

STATES OF JERSEY



NAPIER REPORT INTO THE SUSPENSION OF THE FORMER CHIEF OFFICER OF THE STATES OF JERSEY POLICE: ACTION ON FINDINGS

**Lodged au Greffe on 27th October 2010
by the Deputy of St. Martin**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to request the Chief Minister to inform States members in a Report presented to the Assembly, or in a Statement to the Assembly, of the action he has already taken and the action he intends to take in respect of the report dated 10th September 2010 into the suspension of the former Chief Officer of the States of Jersey Police prepared for the Chief Minister by Mr. Brian Napier QC ('the Napier Report') and, in particular to provide information in respect of the following matters –
 - (i) what action, if any, the Chief Minister has taken in respect of the destruction by the Chief Executive to the Council of Ministers of the original notes he took during the suspension meeting and what guidelines, if any, the Chief Minister has issued regarding the records of suspension meetings in the future;
 - (ii) whether he accepts the conclusion set out in paragraphs 45, 67, 72 and 107 of the Napier Report that action was taken on a basis which was contrary to the advice of the Law Officers and what action, if any, he has taken or proposes to take in respect of that matter;
 - (iii) whether he accepts the conclusion set out in paragraphs 49–53, 55, 58–66, 107 and 108 of the Napier Report that the suspension process did not meet the requirements of the Disciplinary Code for the Chief Officer, issued under Article 9(1) of the Police Force (Jersey) Law 1974 as part of the Chief Officer's terms and conditions, and what action, if any, he has taken regarding the apparent breach of the process specified in the Code;
 - (iv) why there has been no formal presentation of the report to members and no opportunity to discuss the findings with the author?
 - (v) what training, procedural and other corrective measures, if any, he has taken in order to ensure that personnel issues, and in particular disciplinary issues, are managed appropriately in the future;
 - (vi) whether any disciplinary proceedings have been taken as a result of the findings of the Napier Report and, if so, to update members on the outcome of those proceedings;

- (b) to request the Chief Minister to issue a formal apology to the retired Chief Officer of the States of Jersey Police in relation to the failure of those involved, as identified in the Napier Report, to deal with the Chief Officer's suspension in accordance with the procedures set out in the Disciplinary Code;
- (c) to request the Chief Minister to present the Napier Report to the States in accordance with the provisions of Standing Order 37.

DEPUTY OF ST. MARTIN

REPORT

This report and proposition is not seeking a vote of no-confidence. Neither is it intended to invite Members to do anything exceptional or beyond the customary political process. It is intended to invite Members to formally require the Chief Minister to do what may be seen as an inherent part of his role. Namely, to account to Members for his actions as Jersey's Chief Minister. Members are not being invited to condemn his actions. Members are simply being invited to compel him to do what is required of him within our political system. This request is brought as a formal proposition because, in spite of repeated requests, the Chief Minister has declined to discharge this responsibility on a less formal basis. It is hoped that the proposition may gain support from all sections of the House. Whatever divisions may exist from a political perspective, it is hoped that all members will see value in demonstrating their willingness to exercise this basic democratic function.

What is being requested is straightforward and simple. The Chief Minister is being asked to tell Members, and thereby the people of the Island, what action he has so far taken in response to the Napier report and what action he proposes to take in the future. In particular, the Chief Minister should state, in an unequivocal manner, what action he has taken, or now proposes to take, in respect of the actions of the Chief Executive to the Council of Ministers. The Chief Executive's role is not comparable to other positions in the public sector. Members may, for example, be told that it is normal for disciplinary issues to be covered by confidentiality. That may be appropriate in respect of most public sector employees. Members may, however, be prepared to agree that the position of Chief Executive to the Council of Ministers cannot be regarded in the same way as other public employees. His position as the most senior public servant in the Island is pivotal to the good governance of Jersey. It is not sufficient for the post-holder to have the confidence of the Chief Minister and his senior colleagues. That confidence must be shared by the wider political community and to some extent the public at large. And yet the Chief Executive cannot be accountable to States Members or the whole community. He is accountable to the Council of Ministers, led by the Chief Minister, and the Chief Minister is himself accountable to the States for his oversight of the Chief Executive's role. That is how our political system works. Normally this arrangement operates with co-operation and goodwill. On this occasion, neither has been demonstrated by the Chief Minister and it is therefore up to Members to determine whether it will use its powers to compel the Chief Minister to operate within the customary process. If we are not so willing, then so be it. But should that be the case, then it would appear that our system of political accountability has broken down.

Members will be familiar with the report by Brian Napier QC relating to the suspension from duty of the former Chief Officer of the States Police, and some of the significant criticisms made in that report in respect of the fairness of the process, the evidence relied upon, and the extent to which the key participants appear to have acted contrary to the advice of the Law Officers' Department. Unusually for a report commissioned on behalf of the States, Mr. Napier was not asked to set out specific recommendations for the future. Nor, we are told, will he be attending the Island to present his report and answer questions. From enquiries I have made, I understand it to be the clear position of both the Chief Minister and Mr. Napier that no such attendance will take place and no questions addressed to Mr. Napier in relation to his report will be answered. It is therefore for the States to determine the obvious issue of what we do in the light of the report.

If failings are identified, what is to be done to address these failings and who is responsible to the States for ensuring that the appropriate corrective action is taken?

In normal circumstances this task would be addressed by a simple act of good management and leadership. The sponsor of the Report would be tasked with producing an action plan, setting out responsibilities and timescales, and Members could from time to time enquire as to progress. There is nothing remarkable about such a procedure. It is normal competent management of the public sector. What is, however, distinctly abnormal about the present situation is the apparent refusal of the Chief Minister to undertake any such process. When challenged on the actions he intends to take in consequence of the report commissioned by the States, the Chief Minister has commonly expressed a wish to “move on”. Members may agree that it is difficult to see how “moving on” can be achieved when so many issues are left hanging in the air. In order to achieve closure, issues must be addressed and resolved. “Moving on” and “hoping for it to go away” are different things. The former may be achieved with leadership and skill. The latter will not achieve closure, and will serve only to bring further discredit upon the Island and the conduct of its affairs. It is for this, and related reasons, that the proposition is brought. This saga has now been running for over 2 years at considerable financial and political cost. It has also caused untold disruption and suffering to the former Chief Officer of the States of Jersey Police, and there is anecdotal evidence that it has undermined the confidence of the victims and survivors of abuse in the operational independence of the criminal justice process.

All sides hope to bring this long-running issue to an end. In this respect I have a plan set out in this proposition. The Chief Minister prefers to hope for it to go away. It should be recalled that this is the same Chief Minister who denied the former Police Chief details of when the suspension letters were drafted, until, after almost a year, he was compelled to reveal the truth following a Board of Administration Appeal Hearing. However, it is for the House to decide which approach they most prefer to be associated.

It is not necessary for Members to go through the Napier Report page by page and list the matters to be addressed, although they are many. That is an administrative task. What, however, Members need to decide, is whether such a task should be undertaken and the results brought forward for consideration by this House.

I now turn briefly to the specific role of the Chief Executive and how the report impacts upon his position. Before I do so, it might be appropriate for me to remind Members of my particular role in relation to the Napier Inquiry. Members may recall that in January this year, in view of public concerns, I asked the Chief Minister to conduct a review of the suspension process. He responded by claiming that the review was unnecessary as it was being undertaken by the Wiltshire Constabulary. This was never the case; and in the absence of any positive action, on 2nd February I lodged a Report and Proposition – P.9/2010 – in which I requested support for a formal Committee of Inquiry into the conduct of the original suspension. I anticipated that the Inquiry would be completed within 3 months and would cost in the region of £15,000. When it became clear that my proposition may gain support, the Chief Minister offered an alternative in the form of a review by a Commissioner. This would, according to the Chief Minister, be a quicker and simpler process. Members will recall that, by 26 votes to 21, my proposal was rejected in favour of the Chief Minister’s proposal. Members may also recall that, at the suggestion of the Chief Minister, I was

invited to be party to the selection process in respect of the appointment of a Commissioner; and the Chief Minister also agreed that in addition to having oversight of the selection process, in which Mr. Brian Napier QC was subsequently selected, I would also be involved with the Chief Minister in reviewing the ongoing work of the Commissioner, the reporting mechanism and the reports themselves, including the Final Report to be presented to the States in relation to the Commissioner's work. This was intended to give me access and an insight into the Commissioner's progress and methodology which was not commonly available. It also placed upon me, in my assessment, a duty to Members to eventually offer a view as to the manner in which the Chief Minister's Department has managed both the review and its consequences. I had, of course, hoped that I would be able to give an assurance that I was satisfied with all of the action taken. I regret, however, that I am unable to do so because I was not consulted in the watering-down of the Terms of Reference, and I have been denied access to any of the preliminary documentation and progress reports. It was only on 17th September that I was given the Final Report in confidence. It is right, therefore, that my reservations should be shared with Members.

In relation to the specific role of the Chief Executive to the Council of Ministers, I do not believe that a detailed exploration of the relevant issues is necessary at this time. The following key points may, however, be of assistance to Members in coming to a view on how matters should now be addressed –

- The Affidavit of the former Chief Officer of Police is in the public domain and for Members' convenience it is attached as Appendix 3. In part (d) the Terms of Reference as published in the Council of Ministers' Comments (3) to my P.9/2010 it was intended that the Commissioner "*would review all information relating to the original suspension procedure, including relevant sections of the published Affidavit from the suspended Chief Officer of Police.*" However, part (d) was later withdrawn without any consultation with me or States Members. Members will note that in the sworn Affidavit the former Chief Officer describes a series of incidents which left him with a perception that the Chief Executive was seeking to politicise the role of the Chief Officer of Police. For the purposes of today it is of no consequence whether members accept that interpretation or otherwise. The point is that such a perception existed, that it was a source of tension, and that it may have carried into the consideration of the suspension process.
- It is now a matter of public record that the original record of the suspension meeting, at which the Chief Executive played a leading role, was destroyed by the Chief Executive. The former Chief Officer of Police has stated publicly that the audit-trail of correspondence appears to indicate that this destruction occurred after written notice had been given that an application was to be made to the Royal Court.
- Paragraph 45 of the Napier Report gives details of the advice of the Law Officers relating to the standard of evidence which would be required for a suspension, and in particular the warning given against the use of a report which was qualified in its conclusions. Paragraphs 69 onwards describe how this advice was not followed. In normal circumstances, an action by a senior public servant which is contrary to the advice of the Law Officers is regarded as a serious matter. Members may wish to consider whether there are reasons for taking a different view in this case.

- Paragraphs 55, 79, and elsewhere, give details of preparations for the suspension which involved the Chief Executive, and which were taking place around 2 months in advance of the suspension meeting. Mr. Napier says that there was “*little objective basis*” for such preparations (paragraph 80). He points out that the Disciplinary Code requires that concerns should be raised with the Chief Officer at an early stage and in the absence of any explanation from the relevant parties, Mr. Napier says “*I do not know*” why this was not done (paragraph 55.)
- Paragraph 70 describes how the Interim Report provided by the Metropolitan Police, which provided the justification for the suspension, was selectively used, and that key qualifications and reservations were omitted. Paragraph 93 describes how the key document, the letter from the then Deputy Chief Officer of Police was altered, apparently to strengthen its effect, and how nobody admits to making that alteration.
- Paragraph 107 describes how the Chief Executive failed to obtain a copy of the Metropolitan Police Report and how, in the view of Mr. Napier, he should have done so in order that the Minister could be properly advised.
- Overall, Mr. Napier concludes that the process was flawed, the requirements of the Disciplinary Code were not met, and that the principles of fairness were not observed. Mr. Napier is clear in his view that alternatives to suspension could and should have been considered (paragraph 108 and elsewhere). It is a matter of record that the flawed process set in chain a series of events which have resulted in substantial cost to the taxpayer. It is one of a series of high-profile, costly and seriously mismanaged disciplinary issues which have occupied the attention of Members over recent years. Members may wish to view the responsibilities of the Chief Executive in this context.

Against this background, members may consider it reasonable that the Chief Minister considers whether disciplinary action against the Chief Executive is appropriate. However, prior to this proposition, few Members will have been aware that such a measure has in fact already been considered. I became aware of this on a confidential basis on 27th September as part of my particular role, described earlier, relating to the Napier Inquiry. I agreed to maintain that confidentiality, and have continued to do so, in order that there was no undue prejudice to whatever may be determined.

Prior to the release of the Napier Report on 8th October, I had accepted that its release may be delayed due to the consideration of disciplinary issues. However, the delay caused understandable speculation, which led to a question on the matter being asked by Deputy T.M. Pitman of St. Helier at the States Sitting on 12th October (referred to below in Appendix 1). As can be seen, the Chief Minister gave a very guarded answer. Since the Report’s release, I have been concerned at the lack of information regarding the progress of the confidential disciplinary matter referred to above, and I therefore engaged in an exchange of e-mails with the Chief Minister, some of which are also attached at Appendix 1. It will also be noted that I have, on a number of occasions, sought to obtain assurances from the Chief Minister that the matter is progressing, but he has declined to provide information. On 9th October 2010, I asked that he make a statement in relation to the report and produce an action plan (e-mail attached at Appendix 2) but he has failed to respond. I am therefore left in a dilemma. Do I allow

myself simply to be “fobbed off” in relation to this matter or do I bring the issue to the attention of Members? I have decided on the latter course of action.

Members are invited to take the view that matters of such gravity at such a senior level must be dealt with in a way which can be seen to be transparent and accountable. To do otherwise would invite speculation which would do little credit to our political processes. It may also further damage the confidence of victims, survivors and witnesses. In the absence of a clear statement, and plan of action, from the Chief Minister, there will inevitably be speculation, much of which will be unjustified. For example, a belief could develop that the Minister reached a proper decision in relation to disciplinary action but was then somehow persuaded to change his mind. The occasional speculation that there is a “Government within a Government” overriding the democratic process will be encouraged. Such adverse consequences can be prevented by clear leadership, decisive action and transparency. I regret that our Chief Minister has declined to act on a voluntary basis. I now ask that Members require him to do so.

Financial and manpower implications

I do not believe there will be any financial or manpower implications for the States arising from this Proposition.

From: Bob Hill
Sent: 19 October 2010 21:03
To: Terry Le Sueur
Subject: RE: Napier Discipline action

Dear Terry,

Thank you for reply. I can take it that you have investigated the matter and have decided to take no further action. If that is the case why can't you inform Members?

Regards

Deputy F. J. (Bob) Hill, BEM.

From: Terry Le Sueur
Sent: 19 October 2010 20:58
To: Bob Hill
Subject: RE: Napier Discipline action

Dear Bob,

I made my position clear last week regarding disciplinary action. Herewith a copy of the answer I gave to Deputy Pitman in response to his question:

As far as disciplinary action is concerned, it is a matter that I will be dealing with through normal procedures. Any individuals must be treated fairly and with respect and I will apply the same level of respect as would be given any other States employee. This being the case, I do not intend making any further statement on the outcome of any such procedures.

I have investigated the disciplinary issues and I have nothing further to add.

Terry

From: Bob Hill
Sent: 19 October 2010 19:44
To: Terry Le Sueur
Subject: FW: Napier Discipline action

Good Evening Terry,

With reference to your email below. Three weeks have now elapsed and I am no wiser as to your position re disciplinary action. I have as ever respected your wishes for confidentiality and to hope to be able to continue do so. However this is dependent on an arrangement of mutual trust between us. Therefore I would be grateful for an update as to the position in relation to disciplinary action.

Regards

*Deputy F. J. (Bob) Hill, BEM.,
Deputy of St Martin.*

From: Bob Hill
Sent: 09 October 2010 14:31
To: Terry Le Sueur
Cc: All States Members (including ex officio members); 103 (103); 'Channel TV'; JEP Editorial; News (News); Radio Jersey (Radio Jersey); Spotlight (Spotlight)
Subject: Napier-- Next Stage

Good Afternoon Terry,

Thank you for releasing the Napier Report. Unfortunately due to the timing we did not hold a joint press release or allow for anyone to question Mr Napier on his findings. Perhaps that can be arranged.

I also believe you should make a statement in the States on Tuesday. You commissioned the Report, its findings clearly show that Mr Power was unfairly suspended and is therefore entitled to a public apology. I believe your statement should include the plan of action that you will be taking against those responsible for breaching the requirements of the Police Force (States) (Jersey) Law 1974 and the Disciplinary Code made under that law. Perhaps you will also wish to consider whether the States were at any time misled in relation to the sequence of events and decision making process which was applied in this case.

Regards

*Deputy F. J. (Bob) Hill, BEM.,
Deputy of St Martin.*

IN THE ROYAL COURT OF JERSEY

(Samedi Division)

In the matter of the application of Mr. Graham Power, Q.P.M., Chief Officer of the States of Jersey Police (hereinafter called “the Applicant”) for leave to apply for judicial review of the decision of the Minister for Home Affairs to suspend the Applicant from office.

1. I, Graham Power, Q.P.M., (address) make oath and say that the contents of this my affidavit are true to the best of my knowledge information and belief.

I am the Chief Officer of the States of Jersey Police. I am currently suspended from duty and seek leave to apply to the court for a review of my suspension. My feelings of grievance in this matter are summarised as follows:

- The suspension is an unjustified and unwarranted scar on the latter stages of a long and occasionally distinguished career. I would like to see that scar removed.
 - In my suspension a disturbing precedent has been set which I believe needs to be challenged in the public interest. If it remains unchallenged there are potentially serious consequences for the independence and integrity of law enforcement in the island and an additional risk that future police actions will be subject to inappropriate political pressure and intimidation.
2. My professional background is that I have 42 years police service and have served in the senior ranks of four police forces. Prior to my current appointment I was Deputy to H.M. Chief Inspector of Constabulary for Scotland. I have been decorated by the Queen for distinguished service. My contract as head of the islands police has been extended twice, the most recent extension being in 2007 following as assessment of my performance in post. Successive reports by H.M. Inspectorate of Constabulary have described the force under my leadership as a progressive and high performing

organisation with a well motivated workforce. I have been vetted by the relevant U.K. authorities to “top secret” level and have access to security material of extreme sensitivity. In addition to my local duties, I sit on a U.K. committee which addresses sensitive policy issues relating to security matters and I am an assessor for the body which selects potential Chief Officers for U.K. police forces.

3. During my period in office, crime levels have repeatedly fallen and public satisfaction surveys show confidence ratings which are exceptionally high by any recognised standard. I am in possession of letters and reports from political leaders and others which praise me professionalism and commitment. I am physically fit and regularly perform front line operational duties in the island, including nightshifts at weekends. There is no history whatsoever of poor performance or public confidence issues relating to my command preceding the events described in this application. Indeed, all of the recorded evidence points to outstanding performance in the discharge of my duties. Independent evidence to confirm this picture can be produced should any of it be disputed. Since my suspension I have received many messages of encouragement. I am regularly stopped in the street by complete strangers who want to express their support for me and their condemnation of what has occurred. I am one of a handful of the most senior appointed public figures in Jersey. My suspension is seen by many as an event of major significance with far reaching implications. It cannot be described by any fair means as a neutral act. My suspension made world news. My daughter heard of it while listening to her car radio in Australia. The damage to my professional standing and reputation has been considerable. I will now attempt to explain briefly the legal and constitutional background to my position and how it may have affected events.
4. As Chief of Police I am directly accountable to the Minister for Home Affairs on a day to day basis. This was not always the case. Prior to the relatively recent introduction of Ministerial Government I was accountable to the Home Affairs Committee. While this arrangement was far from perfect, the inevitable differences of view and political perspective within the Committee,

or even the requirement for the Committee to arrange meetings as a corporate body, created a loose system of checks and balances which presented a barrier to arbitrary action by the Committee President. This arrangement changed on the introduction of Ministerial Government. The Minister for Home Affairs now has sole initial decision making responsibility in respect of any disciplinary issues and can act without any obligation to consult with political colleagues or any other person. As illustrated in my case, this power also has some potential for retrospective use. In this instance a Minister has initiated suspension and disciplinary proceedings in respect of matters which occurred during the tenure of the previous Minister, and has done so apparently without consulting with the previous Minister and in the probable knowledge that the Minister in power when the alleged acts or omissions took place would have taken a different view. This has now been continued by a third Minister.

5. Police Officers of less senior ranks have the protection of the Police (Complaints and Discipline) (Jersey) Law 1999 and the Police (Complaints and Discipline Procedure) (Jersey) order 2000 both of which are held to be compliant with the islands human rights obligations. The interpretation section of the order specifies that it shall not apply to the Chief Officer, and unlike other jurisdictions, Ministers have not created a corresponding set of "Senior Officer Disciplinary Regulations" or similar legislation to provide comparable process and protections for more senior ranks. The document used to justify the suspension was the non-statutory Disciplinary Code for the Chief Officer of Police (**appendix "A".**) This document was apparently produced within the hours preceding my suspension and is based on an earlier code approved by the former Home Affairs Committee some time in the years before my appointment in 2000. On the face of it the changes from the earlier code consist entirely of a translation into the language of Ministerial Government. However, a practical effect of these changes is that the decision-making responsibility moves from a corporate body to a single individual, namely the Minister, with no obligation to consult with any other party. In that respect this is a significant change. The original code was produced before the adoption of the Human Rights Law and has not been amended in

consequence of that law. No claim is made by the Minister that the translation from the old code to the new code was accompanied by any form of consultation or human rights audit. The code contains no statutory protections, and no provisions for appeal or review in the event of suspension. As events have shown is it capable of creative interpretation by a minister who is so minded.

6. I am therefore now in a situation in which a Minister, on his own individual authority, is seeking disciplinary action against the Chief Officer in respect of matters which took place under the political oversight of the Minister before last, using a code written just hours before the event and based on a document produced in a previous political era with none of statutory provisions and protections afforded the more junior officers.
7. The Jersey legal system does not have a position equivalent to a Procurator Fiscal or an Investigating Judge or Magistrate. For all but a fraction of cases the police service, under the command of its Chief Officer, is the single point of entry for cases into the Criminal Justice System. A court may wish to consider whether, in those circumstances, such close individual political control of the leadership of the force provides for the independence of justice, and is consistent with the principles of Human Rights.
8. In 1996 a committee appointed by the States under the Chairmanship of Sir Cecil Clothier published a report which recommended the establishment of a Police Authority for Jersey. In the twelve years which have followed nothing of substance has been delivered by those in government. Other small jurisdictions have recognised the need to preserve the independence of policing and a number of measures have either been put in place or are under active consideration. For example in Gibraltar there is a Police Authority charged with maintaining the independence of policing and in Guernsey there are draft proposals for the establishment of an Independent Law Enforcement Commission. While these developments have been taking place elsewhere, the movement in Jersey has been in the opposite direction with the removal of the committee structure and a focus on a direct line of accountability to a single politician. It is my contention that this

places the Chief Officer of Police at a structural disadvantage in any situation in which the proper requirements of law enforcement and the interests of political expediency collide and is contrary to the principles of Human Rights and Good Governance. This is particularly the case when a new Minister takes a different view from that taken by his or her predecessor.

9. In spite of this background I have attempted to ensure that at all times the force operates “without fear or favour” particularly when investigating matters affecting the interests of politicians, other senior figures, their families and associates. Such investigations are not rare. It is customary for at least one such enquiry to be live at any one time. I cannot remember the last time when the force did not have at least one enquiry of that nature. In an environment in which Ministers and others are accustomed to a more direct control over public services I have found it necessary to make the point that the police are not a department of government, and to assert the independence of the force from direct political control. Ideally these assertions should be founded on some established and widely accepted principles of law and good practice. In the current circumstances they have more often been founded on the determination and strength of personality of the Chief Officer and the former Deputy Chief Officer. No Chief Officer of Police should be required to operate under such arrangements.

10. The events which gave rise to this application did not begin with the suspension meeting on 12th November 2008. Their roots lay in a series of events associated with the historic abuse enquiry. This enquiry, known as “Operation Rectangle” began over a year before it became publicly known and long before the crime scene work at Haute De La Garenne. The investigation took place against a background of widespread rumor, speculation and political controversy. The establishments which the police were investigating were owned and run by the States of Jersey, and for which members of the Council of Ministers had political responsibility. In the early stages a significant number of people were named as “suspects”, either of abuse or of covering up abuse in a way which may have constituted a perversion of the course of justice. Although the suspect list was later refined as the evidential

picture became clearer it was extensive in the early stages and, significantly, included a number of people who, currently or recently, held positions of seniority or influence in public services. This provided further grounds for tension and prevented the adoption of a partnership working model common elsewhere for enquiries of this nature. Maintaining the independence of police operations, difficult enough in ordinary times under the accountability arrangements described above, became a full time challenge as the enquiry unfolded.

11. Against this background there followed a series of events and confrontations in which the leadership of the force became isolated from an inner group of politicians and civil servants loyal to the then Chief Minister and hostile to the independent line taken by the police. By way of illustration I will give examples of three events which typify this developing state of affairs.

12. In July 2007 a case came to public notice following a Serious Case Review (S.C.R.) carried out by an independent person appointed by the States. The review concerned the completed criminal case of a **(removed for anonymity)** who had been subject of sexual abuse by two local men. The matter had been investigated by the police and the two men were convicted. Following the circulation of the review report the then Health Minister, Senator Stuart Syvret, was critical of the depth of the report and asked a number of questions of all of the agencies involved, including the police. I agreed with the Health Ministers assessment of the report. I thought that it avoided some of the more difficult questions and lacked challenge. I did not think that the Ministers criticism of the police was well founded but I arranged for him to be provided with a full reply in response to whatever he asked. I did not see this as a particularly unusual thing to do. In any healthy environment it is open to politicians to challenge the heads of public services and only right that they should get a full reply. As I see it that is how the system is supposed to work. I had assumed that others would see things the same way. On the afternoon of Wednesday 25th July 2007 I discovered that this was not the case. I attended a meeting of the Corporate Management Board (C.M.B.) this is a body which brings

together the heads of the islands public services to discuss policy issues and provide collective advice to Ministers.

13. The feeling in the room was tense and there was general talk about the questions asked by the Health Minister and the need for some sort of action in response. I had the feeling that “something was going on” to which I was not a party. After the meeting the Chief Executive, Bill Ogley, asked me to stay behind. Also remaining were the head of States H.R., Ian Crich, the Chief Officer of Health, Mike Pollard and the then Chief Officer of Education, (Tom McKeon who has since retired.) The Chief Executive said that it was anticipated that the Council of Ministers would tomorrow be asked by the then Chief Minister, Senator Frank Walker, to pass a vote of “no confidence” in the Health Minister and that this could result in his removal from office. I was then told of measures that had apparently been put in place to facilitate this. I was told that the islands Child Protection Committee (C.P.C.) was due to meet at the same time as we were meeting and that arrangements had been made for it to pass a vote of “no confidence” in the Minister. It was then suggested that as the heads of the relevant public services we should do something similar and that this would give support to the proposal that the Chief Minister would bring forward the next day.
14. I was shocked by this and initially did not know what to say. I eventually made two points. Firstly I said that the Minister was entitled to ask difficult questions. As I saw things that was his role and it was our role to provide a response, and secondly, even if that was not agreed, what was being proposed was civil servant and police engagement in political activity. I stated clearly that I did not see that as acceptable and that I would have nothing to do with it. At this point the Chief Executive asked me to leave the meeting which I did. I then made contact with a police colleague who had been at the C.P.C. and discovered that this colleague had also had left their meeting for similar reasons. Shortly afterwards we both made brief notes in relation to what had happened. This was my first noteworthy experience of the formation of an “inner circle” of politicised senior civil servants loyal to the Chief Minister.

The Chief Executive and the head of H.R. subsequently played a significant role in my suspension.

15. Further indications of an gulf between the Chief Minister and his associates, on one hand, and the force, supported by the then Home Affairs Minister, Senator Wendy Kinnard, on the other, emerged the day on which it was decided that Senator Kinnard was no longer able to maintain political oversight of the Historic Abuse Enquiry. This was because a few days previously she had made a witness statement which created a conflict of interest. At the time of writing I do not have access to my diary and notebooks and cannot be sure of the exact date. A meeting was arranged to discuss how this would be managed. The meeting was attended by me, Senator Kinnard, The Chief Executive and the then Chief Minister. The Chief Minister entered the room and immediately began a verbal attack on the historic abuse enquiry claiming that it was causing damaging publicity for the island. Senator Kinnard, who was the Minister to whom I was actually accountable, attempted to defend the enquiry but she was effectively shouted down.

16. I knew that the views being expressed by the Chief Minister were not the views of the Home Affairs Minister. She had been regularly briefed on the enquiry by members of the force and by senior advisors appointed by the Association of Chief Police Officers and had expressed her strong support for the conduct of the investigation. The Chief Minister said that he was *“under pressure to suspend both the Chief and the Deputy Chief”*. He did not say where the pressure was coming from but he said this in a way which gave the impression that he was not hostile to that pressure. The heat of the exchanges rose and the Chief Minister spoke to Senator Kinnard in a way which I found offensive and I saw that she was clearly becoming upset. She was the only woman present and I was her only friend in the room. I intervened forcefully and told the Chief Minister that from my management experience, I considered that he was behaving in a way which, in a workplace, could be classed as bullying and lead to a claim or constructive dismissal.

17. After a while things calmed down and the options for re-allocating Ministerial responsibility for the enquiry were discussed. I later learned that Deputy Andrew Lewis, who was the Assistant Home Affairs Minister, had been asked to take the Ministerial lead in respect of the enquiry. (On a later date, when Senator Kinnard resigned as Minister, Deputy Lewis was briefly appointed as Minister for a few weeks before he left politics.) I left the meeting in no doubt that the then Chief Minister was actively seeking a justification to use the power of suspension in a punitive way against either myself or the then Deputy Chief Officer or both. At no stage did he mention any substantive allegations which might justify suspension. He gave the impression of regarding suspension as a weapon in itself. The Chief Executive, who was present throughout, played a significant role in my suspension, and during the suspension meeting the Chief Minister was in the next room. The Chief Minister presided alongside the new Minister for Home Affairs (Deputy Lewis) at the press briefing at which my suspension was announced.
18. Since my suspension a member of the States who is otherwise unconnected to any of these events, has come forward and offered evidence. The States member speaks of overhearing a conversation in the corridors of the State building between the then Chief Minister and Deputy Lewis. This discussion appears to have occurred in the weeks following the meeting mentioned above. During that discussion the possibility of suspending or dismissing the Deputy Chief Officer was being actively discussed. It might be useful to add at this stage that if Minister had taken legal advice concerning their suspension powers in relation to police officers (which they presumably have at some stage) they would have been told that in an apparently unintended consequence of the way that the law is drafted, they have no powers whatsoever in relation to the Deputy Chief Officer. That authority rests entirely with the Chief Officer. If suspension is on their mind then the only target within their range is the Chief Officer. There is nobody else that they are able to suspend.

19. The third example I have chosen relates to a Strategic Planning Workshop held at the St Pauls Centre on Friday 24th October 2008. The Workshop was attended by a number of senior public servants including myself and the Chief Executive. At the commencement of the workshop the Chief Executive asked for silence and said that he had an announcement to make. He named a senior civil servant who was present. The person named is a suspect in the abuse investigation but has not been suspended. The Chief Executive said that the suspect had his total support and that *“if anyone wants to get.....(the suspect).....they would have to get me first”*. This announcement was applauded by some but not all of the persons present. I took it as a further indication of the “in crowd” closing ranks against the “threat” of the abuse enquiry. The Chief Executive later played a significant role in my suspension.

20. I now turn to the events more directly related to my suspension on Wednesday 12th November 2008. There was no long “run up” to what occurred. It was all very quick and unexpected. On the evening on Tuesday 11th November 2008 I was on holiday having returned from the U.K. earlier that day. I was unexpectedly telephoned at home by the then Home Affairs Minister, Deputy Andrew Lewis. Given the nature of my professional responsibilities telephone calls during leave and other “off duty” periods are not uncommon, although it was unusual to be contacted by a Minister. The Minister sounded anxious. He told me that he wished to see me in the office of the Chief Executive at 11 a.m. the following day. He said that the meeting was to discuss the content of a presentation and meeting which had taken place that evening, attended by himself other Ministers and the new Deputy Chief Officer. He said that those present at the meeting had seen reports and documents relating to the Historic Abuse Enquiry. I was surprised by this. I did not know that such a meeting had been planned and if I had known I would have attended. In a telephone conversation with the Deputy Chief Officer a few days previously we had discussed forthcoming events and I had been told that there would be a press conference on the historic abuse enquiry on Wednesday 12th November but no mention had been made of any briefing to the Ministers on the evening of 11th.

21. I attended the following morning as requested and was asked to wait in the area outside of the Chief Executives office. I had been there for a few minutes when I sensed a movement and on looking up I saw the Chief Minister apparently leaving the Chief Executives office and return to his own office which was next door. I then saw the Head OF Human Resources, who seemed “flustered” enter the Chief Executives office carrying papers, and leave shortly afterwards. I noted at this stage the time was 11-10a.m. but I did not think to note any times thereafter. Shortly afterwards I was invited into the Chief Executives office. He and Deputy Lewis were seated together and I was invited to sit opposite. They were in possession of documents. It later emerged that these documents were as follows:

21.1. A copy of the disciplinary code for the Chief Officer of Police which I attach at **Appendix “a”**

21.2. A letter headed “Disciplinary Code” which was addressed to me. **Appendix “b”**

21.3. A letter headed “Suspension from Duty” which was also addressed to me. **Appendix “C”**

21.4. Also, two days later I received through the post a copy of a letter headed “Disciplinary Code” signed by the Minister and addressed to the Chief Executive. I attach this at **Appendix “D”**.

22. The Minister read out to me some of the content of the letter at “B” and showed it to me. This was the first indication that I had been given that the meeting was of a disciplinary nature. I had been given no notice, no time to prepare, and was not offered any representation. The Chief Executive said that in view of the content of the letter I would be allowed up to one hour to “*consider my position.*” With hindsight I recognise that the Chief Executive may have chosen his words carefully. However, at the time neither myself, nor I believe anyone else in the room, had any doubt that this was an invitation to resign. I treated it as such and said that I was rejecting the opportunity and denied any wrong-doing. I also

protested at the unfairness of what was happening, the fact that I had not seen the documents to which the letter referred, and had been given no chance to offer representations or a respond to their content. These comments were noted but nothing was done.

23. It was at around this point that I became aware that the Chief Executive was taking handwritten notes. These appeared to be detailed and I saw him turn an A4 or similar sized page at least once. At one point I slowed down what I was saying in order that he could capture the words. The Minister then said that he had decided to suspend me with immediate effect and I was handed the letter "C." This was the first indication I had been given that suspension was a possibility. Suspension had not been discussed until seconds before it was actually invoked. A short conversation followed during which I made representations on the manner of any enquiry and for "equality of arms" by means of legal representation. It was during these exchanges that further information emerged from the Minister, who made a number of unscripted comments which continued in spite of interruptions and other attempts by the Chief Executive to get him to be quiet. It was stated by the Minister that the press briefing to announce my suspension had already been arranged for that afternoon, and that Ministers had already agreed "lines to take" on such matters as confidentiality during any enquiry and that it would be claimed that the suspension was a "neutral act".

24. The Minister then appeared to have an attack of guilt. He told me that he had always admired my commitment and professionalism and that he regarded me as an outstanding Chief Officer. He offered me his best wishes and sincere hopes that I would be successful in defending myself against these allegations. He did not seem to see any contradiction between what he was saying and his actions of a few minutes previously. It was on this surreal note that the meeting ended. According to my recollection it all happened very quickly although I did not think to note the time. It was subsequently said on behalf of the Minister that the meeting lasted less than 35 minutes but how much less was not stated. (The Ministers account of the meeting will be referred to again in this application and is set out in Appendix "h" to follow)

25. I have subsequently had an opportunity to study the documents provided to me in more detail. Based on the documents I have been given, and my long experience in operating similar procedures from a management perspective, I offer the following observations. The letter from the Minister to the Chief Executive (**Appendix "D"**) requires the Chief Executive to *"conduct a preliminary investigation under paragraph 2 of the discipline code"* Paragraph 2 of the code describes the process for a preliminary investigation. The Chief Executive is required to establish the *"relevant facts"* These will include *"statements from the available witnesses and the Chief Officer."* Paragraph 2.3 of the code is headed *"continued or serious breach of discipline/poor performance/capability."* It begins in paragraph 2.3.1. by stating *"if the preliminary investigation indicates that a more serious breach of discipline ... has occurred ... the issue will be considered by the Home Affairs Minister."* Paragraph 2.3.2. describes how a hearing in consequence of paragraph 2.3.1. will be established. Paragraph 2.3.3. states *"In more serious circumstances the Chief Officer may be suspended from duty...pending the outcome of this procedure."* I submit that there can be no reasonable doubt that the Discipline Code for the Chief Officer of Police creates a legitimate expectation that the suspension will be preceded by a period of preliminary investigation, assessment of evidence, a right of response, and an appropriate level of consideration and reflection. I submit that this is not only an expectation created by the code but a requirement of fair play and natural justice. No such entitlements were provided in my case.

26. As I understand it, the Minister may attempt to argue that he was entitled to conclude, without any preliminary investigation, that *"more serious circumstances"* had arisen and that he was thereby entitled to suspend without any preliminary process. It is agreed that the circumstances could conceivably arise in which the procedure may need to be condensed. For example the Chief Officer being arrested while committing a crime might be one such circumstance which could possibly justify a shortening of the expected process, although even in those circumstances some form of preliminary consideration and representation might be

appropriate. In such an event it would be for the Minister to record and justify why such extreme action had been taken. “*more serious circumstances*” should not be used as a “get out clause” Which allows the Minister to by-pass the legitimate expectations of process created by the code, and act without warning, without offering representation and without providing a fair opportunity of response. In this paragraph, and some to follow, I have argued that the Minister has not complied with his obligations under the disciplinary code for the Chief Officer of Police. I would nevertheless ask that all of these comments be viewed in context of paragraphs 5 to 7 of this application which raise questions regarding the appropriateness and Human Rights compliance of the code itself.

27. I will now set out some of the reasons why I consider that it would have been fair and reasonable for the Minister to consider the issues before him at greater length and in accordance with the prescribed procedure, and hoe he has failed to take into account matters which it was his duty to consider. In some cases I have asked the Minister to provide further information relevant to this application. At the time of writing this has not been provided. I do however have copies of the original letters from the suspension meeting which form part of the appendices and I have since received the proposed terms of reference for the Investigating Officer. These are attached at **Appendix “E”**. The reasons which, in my submission, provide grounds for overturning the decision of the Minister in addition to those already stated include the following:

27.1. So far as is known, whatever is alleged (and over six weeks after the event I have still not been shown the documents containing the allegations which gave rise to my suspension) relates to management processes and structures in the early part of the investigation. I understand that nothing relates to the current management of the force and that there is support for the management structures which I have either put in place personally, or have been put in place by others acting on my instructions.

- 27.2. On the 12th November 2008 I was part way through a holiday, was not in command of the force, and did not intend to return to work for several days. There was ample time to apply proper process and to allow representations.
- 27.3. The Minister appears to have placed high emphasis on reports to the effect that the early part of the investigation was not conducted in accordance with the multi-agency model more common in such investigations. He has failed to take into account the strong impediments to partnership working set out in paragraph 10 of this application.
- 27.4. In seeking to determine my culpability the Minister appears to be relying on an assessment of compliance with policing guidelines which apply in much of (but not all of) the U.K. He has failed to address the question of whether he or his predecessors have ever approved the application of those guidelines to this jurisdiction.
- 27.5. The Minister places heavy reliance on a document which purports to set out the interim findings of a review by the "Metropolitan Police" into the early staged of the investigation. This review was carried out on my authority. He does not appear to have taken into account that the actual authors of the report are understood to be one police officer, who. In the context of these allegations, is of relatively junior rank, and one civilian assistant. It is believed that neither has ever exercised strategic oversight of a major crime enquiry from the rank of Chief Officer or equivalent. (At the time of writing more details relating to this have been requested and are awaited.)
- 27.6. The Minister has failed to take into account the reports and verbal briefings provided to him and others during the relevant stages of the enquiry by a team of senior

expert advisors appointed by the Association of Chief Police Officers.

- 27.7. He has failed to take into account the prompt and full response of the force to all of the issues raised during the process described at 27.6 above and the fact that at no stage did he or any other political representative express any dissatisfaction in the consequence of the high level briefings given by the senior A.C.P.O. team.
- 27.8. He has failed to take into account the fact that the senior A.C.P.O. advisors referred to above were internationally recognised for their expertise and were led by a person with many years experience in the strategic oversight of major crime enquiries from a rank equivalent to that of Chief Officer.
- 27.9. So far as is known he failed to give due weight to the fact that none of the alleged events took places during his tenure as Minister and he failed to take reasonable steps to establish whether the person who was Minister at the time had any views on the matter.
- 27.10. The Minister failed to take into proper account the fact that prior to his retirement the former Deputy Chief Officer was awarded a certificate of commendation by the previous Minister for outstanding leadership and media management in the investigation. The Minister has failed to reconcile this award with the retrospective view of events which he has now chosen to take.
- 27.11. The Minister has failed to take into account the frequently expressed wishes of political leaders and others that the policing of the island should be developed along the principles of local solutions to local issues and that the creation of excessive bureaucracy, processes, and management structures should be avoided. In seeking to hold the Chief Officer to account for allegedly failing to comply with U.K. policing

guidelines the impact of such a precedent on the wider agenda of protecting the independence of law enforcement in Jersey has not been given due weight.

- 27.12. The Minister has failed to take proper account of the 2008 report by H.M. Inspectorate of Constabulary which states *“At the time of the Inspection the force was investigating a series of criminal allegations relating to a children’s home spanning a number of decades. In addition to committing substantial local resources, the force sought and was receiving specialist operational assistance from forces on the U.K. mainland to allow the force to effectively investigate these allegations whilst maintaining core business. The investigation was being led by the deputy chief officer and was of a very high profile.”* The Inspectorate made no critical comment concerning this arrangement.
- 27.13. The Minister has failed to fully address the question of whether, against all of the background, and the known performance of the force under my leadership, the action taken was a necessary and proportionate measure.
- 27.14. The suspension occurred on 12th November 2008 and on 2nd December the Minister made a report to the States. In that statement, and in subsequent exchanges, he makes no claim to have sought any further information, or considered any representations since the original suspension. He refused to provide members with a copy of the Disciplinary Code under which he had acted. By his actions the Minister prevented members from engaging in proper scrutiny of what had occurred and has sought to defeat the apparent intention of the law that, although initially accountable to the Minister, the Chief Officer is ultimately accountable to the States as a whole.

28. While guidelines approved by the U.K. H OME Office do not have a direct application to Jersey, they can sometimes provide background information as to what is seen as appropriate elsewhere. For this purpose I attach at **Appendix "F"** a copy of the current guidelines which are applicable in most of the U.K. It can be seen from the document that suspension is positioned as part of an incremental process, usually associated with a history of poor performance and public concerns. The procedure of addressing these issues typically involves a partnership between the Home Secretary, The Inspectorate, and the Police Authority. Suspension may be invoked when the relevant parties have concluded that a point has been reached in which a requirement to resign or dismissal is appropriate and there are significant public concerns. The guidelines state *"suspension is a grave matter and the authority or the secretary of State will need to make a judgement about whether suspension would enhance or diminish public confidence.* While it is accepted that these guidelines are of marginal relevance to my case, they nevertheless give some support to a legitimate expectation that the suspension of the head of a police service will be seen as a last-resort option, preceded by careful consideration and assessment involving a number of parties. It should also be noted that under U.K. guidelines any suspension needs to be subject to a monthly review.

29. I now turn to some associated issues which may be seen as undermining any argument by the Minister that some form of due process or proper consideration was applied in my case. The first concerns the text of the letter of suspension which is at **Appendix "C"**. This letter was handed to me at the conclusion of my discipline meeting. I had received no prior warning of this possibility. The final paragraph of page 1 states *"At our meeting earlier today, I informed you that I was considering whether you should be suspended from duty. I now write to inform you that I have decided, in accordance with the terms of the Police Force (Jersey) Law, 1974, to suspend you from duty, on full pay, pending the outcome of the investigation and any subsequent hearings."* I do not believe that it is disputed that there was no meeting *"earlier today."* I have challenged this and other aspects of the process and received a letter sent on behalf of the Minister dated 19th

November 2008 which I attach at **Appendix "G"**. The letter refers to the discipline meeting on 12th November 2008 and makes the following claim. *"the Minister, having outlined his concerns about the command and control structures in place as regards the Historic Abuse Enquiry and your role within that, informed you that he was minded to invoke the disciplinary code and suspend you. You were offered a period of time (up to an hour) to consider matters and you were offered unsigned copies of the letters it was intended to give you should the process be subsequently activated. The purpose of this was for you to have access to the matters that would be subject of possible investigation and to give you the opportunity to consider those and comment back to the Minister before any decision to commence the process was taken.*

30. Taken as a whole this statement is almost entirely untrue. Firstly it seeks to explain the offer of up to an hour to *"consider my position"* as not an offer to resign but an opportunity to have *"access to the matters that would be subject of investigation."* Given that both the discipline letter and the suspension letter make it clear that these *"matters"* are set out in documents which, over six weeks later, I have still not been shown, and relate to an enquiry which had been running for around two years, I suggested that this claim is transparently false, as is any suggestion that a period of up to one hour, with no notice and no representation, constituted anything approaching a fair opportunity for to make a reasonable submission. If this is doubted then I refer to the initial comments of the Chief Constable of Wiltshire who has been appointed Investigating Officer into the allegations made by the Minister. In seeking to agree the initial process for the enquiry he states in a letter dated 11th December 2008 that *"Based on what I know now, I do envisage that relevant inquiries will probably take a number of months to complete."* Even if a period of "up to an hour" had been offered to comment upon the allegations (which it was not) then it could not be seen as fair in the circumstances.

31. Also relevant to the conduct of the Minister is his claim in the letter that the possibility of suspension was mentioned at the beginning of the meeting, and that he informed me that he was *"minded."* To suspend me. On reading his letter, I saw this as an

attempt on his part to handle the issue of the reference in the suspension letter to the meeting “*earlier today.*” I anticipated that this may be the beginning of an attempt to argue that the meeting in some way had two parts and that some form of consideration took place in the middle. This might be somewhat implausible in a meeting which, by the Ministers own account lasted less than 35 minutes and by my recollection was rushed and quickly concluded. However, this position changed a few days later when, on 29th November 2008 I received a typed document signed by the Minister. **(Appendix “H”)** This purported to be a record of the disciplinary meeting. This at least makes it clear that no mention of suspension was made until the Minister handed me the suspension letter thereby putting the process into effect. I wrote and challenged the typed record of the meeting on the basis that it claimed things which were not true and omitted things which were in my favour. In order to clarify matters I asked for a true copy of the handwritten record made by the Chief Executive during the meeting.

32. On 5th December 2008 I received a further letter on behalf of the Minister **(Appendix “I”)**. This informed me that the original notes of the meeting had been destroyed. It is my belief that, in the sequence of events, this destruction took place at a time when the Minister and his civil servants were on clear notice that I was preparing a legal challenge to my suspension, and may have been done because the notes contained evidence which was in my favour. I have made a separate formal complaint in respect of this.

33. Taking all of the evidence into account I consider that I am entitled to believe that the decision to suspend me was in fact taken by the Chief Minister and the Home Affairs Minister, probably in collusion with others, on the evening of Tuesday 11th November 2008. Civil Servants were then tasked with producing paperwork and a procedure for use the following morning. This was done with the intention of creating an impression that some form of due process and consideration had taken place. This latter task was however performed in a rush with the consequence that mistakes in procedure and the attempted deceptions are evident.

34. On 3rd December 2008 I received a copy of the proposed terms of reference for the Investigating Officer in respect of the allegations against me (**Appendix “E”**). The Investigation has been given the title of “Operation Haven” and is headed by the Chief Constable of Wiltshire. The Investigating Officer has since made it clear that he does not regard matters relating to my suspension as falling within his remit and consequently he will make no enquiries in respect of what occurred. On my reading, the terms of reference invite an investigation into the extent of my compliance with guidelines applicable to police services in England and Wales. No evidence is offered as to why these guidelines should be deemed to be applicable to Jersey I have made separate representations to the Investigating Officer in respect of this and other aspects of the proposed terms of reference for “Operation Haven.”

35. In summary, I suggest that the following are some of, but not all of, the matters in respect of which the court may wish to take a view.

- Whether the actions of the Minister, and the structures of accountability, legislation and process on which he founded those actions, are consistent with the general principles of fairness and compliance with Human Rights.
- Whether the actions of the Minister were consistent with legitimate expectations of process, representation, proper notice, and the right of response created by the disciplinary code and the general expectations of proper procedure relating to the suspension from duty of the Chief Officer of Police.
- Whether the Minister took into account all of the things which he had an obligation to consider before taking the serious step of suspension.
- The public interest issues arising from the creation of a precedent and the possibility of the future abuse of that precedent by a Minister who is inconvenienced by the proper execution of police duties, and of the wider implications for public confidence in the independence and

integrity of the police service and of the Criminal Justice System as a whole.

(Signed.....Graham Power).