

# STATES OF JERSEY



## PUBLIC SECTOR EMPLOYMENT CONTRACTS

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**Lodged au Greffe on 10th March 2022  
by Deputy M.R. Higgins of St. Helier  
Earliest date for debate: 25th April 2022**

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**STATES GREFFE**

## PROPOSITION

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

- (a) that contracts of employment for all States' employees from 1st July 2022 should explicitly prohibit the following and confirm, for the avoidance of doubt, that such acts constitute acts of gross misconduct –
  - (i) lying, obstructing, misleading or attempting to mislead a Minister, the States Assembly, any Scrutiny Panel or “Backbench” Member of the States of Jersey about any aspect of the employee’s work for the States;
  - (ii) covering up or concealing any failure (act or omission) on the employee’s part alone, or together with others, or on the part of others that they have become aware of at any time, on any matter, that could financially damage or bring the States of Jersey and/or the Government of Jersey into disrepute; and

that such lying, obstructing, misleading and covering up should be punishable by termination of their employment without any compensation or compromise agreements, pension rights or bonuses depending upon the severity of the offence they have committed.

- (b) that an independent review of disciplinary policies and procedures should be commissioned to ensure that any disciplinary action follows the rules of natural justice;
- (c) that an amnesty up to 30th June 2022 should be implemented during which period employees can own up to any past lies, obstructions, misleading statements, and cover-ups (unless of a criminal nature) and/or knowledge of acts or omissions of others, with the employees concerned to face no loss of employment, grade, position, pension rights, bonuses, compensation agreements unless they commit a future act of a similar nature or fail to fully declare any past transgressions that are being addressed by this proposition;
- (d) that a register should be maintained of any declarations under paragraph (c) that shall record the past breaches of these provisions; and
- (e) to request the States Employment Board (S.E.B.) to initiate the necessary steps, including instructions for the development of any legislation that may be required, to implement paragraphs (a) to (d) above.

DEPUTY M.R. HIGGINS OF ST. HELIER

## **REPORT**

Although this proposition refers to Civil Servants, it refers to a small minority of mid-level and senior Civil Servants who in my opinion have gone rogue. It does not refer to, or should be taken to refer to, the vast majority of the Island's Civil Service who I hold in the highest regard and who work very hard, day in and day out, for the benefit of all Islanders. I say this having been a civil servant myself at one point in my career and have seen their work, and their work ethic, at first-hand.

Unfortunately, over the years we have developed a system of impunity i.e., a system whereby some officers believe that they can do what they like or want without fear of being held to account for their actions or face any sanction. Some of them hold their political masters with contempt and delight in thwarting those who are democratically responsible for the oversight of the public service and their actions.

Even worse I also believe that they are right, they can act with impunity. The institutions and people who should hold them to account have failed to do so and we do not have any effective checks and balances to protect the public.

We have developed a system in which officers can lie, obstruct Ministers, Scrutiny and Review Panels and States Members and cover up their failures and actions to all three and get away with it.

### **How has this happened?**

It has happened gradually over time for a number of reasons, which I list in no particular order of importance but collectively they have brought us to where we are. It is not the fault of any one Council of Ministers or States Assembly but is the result of successive failures of these bodies over the years.

### **Lack of political control**

#### **States Assembly**

1. In my 13 years in the States there have been numerous examples of Government Ministers lying to the Assembly and to Islanders. They set a bad example to their officers, many of whom are, or could be, complicit in the lies. However the States Assembly has antiquated rules to deal with this situation. For example:
  - (a) Any States Member who alleges that the Government or a Ministers is lying is immediately challenged by the Bailiff or whoever is chairing the Assembly to withdraw the allegation or face sanction – eg. suspension and/or loss of pay. They cannot even say that the Government or Members are misleading the Assembly and are forced to say such persons are unintentionally misleading the States - even though a Member may have evidence that they are indeed lying through their teeth. This needs to change and any Member of the States who believes they have been lied to, when challenged by the, Chair should be able to ask the Chair for their allegations to be immediately referred to the Commissioner for Standards so he can investigate and rule on the validity of the allegations and for him to report back to the Assembly within a very short space of time.

Although in recent years Members can make a complaint to the Chief Minister or to the Commissioner of Standards, this can be less than satisfactory. In the case of the former, the Chief Minister usually backs their Ministers, especially if they need them to keep in power themselves in a coalition that makes up the Council of Ministers. In the case of the latter, referrals to the Commissioner of Standards which are made after the event may take months to come to a conclusion and the government spin machine in the meantime attempts to muddy the water and control the narrative. The media is also fickle and can also lose interest during this extended period and when the report is finally produced it has less of an effect and can be lost in the clutter of what they consider more pressing news.

- (b) Application of the Standing Orders of the States Assembly can hinder effective accountability.

States' Members have an absolute Parliamentary Privilege which enables them to raise issues and name names without fear of being sued in courts of Law for what they say in the Assembly or write in Parliamentary proceedings. It also enables newspapers and others to report on these important matters whereas they would normally not be able to do so for fear of expensive and time-consuming defamation cases. This is because they are granted a Qualified Privilege under the Law, providing they quote the exact words spoken by a Member in the Assembly or written in official documents in parliamentary proceedings. This is an important safeguard in democracy as it enables matters of great public interest to be raised which would otherwise be stifled under legal restraints. It is used sparingly by Members ie. only in the most extreme or important cases or situations where Members consider it to be necessary in the public interest.

It has, however, been weakened over the years in Jersey. The Bailiff or Chair of the Assembly can order that a name spoken is stricken from the Parliamentary Record (Hansard), which means that in future no one will know the name of the person named in the Assembly. This is still the case even though meetings of the Assembly are now broadcast on radio and available to view on the internet. Thus, the name is widely disseminated but it cannot be found as easily as it is in the written Hansard. I do not believe this procedure is adopted by the UK House of Commons upon whose rules ours are supposedly based upon.

In addition to this the rules of the Assembly have not always been applied consistently by those in the Chair. On occasions civil servants have been named - but only to praise them, and such naming is ruled out of order when there is an attempt to criticize them. Members are told to use the civil servants title but not to use the title when criticizing them - instead we are asked to talk about 'officers' or 'senior officers' but this is unfair on those who are not been criticized but who are all tainted by the same brush.

At times people, like the former Chief of Police Graham Power and senior investigating officer Lennie Harper have been named and recorded.

## **Ministers**

- (a) Ministers do not employ their own staff. In fact, under the Target Operating Model introduced by former Chief Executive Charlie Parker, departments were essentially amalgamated under mega-groupings, with the departmental heads done away with or placed under 'Director Generals', and accountability was either diluted or disappeared altogether. Ministers did not really control their departments as lamented by Deputy John Young, the Planning and Environment Minister. Power was devolved to the exceptionally well paid and unelected Director Generals.
- (b) We also have a number of exceptionally weak Ministers who have delegated all their powers under the Law to their officers, effectively ceding control of their departments to unelected officers. Many Ministers are chosen not because of their knowledge and expertise but because they are loyalists who will support the political grouping in control or the dominant ideology. How can they effectively control their department in this situation? Also, without knowledge or experience how can these Ministers effectively determine whether the advice they are receiving is accurate, credible or sound. I also believe that policy which is supposed to be the preserve of elected members may also be largely determined by officers as well in many cases.
- (c) We have Ministers who defend the indefensible. They defend the failures of their officers, their policies and departments rather than take responsibility for their actions and learn from their mistakes. As a result, they have no credibility in the eyes of some members of the Assembly and the general public as a whole. No wonder voter turnout at elections is so low and politicians generally are held in such low regard or in contempt. This has been exacerbated by the well-funded spin machine (the government communications department) that trots out press releases justifying things that cannot be justified, to drown out the adverse message and to deflect criticism.

## **Scrutiny Panels**

Scrutiny Panels have become overloaded with work and cover more than one department. For example, the Education and Home Affairs Scrutiny Panel oversees the Children's Service, Education Department, Youth Service, Police and the other emergency services. This is too wide a remit for the panel to be effective. In addition to reviewing government policy through scrutiny hearings panels have been overloaded with briefings, which although welcome in some respects in that they increase members' knowledge, also take up Members' time. Time which can only be provided at the expense of constituency matters, conducting research or bringing their own propositions to the Assembly on matters not normally brought by governments. Indeed, most social policy over the last nine years has come from backbench members bringing propositions or through their pressure on government.

Scrutiny Panels are being used to help formulate government policy which blurs the line as to who is responsible for policy and holding the government to account.

## **Failed accountability system**

We have created a system whereby members of the public who are wronged by Civil Servants and States Departments are left without remedies - and so these rogue and incompetent officers keep on getting away with their actions.

- (a) Although the States passed a proposition to establish a Public Sector Ombudsman in February 2018, successive Councils of Ministers have not delivered on it. Although funding has been approved for the office the Law still has not yet been drafted some four years later. COVID alone cannot be accepted as an excuse. Is it also political failure or obstruction?
- (b) We have a States' Employment Board that is responsible for all staff employed in the public sector but holds no one to account. Failure has been rewarded with compromise agreements in which many senior civil servants have been paid off with enhanced payments to go, which include non-disclosure clauses so that States Members and the public have no idea of the extent of their failures and the terms of their leaving. So much for accountability and transparency. The States Employment Board is in my opinion dominated by senior civil servants who sway the States Members on the Board. No doubt the politicians on the board will say this is not true but how can they explain their failure to hold civil servants to account?
- (c) We have the States Complaints Board made up of some distinguished lawyers who have done excellent work. But their reports are contested by Ministers and officers alike and then ignored. The Alwitary case is one case in point. Their findings regarding the breach of contract were ultimately endorsed by the Privy Council in London, the highest court for the Crown Dependencies. As the Board can only hear a small number of cases in any one year, they may try to avoid important complex cases that may be time consuming.
- (d) The Law Officer's Department's role is incompatible with assisting wronged citizens. They are the States' own lawyers and will defend the officers and departments with unlimited taxpayer's money. Only the very rich can afford to take on our well paid and resourced Law Officers Department in the courts.
- (e) Jersey's legal aid system is a sick joke. The average citizen cannot afford to pursue their wrongs through the courts when lawyers are charging £4-500 per hour for their services and the new much touted legal aid system will be no better. Even simple legal matters seem to take forever, with constant delays adding to the final cost of any action or proceedings.

Although Advocates will tell you that they only ask potential clients whether they own their own homes in initial interviews to determine who are eligible for legal aid, the truth is that they are screening out those who cannot afford to pay the fees they charge for their professional services. Anyone who is not eligible for legal aid and who wants to pursue a case, say for medical negligence, could end up losing their home to pay off the legal fees which could easily cost them anything from a few hundred thousand pounds to over a million pounds.

## **Examples and costs of failure**

Do some officers lie, obstruct or cover up? Yes, indeed they do.

Do they damage Islanders through their actions? Yes, indeed they do.

Their actions have cost the Island millions of pounds and untold and unjustified suffering for many individual Islanders.

### **1. Mr Amal Alwitary –Consultant Ophthalmic Surgeon [Cost - £2.4m +]**

Mr Alwitary was a consultant ophthalmic surgeon who applied for a position at the General Hospital in Jersey. He accepted the contract unconditionally. On the strength of this Mr Alwitary sold his house in the UK and made arrangements to come to the Island with his wife and children. He was, if I remember correctly, within three weeks from taking up his position in the Island when he was advised by the Health Department that they were withdrawing their offer of employment - something they could not do as he had already entered into a binding employment contract.

They were in fact breaking his contract but dressing it up that they had withdrawn the offer they made to him. To make matters worse the SEB did not even follow the policies laid down in the contract where disputes between parties could be resolved. They denied instead that a contract had come into being.

As any student of the law of contract will tell you, a binding employment contract comes into being when the applicant is made an offer of employment and the applicant accepts that offer completely and unconditionally providing that all the other elements of a valid contract are present, which they were in this case.

In addition, the SEB was advised by the Law Officers Department to offer Mr Alwitary a derisory three months salary in compensation which was considerably less than the £100,000 compensation the SEB were advised by others that he might accept.

Mr Alwitary sued on a number of issues and his case was heard by the Royal and Appeal Courts in Jersey and by the Privy Council in London, the highest court for the Channel Islands and other Crown Dependencies and Territories. The States lost their claim for breach of contract at every stage and Mr Alwitary subsequently was awarded some £2.369m in damages. In addition, the States has spent or will spend hundreds of thousands of pounds on its own lawyers, Mr Alwitary's lawyers and on court costs before the matter is fully resolved.

Among the most galling aspects of this case is how it has been dismissed and spun by the States Employment Board and Government Ministers and the fact that no one has been held to account for this fiasco. Neither the medical consultants who instigated the action based on erroneous information, the Health Department Executives who sanctioned it, or the officers of the States Employment Board who advised Ministers, or the Law Officers Department for pursuing such a hopeless case for damages for Breach of Contract.

## **2. Jersey Child Abuse Scandal [cost abused children and £29m+ in costs of Inquiry, legal fees and compensation]**

In 2007/2008 when Senator Stuart Syvret was the Minister for Health and Social Services he became aware that child abuse was taking place in States-owned and run children's homes by those employed in the service and others. He told his senior officers to urgently investigate and report back to him. Instead, they obstructed him with the aid of others within the Jersey Establishment and plotted to remove him from his position. They were successful. He was removed from office and the officers responsible went unpunished. At least one senior officer directly engaged in this obstruction is still employed in a well-paid job by the States of Jersey.

Another Officer who allegedly raped, sodomised and/or physically abused both boys and girls was not prosecuted, despite multiple allegations and credible evidence. He later left the service on his own accord. No doubt with a good reference and pension.

A former Director of Education who was nicknamed the "Pin Ball Wizard" for physically brutalizing children by beating them and bouncing them off the walls of his office was protected even when former Deputy Trevor Pitman asked the then Education Minister James Reid in the States to suspend him as a neutral act so the very credible allegations which came from both children and staff could be investigated. He was not suspended, nor was the matter investigated, He was instead protected and allowed to continue to work for many years as Director for Education before retiring on an exceptionally good pension.

Others who covered up the child abuse were allowed to leave the public service, no doubt also with glowing references and pensions. Some of whom are currently engaged in occupations where they work with young children and vulnerable adults.

The Chief of the States of Jersey Police whose department was investigating child abuse allegations as part of Operation Rectangle was, however, suspended, as a so-called neutral act for alleged failings in the police investigation. In reality he was suspended by a Home Affairs Minister who lied to the States Assembly as to the reasons for the suspension in what was really a political act of revenge for not joining in with other officers – including the Chief Executive and Health Chief Executive at the time – who were planning a coup to remove Senator Syvret from his position as Health Minister<sup>1</sup>, and for supporting his Senior Investigating Officer Lenny Harper in his robust investigation into child abuse in the Island. Something that was inconvenient to senior departmental officers and politicians alike. He received no compensation for his treatment and loyal service.

This same Home Affairs Minister was later accused by the Independent Jersey Child Care Inquiry of lying to the States Assembly and to their inquiry in their report.

The cost of these actions was continued abuse of children and an inquiry which cost taxpayers circa £29 million pounds and established beyond all doubt that children had been abused in the care of the States. But who was held to account? A few abusers were prosecuted but many were not brought to justice, nor were those responsible for safeguarding children nor those who covered up the abuse held to account. Lawyers

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<sup>1</sup> This was evidenced in contemporaneous notes made by the Chief of Police and another police officer immediately following the meetings where the plotting took place

employed by the States who advised States Departments and some of the accused were, however, paid in excess of £1m in fees.

### **3. Officer lying to a States Member in the course of his duty**

In 2008 I was elected to the States Assembly and became a member of the First Tower Community Association. The association, then under the leadership of the Headmistress of First Tower School, had established a youth club in one room on the ground floor of the former Overseas Trading Corporation building (OTC). The other rooms in the building were occupied by three States Departments - Law Officers Department, the Viscounts Department and the Social Security Department - for document and furniture storage.

One of my objectives on election was to find some premises in the west of St Helier for use as a community centre that could be used by all ages. I discovered that the only publicly owned building in the area was the OTC building, so set about trying to get the occupying States departments to move elsewhere. The first to move was the Social Security Department then under Senator Gorst. This freed up more room on the ground floor which enabled the youth club to expand. Later this became managed by the Youth Service.

Thirteen years later, after negotiating throughout that period with two Viscounts and three Attorney Generals I succeeded in getting the Viscount's and Law Officer's Departments to move from the first floor of the building and entered into discussions with Property Holdings to take over the whole building. We currently have a lease for the whole of the ground floor. We also made a bid with the assistance of the Parish of St Helier for fiscal stimulus funding to renovate the building as a community centre. Our bid, which was for £1.3m was rejected. We discovered that our bid had been rejected in favour of a bid from the Youth Service for a community centre on the same site for £1.5m. To say that I was not amused was an understatement as I had kept the Youth Club Officer fully informed of our plans and told him that the club had nothing to fear as the youth club was part of our community centre plans.

It transpired that a Senior Youth Officer had put in a bid in behind our backs for the same project. He and his colleagues had no part in getting the States Departments to leave the premises and did not have a lease on the building.

When I tackled the Senior Youth Worker concerned on what I considered to be a totally underhand and unprofessional act in a meeting front of a third-party witness he denied that he was aware that the States Departments were leaving the building. When I said "so you have made a speculative bid for fiscal stimulus funding for a new youth and community centre using the whole of a building that was occupied on the first floor by the Law Officers and Viscounts Department" (and on which the Youth Service had no lease). He said yes. His answer was totally implausible and could not stand up to scrutiny. He later admitted to an investigating officer that he did know that they were leaving and so had lied to me.

In addition, he knew through the centre youth worker what our plans were for the building and that we were putting in a fiscal stimulus bid for the building. He also claimed that he did not contact us before putting in his bid because he was going on holiday and was racing to get it in before the deadline although he did have time and had a very capable deputy who could have discussed the matter with us. The building is

currently being renovated with the £1.5m stimulus money but the question of who will have the lease on the centre and run it has yet to be fully determined.

I think it totally unsatisfactory for a civil servant not only to lie to a States Member but also to try to undermine the work they are doing for their constituents. It strikes at the very heart of the role of civil servants and elected members.

#### **4. Governance of a States Independent Non-Governmental Body**

I received one of the best written and detailed reports I have ever read from an anonymous source associated with one of the Islands most important independent non-governmental bodies. The allegations detailed a number of governance matters, which included comments made about failures of the body's own internal audit body and its former Chief Executive, who had just been nominated to sit on another independent body whose membership was to be nominated by the States.

The allegations were very concerning, and I felt that they had to be investigated as was the question of the suitability of the nominee to sit on the other independent body. It was, however, an anonymous report.

I felt that the governance issues should be investigated by the Comptroller and Auditor General but was faced with a dilemma with regard to the appointment to the independent body whose nominees were to be discussed and voted upon at the next States sitting.

I felt that to name the individual and challenge their appointment based on an anonymous and yet to be investigated complaint would be wrong as would be to challenge all the States nominees to the body to hide the specific individuals identify in an attempt to delay all the appointments would also be unfair on the other nominees. But I also felt that if the allegations were true that the person should not sit on the body.

In the end I consulted with the Chief Minister, who was fully supportive and shared my concerns. I was referred to a senior officer with responsibility for the complained about body. The officer spoke to the individual concerned who had said that if their appointment was to be challenged in the States they would withdraw their name from consideration. Again I felt it would be wrong for this to happen on the strength of an anonymous report so I made an agreement with the senior officer concerned that he would refer it to the Comptroller and Auditor General for investigation and I would not challenge the appointment but only on the understanding the person concerned would not take up their appointment until such time as the matter had been investigated by the C&AG and they were cleared. If they were not cleared they would not sit on the body. The person concerned nomination was approved by the States with no objections.

After some considerable time had gone by I asked the Chief Minister what the C&AG had determined as I had heard no more. He said he did not know either and would contact his senior officer find out. Unbeknown to the Chief Minister or myself the senior officer who has handling the matter had been told by the C&AG that she did not want to investigate it and he had referred it to the body's own audit body – the very same body that was criticised in the anonymous report. As it turned out the former Chief Executive did not sit on the other independent body but not I believe this was on account of the body's own internal audit investigation into the allegations and its findings.

I think it was totally unacceptable for this senior officer to not inform myself or the Chief Minister of the C&AG's unwillingness to investigate the matter and for him to pass it on to the firm's own audit body to investigate and not to keep us both informed. Was this due to a mistake, incompetence, obstruction or cover-up? I don't know the answer to this question but the senior officer concerned is now a Director General and following his actions he does not fill me with confidence.

**5. The Chief Executive of Health and Social Services Department made unauthorized pay awards to some Health and Allied Service Staff and advised them not tell their colleagues – cost to the States and Taxpayers at least £900,000**

A former Chief Executive Officer for the Health and Social Services Department, together with some of her senior officers, gave a pay rise to certain employees without permission of the States Employment Board and in contravention of the States Pay Policy at the time. This act was compounded by telling those so rewarded to keep it to themselves ie. not to tell their colleagues who did similar or comparable work in case they also asked for a pay rise as well. Quite naturally, however, the word did get out and their aggrieved colleagues who included line managers who found their salaries leap-frogged by the staff under them did seek a comparable pay rise. The resulting fiasco has cost taxpayers at least £900,000, created a major breakdown in trust throughout the public service, and taken untold manhours to try to resolve the mess so created including the commissioning of independent reports whose cost I don't believe forms part of the figure above.

Although the former Chief Executive of Health and Social Services Department later left the States of Jersey for family reasons it is possible that they received an enhanced payment to leave but we will never know as the agreement as usual included a non-disclosure clause. Others involved in this fiasco still serve in the public service.

**6. Former Head of Children's Service - cover-up and defamation**

A former Head of the Children's Service made untrue and defamatory statements in a letter to me about a vulnerable person I was helping and lied to the Minister of the Department concerned who would not investigate legitimate wrongs against the person and their family.

The allegations were that the person I was helping harassed one of her social workers at work, at her home, on social media and her children. These were false allegations and so I immediately challenged her to produce evidence of her accusations or to apologize. The person I was helping did not know where the social worker lived, her children or own a computer or know how to use social media on her telephone. The only contact with work was to ask the social worker concerned to contact her about the meeting she had promised the woman and then reneged on it and cut the vulnerable person off completely.

The Head of the Children's Service after much prompting eventually withdrew the comment about harassing the social worker at her home but refused to retract any of the other allegations or to provide any proof whatsoever.

When I continued to pursue this matter the following things happened:

- i. When I raised the matter in the States Assembly the Minister of Health of the day brought a complaint against me to the Commissioner of Standards which was not upheld.
- ii. the social worker responsible for the original allegations of harassment made a complaint to the police alleging harassment by the woman I was helping. The police officers who came to a meeting at the offices of Advocate who was also helping the woman on a pro bono basis (ie. free) revealed that the complaint was made after I had written my letters to the Head of the Children's Service demanding evidence and/or an apology. It was obviously an attempt to smear this woman. The social workers statement did not correspond to the allegations made by the Head of the Children's Service for if it had and she had signed it she could have faced possible charges for perverting the course of justice. The police took no further action.
- iii. A so-called inquiry was eventually commissioned by the then Chief Executive of the Health and Social Services Department<sup>2</sup> involving the then Director of Education. It can only be described as a travesty and it was never completed. The correct procedures were not followed and evidence was not taken from the social worker whose accusations sparked off the whole the incident and whose allegations were repeated by her senior officer without checking the facts. Before the matter was concluded the then Chief Executive of Health and Social Services and the Director of Education left the employment of the States of Jersey and the matter has still not yet been resolved. It was quite obvious to me that they were trying to cover up for the social workers concerned.

I was told by the Chief Executive at the time that he had told the Former Head of the Childrens' Service to apologize and he was surprised when he heard that she did not do so. The matter was not resolved before he too had left the States.

I think it is unacceptable for the former Children's Service Head should still be employed by the States in another capacity involving children and to have faced no sanction.

## **7. Children's Service – routine cover-ups**

- (a) I went with a mother to a meeting with the new Head of the Children's Service (who has recently announced his resignation) attended by one of his most senior officers. In that meeting the woman I was assisting made certain allegations that the social worker dealing with her case had made certain comments about her in front of her child's Headteacher and others which were not only untrue but which should not have been made in front of such a gathering. The social worker in question was present in our meeting and adamantly denied that she had said what she had been accused of saying and was immediately defended by the Senior Officers.

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<sup>2</sup> This was the same Chief Executive of the Health and Social Services Department mentioned in example 5 above.

Unfortunately, I could not attend the meeting where the statements had been made because it clashed with another meeting I was attending and therefore could not push back immediately. When I left the meeting I contacted Deputy Carina Alves who had attended the meeting and she advised me that the statements were made by the social worker and they were totally out of order.

- (b) In other cases officers in this department have revealed highly sensitive information about their clients to third parties in breach of the Data Protection (Jersey) Law 2018. These have been confirmed by the Information Commissioners Office who unfortunately can only make a public statement and cannot fine the department for their breaches because it is a States Department. Perhaps it is time we changed the Law and fined the officers instead for these breaches.
- (c) In one of these cases an Officer sent highly sensitive information to a relative of two women who had been abused to another member of their extended family who were not aware of the abuse. A complaint was made to the department. The same social worker compounded her action by telling another third party that she had been complained about by the woman concerned and revealed other information. A complaint was also made about this second breach.

When the woman concerned met with the former Head of the Children's Service and his most senior officer he said that the social worker concerned had denied that she had done so and they defended the social worker to her. The women concerned then produced a mobile phone recording of the social workers comments that she had denied making. She did not realize that the person she was revealing the information to was a good friend of the person she was talking about and had recorded her conversation. The two officers put their heads in their hands.

At a later meeting the Head of the Children's Service and his senior officer told the complainant that the woman who recorded the conversation had been breaking the data protection law and by disseminating the recording she could also be breaking the law. This was false as I had taken her to a meeting with the former Information Commissioner, who stated that it was perfectly legal to secretly record a meeting so that an accurate record was made. It was not illegal to disseminate it in this way.

Was the Head of the Children's Service trying to intimidate the complainant and cover up the actions of the social worker? The children's service has now formally entered into a legal agreement to pay compensation to the two women affected by the department's action.

There are numerous problems with this department and when I was asked by a foreign television documentary maker a few years after the Independent Jersey Care Inquiry's second visit whether I was confident that child abuse and cover-ups would not take place in the future I stated that I could not be. The States can introduce as many laws and procedures as it likes but it basically comes down to the people the States have appointed and the culture within the organisation.

## 8. Planning and Environment Department

Over the years there have been many problems with the Planning and Environment Department and its management.

- (a) **Senior officers lying to States Member and members of the public and then either doing either nothing or the exact reverse of what they had agreed to do.**

The owner of a listed building (classified as a site of Special Interest under part 6 of the 2002 Planning and Building Law) was told that he could not renovate the building as he wished and had to retain many of the original features of the building. This made the cost of restoring the building prohibitive and so he sold the building.

The new owner was fully aware of the various conditions and restrictions and yet deliberately carried out the work anyway resulting in the permanent destruction of many of the features that were to be preserved. He also renovated the roof space putting in additional rooms for habitable accommodation which was prohibited and rejected by the Planning and Environment Department, their own Historic planning officer and the States of Jersey Planning Committee – not least on fire safety grounds.

Despite objections from the previous owner who lived next door to the property and another neighbour, and another concerned party, the Planning and Environment Department took no action – with the exception of issuing an enforcement notice for the roof space which the owner appealed. The appeal was heard before an independent planning inspector who dismissed the appeal.

At the appeal the inspector was given evidence of other breaches of the law which should have resulted in new enforcement actions. He stated, “there is some justification for” [names redacted] “criticisms that the enforcement notices do not go far enough because they do not appear to require all aspects of the breaches of control to be undone”. He said under his powers in the appeal he could not deal with those matters but later suggested that the original enforcement notice could be withdrawn and re-issued in an amended form to deal with this situation. The department took no such action.

In addition to this before the Inspector reported his findings I arranged for a meeting to take place with the Director of the Planning and Environment Department, his officers, the previous owner, and another neighbour and concerned party. At this meeting the breaches of planning law were discussed and overwhelming evidence of the breaches was inspected, and it ended in the Director and his officers undertaking they would pursue the breaches with enforcement notices. They did not do so and it since appears the department has given the new owner consent for some of the same breaches that other members of the public have been prosecuted for including one very high-profile case where the owner was fined by the courts £50,000 to set an example to others that such activities would not be tolerated. The department has failed to respond to requests for information.

At that meeting we were advised by the then Director of Building Control that he had recently submitted papers to the Law Officers Department regarding the prosecution of one item. He then retired from the department within a month. As we had heard no more on this issue I later asked the Attorney General whether the papers had indeed been sent to his department which he confirmed that they had. However, he also told me that the Planning department had withdrawn them before they had been considered by his department. I have not yet been able to ascertain who withdrew the papers within a month of them being submitted and for what reason. No new papers have been resubmitted.

It is my sincere hope the fact that the new owner's father previously worked for the Planning and Environment Department, and who we believe was living in the roof space accommodation, was not a consideration in this matter.

**(b) Chief Officer allegedly lying to the Chief Executive to thwart an investigation and Departmental Officers lying to a Court of Law.**

I have spent over twelve years helping a man who was taken to court for breach of an enforcement notice which required him to remove plastic windows from the rear of a property. He was convicted in the Magistrates court and given a fine and a criminal record. The whole process from start to finish was a travesty of justice and shows the States of Jersey and the legal justice system at its very worst. I believe that he was illegally and maliciously prosecuted.

Following the trial, which took place in 2010, he was advised by the Magistrate who heard the case to take up his grievance with the department through political channels. He then met and made a formal complaint with the then Chief Minister, who in turn asked his Chief Executive to investigate the matter. He contacted the Chief Officer of the Planning and Environment department, who in turn did not carry out a full investigation but instead sent an email to the Chief Executive which contained false, and unsubstantiated defamatory allegations against the complainant. This stopped the investigation in to the complainant's allegations in its tracks as the Chief Executive chose to accept what his Chief Officer was telling him rather than someone who had just been convicted in the Magistrates Court. Had a proper investigation gone ahead into the matter it would have stopped a miscarriage of justice, much expense, time and effort on the part of many individuals and the ongoing financial harm and mental anguish on the part of the complainant.

In 2013 the complainant appealed his conviction in the Royal Court, three years out of time, and his conviction was quashed but he suffered unnecessary financial loss, mental trauma and family stress which cannot be completely undone.

It also led ultimately to an Independent Norfolk Police Investigation into the Planning and Environment Department costing circa £50,000, which looked into allegations of perversion of the course of justice, perjury and

misconduct in public office. This investigation was completed in December 2021 after almost four years but no written report has been made to the SEB or to the public. We have been told, however, that there be no criminal prosecutions of members of the department - primarily because the Department was found to be “Not fit for purpose”, deficient in policies and procedures with the result that individual officers were applying the laws differently, unchecked and as they saw fit. Two have already left the department. And one of those who deliberately lied to the court and should, in my opinion, have been charged with perjury seems to have escaped on a technicality which is highly debatable and should be tested in court.

The police officers were, however, very clear in their verbal report that one of the Planning Officers deliberately lied to the court.

Whether it was technically perjury or not is irrelevant, however, as there are no circumstances whatsoever where an officer should deliberately lie to a court under oath. Not least in a criminal court where the accused faces substantial criminal sanctions that can be imposed by the court. The officer in question has served in the department for 12 years and given evidence in a number of court cases since then. Can we be assured that their evidence in those cases has not been tainted? They have not been disciplined or even monitored during this time.

Although it is not my decision offenses such as this should amount to gross misconduct and result in dismissal. I am concerned, however, their fate maybe determined by the very same Chief Officer, now promoted to Director General, whose email thwarted a proper investigation of the matter in the first place rather than the States Employment Board itself.

### **Other Civil Service examples**

I also hope that those former Ministers and Assistant Ministers who have privately given other examples to colleagues but not revealed them publicly will pluck up the courage and share their experiences with all members of the Assembly and the public. I also hope that they will support this proposition and end the era of impunity and hold the rogue civil servants accountable for their actions.

### **Other Public Sector Examples**

Although this proposition only relates to the contracts of civil servants other public sector officials also lie and take actions which are not cleared by or with the approval of their political masters.

- (a) In protracted discussions with the States of Jersey Police relating to a harassment/stalking case which I and a number of other deputies and a Senator took up we were told that all the evidence in a matter that we felt should be sent to the Attorney General had in fact been sent. On the basis of this evidence the Attorney General’s Office decided not to prosecute the alleged offender. We later discovered from the Attorney General that all the information in this case had not been forwarded to his office and had therefore not been considered in the prosecution decision.

- (b) In another case involving the Law Officer's Department, the then Solicitor General was proposing to go to a meeting with the Master of the Royal Court to strike out the civil orders of justice made by a litigant in person against the States' Employment Board relating to the actions of States employees before an extensive police investigation had been completed into the matter as it was felt it was not fair on the employees who had been waiting so long for the enquiry to finish. There was no thought for the litigant who had been wronged by the States and who had suffered financial loss, had their character impugned and suffered mental torment. When I challenged him on this and spoke to the Chief Minister/Chairman of the State's Employment Board and his Vice Chairman the proposed action to strike out the case did not take place. The States' Employment Board had no knowledge of what the Solicitor General was intending to do and had not been consulted even though the action would have been done in the name of the SEB.

### **Purpose of Amnesty clause for past lies, obstruction and cover-ups**

The purpose of including an amnesty clause in the employment contract is to try to find out about past lies, obstruction and cover-ups that have taken place. Many which could be ticking time-bombs for the States in the future and prove very costly to taxpayers.

I have included it in the proposition as we cannot make these changes retrospective and so I felt it was the next best thing to doing so. These officers may not be sanctioned for their past actions unless criminal but at least we would know what has happened and they could be considered in their fitness to hold new promoted positions should they apply in the future.

### **Safeguards to Staff**

As someone who has repeatedly stood up for staff in disciplinary cases when they have not been treated fairly I believe that in parallel with this change to the contracts of employment for civil servants the States should ensure that any investigations and hearings into anyone accused of gross misconduct, or any other disciplinary offence for that matter, are only carried out in accordance with best employment practices and that all those accused are subject to the principles of natural justice so that everyone has the right to a fair hearing and determination, without fear or favour. Therefore, no one should fear this proposition and process. I also believe there should be an independent inquiry into the workings of the States Employment Board and changes made to this body which I do not think is fit for purpose.

### **Conclusion**

I ask members to support this proposition so we can end the era of impunity and can restore an effective system of public accountability. We owe it to the people we represent.

### **Children's Impact Statement**

This proposition does not directly impact children. It will however educate them that people in positions of responsibility lie, obstruct and cover-up but that these actions should not be tolerated in the Public Sector. Children should, however, benefit indirectly from this proposition if it is carried and the changes to the employment contracts of civil

servants are made as it will mean that their interests will not be subverted by lies, obstruction and cover-ups in the future as it has been in many instances in the past.

**Financial and manpower implications**

There should be no additional financial or manpower implications arising from this proposition as it forms part of the everyday activities of the States Employment Board and its officers.

Re-issue Note

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This projet was re-issued to include further wording of the report that was not originally included in the proposition.