likely to be true is that half the 27 per cent is more like 13 per cent and probably less, have been resolved in terms of having gone to court. I think that is important because the implication of the closing statement of the States of Jersey Police was: "We have dealt with a quarter of the offences so that is a bit less awful." But it is not that and it is about an eighth that have been, if you like, resolved in the court process. Then, beyond that, there are the tales of what happened to survivors and what they did after they had been abused, the murder, the suicide and other things. So I think that we do need to remember this, and I do not think it has been really clearly spelt out by anyone just how big this event is. I am really, really worried about the process of if we were to reject this amendment and then go into the proposition, then the Council of Ministers take it away to their silo, to their bunker to report back to us in 3 months. I am really, really concerned. The other argument that the Council of Ministers use is that it would not find anything, it would not find anything new. I am not going to go into the detail. I have plenty of evidence of what people are telling us from among the survivors and people who have worked in the care homes. But it is abundantly clear to anyone who has read the documentation that has been sent to us that there are many unanswered questions. Many, many unanswered questions. People whose experiences have not gone anywhere. They have not been resolved. There is a curious argument on R., page 8, that this inquiry would be the same as many other inquiries and so therefore it would not really bring anything new. So why did all the other inquiries happen after the first one, because all they would do is find out the same litany of things that need to be done and I think the paragraph lists mistakes and errors found by this range of inquiries: lack of close inspection, inadequacy of handling of complaints, failure to listen, poorly trained and unqualified staff, and so on. It is a funny argument to use because once you have done the first 2 are you not going to find the same patterns again? Maybe not. In fact, clearly we have to do what all the other jurisdictions did, all the other authorities and go there. We have to find out for ourselves what happened in Jersey and then we can reach the conclusions that make things better in the future and provide some sort of closure. Telling their story, that is one of the reasons for having an inquiry. Again, R.8 does a half version of this that is not enough. It is not going to meet the need. On page 9 of R.8, second paragraph: "It is hoped that individuals that have been affected will continue to be able to tell their story and access appropriate support." It says what kind of support. I think that is in the context of listing the kind of support that is available. But the point is that telling the story has to be in a forum where people feel that it is accepted in a different way from still being a victim and telling someone who is there to support you. I think it is a different kind of telling the story. We are told by the Council of Ministers that the police investigation has sorted all these matters. I have said already, there are many, many undealt with questions. How those should be best addressed I am not sure and we will comment on in the closing debate.

The Greffier of the States (in the Chair):

Sorry, Deputy, the States have become inquorate. I ask the usher to summons Members. I would ask Members to return urgently to the Chamber. Very well, Deputy, you may continue.

The Deputy of St. Mary:

Yes, the suggestion is that the police investigation has effectively done the job and so we can spare ourselves the additional difficulty, effort and expense of an inquiry. On page 10 of R.8 we see the Council of Ministers trying to say that Wiltshire would appear to fulfil the requirements for public scrutiny and future improvement, which is strange because Wiltshire was a disciplinary report and not a report designed to improve the workings of the police. The report that was designed to improve the workings of the police was the Metropolitan report which was misused as a disciplinary report. So even if you start to look at the detail behind the police investigation and the murky waters of the investigations that have been carried on into the police investigation, you find that it is controversial, that is unsettled and unsatisfactory. I think that there are many points to be made about the police investigation and the way that it has been handled, if you like, from outside but I would just want to emphasise perhaps 2 points. One is that the question of whether everything is sorted is still controversial and there is evidence still out there that is contested as to whether it has been fully resolved or not, and the other issue is the issue of why so much effort was put into discrediting the original inquiry and there is the extraordinary comments of the ... now I have to try and remember the replacement senior investigating officer who then retired quite quickly afterwards ... about the previous senior investigating officer, trying to discredit the previous inquiry and the infamous press conference. Again, huge subject of controversy, highly contested findings, which if you go to the findings with an open mind you can see just how controversial all that is. The question of whether the media has whipped it up or not ... I have tried and tried and tried to get proper audit trails and been blocked, and been told even by the Minister to do the research myself when it is the job of Wiltshire. Then the strange removal of the former Chief Officer of Police. So there are many, many questions around the police investigation which, of course, echo around population, echo around those who are politically interested and just wonder whether we can actually not have a proper inquiry. A further point that is of great importance is the cost, and this is another reason why Members should vote for this amendment, they should make sure that this happens because we have 2 comments from the Minister for Treasury and Resources and I think they both say more or less the same: "This is going to be expensive." I better check that I am getting this right, but I think the gist of what he says is: "This is going to be expensive and would need to be allocated separately by the States." He does not say we should not do it because of the cost, although he does say: "The comments provided separately by the Council of Ministers clearly indicate that any benefits to be derived from a Committee of Inquiry may not justify the financial costs involved although it is important to stress that the Council of Ministers' decision was not taken on this basis. So he is putting the doubt ... he is saying the money is important, which I think is a legitimate comment. But then he says the thing that I want to talk about. "The answer to the Senator's recent written question 6031 clearly indicates that the Criminal Offences Confiscation Fund is not considered by the Attorney General likely to be suitable as a source of funding for any potential Committee of Inquiry." This is an important point because if it is true that we cannot use the Confiscation Fund then we do obviously have a difficult question of where the money would come from. I circulated a paper to Members and I would like them to look at it now, it is headed "P.19 Historical Child Abuse Inquiry: Additional information about the uses to which the Criminal Offences Confiscation Fund has been put in the past." I asked a question of the Treasury officer who was the person to ask about the uses of the C.O.C.F. (Criminal Offences Confiscation Fund). Members will recall that we had reports from the Minister for Treasury and Resources, quite rightly too, of the last 4 years of the C.O.C.F. detailing the amount of money that had come into the Confiscation Fund and the amount of monies that had been paid out of that fund in the form of grants. The information in the Minister for Treasury and Resources' report was somewhat thin so I asked for more information. On page 1, which is simply overleaf from the cover, Members will see what the Criminal Offences Confiscation Fund has been used for. It is just a thin little 2-page document and it is on your desk somewhere. There is a table on page 1 with the details of the purposes of the grants. I will just read some of them out and then I will ask whether this expenditure is not closer to the specific terms in which the Confiscation Fund must be used than this inquiry ... sorry that the inquiry is closer than these things. Staff salaries and others, in the Law

Officers Department; running costs of Magistrates Court; police for C.C.T.V. (Closed Circuit Television) storage equipment; Criminal Injuries Compensation Fund implementation, which is fair enough; court and case costs. Now, we are being told that, and it is in one of the reports, we should not use the proceeds of the C.O.C.F. because it would not be proper, it would not fall within the guidelines of spending of that fund. It has to be to do with the prevention of crime. It is certainly the case that this inquiry would fall slap back into the terms of reference of the Confiscation Fund and certainly nearer to its terms of reference than some of those items which I have listed as in salaries in the Law Officers' Department or the police C.C.T.V. storage equipment. I am sorry I cannot find the exact reference for the Criminal Confiscation Fund and ... yes, I can, just one moment. "The Criminal Offences Confiscation Fund has to be used in promoting or supporting measures that in the opinion of the Minister may assist in the preventing, suppressing or otherwise dealing with criminal conduct."

[16:45]

Preventing, suppressing or otherwise dealing with criminal conduct; that seems to me to be exactly where this inquiry is and certainly it is a lot nearer to that than some of the things on which that money has already been spent in the past.

Deputy S. Power:

Will the Deputy give way? Through the Chair, could I ask the Attorney General if he agrees with the Deputy of St. Mary's interpretation, application and use of the Criminal Offences Confiscation Fund because I am not sure he is interpreting it to the letter of the law?

The Greffier of the States (in the Chair):

Do you wish to deal with that now, Mr. Attorney, if the Deputy of St. Mary is willing to give way?

The Attorney General:

I stand with an element of confusion because it had been whispered in my ear that I am conflicted in giving an answer but so far as I am concerned I am giving legal advice and the benefit of my legal opinion to the Assembly, and I am not entirely certain on what basis it can be suggested that I am conflicted in doing so. The Criminal Offences Confiscation Fund is established under the Proceeds of Crime (Jersey) Law and the relevant Article is Article 24. Article 24 provides that the fund is separate from the general revenues of the States and is a specific purpose fund. Articles 24(4) and (5) are, I believe, the relevant provisions and the Deputy of St. Mary is correct when he says that there are certain purposes that the fund must be used for in promoting or supporting measures that in the opinion of the Minister - and for these purposes that is the Minister for Treasury and Resources - may assist in preventing, suppressing or otherwise dealing with criminal conduct, in dealing with the consequences of criminal conduct or without prejudice to the generality of those clauses facilitating the enforcement of any enactment dealing with criminal conduct, discharging Jersey's obligations under asset sharing agreements and meeting the expenses incurred by the Minister in administering the fund. Before supporting any measure under that paragraph the Minister has an obligation to consult with the Attorney General. The question, as I understand it, is whether or not I agree that the fund can be used for the purposes a Committee of Inquiry. The Minister for Treasury and Resources, I think, gave a written answer to a written question in February in which he indicated that having consulted with me the view was taken that it would be difficult to argue that the inquiry, depending upon its terms of reference, could be taken as dealing with the consequences of criminal conduct. That is the view that I hold. The *vires* that enables the fund to be used seems to me to point to dealing with the direct consequences of criminal activity or actions taken to stop criminal activities occurring or in processing the prosecution of crime. I think an investigation, if I may say so, into the care regime, in whatever form it takes, would not be the consequences of criminal conduct. It may be knowledge about it and concerns about it arise as a result of investigation into criminal conduct but I do not think that

an inquiry into the care system is a consequence of criminal conduct. In my view the fund is not designed for such a purpose. In indicating I am not sure why the thought might be there that I might be conflicted in giving that advice, it seems to me this is a matter of legal interpretation and that is my interpretation of the Article and the proposition, of course, or indeed any of the amendments does not purport to point to a particular source of funding. I am merely indicating what my view is of the Criminal Offences Confiscation Fund.

The Greffier of the States (in the Chair):

Thank you. The Deputy of St. Mary.

The Deputy of St. Mary:

I thank the Attorney General for that clarification. The point I was making was there has been some discussion of this possible route of funding and I certainly interpreted the question of Senator Le Gresley in that light when I read the response of the Minister for Treasury and Resources. I was very taken with the first 2 subparagraphs of Article 24(4)(a) and I will read them again. “In preventing, suppressing or otherwise dealing with criminal conduct.” Preventing, that means looking back, making sure that it does not happen again and it was, indeed, criminal conduct. While I hear the Attorney General has just given us his legal advice I will then refer Members to the document I circulated today where, under those same terms of A(i)(ii)(iii) and so on, which are in the written question, we see staff salaries, court and case costs, running costs of the Magistrates Court all funded out of the Confiscation Fund. So I would just say, with my untutored brain, that what is sauce for the goose is sauce for the gander and it seems to me that it will be hard to argue that those things are more within the meaning of the law than the inquiry. So I do think that that little pot that the Minister for Treasury and Resources put at £8.25 million in December 2010. I think that is an important point because one of the objections is: “Well, where does the money come from?” It would seem to me to be a very apposite use of the Criminal Offences Confiscation Fund to use it to conduct this inquiry which, as I have argued, is very necessary. I just want to make one point in closing about accountability. Somebody mentioned accountability, I think the Chief Minister, and he said about the proposer: “He was looking for scapegoats, he was looking for someone to blame.” I can see the proposer shaking his head, but that is one possible interpretation of the sort of thing that a Committee of Inquiry might get stuck with. I just want to raise the point for all Members, and I do not think it has been really talked about by others. Going slightly beyond the institutional failing to listen and to hear and to take on board what was happening. It is a difficult area and it is about our own, all of our, responsibility as a community because these things did not just happen ... well, they happened inside institutions and care homes and fostering homes and so on but all those children knew people who knew people and I find it ... that some of the responsibility must lie in the community as a whole and that that is an area that should be addressed by whatever inquiry is set up. It is very difficult, it is not easy, and it is trying to establish what the preconditions are for a safe society. When is it right to tell and when is it right not to tell, and when is right to hear the voice and pass it on and so on? I think that is a useful area for any inquiry to go into. I will just give some little examples to bring it home. There is someone I know whose daughter worked in a school for a while and noticed someone on the staff behaving what she thought was inappropriately and she told this person I know and the mother did nothing, she just put it on the shrug pile. Now, should she have done something or should she have not done something? I think it is that kind of question because it must have arisen in the course of all this going on. I have heard of someone who gives private tuition, second-hand, touched the girl inappropriately and again nothing was said by the person who passed that on to the person who passed that on to me. Do we, do we not, what are the issues around this? I do think that it is something important that does need addressing and that we should also include that in any terms of reference. But my main point is we have to vote for this amendment to make sure that the inquiry happens.

6.4.5 Senator J.L. Perchard:

I will ask Deputy Hill, through the Chair, when summing up to make clear his intention to drive these 6 points through to the final terms of reference of any Committee of Inquiry should one be formed. If the Deputy, and I suspect I am right when I say this, would like the Committee of Inquiry to touch on areas as identified in his 6 points but not literally the 6 points as drafted, I will support it. But if he is not able to give me that assurance that he accepts that these 6 points were written in 2008 and were very relevant at the time but now in 2011 they are not quite so relevant and will need redrafting to suit today's questions, if he accepts that this is a guideline to the Council of Ministers and the future of the States when they discuss the terms of reference in the future I will support him. But if he is unable to give me that assurance I am afraid I cannot.

The Greffier of the States (in the Chair):

That is a matter for the Deputy, Senator, the Chief Minister has made his position clear.

Senator J.L. Perchard:

My question was directed at the Deputy of St. Martin, if he is insistent that when the terms of reference comes back to the House, he will not support it unless it contains these 6 points literally, I am afraid I will not be able to support him. If he shows goodwill at this point I will join him in extending my hand of goodwill.

6.4.6 Deputy M.R. Higgins:

Just very briefly and this is following on from the Deputy of St. Mary. I am hoping some Members will be able to clarify a position for me because ... it may be my defective memory but I thought before Christmas we had a situation where the court and case costs were rather excessive and we put so many millions towards it, and the reason why there was a shortfall, there was not any money in this particular fund which was topped-up a later stage. If I remember correctly, in that debate Members expressed concern about all the money they had been putting in this fund, in fact I think I did myself because I was aware, I think, in the long distant past how money had been used for the police to get some equipment. I question the use of the fund for that. If I am not mistaken, I thought the Minister for Treasury and Resources at that time gave an undertaking that the money that went in this fund would now be going into general funds because we have already topped-up the criminal case funds. So I hope someone will clarify the position for me.

6.4.7 Senator B.I. Le Marquand:

I approach this debate with an awareness that there are a considerable number of children, many of whom are now adults, who were very badly let down by the childcare system in Jersey and particularly by the childcare system within the children's homes in the past. Some of these have suffered profound and lasting psychological and emotional damage which continues to this time. In relation to this group there is a strong desire for justice and for public recognition of what they suffered. Some wish to be able to tell their story publicly, some wish to know how it was that they were so badly let down. Some are in need of specialist psychological counselling to enable them to deal with their pain and anger from the past in a controlled way and to enable them to move on. All want to know that the current services have moved on with safeguards having been put in place in such a way as to ensure there is no repetition of the past for the current and future generations. Some find it very difficult to trust anyone in authority because those who were in authority let them down so badly in the past. So the main question we are seeking to start to answer today is how can we, the Island current political leaders best provide for all these genuine needs. I am personally sorry that the Council of Ministers has not so far come up with the right package and I accept my own personal share of responsibility for that. I have, in the last 10 days or so been trying to put this right. In so doing I am fortunate to have a contact with a local doctor who has a particular interest in this area of work and who has made contact on my behalf with experts outside of Jersey in this area.

[17:00]

I have received input from 2 separate experts in this field, both of whom have indicated that a full public Committee of Inquiry is not the best way forward in order to achieve these objectives. The first of these experts is associated with an organisation called Survivors West Yorkshire and I am going to quote part of his email response to me. He says this: "Re a public inquiry. I would agree with your view in relation to the issues. I am not sure there is evidence internationally of any public inquiry meeting the expectations of victims. That is very understandable, they want justice via trials and prison sentences, *et cetera*. Not often that happens as they hope for. My personal view is a parallel justice approach, it is much more effective in meeting the needs of all victims of any kind of interpersonal abuse. Working alongside mainstream criminal justice processes as a partner to holistically meet victim needs. Scotland has recently been exploring the kind of validation forum you highlight, it is called Time To Be Heard, which very much fits into a parallel justice approach." He then goes on to suggest 5 alternative and positive approaches as follows. Firstly, an independent historical review of looking-after care by an expert. This is, in fact, what happened in the Scottish system and the Scottish model. That should answer the question how did this occur in the past. Secondly, the establishing of a Time To Be Heard forum project for Jersey, which he suggests should be combined with a restorative justice project. This is aimed at giving victims the opportunity to be heard within what I would describe as a healing model. Thirdly, the setting up of an independent professional support service, independent of the States system, so that it will be trusted by the victims. Fourthly he suggests the bringing of all the stakeholders together, including victims, to work together to improve systems for the future. Fifthly, he suggests having all this evaluated externally from time to time. Now, here is a possible model for positive action for the future. It is not the only model but it is a positive model. The second expert wrote this: "The availability of skilled support workers to help victims work through their painful issues is crucial and the money (inquiries are expensive) would be better spent on setting up services." Now, this particular expert's view tends towards improvement of the quality of psychological services, care services and counselling services and so on. There we are, 2 separate opinions from experts which I have been fortunate enough to receive. I have gone into some detail in order to demonstrate that a number of positive groups exist which, in my view, now need to be explored. The problem with the amendment of the Deputy of St. Martin is that it locks the States in at this stage to a full Committee of Inquiry as the sole way forward. It also makes no provision for the other issues which I have mentioned and which certainly need to be considered. The first problem with that is that it only seeks to meet the first objective, namely why did things go wrong in the past? It may be argued that a Committee of Inquiry also tries to meet the second objective, namely giving victims an opportunity to be heard, but I will come back to that very shortly as to why, in my view, that is not the right way and the right place to deal with that issue. I want to suggest that a full-blown Committee of Inquiry is a long-winded, unwieldy and expensive way of finding out what went wrong in the past. It is far better, in my view, to follow the Scottish model and to ask an expert to review this. The problem with a formal Committee of Inquiry in relation to the second need which is that of many victims to be able to tell their story in a sympathetic place where they will be believed. To be believed and to be able to tell their story is an important part of a therapeutic model for individuals. The difficulty is this, with a public Committee of Inquiry some victims are inevitably going to want to name people who did the bad things to them, who did the wrong things. The moment they seek to name individuals we then get into a situation where those individuals will want to seek to counter that. They will need to have the right to legal advice. We may need, in some cases, to publicly fund the legal advice for those who are being accused. The moment we are into that situation then rather than a model in which victims are able to tell their story and are believed they will find themselves in a position in which they are facing hostile cross-examination. That cannot be in the least beneficial or in the least therapeutic from the point of view of victims. It is simply the wrong model and that is why the first expert is suggesting this parallel justice model as being the better approach to that. The danger with that is that some victims may come out yet further traumatised by virtue of the whole experience of cross-examination and their veracity being questioned and so on. This amendment does nothing for the improvement of public

services. Indeed, in my view it may delay this for years, indeed it may delay it indefinitely by simply focusing upon one area and not focusing upon the broader needs of the most important group in my view here, which is the victims. I therefore ask Members of this Assembly to reject this amendment and instead to allow time for a proper assessment of the other available options with a view to a later debate on this in which we can come up with the right package which meets the needs of victims in the best and most appropriate way. Finally, purely as an aside, in response to what the Deputy of St. Mary said in relation to police statistics, I have responded to his request for information and discovered what has happened here. What has happened here is the figure of 27 per cent, which the police gave was the total number of case files which related to people who were eventually charged. That is the way in which they came to this figure. That is my understanding of that. I do not think the figure is particularly important but I answer that question.

6.4.8 Deputy M. Tadier:

One takes a risk in speaking quite early, hopefully there are not too many Members left to speak. I want to counter some of the arguments that have been put, and I think it is quite apt that I rise to speak after the Minister for Home Affairs who, himself, has complete confidence in the system and does not believe that there is anything untoward that happened to do with prosecutions *et cetera* and that everything was fully above board. So it is quite clear that he may not see the need for a Committee of Inquiry at all. There have been lots of arguments made, and a lot of presumptions that States Members know exactly what is going on in the heads of those who experienced the abuse either firsthand or indirectly or when it happened to their families and their friends many years ago, sometimes more recently. We hear all these quotes allegedly from experts, who I am sure are not necessarily free from political opinions themselves, who tell us what is best for the victims. We hear that the victims just want to be heard. So let us look at this in 2 ways. First of all, the victims are already speaking, it is almost like we have got our hands over our ears and saying: "The victims want to be heard, the victims want to be heard, we need to set up some kind of system, whether it be a truth and reconciliation like in South Africa or the parallel justice system that has just been mentioned in Scotland." The point is the victims are already speaking and now if we have a system which is set up where we allow the abuse survivors to speak they are just going to tell us exactly the same things. They are going to say: "This is what I went through, I do not trust the system, I do not believe that the prosecutions were handled in the correct way." They are going to tell us exactly the same thing because they think their needs' issues are not going to be resolved. We are already at that point. Why do we presume that we need all these mechanisms in place for people to be heard? The care leavers and other abuse survivors have an adequate avenue, many avenues, of making their voices heard. They have the J.C.L.A., which was formed fairly recently, in order to make their views heard. They have a variety of blog sites which they can make their voices heard on, there is nothing to stop them speaking out, the criminal prosecutions have now finished and many of the victims for many years already have been telling their story, so simply setting up another mechanism by which we are going to allow these individuals to tell their stories is not going to solve anything and I would suggest it is completely disingenuous, or it could be perceived like that. So I think we have to knock those arguments on the head and presume that we can speak for those who should be speaking themselves. It reminds me of the saying: "Nothing about me without me" which says that in the decision making processes, which sadly have been lacking here, there should be consultation right the way through, it is not simply a case of we will inform those who it concerns on the day that we inform States Members. I think that is something that has been lacking up until now. I would encourage Senator Perchard to recognise the flexibility within this system. Clearly what we have here from the Deputy of St. Martin are not terms of reference, they are not terms of reference yet, they are a series of issues which he is asking be looked at which he has called unresolved issues and I have added my seventh one to that, which I also feel needs to be looked at and which the Assembly has agreed to accept by a majority. These are not inflexible. It may well be that ... first of all they cannot remain in this format, these are questions, the terms of reference will need to be changed. I would hope, of course, that it does set a

general direction but if it comes back to the Assembly and if a case can be proven that a particular area does not need to be looked at, that it has already been resolved, that it is already out of date, that can be removed. That is fine, there just needs to be, I would say, a presumption that these issues will remain in there but if a States Member or the Chief Minister himself can prove that something has got a valid case for being removed, that should be done but in a democratic way, not simply disappear into oblivion. I think we should not be looking for excuses not to do something, I would be a lot more at ease if those who are standing up saying: "Let us put this off, let us make sure we have got a more comprehensive review, something that we can all get behind" if those individuals were supportive of a Committee of Inquiry or something similar in the first place I would be a lot more inclined to believe that they would be forthcoming with something that would happen. At the moment the cynical part of me just thinks these are stalling tactics, we do not want to address the issue here and now, which we can do, which we so often do not do, and simply let us leave it until after the elections because it is not a particularly convenient issue to have around our necks for those of us who may have to contest an election. Hopefully that is not the case. I would like to see this resolved here today. I think there is also an argument about the Committee of Inquiry being flexible itself. The Deputy of St. Martin, and none of us who support this, is prescribing in any way what format or what shape or form the Committee of Inquiry or something by a similar name should entail. This whole idea that those who have experienced or allegedly experienced abuse in the past are going to be sat down by SS-type lawyers and have a light shone in their face and interrogated is simply scare tactics. We already have systems in place, for example, in courts which deal flexibly with those who are vulnerable, with children, with families, and it is clear that any inquiry that is taken, which must be truly independent, will obviously have to be sensitive because we are dealing with sensitive issues and sensitive individuals. So I think that argument can be thrown out the window.

[17:15]

This may sound slightly surprising, it is not simply about the victims either, it is not simply about those who may have experienced abuse while they were in care, as shocking as that is and that is a reason in itself to have an inquiry, but it is also for society in general. We need to be able to have confidence in all of our mechanisms and when those mechanisms are put into question, whether or not those allegations are completely correct or not, when there are grounds and these allegations are occurring from various different sources, on both sides it has to be said, remember, there are allegations that those who are ... as I mentioned before, the police, they were not necessarily squeaky clean. It needs to be looked at in the round and these are not simply issues which relate directly to the abuse survivors themselves. So we do need to make sure, as a society - if we are to move on - that there is a thorough Committee of Inquiry but the actual processes which are adopted need to be flexible. I think we are looking for reasons to reject this rather than adopt it today, with the inbuilt flexibility, with the possibility for the Chief Minister and the Deputy of St. Martin to come back with terms of reference that they agree with, that the House can then endorse and then move this forward because simply we all know how politics works, it takes a very long time to get things done. I think we are just seeing stalling tactics, reasons for not doing something and we need to be positive and get this through.

6.4.9 The Deputy of Trinity:

I shall be very brief at this point. I, like other Members, cannot begin to imagine what the victims have been through. I hope the apology that was given by the Chief Minister and the Council of Ministers perhaps helped in their beginning to cope with the situation, but this next step is important. It must be right. The Constable of St. Ouen is quite right with the terms of reference. My main concern is that if we do this Committee of Inquiry it must be right. It must meet the needs of the victims. I think with the terms of reference, the first one is going back over recent decades. Are we looking back 10, 20, 30, 40 years? As we know, childcare services over those decades were very different to what they are now, I am pleased to say. It is important that what we do set

up is right and, as we have heard from Senator Le Marquand, the evidence from other jurisdictions that have had a public inquiry has not met the expectations of the victims. We have had this evidence not only from one or 2 jurisdictions but others around the world who are facing similar issues to what we are facing today. We have a chance here to look at other ways and to try and meet the needs of the childcare services that have changed. Some of the victims, I am pleased to say, have moved on. Some of the victims live around the world and they have moved on with support. The psychological services and assessment therapy services continue, and will continue, to work closely with all the victims as they have done over the last years and they have been supported by a victim support agency as well as other agencies that are there to offer that help. The apology, I would like to think, was a very important step and we do work closely with the Jersey Care Leavers Association, especially my Assistant Minister who has met them many times. I am pleased to say that the apology was received by the Chairman of the Jersey Care Leavers Association before it was made public by the Chief Minister. The Ministerial team is cognisant of the victims and that is why I felt it was important that they did receive the apology. I urge Members to think of what Senator Le Marquand said about the different options which are open. We know that a Committee of Inquiry, from other evidence around the world, will not work. If we accept these terms of reference - albeit that there is still room to change perhaps - it is the basis of how we will do and move forward.

6.4.10 Connétable S.A. Yates of St. Martin:

Having listened to this part of the debate I was moved to add a few words because when Senator Le Gresley brought his proposition I was somewhat supportive because I was here when the previous Chief Minister said we would have a Committee of Inquiry, and that was tantamount to a promise. Subsequently we have had the police investigation and we have had some prosecutions and convictions. The point I want to make is, looking at Senator Le Gresley's proposition, it is quite short and quite non-specific, and does not even mention terms of reference. Turning on to this amendment our esteemed Deputy of St. Martin has given us 6 questions. The first question: "How have the Island's children's homes been run in recent decades?" Recent decades, well how long is that? As the last speaker said it could be 10, 20, 30, 40 or 50 years and she very correctly said that things have changed in 50 years. Norms have changed. Those last 3 words "in recent decades" could be applied to each one of those 6 questions. The last one: "Were there any mechanisms in operation to allow children to report their concerns in safety and what action was taken if and when concerns were involved in recent decades?" Although a time factor was not mentioned in Senator Le Gresley's proposition he did, in his presentation, say: "During the last 4 decades" and my ears pricked up. I was going to raise some similar thoughts that the Minister for Health and Social Services has just raised in as much as if you went to school in the 1940s, 1950s or 1960s you were most certainly subject to, or subject to the threat of, physical abuse. Probably also mental abuse due to mental bullying or extreme acute ridicule if you did not perform well. This is all abuse. For sexual abuse there never was an excuse nor ever is there a reason why that should be tolerated. But on the other 2 - and we are including mental and physical abuse - what I am concerned with ... I do not think I can support this because there are 6 questions and, as the Constable of St. Ouen said, it is going to tie our hands into any subsequent Committee of Inquiry. What I am very interested in finding out is ... I am very well aware of the difficulties of judging historical events, events of 50 years ago, with the criteria of today. I think it is going to be almost impossible not to look at physical abuse in terms of corporal punishment, which was the norm in 1950 and 1960, with the criteria of today. I have not made my mind up yet but if there is going to be a Committee of Inquiry and if there is going to be a terms of reference I should be very interested to see what those terms of reference are. But I have voiced my fears about inquiring into historical events and applying the criteria of today because things have changed in 50 years. I will leave it at that and I will be waiting for the vote to make my mind up.

6.4.11 Deputy G.P. Southern:

For me this is a very simple matter, the previous Chief Minister made a commitment to a Committee of Inquiry on this issue and we should, we must, hold to that commitment.

6.4.12 Deputy T.M. Pitman:

I will try and keep us going for 5 minutes. It was not a threat. When I think about my experience of lunchtime - and personally I have not spoken to those things for probably 20 years - I do not want to pursue what happened then and it is not nearly as serious as what has happened to some of the people in these cases at Haut de la Garenne, *et cetera*, but we are talking there more than a quarter of a century ago. The individual who was quite happy to strike me, a backhander across the face, as a 12 year-old, he just walked past us as my friend pointed out. I still remember this gentleman, he is my age now obviously, being thrown across 2 sets of chairs, and there must be a lot of people ... because it was in the lecture theatre so it was in front of a whole school year. That person is still walking around. We use this get-out of: "It is all a long time ago" too liberally, I think sometimes. Of course there are difficulties but sometimes it is not as difficult as we would like to think and using it as an opt out of pursuing something ... Just watching a documentary the other day, and of course it is not nearly the same, but you look at war crimes, there is still a big case in America now being pursued, what, 70 years later. The problem I find with the approach being put forward by the Chief Minister in relying on what is effectively a review by an expert is that that outcome, if it should prove unpalatable to the Council of Ministers - and we have seen this I am afraid only recently with the Napier Report - the Council of Ministers will simply say: "Okay, Mr. So-and-So expert, he says this was wrong and this should have been done and this action should be taken. Sorry, but we disagree with this expert." The point of highlighting this is that a review by an expert will never ever have the same finality, the same weight in terms of justice and closure for those let down by the system as a full Committee of Inquiry will offer. I think if we try and convince ourselves otherwise we are kidding ourselves. Of course the Committee of Inquiry may, and surely will, still leave some feeling that answers have still not been brought fully to light. In such a case then I would suggest to Members that the best guide in which way to go - and it is a difficult question - to ensure the greatest possibility of final closure is offered to those at the centre of all this, is surely to listen to those at the centre of all this; those who feel betrayed and damaged by past failures. What is our difficulty, because lots of these things happened long before most of us were in this House in many cases, in some cases long before some of us were born? To me it should not be that difficult to show the courage to say that people are more important than just pound notes, and that is not a dismissive or socialist look at things. That is about reality. Without people there are no pounds so I think you have to get to the heart of the matter. People must come first. I think it is all too much of a leaning towards sweeping it all away and, as I say, we have to look forward now, or some people cannot look forward and they will never be able to look forward until they feel that the best opportunity has been given to get those questions answered. We know some people who will probably be accused of things are dead. You cannot do anything about that but we have got to make sure that we do absolutely all we can do, as was pointed out earlier, what the former Chief Minister, Frank Walker, said: "No stone unturned." Again, I come back to it, if we do not do this then rightly or wrongly there is always going to be that perception, I am afraid, with a lot of people that Jersey does care about our public image more than we care about our people, and it is the vulnerable people at that. So I really would urge Members to support these amendments. Other things can be put in, as Senator Perchard said, and he is right, there are probably things that I would want to put in. I did not make an amendment but we are not tying the Chief Minister's hands, he can come back to us. I honestly think that he can only do himself, his Council of Ministers, a positive turn by accepting this. It is the best way forward. It is not a perfect way forward but it is the best way forward and I really would urge him to change his mind, and his Ministers and everyone.

[17:30]

Support these amendments, support the main proposition, and let us set about bringing an end to this because otherwise I think it will just go on and on and on. That cannot be good for anyone, lest of all the people who are the ones that have suffered. Thank you.

The Greffier of the States (in the Chair):

The adjournment is proposed. If I could just announce to Members that the correct version now of Deputy Southern's amendment to the Draft Public Elections (Amendment No. 4) has been lodged and the Economic Affairs Scrutiny Panel has also presented comments on the Draft Gambling (Remote Gambling Disaster Recovery) (Amendment) (Jersey) Regulations and they have been circulated to Members for that debate later in this sitting. Very well, the adjournment is proposed, the Assembly will reconvene at 9.30 a.m. tomorrow morning.

[17:31]