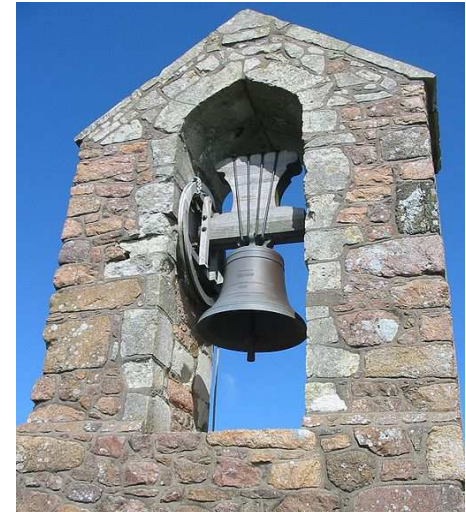




# Public Accounts Committee



## Financial Review of the Jersey Heritage Trust

Presented to the States on 6th July 2010



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## Chairman's Foreword

It is sometimes the obvious that is the most difficult to see, and the letter dated 15<sup>th</sup> June 2010 from the Jersey Heritage Trust (see Appendix 3 of this report) somewhat demonstrates this observation.

In the letter, the Jersey Heritage Trust highlights one of the core observations of this report – perhaps without realising it.

The Jersey Heritage Trust believed that it could run its operation by spending all the money it had without giving thought to longer term issues – with the implicit expectation that in due course, when it ran out of money, it would return to the States and demand some more funds to make good the backlog of problems.

This attitude was not matched by that of the Education, Sport and Culture Department – which assumed that what was given to the Trust covered the whole deal.

The key issue here is that everyone should know and accept the deal through a Service Level Agreement that comprehensively covers all requirements.

Proposition P.75, '*Jersey Heritage Trust: Service Level Agreement and Funding Requirement*,' lodged 'au Greffe' on 8th June 2010 by the Minister for the Education, Sport and Culture Department, (see Appendix 7 of this report) goes some way to correcting this mis-match of expectations. However, it is vitally important that any Proposition has the full support of the Council of Ministers. It is important that all parties 'buy into' the solution in order that we do not repeat the previous mis-match of expectations.



Senator B.E. Shenton  
Chairman, Public Accounts Committee

## **Committee Membership**

The current membership of the Public Accounts Committee comprises:

### **States Members**

Senator B.E Shenton (Chairman)

Connétable J. Refault (Vice-Chairman)

Senator A. Breckon

Senator J. Perchard

### **Independent Members**

Mr A. Fearn

Mr M. Magee

Mr K. Keen

(N.B. Mr. Keen did not participate in the preparation of this report due to a conflict of interest)

# 1. Executive Summary

- 1.1 In November 2009, subsequent to public concern about the matter, the Comptroller and Auditor General produced a review of the financial management of the Jersey Heritage Trust.
- 1.2 The Comptroller and Auditor General reported that since 2005 the Jersey Heritage Trust had reported an annual and growing deficit.
- 1.3 The Public Accounts Committee notes that during the last year, the Jersey Heritage Trust has received nearly £1.5 million of public funds, including almost £900,000 to settle its overdraft.
- 1.4 The Comptroller and Auditor General's report states that the Trust's poor financial condition could be attributed to a number of causes.
- 1.5 These causes included: increasing costs and declining visitor numbers; a lack of corrective action; a lack of successful commercial management; governance arrangements which have not corrected these financial weaknesses and a lack of action by the Education, Sport and Culture Department.
- 1.6 The report also expressed disquiet about the relationship between the Education, Sport and Culture Department and the Jersey Heritage Trust.
- 1.7 As the Jersey Heritage Trust's principal source of funding is a States grant, funded by the taxpayer, the Public Accounts Committee is duty bound to follow up on the report of the Comptroller and Auditor General, in order to examine how the Jersey Heritage Trust and the Department of Education, Sport and Culture have tackled the issues raised.
- 1.8 On May 18<sup>th</sup> 2010, the Public Accounts Committee held a public hearing with Senior Management from the Jersey Heritage Trust, as well as the Director of Education, Sport and Culture.
- 1.9 On 1<sup>st</sup> June 2010, Members of the Public Accounts Committee visited the Jersey Archive (which is funded by the Jersey Heritage Trust) in order to tour the building and also to meet with the Head Archivist.
- 1.10 The Public Accounts Committee considers that inadequate corrective action has been taken by both the Trust itself and the Department of Education, Sport and Culture in order to counter the fiscal problems faced.
- 1.11 The Public Accounts Committee agrees with the Comptroller and Auditor General's criticisms of the Jersey Heritage Trust's management of its finances.
- 1.12 The Committee is particularly perturbed by the Trust's purchase of amphibious vehicles at a cost of approx £500,000. This decision was not only unwise, but also made without reference to the Minister for the Education, Sport and Culture Department or the States Assembly.
- 1.13 The Committee considers that the dysfunctional relationship between the Jersey Heritage Trust and the Education, Sport and Culture Department was instrumental in the former's financial crisis, and that this relationship is still far from satisfactory.
- 1.14 Concerns have also arisen regarding the manner and extent of the funding of the Jersey Archive by the Jersey Heritage Trust.

- 1.15 Within this report, the Committee has made a number of recommendations to facilitate the recovery of the financial condition of the Jersey Heritage Trust. The Committee will be re-visiting these recommendations in order to ensure they have been implemented.

## **2. Key Findings and Recommendations**

### **KEY FINDING 3.5**

The value of formally adopting aspirational strategies is questionable, especially when there is a mismatch between those aspirations and the realities of funding.

### **RECOMMENDATION 3.6**

The Privileges and Procedures Committee should examine this issue and review current arrangements. There is no point in passing aspirational strategies unless there is some realism in respect of execution and funding.

### **KEY FINDING 4.8**

The Education, Sport and Culture Department's approach towards the Jersey Heritage Trust has been too 'laissez faire' and it has not made the Trust accountable for the funds it was using.

### **RECOMMENDATION 4.9**

The Education, Sport and Culture Department needs to take back control of the Jersey Heritage Trust. Arrangements should be put in place for the Trust to make regular financial reports to them. This is particularly important in consideration of the fact that further funds may well be required by the Trust and appropriate steps taken to ensure the proper use of public funds. (The Public Accounts Committee acknowledges that some measures are currently being put in place by the Director of Education.)

### **KEY FINDING 4.11**

The Education, Sport and Culture Department saw the Jersey Heritage Trust as independent and responsible for its own actions while the Jersey Heritage Trust relied on the safety of the States to bail it out.

### **RECOMMENDATION 4.12**

The relationship between the Jersey Heritage Trust and the States needs to be clearly defined. Furthermore, the Education, Sport and Culture Department needs to take greater responsibility for ensuring that the grant to the Trust is managed in a professional manner, with no overspends.

### **KEY FINDING 5.7**

A Partnership Agreement does not offer sufficient direction or obligation to the Jersey Heritage Trust.

### **RECOMMENDATION 5.8**

A Service Level Agreement should be implemented forthwith. This should include specific reference to procedures required for any capital outlays considered by the Trustees to be pre agreed with the Minister for the Education, Sport and Culture Department, therefore acting as a mitigating measure to Key Finding 11.6.

### **KEY FINDING 6.4**

The Jersey Heritage Trust expected extra capital grants over and above their normal grant as a matter of course.

#### **RECOMMENDATION 6.5**

The Public Accounts Committee has highlighted in previous reports the value of using good accountancy practice throughout the States. On the basis that a clearly defined Service Level Agreement will identify depreciation and refurbishment responsibilities, the grant should be increased to a level that takes these basic requirements into account. Furthermore any under-spends should be allowed to be carried forward, without fear of loss or grant reduction, to ensure that a capital sum can be accumulated in anticipation of any significant capital work. The Jersey Heritage Trust must be satisfied that it holds staff of sufficient calibre to carry out professional oversight.

#### **KEY FINDING 7.4**

The Jersey Heritage Trust did not budget realistically within its grant and instead expected the States to provide any extra funds required.

#### **RECOMMENDATION 7.5**

Ultimately the Jersey Heritage Trust is funded by the States, and realistically it would be difficult to defend a situation whereby the States did not step in as lender of last resort. However there has to be accountability for failure and the Jersey Heritage Trust should realise that consistent overspending is failure. Our recommendation is that any future overspends should be examined in detail, and consideration should be given to dissolving the Trust and moving the control back to the States if it is unable to demonstrate the ability to manage its affairs in a financially acceptable manner. In other words the Jersey Heritage Trust has used up most of its nine lives.

#### **KEY FINDING 8.4**

By their absence from three consecutive meetings of the Jersey Heritage Trust, both political Members of the Trust therefore provided sufficient reason to have their Membership of the Trust terminated. However, their appointments were not terminated. This implies that the Education, Sport and Culture Department was content with poor oversight, as it did not address the issue.

#### **KEY FINDING 8.5**

The inclusion of politicians on the Board of the Jersey Heritage Trust acted as a negative rather than a positive. This was because the Education, Sport and Culture Department believed that the political representatives were undertaking an oversight function, yet there is no evidence that this actually occurred.

#### **RECOMMENDATION 8.6**

With a defined Service Level Agreement, the Jersey Heritage Trust should be free to operate without political incumbents.

#### **KEY FINDING 9.3**

The Minister for the Education, Sport and Culture Department opposed savings at the Jersey Heritage Trust and the Public Accounts Committee is unable to identify clear or justifiable grounds for this. The actions of the Minister, who appeared to put political preferences ahead of prudent direction, were unacceptable. Similarly, the Management of the Jersey Heritage Trust was far too weak and failed to meet its responsibilities by neglecting to robustly question the lack of action by the Minister.

#### **RECOMMENDATION 9.4**

The Jersey Heritage Trust and the Education, Sport and Culture Department need to understand that their responsibilities do not disappear simply because the problem has been passed to the Minister. Furthermore they operate as 'checks and balances' on the Minister as much as the Minister operates as 'checks and balances' on them. It would be very dangerous for Departments to give their Minister unconditional control as that individual may be influenced by personal or political considerations. Where a Department is



operating over budget action must be taken to rectify the situation in a timely manner. If a Minister stands in the way of prudent action the matter must be reported to the Treasurer of the States and the Comptroller and Auditor General.

**KEY FINDING 9.11**

There appears to be confusion about who has responsibility for the funds, and a lack of accountability from the Chief Officer.

**RECOMMENDATION 9.12**

Financial Direction 5.4 needs to be re-circulated to all relevant persons to ensure that there is full understanding of responsibility and ultimately, accountability.

**KEY FINDING 10.5**

The Jersey Heritage Trust is not a Trust in the literal sense. The Trustees are under no personal obligation to bail it out when it is in trouble. Therefore there is little personal incentive to manage the Trust in a prudent manner.

**RECOMMENDATION 10.6**

Financial controls need to be tightened and all Trustees need to understand that responsibility comes with a place on the Board, it is not just a position to make a curriculum vitae look good. All Trustees should be fully aware of the Trust's financial position, and understand their responsibility to ensure that financial management is to the required standard.

**KEY FINDING 11.6**

The Jersey Heritage Trust purchased the DUKW's out of the annual revenue budget without consulting the Minister of the Department. Yet the Education, Sport and Culture Department had to make good for this overspending.

**KEY FINDING 11.9**

The Jersey Heritage Trust spent public funds to purchase the amphibious vehicles, and further funds to compensate the previous operator, despite the fact that they had no legal obligation to do so.

**KEY FINDING 11.13**

The Senior Management of the Jersey Heritage Trust had no justification for the purchase of the DUKW's other than a feeling of obligation to provide transport to the castle. Yet, it has been established that no such obligation existed, and no similar obligation to operate within a grant of public funds was apparently felt. There are a few redeeming considerations in respect of the purchase of the DUKW's. However, it is a major concern that an item of significant expenditure can be undertaken without the consent of the Department or the States Assembly.

**RECOMMENDATION 11.14**

Financial considerations must at all times take precedence over perceived duties. All grant aided bodies should be advised within their Service Level Agreement that they must at all times operate in a solvent manner and that any unusual or significant capital requirements must be cleared by the relevant Minister before agreement.

**KEY FINDING 12.3**

There are difficulties with getting the audits for the Jersey Heritage Trust signed, due to the auditor's concerns about the Jersey Heritage Trust as a going concern and the uncertainties around future funding. The current partnership agreement between Education, Sport and Culture and the Jersey Heritage Trust does not offer sufficient financial controls. There are audits yet to be signed and placed in the public domain, indicating real problems with financial reporting.

**KEY FINDING 13.2**

Whilst the Public Accounts Committee and the Comptroller and Auditor General did not consider the financial records to be held in an acceptable manner, it is obvious (by their inaction) that Education, Sport and Culture considered them to be sufficient – thereby demonstrating acceptance of lower standards than expected. We would reasonably have expected higher standards from a Department charged with education and the pursuit of excellence.

**KEY FINDING 13.4**

Despite its commitment to produce an annual business plan, the Jersey Heritage Trust made decisions outside of its proposals to the States Assembly.

**RECOMMENDATION 13.5**

The Jersey Heritage Trust's annual business plan should be binding, and any exceptional expenses which arise in the course of the year should be referred to Education, Sport and Culture for approval.

**KEY FINDING 14.3**

The multiplicity of cultural organisations in Jersey creates unhelpful fragmentation and rivalry.

**RECOMMENDATION 14.4**

Consideration should be given to setting up a joint membership facility for the public – which gives membership to both the Société Jersiaise and the Jersey Heritage Trust. It may be possible to obtain commercial sponsorship for this endeavour. Further, if three separate cultural bodies were to exist, the Public Accounts Committee believes it would be in the best interest for the relationships and respective responsibilities between the three to be clearly defined with the Jersey Heritage Trust and appropriately funded.

**RECOMMENDATION 14.6**

A complete review of commercial funding opportunities – such as shops, cafes, etc – requires further assessment in order to maximise opportunities.

**RECOMMENDATION 15.2**

The States need to decide what level of funding Heritage should receive. The Public Accounts Committee recommends that the grant to Jersey Heritage Trust is increased on the basis that GAAP (Generally Accepted Accounting Principles) accounting is adhered to, i.e. the Jersey Heritage Trust would take on responsibility for depreciation, refurbishment costs and so on. Direct funding from the Treasury is encouraged – albeit there should be no undue duplication in ensuring that funds are appropriately spent across the Treasury, Education and the Jersey Heritage Trust.

**KEY FINDING 16.7**

The current FTE (full time equivalent) posts at the Jersey Archive are fewer than those recommended by P.99/92 which established the Archive. As a result, the Archive is performing poorly in terms of public access despite the fact it has world class facilities.

**KEY FINDING 16.11**

When the States Assembly passes legislation it must ensure that funding is sufficient to allow the requirements of the law to be upheld. There is a statutory requirement for the Government to store its records in a suitable manner.

**RECOMMENDATION 16.12**

The increasing backlog at the Jersey Archive must be addressed either through additional funding or by increasing charges to other States entities for providing archive services. In

other words the Public Accounts Committee recommends a further investment of staff, funded through an increase of the direct grant or via more commercial 'user pays' policies.

**KEY FINDING 16.19**

Jersey Archive (and therefore the States Departments it serves) is currently not complying with the Public Records Law, due to under-funding and insufficient staffing.

**RECOMMENDATION 16.21**

Funding for the statutory duties of the Jersey Archive under the Public Records Law (and any subsequent Freedom of Information legislation) should be provided directly by the Treasury, thereby protecting this crucial function and ensuring that it is not used by the Jersey Heritage Trust to cover other deficits in its portfolio of services. Funding for the other activities of the Archive such as genealogy research should continue to be provided by the Jersey Heritage Trust. A performance criterion should be a meaningful reduction in the records backlog.

**KEY FINDING 16.24**

The Jersey Archive does not fit naturally within the Jersey Heritage Trust portfolio. However, there are some overlaps that make the continuance of this arrangement logical.

**RECOMMENDATION 16.25**

The Jersey Archive, and the employment of its staff, should remain under the auspices of the Jersey Heritage Trust. However, funding for the areas of work required under statutory duties, including funding of building maintenance and depreciation, should be made in the form of a ring-fenced grant that ensures there are sufficient funds to meet all legal requirements.

**KEY FINDING 16.32**

If Freedom of Information legislation is passed, the Jersey Archive will face significant pressure to catalogue and put many thousands of documents into the public domain, when they are already under-resourced. It is of concern that the inability to adequately fund the Public Records Law, and the fact that the manpower requirements were underestimated when passed, will be magnified by the proposed Freedom of Information legislation.

**RECOMMENDATION 16.33**

The grant to the Jersey Archive must be realistic given its possible statutory obligations under Freedom of Information legislation.

### **3. The Cultural Strategy of the States of Jersey**

- 3.1 The difference between an aspirational strategy and what can be afforded is often lost due to the manner in which the States conducts its business. It is questionable whether the benefit of aspirational documents formally passed as policy by the States Assembly outweighs the damage caused by policies not correctly costed or ramifications not fully identified. Propositions are passed without States Members having the information at hand to examine the financial realities of the situation.
- 3.2 During the Hearings on May 18<sup>th</sup> 2010 the gap between aspirational strategy and reality was readily acknowledged by the Director of the Education, Sport and Culture Department:

***Director of the Education, Sport and Culture Department:***

*... my understanding of the situation is that it was generally recognised that there was a funding crisis in Jersey Heritage Trust. In fact, you recognised that as States Members*

*because it was discussed when you debated the cultural strategy. So there was a general awareness that funding and activity were mismatched. I think that all I can say is that my understanding is that at the time there was an expectation that the Minister for Education would come back to the States to seek additional funding for the cultural strategy. That has not happened and I cannot comment on why it has not happened.*

3.3 ...and also by the Cultural Development Officer:

***Cultural Development Officer of the Education, Sport and Culture Department:***

*I think there is a mismatch between the aspirations to do more things and the reality of the funding. Clearly the situation at the moment in terms of funding is even more difficult than it was at the time when the cultural strategy was adopted. So I think part of the problem lies in trying to square these conflicting sets of aspirations. I think that is fairly clearly set out in the cultural strategy in a fairly direct way in terms of the bodies which are in receipt of States funding. I think it is quite difficult to acknowledge on the one hand that there is not enough money for those bodies and on the other hand to be saying we must expand in these various areas.<sup>1</sup>*

3.4 The above conflicts will always be prevalent where strategic documents with no financial and manpower detail are formally taken to the States Assembly for approval. The Strategic Plan is another example which could be open to abuse.

**3.5 KEY FINDING**

The value of formally adopting aspirational strategies is questionable, especially when there is a mismatch between those aspirations and the realities of funding.

**3.6 RECOMMENDATION**

The Privileges and Procedures Committee should examine this issue and review current arrangements. There is no point in passing aspirational strategies unless there is some realism in respect of execution and funding.

## **4. The relationship between the Jersey Heritage Trust (JHT) and the Education, Sport and Culture Department (ESC)**

4.1 The Committee considered to what extent the Education, Sport and Culture Department was responsible for the financial problems of the Jersey Heritage Trust. Historically, the Education, Sport and Culture Department has always managed the Jersey Heritage Trust with a very light touch. The Chairman of Trustees acknowledged this distance in the relationship:

***Chairman of Trustees, Jersey Heritage Trust:***

*When you create an arm's length organisation to do stuff that you could otherwise do in house, if you like, if I can put it that way, it is I think a reasonable presumption that you manage it at arm's length. I think that has probably from the time that I have been involved characterised the relationship between Jersey Heritage and the department. It may have been that the board felt that the presence from time to time of an Assistant Minister on the Board of Trustees provided a sufficient link back into the political level and the department to ensure that it was up to speed with what was going on. That might have been a misplaced expectation.<sup>2</sup>*

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<sup>1</sup> Transcript of the Public Hearing with the Director of Education Sport and Culture, May 18<sup>th</sup> 2010

<sup>2</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

- 4.2 It is clear, with hindsight, that either the Education, Sport and Culture Department was *not* 'up to speed with what was going on,' or possibly it was aware of the magnitude of the Trust's financial difficulties but did not act to rectify them.
- 4.3 Both scenarios are of concern to the Public Accounts Committee.
- 4.4 The Director of the Education, Sport and Culture Department referred to Financial Direction 5.4 (obtaining value for money from grants), and how the Jersey Heritage Trust was supposed to fit into that:

**Director of the Education, Sport and Culture Department:**

*The arrangements that were set out were they complied with financial direction 5.4, obtaining value for money from grants, obviously part of the Public Finance Law. The way that we went about it was each body, not just the Heritage Trust, each grant-obtaining body was required to set out its purpose in its constitution, which is agreed. Partnership agreements exist with each of the bodies. In fact the shadow Public Accounts Committee received an audit which highlighted the nature of those partnership agreements at the time. Each of them identifies the functional areas; in respect of the JHT (Jersey Heritage Trust), for example the JHT constitution, general operational aims and specific outcome-based performance measures. On top of that obviously we would expect each of the bodies to present an annual business plan, an annual report, annual accounts and quarterly reports on activity and performance.<sup>3</sup>*

- 4.5 However, in practice, this system obviously did not work, with the Jersey Heritage Trust showing an ever-growing deficit and no remedial action taken. Furthermore, the Jersey Heritage Trust had no audit committee, so as laudable as the above expectations appear, there was no way they could ever have been met.
- 4.6 The Chief Officer said he could not comment on why no action was taken by the Department to rectify this.

**Senator J.L. Perchard:**

*With these robust systems in place, what happened in 2005 at Education, Sport and Culture when the audited accounts of the Jersey Heritage Trust showed its first deficit of £65,000? What systems were flagged up and what actions did you take, particularly when 2006 showed a deficit of £180,000?*

**Director of the Education, Sport and Culture Department:**

*Obviously I cannot speak with complete confidence in this because I was not in post until 2008 but my understanding of the situation is that it was generally recognised that there was a funding crisis in Jersey Heritage Trust.<sup>4</sup>*

- 4.7 We pressed the Chief Officer for an indication of why years of deficits were allowed to build up with seemingly no remedial action taken:

**Senator B.E. Shenton:**

*£65,000 loss 2005, £180,000 loss 2006, £259,000 2007, £500,000 loss 2008, £182,000 loss 2009; what exactly was the department doing during this time?*

**Director of the Education, Sport and Culture Department:**

*It is difficult for me to comment on that. I can tell you what the Department has been doing over the last year and the Department over the last year, in fact over the last two years, has been in discussion with the trust and the Minister has been in discussion with the Trust. In fact, the Minister and the previous Minister had been in discussions with the Trust. One of the difficulties is that no additional money was forthcoming and there was no*

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<sup>3</sup> Transcript of the Public Hearing with the Director of Education Sport and Culture, May 18<sup>th</sup> 2010

<sup>4</sup> Transcript of the Public Hearing with the Director of Education Sport and Culture, May 18<sup>th</sup> 2010

*real will to see services reduce. We have had to work towards a compromise over time: services are now going to reduce, the Trust is now going to bring its spending into line with its income. I have got a greater degree of confidence now as Accounting Officer that there will be appropriate mechanisms in place to ensure financial propriety.*<sup>5</sup>

#### **4.8 KEY FINDING**

The Education, Sport and Culture Department's approach towards the Jersey Heritage Trust has been too 'laissez faire' and it has not made the Trust accountable for the funds it was using.

#### **4.9 RECOMMENDATION**

The Education, Sport and Culture Department needs to take back control of the Jersey Heritage Trust. Arrangements should be put in place for the Trust to make regular financial reports to them. This is particularly important in consideration of the fact that further funds may well be required by the Trust and appropriate steps taken to ensure the proper use of public funds. (The Public Accounts Committee acknowledges that some measures are currently being put in place by the Director of Education.)

- 4.10 The Comptroller and Auditor General's report found that the Education, Sport and Culture Department and the Jersey Heritage Trust had somewhat differing views of their relationship. This difference was summed up by the Director of Education in the hearing:

***Director of the Education, Sport and Culture Department:***

*I think we are moving from a time when there was a fairly light touch to this type of governance. The Comptroller and Auditor General in his report commented on the dysfunctional relationship and the fundamental basis of that dysfunctional relationship was that I suppose the department looked on the trust as an independent body and the trust felt that it had the safety of being connected to the States and therein lies a contradiction.*<sup>6</sup>

#### **4.11 KEY FINDING**

The Education, Sport and Culture Department saw the Jersey Heritage Trust as independent and responsible for its own actions while the Jersey Heritage Trust relied on the safety of the States to bail it out.

#### **4.12 RECOMMENDATION**

The relationship between the Jersey Heritage Trust and the States needs to be clearly defined. Furthermore, the Education, Sport and Culture Department needs to take greater responsibility for ensuring that the grant to the Trust is managed in a professional manner, with no overspends.

## **5. What was the steer from Education, Sport and Culture?**

- 5.1 The Committee asked the Chairman of Trustees how much direction was given to the Jersey Heritage Trust in regard to how it was expected to spend the funds supplied by the Education, Sport and Culture Department. At first he was unclear:

***Senator J.L. Perchard:***

*But was the Board of Trustees ever ... was it ever made clear to the Board of Trustees what the Education, Sport and Culture grant was there to do? Did you ever have a directive?*

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<sup>5</sup> Transcript of the Public Hearing with the Director of Education Sport and Culture, May 18<sup>th</sup> 2010

<sup>6</sup> Transcript of the Public Hearing with the Director of Education Sport and Culture, May 18<sup>th</sup> 2010

**Chairman of Trustees, Jersey Heritage Trust:**

*No, I mean the Comptroller and Auditor General I think probably quite accurately characterised that when he said that it effectively suggested that it was a payment made to Jersey Heritage by the Department in discharge of what it saw as its obligations.*

**Senator J.L. Perchard:**

*So there was never any clear directive of what was expected from you?*

**Chairman of Trustees, Jersey Heritage Trust:**

*I cannot say never but it would be interesting to see if ...*

**Senator J.L. Perchard:**

*Were you ever provided with some sort of clarity over the Department's longer term funding strategy to the trust?*

**Chairman of Trustees, Jersey Heritage Trust:**

*I was never particularly aware of the longer term funding strategy towards the Trust.*

**Senator J.L. Perchard:**

*So the Trust was ignorant of the strategy of the States?*

**Chairman of Trustees, Jersey Heritage Trust:**

*No, the States had a strategy. The States approved a cultural strategy and they gave us a big wodge of it to implement. The States also in the same document acknowledged that there was a need for funding to cover that. Sadly that funding was not forthcoming.*

**Senator J.L. Perchard:**

*So there was an assumption that funding would be forthcoming with the strategy but it was not, is that what you are saying?*

**Chairman of Trustees, Jersey Heritage Trust:**

*It is a part of the long and well hallowed tradition of willing the ends but not the means, Senator.<sup>7</sup>*

- 5.2 The Chairman of the Jersey Heritage Trust also confirmed that he was not aware of a steer from the Minister for the Education, Sport and Culture Department either:

**Senator J.L. Perchard:**

*The previous Minister never quite made it clear to you as to what was expected of the Jersey Heritage Trust for the monies that were being made?*

**Chairman of Trustees, Jersey Heritage Trust:**

*I think that is correct. Is that fair?*

**Director, Jersey Heritage Trust:**

*When ESC was formed we did develop, in fact the Heritage Trust drew up the first one, the basis of the partnership agreement. I think that the Department's view at the time was that something more broad brush than our early draft would be appropriate, so I think that in their own terms the department was clear what it wanted. I think that it was probably not expressed in the detail that I think we would all like to see now.<sup>8</sup>*

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<sup>7</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

<sup>8</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

- 5.3 The Director of the Jersey Heritage Trust is here highlighting an essential weakness of the Partnership Agreement between the Department and the Trust in that it was too broad and generalised to give sufficient direction. Also, a Partnership Agreement confers no obligation on the Trust.
- 5.4 The Chairman of the Jersey Heritage Trust stated that this Partnership Agreement was being replaced with a Service Level Agreement, but that this had not yet happened.

**Chairman of Trustees, Jersey Heritage Trust:**

*To the best of my knowledge, it is in the process of being replaced with a Service Level agreement and in fact part of that is at the moment, as I understand it, BDO is working with the department to define key performance indicators for Jersey Heritage. When they have agreed on what they think they should be we will have a look at them and then if we think we can manage them then we will roll.<sup>9</sup>*

- 5.5 The Director of the Education, Sport and Culture Department acknowledged that more stringent guidelines were certainly needed in defining the expectations of the Jersey Heritage Trust by the Education, Sport and Culture Department, and that this was to be put in place:

**Director of the Education, Sport and Culture Department:**

*I think where you have an arm's length body that has a liability or potential liability that the States could pick up then, as indicated in the Comptroller and Auditor General's report, it is probably necessary to have a high degree of intervention and direction and that is exactly where we are going with this. There needs to be a much clearer set of objectives, much clearer direction from the States as to what it wishes bodies such as Jersey Heritage Trust to provide and much clearer and much more rigorous governance, both within the organisations and between the organisations and the States Departments that manage them, regardless of whether it is Education, Sport and Culture or any other Department.<sup>10</sup>*

- 5.6 He further confirmed that there would be a Service Level Agreement implemented to replace the Partnership Agreement.<sup>11</sup>

**5.7 KEY FINDING**

A Partnership Agreement does not offer sufficient direction or obligation to the Jersey Heritage Trust.

**5.8 RECOMMENDATION**

A Service Level agreement should be implemented forthwith. This should include specific reference to procedures required for any capital outlays considered by the Trustees to be pre-agreed with the Minister for the Education, Sport and Culture Department, therefore acting as a mitigating measure to Key Finding 11.6.

## **6. Financial Management in the shadow of mounting deficits**

- 6.1 The following extract from the Comptroller and Auditor General's report illustrates a clear and growing problem:

*In every year since 2003, the Trust has reported a deficit in its annual accounts. To identify the deficits arising from the Trust's continuing activities, I have made certain adjustments to*

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<sup>9</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

<sup>10</sup> Transcript of the Public Hearing with the Director of Education Sport and Culture, May 18<sup>th</sup> 2010

<sup>11</sup> Transcript of the Public Hearing with the Director of Education Sport and Culture, May 18<sup>th</sup> 2010



the published accounts, for example to remove the effect of material exceptional items such as the refurbishment of historic sites. The adjusted deficits are as follows:

2004: £63,000 (surplus) (audited).  
2005: -£65,000 (deficit) (audited).  
2006: -£180,000 (deficit) (audited).  
2007: -£259,000 (deficit) (audited).  
2008: -£502,000 (deficit) (unaudited).  
2009: -£182,000 (deficit) (budget).<sup>12</sup>

- 6.2 When asked why the Jersey Heritage Trust had believed it could spend more money than it had, the Chairman of Trustees did not answer the question, instead taking issue with the way the deficit figure had been arrived at by the Comptroller and Auditor General:

**Senator B.E. Shenton:**

*The Trust lost money each year for the past number of years. What made the Trust feel that it could operate spending more money than it was allowed within its grant?*

**Chairman of Trustees, Jersey Heritage Trust:**

*We do not necessarily agree that, for example, provision for depreciation or refurbishment of exhibitions would go properly as part of our expenses and so therefore I have to say, with respect, that we felt that the deficit figure was somewhat inflated. That does not depart from the proposition that there was a deficit.*<sup>13</sup>

- 6.3 The Chairman of the Public Accounts Committee suggested that it was unrealistic not to allow for refurbishment in the budget when the requirement for refurbishment was inevitable:

**Senator B.E. Shenton:**

*But if you do not allow for provision for refurbishment, for example, how will you refurbish any attractions?*

**Chairman of Trustees, Jersey Heritage Trust:**

*Senator, you are probably one of the few Members of the States who understands why it is that the States accounts never provide for depreciation, dilapidation, reinstatement, replacement or impairment. It is a fact of life that all such expenditure historically by Jersey Heritage has been funded out of a capital grant. The last one we received was in 1999 for Mont Orgueil.*

**Senator B.E. Shenton:**

*So basically the Trust operates on the basis that they would require additional grants for refurbishment?*

**Chairman of Trustees, Jersey Heritage Trust:**

*Unless the whole world changed in order to operate on a generally accepted accounting principles line, yes.*<sup>14</sup>

## 6.4 KEY FINDING

The Jersey Heritage Trust expected extra capital grants over and above their normal grant as a matter of course.

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<sup>12</sup> Jersey Heritage Trust, Financial Review – report by the Comptroller and Auditor General October 2009  
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<sup>13</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

<sup>14</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

## 6.5 RECOMMENDATION

The Public Accounts Committee has highlighted in previous reports the value of using good accountancy practice throughout the States. On the basis that a clearly defined Service Level Agreement will identify depreciation and refurbishment responsibilities, the grant should be increased to a level that takes these basic requirements into account. Furthermore any under-spends should be allowed to be carried forward, without fear of loss or grant reduction, to ensure that a capital sum can be accumulated in anticipation of any significant capital work. The Jersey Heritage Trust must be satisfied that it holds staff of sufficient calibre to carry out professional oversight.

## 7. Was there an agenda?

- 7.1 The Chairman of Trustees expressed his concern that the Jersey Heritage Trust could have been viewed as wilfully overspending in the expectation that the States would bail it out:

**Chairman of Trustees, Jersey Heritage Trust:**

*No, and I will say that there was a paragraph in the Comptroller and Auditor General's report that I strongly took exception to both personally and on behalf of the Trustees because there was an implication at one point that the trustees were almost laughing behind their hands while they palmed on obligations in the knowledge that the States would have to bail them out. Now the ...*

**Comptroller & Auditor General:**

*Sorry, could you refer me to the paragraph concerned and the words that I in fact used? I do not remember using the words "laughing behind your hands."*

**Chairman of Trustees, Jersey Heritage Trust:**

*Yes, it is paragraph 71 and the first part of paragraph 73 which if you like I will read: "In contrast as I have explained the trustees appear to have assumed that the States would eventually be obliged to ensure that the trust could meet its financial liabilities. The result has been that an overdraft has been accumulated largely by incurring operating deficits." Then at the beginning of 73: "The actions of the Trust will thus have placed the Department in the position of almost a guarantor of liabilities over whose assumption it appears to have little influence." Now as I say I took exception to that because I felt that it suggested that the Trustees had embarked on this as a deliberate course of action and I have to say to you that in no meeting of trustees that I have ever participated in was there anything other than concern for how the financing of the trust and how the States money was applied. Simple as that.<sup>15</sup>*

- 7.2 Yet it is impossible for the Trustees not to have known that the Trust was running on an ever increasing deficit.
- 7.3 Furthermore, the unwise purchase of the amphibious vehicles was made in the full knowledge that this would leave the trust in financial difficulties from which only the taxpayer could possibly save it. These actions could be viewed at worst as deliberate, and at best amateurish.

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<sup>15</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

**Martin Mageee**

*... I can understand the reasons why you are taking that quite personally but I think the point has been made a couple of times that it really is you will pick up ... the tab will be picked up by the States of Jersey.*<sup>16</sup>

**7.4 KEY FINDING**

The Jersey Heritage Trust did not budget realistically within its grant and instead expected the States to provide any extra funds required.

**7.5 RECOMMENDATION**

Ultimately the Jersey Heritage Trust is funded by the States, and realistically it would be difficult to defend a situation whereby the States did not step in as lender of last resort. However there has to be accountability for failure and the Jersey Heritage Trust should realise that consistent overspending is failure. Our recommendation is that any future overspends should be examined in detail, and consideration should be given to dissolving the Trust and moving the control back to the States if it is unable to demonstrate the ability to manage its affairs in a financially acceptable manner. In other words the Jersey Heritage Trust has used up most of its nine lives.

## **8. Political involvement in the Jersey Heritage Trust**

- 8.1 During the Public Hearing, the Director of the Jersey Heritage Trust explained the composition of and the political representation on the Trust:

**Director, Jersey Heritage Trust:**

*Jersey Heritage Trust is an incorporated body and has a constitution approved by the States in 1999. It is governed by a board of trustees, up to 12 trustees. The trustees are recruited according to a process agreement with the Appointments Commission. The president of the Société is a trustee. There is a member appointed by the States in Simon Crowcroft and previously has been a member for the time being of the Education Committee.*

**Senator B.E. Shenton:**

*Does the States-appointed trustee have a full attendance record?*

**Chairman of Trustees, Jersey Heritage Trust:**

*I think that is information we have provided previously to somebody. I am not quite sure who it was. No, he has not always been able to attend because of States business. I think the same was probably true when the relevant Assistant Minister was also on the board of trustees as well.*<sup>17</sup>

- 8.2 Subsequent to the hearing, the Public Accounts Committee requested a breakdown of the attendance record of the political members of the Trust since 2004. The figures show that Connétable Simon Crowcroft and Deputy Carolyn Labey attended less than half of the meetings of the Trustees to which they were invited. Both politicians also missed three consecutive meetings at least once.<sup>18</sup> *(The detailed figures are supplied in Appendix 2 of this report.)*
- 8.3 The Constitution of the Jersey Heritage Trust states that:

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<sup>16</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

<sup>17</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

<sup>18</sup> Letter from the Director of Jersey Heritage Trust, 27<sup>th</sup> May 2010

*“The Board of Trustees may, by majority vote, terminate the appointment of any Trustee upon the happening of any of the following events, namely that the Trustee - ...has been absent from three consecutive meetings of the Jersey Heritage Trust without the permission of the Jersey Heritage Trust.”<sup>19</sup>*

#### **8.4 KEY FINDING**

By their absence from three consecutive meetings of the Jersey Heritage Trust, both political Members of the Trust therefore provided sufficient reason to have their Membership of the Trust terminated. However, their appointments were not terminated. This implies that the Education, Sport and Culture Department was content with poor oversight, as it did not address the issue.

#### **8.5 KEY FINDING**

The inclusion of politicians on the Board of Jersey Heritage Trust acted as a negative rather than a positive. This was because the Education, Sport and Culture Department believed that the political representatives were undertaking an oversight function, yet there is no evidence that this actually occurred.

#### **8.6 RECOMMENDATION**

With a defined Service Level Agreement, the Jersey Heritage Trust should be free to operate without political incumbents.

## **9. The role of the Minister for Education, Sport and Culture**

9.1 The Chairman of Trustees advised that the Jersey Heritage Trust had proposed to reduce their overdraft in 2008 but the Minister for the Education, Sport and Culture Department at the time (Senator Vibert) had prevented them:

***Chairman of Trustees, Jersey Heritage Trust:***

*This is not the first time that we have tried to confront this, as you will probably know, and as the Comptroller and Auditor General acknowledged in his report we did advance a proposal to reduce the overdraft and eliminate the deficit in 2008 but we were told basically not to proceed with that. What we have done since then and since the ...*

***Senator J.L. Perchard:***

*Sorry, can I interrupt you there? By whom and on what grounds?*

***Chairman of Trustees, Jersey Heritage Trust:***

*By the incumbent Minister on no particular grounds. I do not recall the letter in detail. I think we were told not to do it.<sup>20</sup>*

9.2 This is also confirmed in the Comptroller and Auditor General's report:

*'In 2008, the Trustees prepared a plan to end the series of deficits and produce an annual surplus at a level which would permit the repayment of the Trust's overdraft within a reasonable period, assuming that no additional grant would be made available by the Department. The plan developed by the Trust envisaged not the reduction of costs at the Trust's most expensive sites but the closure of at least two of the Trust's sites. When this plan was shared privately with the Department, the Minister's reaction was to urge that no action should be taken before the beginning of 2009. The consequence of this delay was to*

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<sup>19</sup> Constitution of the Jersey Heritage Trust

<sup>20</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

*lengthen the period for which the Trust continued to operate at a deficit, building up its overdraft. In other words, the Trust's financial condition continued to worsen.*<sup>21</sup>

### 9.3 KEY FINDING

The Minister for the Education, Sport and Culture Department opposed savings at the Jersey Heritage Trust and the Public Accounts Committee is unable to identify clear or justifiable grounds for this. The actions of the Minister, who appeared to put political preferences ahead of prudent direction, were unacceptable. Similarly, the Management of the Jersey Heritage Trust was far too weak and failed to meet its responsibilities by neglecting to robustly question the lack of action by the Minister.

### 9.4 RECOMMENDATION

The Jersey Heritage Trust and the Education, Sport and Culture Department need to understand that their responsibilities do not disappear simply because the problem has been passed to the Minister. Furthermore they operate as 'checks and balances' on the Minister as much as the Minister operates as 'checks and balances' on them. It would be very dangerous for Departments to give their Minister unconditional control as that individual may be influenced by personal or political considerations. Where a Department is operating over budget action must be taken to rectify the situation in a timely manner. If a Minister stands in the way of prudent action the matter must be reported to the Treasurer of the States and the Comptroller and Auditor General.

9.5 The Chairman said the Trust had felt beholden to the Minister's request:

***Chairman of Trustees, Jersey Heritage Trust:***

*We are an independent or better put possibly an arm's length organisation. I think it might be a little bit of a stretch to say that we are completely independent because after all we do get two-thirds of our funding, or 55 per cent of our funding, from the States and from that department. So, not to take the Minister's views into account I think might be a little foolish on our part.*<sup>22</sup>

9.6 Our Committee asked the Director of the Education, Sport and Culture Department to explain why a Chief Officer should not step in when public funds were at risk:

***Senator B.E. Shenton:***

*The Minister was up for re-election at that time and in effect he asked for the plan to be held over until after the election. That is the facts. Where does your responsibility lie? Does what the Minister says, that is it? Surely you have a responsibility to the people of the Island. If a grant-aided body is running a series of deficits and there is a plan put before you and the Minister says to hold it over until after the election, how does that leave you, how does that leave the taxpayer?*

***Director of the Education, Sport and Culture Department:***

*Firstly the Minister is accountable for the funds and I am accountable to ensure that they are used appropriately, not misused and there is no overspending. I think when you have a situation such as that arising it is somewhat difficult. If there is a danger that the Department would become in any way overspent then that would cause considerable difficulties for me.*

***Comptroller & Auditor General:***

*Did you say the Minister is responsible for funds?*

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<sup>21</sup> Jersey Heritage Trust, Financial Review – report by the Comptroller and Auditor General October 2009  
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<sup>22</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

**Director of the Education, Sport and Culture Department:**

*I am quoting, I think, from the Financial Direction 5.4, which I do have somewhere here.*<sup>23</sup>

9.7 However, Financial Direction 5.4 does not say that the Minister is responsible for funds.

9.8 In fact, Financial Direction 5.4 states quite the contrary:

*“It is the awarding Department’s responsibility to ensure that the expenditure of public money by the recipient is properly audited and spent for the purpose which it was intended.”*<sup>24 25</sup>

9.9 Regarding the purchase of the amphibious vehicles, the Director of the Education, Sport and Culture Department stated that this decision was not on his watch.

**Director of the Education, Sport and Culture Department:**

*At the risk of using that phrase again, I think the purchase was in 2007.*

**Senator J.L. Perchard:**

*Not on your watch.*

**Director of the Education, Sport and Culture Department:**

*So I did not have a reaction.*<sup>26</sup>

9.10 When it was pointed out that given his appointment in January 2008, the purchase was in fact on his watch, the Director of Education’s answer was also unclear:

**Senator J.L. Perchard:**

*Just for the record, Mr. Chairman: “Amphibious vehicles purchased for use on the West Park to Elizabeth Castle route, briefing report presented to the States on 8th July 2008 by the Minister for Education, Sport and Culture. Point 10, February 2008 the decision to sever the contract and buy the vessels was made.” So, February 2008.*

**Director of the Education, Sport and Culture Department:**

*I cannot recall a reaction.*<sup>27 28</sup>

**9.11 KEY FINDING**

There appears to be confusion about who has responsibility for the funds, and a lack of accountability from the Chief Officer.

**9.12 RECOMMENDATION**

Financial Direction 5.4 needs to be re-circulated to all relevant persons to ensure that there is full understanding of responsibility and ultimately, accountability.

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<sup>23</sup> Transcript of the Public Hearing with the Director of Education Sport and Culture, May 18<sup>th</sup> 2010

<sup>24</sup> Financial Direction 5.4 Section 5.13

<sup>25</sup> The Director of Education Sport and Culture submitted the following written response to this point on 1<sup>st</sup> July 2010: *“This point has been misinterpreted. The point that was being made was that an accounting officer is not responsible for making decisions on policy issues i.e. what the Minister decides will be funded. Rather the accounting officer is responsible for the implementation of policy and must ensure financial propriety and value for money.”*

<sup>26</sup> Transcript of the Public Hearing with the Director of Education Sport and Culture, May 18<sup>th</sup> 2010

<sup>27</sup> Transcript of the Public Hearing with the Director of Education Sport and Culture, May 18<sup>th</sup> 2010

<sup>28</sup> The Director of Education Sport and Culture submitted the following written response to this point on 1<sup>st</sup> July 2010: *“The reaction was as follows: The Minister was concerned that he had not been consulted and requested a full report from the Trust. The Department requested the Chief Internal Auditor to consider the robustness of the business case that underpinned the purchase.”*

## 10. The Trust that is not really a Trust

- 10.1 It is generally considered that it is surely impossible for a Trust to go bankrupt as Trustees are normally expected to personally bail a Trust out. However, the Jersey Heritage Trust was not strictly speaking a Trust in this regard, as it was registered with the Royal Court and could therefore go bankrupt.
- 10.2 In fact, the Chairman of the Jersey Heritage Trust was at pains to point this out:

**Chairman of Trustees, Jersey Heritage Trust:**

*Can I just pause for a second on the use of the word Trustee. We are not Trustees in the sense of a Trustee under the Trust Law. There is some authority for this. We are closer to being Company Directors. That still obviously places responsibilities and constraints on our freedom for action but we are not quite the same as a Trustee.<sup>29</sup>*

- 10.3 However, whether a Trustee or Company Director, this does not absolve the individuals of responsibility.

**Senator B.E. Shenton:**

*But as a Company Director you would not allow a company to run insolvent and it would be against the law to do so.<sup>30</sup>*

- 10.4 This echoes the report of the Comptroller and Auditor General which stated that:

*'one would expect that the trustees would insist that the Trust should operate within the resources that could reasonably be expected to be available.'<sup>31</sup>*

### 10.5 KEY FINDING

The Jersey Heritage Trust is not a Trust in the literal sense. The Trustees are under no personal obligation to bail it out when it is in trouble. Therefore there is little personal incentive to manage the Trust in a prudent manner.

### 10.6 RECOMMENDATION

Financial controls need to be tightened and all Trustees need to understand that responsibility comes with a place on the Board, it is not just a position to make a curriculum vitae look good. All Trustees should be fully aware of the Trust's financial position, and understand their responsibility to ensure that financial management is to the required standard.

## 11. The purchase of amphibious vessels for use on the West Park to Elizabeth Castle route

- 11.1 The unwise decision to purchase the amphibious vehicles to the tune of approx half a million pounds was a major contributory factor to the decline in Jersey Heritage Trust's financial health. The Comptroller and Auditor General's report states in no uncertain terms that the Trust did not protect its commercial interests.

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<sup>29</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

<sup>30</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

<sup>31</sup> Jersey Heritage Trust, Financial Review – report by the Comptroller and Auditor General October 2009

...when the management of the ferry service by the previous operators, Pure Adventure (Jersey) Limited, was proving unsatisfactory, the Trust did not take sufficient care to preserve the Trust's commercial interests. In particular, it suggests that the Trust failed to preserve its right to claim that the operator's poor performance had so breached the terms of the contract that it had repudiated the contract. As a result of this failure, when an agreement was reached by which the Trust took over management of the ferry and the operator withdrew, the Trust was obliged to make a payment to the operator (of the order of £120,000) for the benefit that the operator would have enjoyed had the contract continued.<sup>32</sup>

11.2 The Public Accounts Committee asked how the above decision had been arrived at:

**Senator B.E. Shenton:**

*Going back to the £500,000 purchase, did you ask the Minister before you purchased that or did you do that as an independent body?*

**Chairman of Trustees, Jersey Heritage Trust:**

*My recollection is that it was decided by the Board of the Trust and the Minister was told later. I think that is right.*<sup>33</sup>

11.3 Our Committee noticed a contradiction here. Earlier the Chairman of Trustees had claimed that the same Minister for the Education, Sport and Culture Department had prevented the Jersey Heritage Trust reducing their overdraft, yet here was the expenditure of 500,000 without the Minister's sanction. The Chairman of Trustees was forced to accept the logic of this:

**Senator B.E. Shenton:**

*The Minister was told later? So when it comes to spending money you feel that you can do it independently but when it comes to cutting costs you need the approval of the Minister to do so?*

**Chairman of Trustees, Jersey Heritage Trust:**

*I accept the burden of your question, Senator, and there is no answer to that. I can either be a knave or a fool.*<sup>34</sup>

11.4 It also became apparent that the Jersey Heritage Trust made this purchase of the amphibious vehicles without consulting the Department who it knew must inevitably pay for them:

**Director of the Education, Sport and Culture Department:**

*I think the first thing I would say is around the borrowing and of course one of the issues that led to the borrowing was the purchase of the DUKW's. We were not aware of that purchase until after it had effectively been authorised.*<sup>35</sup>

11.5 In the end, the Department did have to 'make good,' acting as the banker of last resort;

**Comptroller and Auditor General:**

*A little earlier you said, I think, that by the end of 2009 you were in a position where you had no choice but to make good the borrowing because the States could not afford to allow the trust to go down.*

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<sup>32</sup> Jersey Heritage Trust, Financial Review – report by the Comptroller and Auditor General October p22

<sup>33</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

<sup>34</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

<sup>35</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010



**Director of the Education, Sport and Culture Department:**  
*That is effectively what I was saying.*<sup>36</sup>

#### 11.6 KEY FINDING

The Jersey Heritage Trust purchased the DUKW's out of the annual revenue budget without consulting the Minister of the Department. Yet the Education, Sport and Culture Department had to make good for this overspending.

- 11.7 The previous vehicle operators were not providing an adequate service, yet the Jersey Heritage Trust not only purchased the DUKW's, but also made a payment to the previous operators to compensate them for the loss of the contract. The Public Accounts Committee asked for a clarification of why the Trust had not acted in a more prudent manner, rather than spending these funds unnecessarily:

**Senator B.E. Shenton:**

*I suppose the obvious question is why did the Trust not act better in protecting its contractual rights?*

**Chairman of Trustees, Jersey Heritage Trust:**

*Well, if I can just take a second to put it a little bit in context. We were faced with a situation whereby the existing provider of amphibious ferries told us unequivocally that they wanted to withdraw from providing the service. It was not a question of whether they could be persuaded to be paid more or to do it some other way, they wanted out, and ideally they wanted us to buy the vehicles. So we were faced with the possibility of being unable to fulfil the obligations that we felt we had to get access to Elizabeth Castle.*<sup>37</sup>

- 11.8 The Chairman of the Public Accounts Committee pointed out that there was no such obligation to provide transport to the castle:

**Senator B.E. Shenton:**

*With the obligations to who?*

**Chairman of Trustees, Jersey Heritage Trust:**

*Under the usufruct between us and the States of Jersey.*

**Comptroller & Auditor General:**

*The phrase in the usufruct is to use all reasonable endeavours.*

**Chairman of Trustees, Jersey Heritage Trust:**

*Yes. I accept that.*

**Comptroller & Auditor General:**

*It is not an unqualified obligation to provide access.*<sup>38</sup>

#### 11.9 KEY FINDING

The Jersey Heritage Trust spent public funds to purchase the amphibious vehicles, and further funds to compensate the previous operator, despite the fact that they had no legal obligation to do so.

- 11.10 As seen above, the Jersey Heritage Trust considered that refurbishment was a capital expense that was outside of their ordinary grant.

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<sup>36</sup> Transcript of the Public Hearing with the Director of Education, May 18<sup>th</sup> 2010

<sup>37</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

<sup>38</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

- 11.11 However, this was not the view taken with the purchase of the amphibious vehicles, which were purchases from their ordinary annual revenue budget. This decision must have been made in the full knowledge that this would leave the Trust at a substantial deficit going forward.
- 11.12 If there was not a confident expectation that the States would pick up the tab, then what was the expectation?

**Senator B.E. Shenton:**

*What sort of slightly confuses me is if we go back to the earlier part of this interview where you said you do not count refurbishment as part of your grant. It would be something where you would go to ESC and ask for an additional grant. So it almost implies that capital expenditure or any exceptional expenditure is separate from your grant. Yet .. when this happened you did not go to the Minister and say: "I could do with £500,000 to pay for the DUKW's." You took it out of revenue knowing that you were effectively going to run at a substantial loss for that year by doing so. Now you would be very critical of directors of a company that ran a company in that way. Why did Jersey Heritage Trust operate in such an amateurish way, and it was very amateurish?*

**Chairman of Trustees, Jersey Heritage Trust:**

*Well, I am sorry you feel that it was amateurish. I will say again that it was effectively driven by our feeling that we had an obligation to keep access to the castle running and the fact that we felt able to sustain an overdraft.*

**Senator B.E. Shenton:**

*But you also have an obligation to operate within your grant.*<sup>39</sup>

**11.13 KEY FINDING**

The Senior Management of the Jersey Heritage Trust had no justification for the purchase of the DUKW's other than a feeling of obligation to provide transport to the castle. Yet, it has been established that no such obligation existed, and no similar obligation to operate within a grant of public funds was apparently felt. There are a few redeeming considerations in respect of the purchase of the DUKW's. However, it is a major concern that an item of significant expenditure can be undertaken without the consent of the Department or the States Assembly.

**11.14 RECOMMENDATION**

Financial considerations must at all times take precedence over perceived duties. All grant aided bodies should be advised within their Service Level Agreement that they must at all times operate in a solvent manner and that any unusual or significant capital requirements must be cleared by the relevant Minister before agreement.

## **12. Financial Reporting and Corporate Governance**

- 12.1 It was noted by the Public Accounts Committee that the most recent set of accounts of the Jersey Heritage website were from 2007, and that this indicated some issues with financial reporting and corporate governance.

**Senator B.E. Shenton:**

*There was some criticism within the report about the level of management accounts that was available to the trustees. Is this something that has been improved upon since the publication of the report?*

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<sup>39</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

**Chairman of Trustees, Jersey Heritage Trust:**

Yes, it has. A couple of things have happened and this was part of the stuff that we have taken on board from the Comptroller and Auditor General's review. (1) We have appointed an honorary financial adviser. (2) We have recruited three additional Trustees. We had quite a large number of vacancies on the Board, mainly because we did not feel that it was sensible to go out and try to recruit Trustees while we were still figuring out whether we were wading or drowning and once we had stopped drowning we went out and specifically sought to recruit people with commercial and financial experience and have got three excellent new Trustees, two with financial and business experience and another with substantial human resources and business experience. We will recruit more later on in the year and working with BDO we have developed, we have recreated the Finance and Audit Committee. It has had a meeting, and it has looked at management accounts and those management accounts have been brought up to speed in consultation with BDO on an activity basis.

**Senator B.E. Shenton:**

So if I was a Trustee I would be able to ascertain what the income and expenditure for say La Hougue Bie was in a certain month?

**Chairman of Trustees, Jersey Heritage Trust:**

Yes, but not for 2006.

**Mr. M.P. Magee:**

I made a comment earlier on about your website and the fact that the last set of accounts that you could access were 2007. I assume that is partly to do with your financing issues?

**Chairman of Trustees, Jersey Heritage Trust:**

Yes, well the problem with the 2008 accounts was that the auditors wanted to qualify them on the principle of going concern and the problem with that was in order to effectively get them to issue qualified accounts would have cost us quite a lot more in audit fees because of the additional work they felt they would have needed to have done to produce qualified accounts and we did not think that it was worthwhile spending the money.<sup>40</sup>

- 12.2 The Financial Director of the Jersey Heritage Trust admitted that the uncertainty about the Trust as a going concern moving forward was a major concern for the auditors:

**Financial Director, Jersey Heritage Trust:**

Yes, part of the problem of course is that if you use a big firm like E.Y. (Ernst and Young) which we do and have done in the past is that of course it is very difficult to get them to schedule their audit any time other than the summer, but we have re-engaged them and in fact we re-engaged them in completing their final audit work for 2008 and going forward for 2009 6 weeks ago, once we had the announcements that funds would be released to enable us to complete our reconstruction and obviously we had resolved our insolvency issues towards the end of 2009. I mean the problem for audit is until we had got funding for the restructure it was unclear, or would have been unclear to them, whether or not we would remain a going concern going forward. So removing those uncertainties is a big step. The next uncertainty of course continues which is how the revenue funding gap between what is needed going forward, £2.2 million and what we have available, £2 million will be filled.<sup>41</sup>

**12.3 KEY FINDING**

There are difficulties with getting the audits for the Jersey Heritage Trust signed, due to the auditor's concerns about the Jersey Heritage Trust as a going concern and the

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<sup>40</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

<sup>41</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

uncertainties around future funding. The current partnership agreement between the Education, Sport and Culture Department and the Jersey Heritage Trust does not offer sufficient financial controls. There are audits yet to be signed and placed in the public domain, indicating real problems with financial reporting.

## 13. Financial Reporting to the Education, Sport and Culture Department

13.1 The Constitution of the Jersey Heritage Trust states that:

*“The Jersey Heritage Trust shall keep accounts in such form as shall be acceptable to the Education, Sport and Culture Committee.”<sup>42</sup>*

### 13.2 KEY FINDING

Whilst the Public Accounts Committee and the Comptroller & Auditor General did not consider the financial records to be held in an acceptable manner, it is obvious (by their inaction) that the Education, Sport and Culture Department considered them to be sufficient – thereby demonstrating acceptance of lower standards than expected. We would reasonably have expected higher standards from a Department charged with education and the pursuit of excellence.

13.2 In its Constitution, the Jersey Heritage Trust also makes the following commitment to provide an annual business plan:

#### ***Accountability to the States of Jersey***

*In recognition of the funds voted annually by the States of Jersey to the Jersey Heritage Trust to enable the Trust to carry out its purpose and recognising the agreements between the States of Jersey and the Jersey Heritage Trust in respect of the castles and the collections owned by the States of Jersey, the board of trustees shall present annually to the Education, Sport and Culture Committee a business plan, a report of the activities and achievements during the previous year and the audited accounts for the previous year of the Jersey Heritage Trust.<sup>43</sup>*

13.3 But there is little point in producing a business plan if officers are allowed to deviate from it without any accountability or responsibility. The purchase of the DUKW's without consultation is a case in point.

### 13.4 KEY FINDING

Despite its commitment to produce an annual business plan, the Jersey Heritage Trust made decisions outside of its proposals to the States Assembly.

### 13.5 RECOMMENDATION

The Jersey Heritage Trust's annual business plan should be binding, and any exceptional expenses which arise in the course of the year should be referred to the Education, Sport and Culture Department for approval.

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<sup>42</sup> Constitution of the Jersey Heritage Trust

<sup>43</sup> Constitution of the Jersey Heritage Trust

## 14. The relationship between the Jersey Heritage Trust (JHT) and other cultural organisations in Jersey

- 14.1 It was noted that the Société Jersiaise, the Jersey Heritage Trust and the National Trust for Jersey were very disparate entities with a less than ideal mutual relationship. In fact, the relationship between the Société Jersiaise and the Jersey Heritage Trust could almost be described as acrimonious. For example, they operate competing Membership schemes.
- 14.2 There were some complex arrangements in place between the organisations, for example, some items in the Jersey Museum are owned by the Société Jersiaise but were insured by the Jersey Heritage Trust because the Société could not afford insurance. Hamptonne is owned by the National Trust, while the Société owns La Houge Bie, but both are managed by the Jersey Heritage Trust. This is a far from ideal situation.

### **Senator B.E. Shenton:**

*Is there room, I mean in Jersey we have the Jersey Heritage Trust, we have the Société Jersiaise, we have the National Trust and so on and so forth. There appears ... I mean I am just a layman but there seems to be a bit of competition between the 3 to get my membership and certainly if I join Société I think I get into the castles for free, if I join Heritage I get into the castles free and so on and so forth. Is there room for ... you know, is there room for so many bodies over here and is there a place for Jersey Heritage Trust I suppose at the end of the day?*

### **Chairman of Trustees, Jersey Heritage Trust:**

*Well, I mean the 3 bodies do different things, in many ways very different things and I think one of the reasons why Jersey Heritage was brought into existence was to try to do some of the things that closely involved the Société because they involved the Société's collections, but that perhaps the Société itself was not best placed to do. The National Trust I think you have to kind of put off to one side slightly because it is a somewhat different organisation. Last year when we introduced our membership campaign there was a little bit of a flurry of disquiet among our fellow organisations that this might involve some cannibalism of their membership. I am happy to say that the results would appear to show that our membership has gone up and that their membership has not gone down, so to the extent that it has satisfied the reasons for our introducing a membership campaign to try and get more people to come and see us that seems to have worked. I mean we do have a formal accord with the Société Jersiaise as to how we operate. The president of the Société sits on the Board of Trustees and we have an effective working relationship, although we are very different organisations. We will often see eye to eye.<sup>44</sup>*

### **14.3 KEY FINDING**

The multiplicity of cultural organisations in Jersey creates unhelpful fragmentation and rivalry.

### **14.4 RECOMMENDATION**

Consideration should be given to setting up a joint membership facility for the public – which gives membership to both the Société Jersiaise and the Jersey Heritage Trust. It may be possible to obtain commercial sponsorship for this endeavour. Further, if three separate cultural bodies were to exist, the Public Accounts Committee believes it would be in the best interest for the relationships and respective responsibilities between the three to be clearly defined with the Jersey Heritage Trust and appropriately funded.

- 14.5 The Public Accounts Committee pointed out that an approach more akin to that of a private commercial enterprise might be helpful in creating income:

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<sup>44</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

**Senator B.E. Shenton:**

*If a private entrepreneur was running something like Mont Orgueil they may say: "Well, we will not charge anyone to come in which means that we will get 4 or 5 times the footfall which means that we can make money on the catering and the shop and so on and so forth" so you would not say that it would lose £1.1 million. The figure might be nothing at all based on how you run the site.*<sup>45</sup>

**14.6 RECOMMENDATION**

A complete review of commercial funding opportunities – such as shops, cafes, etc – requires further assessment in order to maximise opportunities.

## **15. Moving Forward**

**15.1 Chairman of Trustees, Jersey Heritage Trust:**

*Well I again refer and take the liberty of paraphrasing the Comptroller and Auditor General's report. It is time for the States to decide how much heritage it wants to buy.*<sup>46</sup>

**15.2 RECOMMENDATION**

The States need to decide what level of funding Heritage should receive. The Public Accounts Committee recommends that the grant to Jersey Heritage Trust is increased on the basis that GAAP (Generally Accepted Accounting Principles) accounting is adhered to, i.e. the Jersey Heritage Trust would take on responsibility for depreciation, refurbishment costs and so on. Direct funding from the Treasury is encouraged – albeit there should be no undue duplication in ensuring that funds are appropriately spent across the Treasury, Education and the Jersey Heritage Trust.

## **16. Case Study - Jersey Archive**

**16.1 Manpower implications.**

Proposition 99 of 1992, which established the Archive, states that:

*'When fully operational the Archives Service will require a minimum of six full time staff (or part time equivalents). Two of these should be trained graduate archivists (the Archivist and Deputy Archivist), two non-graduate archive assistants, together with a conservator and at least one support staff (porter/messenger). **It is vital, however, that the Service be adequately staffed from the outset, as setting up records management programmes and identifying records for permanent preservation will be very labour intensive.***<sup>47</sup>

16.2 In 2004 the Archive was subject to staff cuts and current staff provision in 2010 is as follows:

- \* Head of Archives and Collections
- \* Senior Archivist
- \* Archivist

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<sup>45</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

<sup>46</sup> Transcript of the Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

<sup>47</sup> P.99 1992 Lodged au Greffe on 14<sup>th</sup> July 1992 by the Policy and Resources Committee, page 11 paragraph 27

- \* 2 full time Archives Assistants
- \* 2 part time Archives Assistants
- \* 1 part time Conservator
- \* 1 part time Caretaker

This gives a total of 7.5 FTE (full time equivalent) posts - a reduction of 32.7% on the 11 staff in place when the Public Records (Jersey) Law was passed in 2002.<sup>48</sup>

- 16.3 The reduction in staff also mean that the Archive is only open for three days a week (and one Saturday a month on a sponsored basis), meaning that it is very difficult for individuals who work full time to attend the Archive.
- 16.4 Partly for this reason, in his Audit Inspection Report on the Jersey Archives Service in August 2008, NW James states that the Jersey Archive fell below the UK expected standards for archive services. The report states that while the building itself is in the top 8% of Archive buildings in the UK, it is in the lowest 5% for opening hours.<sup>49</sup>
- 16.5 This indicates a significant waste in the initial investment of the construction of the building, if there is relatively little access to the public.
- 16.6 This sentiment was echoed by the Chairman of the Jersey Heritage Trust in the public hearing:

**Chairman of Trustees, Jersey Heritage Trust:**

*The Archive is an interesting story inasmuch as the States decided to and funded the building of what is probably one of the top ten archive centres in the British Isles and it handed it over to Jersey Heritage to run it and by and large I believe, based on the evaluation by the National Archive, that we run it well. It is in, in terms of physical facilities, the top 8 per cent of archives in the United Kingdom. It is in the bottom 10 per cent because of the lack of public access, because we cannot afford to run it more than three days a week, so we fail the national standard even though it is a world class building. The other thing, and we touched on this before, is that when the Archive was handed over no provision was made for depreciation, dilapidation, reinstatement and so forth which at some point is bound to be necessary. It is partly a problem of States accounting and it is partly a problem of willing the end but not the means.<sup>50</sup>*

**16.7 KEY FINDING**

The current FTE (full time equivalent) posts at the Jersey Archive are fewer than those recommended by P.99/92 which established the Archive. As a result, the Archive is performing poorly in terms of public access despite the fact it has world class facilities.

**16.8 Cataloguing Backlog at the Jersey Archive**

At the end of 2009, the cataloguing backlog stood at 21.8 years. It now stands at 24 years.<sup>51</sup>

- 16.9 NW James' report is minded that more staff are required, stating that:

*'The Records Advisory Panel and Jersey Heritage Trust should...determine whether additional mechanism need to be put in place to ensure the efficient implementation of the Public Records law and , if so, to make recommendations accordingly. The current workload of the Archivist is unsustainable in the longer term. ..The current complement of three professional archivists is inadequate to tackle the range of duties currently*

<sup>48</sup> Information supplied by the Head Archivist, 21<sup>st</sup> May 2010

<sup>49</sup> Audit Inspection Report on the Jersey Archives Service in August 2008, NW James

<sup>50</sup> Transcript from the Public Hearing with Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

<sup>51</sup> Information supplied by the Head Archivist, 1<sup>st</sup> June 2010

*undertaken including records management for the States and collections management for the Trust.*<sup>52</sup>

- 16.10 Mr James goes on to explain why a reduced records management service has other serious implications:

*'While decisions on this matter are ultimately a matter for Jersey's Government..the Haut de la Garenne investigations have underlined the risks involved in failing to maintain robust record keeping mechanisms.'*<sup>53</sup>

#### **16.11 KEY FINDING**

When the States Assembly passes legislation it must ensure that funding is sufficient to allow the requirements of the law to be upheld. There is a statutory requirement for the Government to store its records in a suitable manner.

#### **16.12 RECOMMENDATION**

The increasing backlog at the Jersey Archive must be addressed either through additional funding or by increasing charges to other States entities for providing archive services. In other words the Public Accounts Committee recommends a further investment of staff, funded through an increase of the direct grant or via more commercial 'user pays' policies.

#### **16.13 The implications of the Public Records Law**

In 2002, the Public Records Law was passed. This Law gave the Archive various responsibilities, the most notable being the requirement for all records being transferred from the Department to the Archive after 20 years. This requires significant work, not only in liaising with Departments but in matters of Data Protection and cataloguing. All records must be considered individually and go to the Records Advisory Panel before they are released into the public domain. The Archive is also working with Departments to create retention schedules - effectively a classification of types of records and decisions made on which are to be kept and which destroyed. This in itself is a large body of work which is far from complete.

- 16.14 Despite these extra responsibilities conferred by the Public Records Law, no extra funding was provided on its implementation with which to discharge these responsibilities.

- 16.15 It is interesting to note that P107/2002 (Draft Public Records Law lodged au Greffe on the 18<sup>th</sup> June 2002 by F&E) predicted no manpower implications for the implementation of the Law. At this time the Archive was staffed by 11 FTE posts rather than the 7.4 FTE staff that it now has.

- 16.16 In his Audit Inspection Report on the Jersey Archives Service in August 2008, NW James stated:

*'There is a real danger in our opinion that the Island's future archival heritage will be lost. The lack of an adequate implementation structure clearly undermines the intent and purpose behind the passing of the Public Records Law itself.'*<sup>54</sup>

- 16.17 Furthermore, that:

*'The danger that the Public Records Law cannot be properly implemented ought to be entered on the (Jersey Heritage) Trust's risk register.'*<sup>55</sup>

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<sup>52</sup> Audit Inspection Report on the Jersey Archives Service in August 2008, NW James page 11

<sup>53</sup> Audit Inspection Report on the Jersey Archives Service in August 2008, NW James page 11

<sup>54</sup> Audit Inspection Report on the Jersey Archives Service in August 2008, NW James page 11

<sup>55</sup> Audit Inspection Report on the Jersey Archives Service in August 2008, NW James page 7



16.18 The Audit report of 2008 also found that the Archive was underfunded and the staffing inadequate in order to carry out its remit under the Public Records Law.<sup>56</sup>

**16.19 KEY FINDING**

Jersey Archive (and therefore the States Departments it serves) is currently not complying with the Public Records Law, due to under-funding and insufficient staffing.

16.20 The Public Accounts Committee notes that the Jersey Archive carries out two distinct functions:

a) The first relates to its statutory duties under the Public Records Law to retain, catalogue and make accessible the official records of States Departments. This is a vital function. There may also be additional responsibilities brought to bear under any Freedom of Information legislation.

b) The second function of the Archive is the activity around family and cultural history. The Public Accounts Committee considers this activity as necessary, but not a legal essential.

**16.21 RECOMMENDATION**

Funding for the statutory duties of the Jersey Archive under the Public Records Law (and any subsequent Freedom of Information legislation) should be provided directly by the Treasury, thereby protecting this crucial function and ensuring that it is not used by the Jersey Heritage Trust to cover other deficits in its portfolio of services. Funding for the other activities of the Archive such as genealogy research should continue to be provided by the Jersey Heritage Trust. A performance criterion should be a meaningful reduction in the records backlog.

**16.22 Senator B.E. Shenton:**

*Should (the Archive) be under Heritage?*

**Chairman of Trustees, Jersey Heritage Trust:**

*It does not have to be. You might want to have Heritage run it but it does not have to be.*

16.23 The Comptroller and Auditor General stated:

*There is no logical necessity for the States to rely upon the Trust to manage all of the current activities on behalf of the States. In practice, it may be convenient for the States to employ the Trust as sub-contractor to manage the sites which are currently entrusted to it. Indeed, there may be benefit in the sites all being under common management. But this is a matter of practical convenience rather than logical necessity. However unwelcome, the Department could choose to manage some activities itself (e.g. Jersey Archive) or find other operators.<sup>57</sup>*

**16.24 KEY FINDING**

The Jersey Archive does not fit naturally within the Jersey Heritage Trust portfolio. However, there are some overlaps that make the continuance of this arrangement logical.

**16.25 RECOMMENDATION**

The Jersey Archive, and the employment of its staff, should remain under the auspices of the Jersey Heritage Trust. However, funding for the areas of work required under statutory duties, including funding of building maintenance and depreciation, should be made in the

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<sup>56</sup> Audit Inspection Report on the Jersey Archives Service in August 2008, NW James page 4-5

<sup>57</sup> <sup>57</sup> Jersey Heritage Trust, Financial Review – report by the Comptroller and Auditor General October 2009 page 34

form of a ring-fenced grant that ensures there are sufficient funds to meet all legal requirements.

- 16.26 The Public Accounts Committee is concerned about the implications of the Freedom of Information Law for the Archive, as many of the principles of the Public Records Law overlap with the Draft Freedom of Information principles.
- 16.27 If (as has been evidenced), funding restrictions currently mean that the Public Records Law is not being complied with, the Public Accounts Committee is concerned about the implications this will have for the Freedom of Information Law, which will have similar requirements on a much larger scale.
- 16.28 Under the present Public Records and Data Protection law, files are closed for 30 years. Freedom of Information is different in that there is an automatic presumption of openness, which would create an almost overnight pressure for the Archive to catalogue their backlog of documents. This would also potentially have significant cost implications in terms of the skilled manpower required to do this.
- 16.29 The Jersey Heritage Trust Chairman expressed concern at a potential tidal wave of information requests as a result of the impending Freedom of Information Law.

***Chairman of Trustees, Jersey Heritage Trust:***

*I think the biggest risk is going to be the continued backlog of archiving in relation to the Public Records law and the anticipated tsunami under the Freedom of Information law. We have talked to the Minister about this, I understand the Minister does intend to develop plans and bring those to the States in due course. But I use the Archive as a good example of an entirely good decision to create a marvellous asset for the Island but not really looking forward to the implications.*<sup>58</sup>

- 16.30 However, this concern is tempered by the fact that the Freedom of Information Law won't require full retrospection from the outset and will be introduced in a staggered manner. Under the current proposal, two years after the adoption of the Law, departments will only be required comply with information created from 20th January 2000 (the date on which the Code of Practice on Public Access came into force). They will move to full retrospection 3 years after the adoption of the Law.<sup>59</sup>
- 16.31 The Public Accounts Committee remains concerned however at the cost implications of Freedom of Information legislation. If the situation with the Public Records Law and the Jersey Archive is used as a precedent, then the concern is real, as under the Public Records Law the Archive cannot charge individuals who research in person. Written research is charged out at £20 per hour.<sup>60</sup>

**16.32 KEY FINDING**

If Freedom of Information legislation is passed, the Archive will face significant pressure to catalogue and put many thousands of documents into the public domain, when they are already under-resourced. It is of concern that the inability to adequately fund the Public Records Law, and the fact that the manpower requirements were underestimated when passed, will be magnified by the proposed Freedom of Information legislation.

**16.33 RECOMMENDATION**

The grant to the Jersey Archive must be realistic given its possible statutory obligations under Freedom of Information legislation.

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<sup>58</sup> Transcript of Public Hearing with the Senior Management of the Jersey Heritage Trust, May 18<sup>th</sup> 2010

<sup>59</sup> Extract from the FOI White Paper presented to the States on the 14th October 2009

<sup>60</sup> Public Accounts visit to the Jersey Archive and meeting with the Head Archivist, 1<sup>st</sup> June 2010

16.34 **N.B.** The Public Accounts Committee also notes that the Freedom of Information's commitment to put so many documents into the public domain is not necessarily compatible with Data Protection Law 2005.