



Public Accounts Committee



Compromise Agreements: Following up the investigations of the Comptroller and Auditor General.

Presented to the States on 6th July 2012

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1. CHAIRMAN'S FOREWORD

“There are no magic answers, no miraculous methods to overcome the problems we face, just the familiar ones: honest search for understanding, education, organization, action that raises the cost of state violence for its perpetrators or that lays the basis for institutional change – and the kind of commitment that will persist despite the temptations of disillusionment, despite many failures and only limited successes, inspired by the hope of a brighter future.”

Noam Chomsky

The States of Jersey is in a strategic position to change whenever deemed necessary, to achieve results in the best interest of the public and most of all lead the way.

There has been a history of problems that have been aired already, acknowledged by others and “left on the shelf” for the future to deal with. This is not the first time findings similar to the ones in this report have been made public and undoubtedly it won't be the last.

Lack of listening and lack of action seem to be an inherent problem within our Island's government. Inevitably there are nearly always risks which need to be taken into account. Value for money is essential but doing nothing is not the answer.

Unfortunately, our current Human Resources function is not fit for purpose for the 21st Century. But it is one of the fundamental components required for improvement of services. We must move forward. We must achieve efficient, effective service delivery. Yet this will not happen without investment in our Human Resources Department and in our employees.

The Public Accounts Committee recognises the need for Compromise Agreements and understands that such agreements can facilitate change and progress, be that for the Employer or the Employee. However, we err on the side of caution in terms of invoking them in the case of poor performance, inadequate processes and bullying and/or harassment.

On a final note I would like to thank everyone who has been involved in the review and given time to provide the Committee with information, those who have attended hearings, the Members of the Committee for their support and the officer support from the Scrutiny Office.



Deputy Tracey Vallois

Chairman

Public Accounts Committee

2. KEY FINDINGS

Note: The following findings are the overarching main findings from the Committee's review. There are further findings within the report, however the Committee wishes to focus on the following and the recommendations which arise from these.

- 2.1 The decision to accept the amendments to the contract of the former Chief Executive Officer was taken at a time when money was not subject to the restraints faced in 2012. There had been no succession planning which had left the Island extremely vulnerable and the post holder had become pivotal in the change to Ministerial Government which left little choice given the desire to retain the officer's services. The decision was none-the-less flawed. There had been no formal risk assessment or thorough investigation of the options available between receipt of the request to revise the contract on 2nd March 2005 and the acceptance of the changes on 9th March 2005.**
- 2.2 The change to the States of Jersey Law to have Chief Officers accountable to their Ministers left a fracture in the lines of responsibility that continue to cause problems today. When viewed alongside Ministers being 'corporate sole' and therefore not responsible to the Chief Minister, the double fracture in the lines of responsibility create confusion in the management structure at the highest level of the organisation.**
- 2.3 Given that the decision makers may have been keen to retain the Chief Executive Officer through the pinch point of the change to Ministerial Government, no time limit was placed on the unusually generous agreement of 2.5 times salary. It appears that this was simply not considered, leaving the huge cost to be met at any point the officer might leave further down the line. This was unacceptable and expensive.**
- 2.4 The result of the two breaks in the lines of responsibility of both the Chief Minister and the Chief Executive Officer render them impotent. They are powerless and isolated. Their duties can only be carried out with the good will of their "subordinates" and the strength of character they can bring to bear.**
- 2.5 In examining the termination of the former Chief Executive Officer's employment, there were many failures revealed.**
 - Performance management was woefully inadequate.**

- **The fractured lines of responsibility allowed the Chief Minister of the day to do nothing, despite his recognition of the problems brewing.**
- **The Code of Conduct for Ministers is deficient and offers no sanctions for transgressions.**
- **There was no management intervention in the longstanding deterioration in the relationship between the Minister for Treasury and Resources and the former Chief Executive Officer.**

2.6 It is the combination of these failures that left no option but to pay the £546,337.50 to the departing officer.

2.7 There is no clear demarcation of boundaries between policy setting by States Members and operational implementation by officials. Blurring these lines can lead to destabilisation of relationships and derailment of operational matters rendering them ineffective.

2.8 Despite the blurring of roles between the Minister for Treasury and Resources and the former Chief Executive Officer, the real concern is that, even knowing about the difficulties, the then Chief Minister took no action and in so doing allowed an already pressurised relationship to deteriorate to such an extent that the former Chief Executive Officer decided to invoke the terms of his revised contract.

2.9 Relating to other compromise agreements entered into by the States over the last five years, the Committee noted that the private sector has no issues with compromise agreements. They are used as a tool for many reasons and money spent is recouped over the following period.

2.10 The existing Human Resources Department is not fit for purpose in order to meet modern day Human Resources requirements for the public service.

2.11 There is a place for compromise agreements as a management tool when appropriate but all the other management structures must be in place first. Every agreement should be considered on its worth, based on good performance management records and consideration of the options available. It is only by meeting those standards that there can be any hope of convincing the public that value for money is being achieved.

- 2.12 Looking at the way forward, the Committee notes the willingness that the current Chief Minister shows in bringing forward changes to ensure these mistakes are not repeated and looks forward to seeing the production of timelines for their introduction.**

3. RECOMMENDATIONS

Please note: Each recommendation is accompanied by a reference to that part of the report where further explanation and justification may be found.

- 3.1 A recognised and structured succession planning strategy for all senior positions including the Chief Executive Officer and Chief Officers' posts must be put in place. (See 6.11)**
- 3.2 The Privileges and Procedures Committee should amend Standing Orders to ensure that Amendments which would bring about major changes to States Policy must be accompanied by an Impact Assessment and explained to all States Members in the wider context before debate. This would make all States Members fully aware of implications of Amendments to major propositions. (See 6.22)**
- 3.3 The States Employment Board must reconsider the role of the Chief Executive Officer so that it is clearly defined in light of the significant changes to that post due to the adoption of P.124/2004 (Amd 3). Alternatively that Amendment should be rescinded. (See 6.23)**
- 3.4 The review into the Machinery of Government currently being undertaken by a Sub-Committee of the Privileges and Procedures Committee must resolve the fractured lines of responsibility at the level of Chief Minister and Chief Executive Officer, because without clear lines of responsibility, there are no clear lines of accountability. (See 7.12)**
- 3.5 The Chief Minister must bring an amendment to the Employment of States of Jersey Employees (Jersey) Law 2005, compelling all employees to conform to a performance review process. This should include political oversight of the Chief Executive Officer and Chief Officers' performance review and appraisals. (See 7.24)**
- 3.6 Serious concerns relating to behaviour must be acted on promptly whether involving a Minister or public employee or both, appropriately recorded within personnel files and accompanied by an explanatory note on how it was resolved. (See 7.45)**
- 3.7 An independent mediator should be identified before the end of 2012 to work with the States Employment Board and the Privileges and Procedures Committee whenever**

serious concerns are expressed by the Chief Executive Officer and Chief Officers in respect of working relationships with Ministers. (See 7.46)

- 3.8 The Privileges and Procedures Committee must ensure that the Appendix of (Amendment No 1) of the Standing Orders of the States of Jersey (P.225/2005) [*Procedure for dealing with a complaint or concern about capability from an elected Member*] must be included in the States Members Handbook so that Members are fully aware of the procedures to be followed. (See 7.56)**

- 3.9 The Privileges and Procedures Committee must draw up a thorough and robust system of investigation and resulting sanctions which can be implemented to ensure compliance with the Code of Conduct for both States Members and the Council of Ministers. (See 9.6)**

- 3.10 The Chief Minister must provide the Corporate Services Scrutiny Panel with a timeline as to when he intends to change his policies in respect of the recommendations contained within the reports of the Comptroller and Auditor General. (See 9.14)**

- 3.11 The business case submitted by the Human Resources Department should be considered favourably by the Council of Ministers in order to create value for money across the whole organisation. (See 9.35)**

4. TERMS OF REFERENCE

1. To examine what action has been taken in relation to the recommendations of the Comptroller and Auditor General in his reports “Utilisation of Compromise Agreements” and “The Former Chief Executive – Compromise Agreement”.
2. To examine the circumstances of the change of contract between the States and the Chief Executive in 2005 to establish if best value for money was obtained by those changes.
3. To examine the risk assessments made in relation to compromise agreements which have been triggered since 2005 and identify whether value for money has been achieved.

5. UTILISATION OF COMPROMISE AGREEMENTS

Definition

- 5.1 It is useful to establish at this early stage just what a compromise agreement is. For the purposes of his reports, the Comptroller and Auditor General used a definition set out in a statement by the current Chief Minister and which was supplied to the Committee by the States of Jersey Human Resources Director as follows:

“A compromise agreement is a legally binding agreement in which an employee (or ex-employee) agrees not to pursue particular claims in relation to his or her employment or its termination, which is usually accompanied by a financial settlement that is considered to be full and final settlement of any claims that might have been pursued by either party. Such an agreement is normally mutually beneficial to both parties, employer and employee, and is accompanied by a confidentiality clause.”¹

How they are used

- 5.2 Compromise agreements are widely used by employers to terminate a contract of employment in a way that satisfies both parties where a situation occurs rendering the continued employment of an individual untenable. They are a normal part of the employer’s armoury in managing the termination of an employee.
- 5.3 Such agreements are usually made when it is not possible to deal with the circumstances of the breakdown between the employer and employee by the normal employment processes such as disciplinary, capability, performance, absence management etc.
- 5.4 Where there is a breakdown in the employment relationship, a compromise agreement is a way of preserving the reputation of both parties and not about ruining the reputation of an individual.

¹ Page 2 R27/2012

6. FORMER CHIEF EXECUTIVE OFFICER 2003 TO 2005

6.1 The Committee's second Term of Reference states:

To examine the circumstances of the change of contract between the States and the Chief Executive in 2005 to establish if best value for money was obtained by those changes.

6.2 Article 3 of the Employment of States of Jersey Employees (Jersey) Law 2005 required the appointment of a Chief Executive Officer as follows:-

- (1) *There shall be a Chief Executive Officer.*
- (2) *The Chief Executive Officer shall be the person employed under this Law as the Chief Executive to the Council of Ministers and Head of the Public Service.*
- (3) *The Chief Executive Officer shall be responsible for the administration and general management of the public service.*

6.3 The former Chief Executive Officer commenced employment with the States of Jersey on 12th May 2003, following the signing of a contract with the Policy and Resources Committee dated 25th January 2003.

6.4 As stated in the report by the Comptroller and Auditor General, the duties of the post were specified in a job description which stipulated four principal roles:-

- *“Chief Executive to the Council of Ministers;*
- *Head of the Island's public service;*
- *Head of the Chief Minister's department and as such, Chief Executive to the Chief Minister;*
- *In the transitional period Chief Executive of the Policy and Resources Department.”*

6.5 The contract specified, amongst other things, the salary for the post and stated that this would be reviewed on the first of June each year subject to satisfactory performance and negotiation between the employer and the Chief Executive. It was further stipulated that every four years, the employer would undertake a general review of the salaries paid to comparable senior management positions in the private sector in Jersey along with comparative data from the United Kingdom. This information was to be taken into account on reviewing the remuneration in June of the year concerned.

Succession Planning

- 6.6 The Committee has been informed that the role of the Chief Executive Officer was considered pivotal to the process of change from Committee to Ministerial Government. Not only were huge changes taking place in the political arena, but significant changes were needed within Departments. The Chief Executive Officer was expected to manage these changes to suit the political needs of the new Council of Ministers.
- 6.7 It is accepted that it not unusual for a project to have an individual in a pivotal position as is the case in many major projects, however the Committee questioned why no succession planning had been put in place? There was no Deputy Chief Executive Officer during that period which seemed, with the benefit of hindsight, to leave complete reliance on a sole individual and lack forward planning. The serious lack of a succession planning strategy meant that the Island was extremely vulnerable. What would have happened if the Chief Executive Officer should have decided to leave or circumstances prevailed which prevented him working for some time?
- 6.8 When this was discussed with Mr F Walker, O.B.E at the hearing on 16th April 2012, the Committee was given the following answer:

“... there is much criticism, and not surprisingly, of the fact that the States over the years has not appointed more local people to the top jobs. One of the principal reasons, and there are more than one and I would not argue that our management development in the States has been up to speed because it most certainly has not over the years, but one of the other major contributing factors was local civil servants reading the Evening Post, listening to Radio Jersey or Channel Television or whatever were well aware of what was going on and simply in many cases, and you will never find this on the record, you will just have to take my word for it but I am personally aware of it, in many cases were simply not prepared to put their heads above the parapet. They were concerned not only for themselves but also for their families and there are a number of instances that I recall where there were very good local senior civil servants who were very

*promotable to the top jobs who just point blank refused to even consider that promotion.*²

- 6.9 This may offer some explanation of why there was no Deputy Chief Executive Officer, however, the Committee has found nothing to suggest that the appointment of a Deputy Chief Executive Officer was ever considered during the transition period from Committee to Ministerial Government and there is also no evidence of a concerted effort to protect the States of Jersey in the event of the sudden loss of the post-holder.

KEY FINDING

6.10 The decision to accept the amendments to the contract of the former Chief Executive Officer was taken at a time when money was not subject to the restraints faced in 2011. There had been no succession planning which had left the Island extremely vulnerable and the post holder had become pivotal in the change to Ministerial Government which left little choice given the desire to retain the officer's services. The decision was none-the-less flawed. There had been no formal risk assessment or thorough investigation of the options available.

RECOMMENDATION

6.11 A recognised and structured succession planning strategy for all senior positions, including the Chief Executive Officer and Chief Officers' posts must be put in place.

States of Jersey Law: responsibilities of the Chief Minister and Chief Executive Officer

- 6.12 The States of Jersey Law is defined as "A Law regarding the constitution and proceedings of the States, to declare and define the powers, privileges and immunities of the States, and to establish a ministerial system of government."
- 6.13 Article 26 of the Law bestows the status of a Minister as a corporation sole. A corporation sole is a legally recognized position consisting of a single incorporated office occupied by, in this case, the Minister. This allows the States of Jersey to pass responsibility from one office holder to the next successor-in-office, giving the position legal continuity with each subsequent office holder having identical powers to their predecessor.

² Page 5 Transcripts of Mr F. Walker OBE from 16th April 2010

- 6.14 This was contained within the draft placed before the States when the Law (P.124/2004) [Appendix 2 of this report] was debated on 16th November 2004. However, the third amendment to P.124/2004 contained a change to the article concerned, adding:

“(6) The senior officer in any administration of the States for which a Minister is assigned responsibility shall be accountable to that Minister in respect of policy direction.”

- 6.15 The Policy and Resources Committee was aware that this amendment could create some difficulties and did not support it, submitting the following comments to the States:-

“Amendment (16).

The Privileges and Procedures Committee does not support this amendment as it considers that it runs counter to the appropriate relationship that should exist in the future system between a Minister and his or her senior officer. Although there will be a very close working relationship between a Minister and his or her senior officer, that officer will have a contractual reporting line to the Chief Executive of the Council of Ministers. If there was any conflict between instructions given by the Minister and the Chief Executive to a senior officer the matter could be raised with the Council of Ministers for resolution. This is a common issue in many public and private jurisdictions where the working solution lies in negotiation and compromise with only infrequent recourse to higher authority.”³

- 6.16 Despite the comments to the amendment by the Policy and Resources Committee, the amendment was carried and became part of the Law.
- 6.17 The resultant effect was that Chief Officers were no longer accountable directly to the Chief Executive Officer, but to their respective Ministers and significantly changed the powers of the Chief Executive Officer.
- 6.18 Put more clearly, he remained head of, and responsible for the administration and general management of the public service. He was also responsible for driving the States Departments through the transition into Ministerial Government. However, his management team were no longer accountable to him as head of the public service but to individual Ministers.
- 6.19 Mr Walker, O.B.E. described the situation as follows:

³ Draft states of Jersey Law 200- (p.124/2004): Third amendments (p.124/2004 amd.(3)) – Comments

“...he was the individual who had responsibility for making the changes. Of course his management team had their own responsibilities, but he was the leader and the buck stopped with him in terms of how effective the changes were going to be. So he found himself in, I would say again, a unique position where ... he was getting highly frustrated because his ability to do the job as he wanted to do it was being constrained.”

6.20 Mr Le Sueur, O.B.E stated:

“He had been recruited on the basis of certain expectations and as a result of States decisions his position was different from what it might otherwise be.”

KEY FINDING

6.21 The change to the States of Jersey Law (Amd 3 of P.124/2004) to have Chief Officers accountable to their Ministers left a fracture in the lines of responsibility that continue to cause problems today. When viewed alongside Ministers being ‘corporation sole’ and therefore not responsible to the Chief Minister, the double fracture in the lines of responsibility create confusion in the management structure at the highest level of the organisation.

RECOMMENDATION

6.22 The Privileges and Procedures Committee should amend Standing Orders to ensure that Amendments which would bring about major changes to States Policy must be accompanied by an Impact Assessment and explained to all States Members in the wider context before debate. This would make all States Members fully aware of implications of Amendments to major propositions.

RECOMMENDATION

6.23 The States Employment Board must reconsider the role of the Chief Executive Officer so that it is clearly defined in light of the significant changes to that post due to the adoption of P.124/2004 (Amd 3). Alternatively that Amendment should be rescinded.

Nature of political environment during transition to Ministerial Government

6.24 During the two years following the employment of the Chief Executive Officer, the main focus of States Members was the transition from Committee to Ministerial Government. This was a period of considerable uncertainty which may have caused some stressful times for some States Members. This has been evidenced in various quarters including Mr Maurice Dubras,

the former Chairman of the Policy and Resources Committee Sub-Committee on Human Resources, who informed the PAC:

“...there were some Members whose motivation and whose attitude to other Members was quite unacceptable, and their criticism of officials, be they non-elected Members of the States or be they supporting staff, I think was known generally to be unacceptable...”⁴

6.25 Privileges and Procedure Committee minutes from 2004 show that former Deputy, Maurice Dubras complained to the Privileges and Procedure Committee about conduct of States Members during States debates and more specifically, the use of individual officers' names either verbally or in print. The result was the Policy and Resources Committee's successful amendment to Schedule 3 of Standing Orders of the States of Jersey which added paragraph 6, "Public comments etc. regarding a States' employee or officer".

6.26 Further, Mr F. Walker, O.B.E. the first Chief Minister and former President of the Policy and Resources Committee stated:

“I think we need to recall that this was 6 or 7 months before the introduction of Ministerial Government and before, therefore, the biggest changes in the structure of the States and not just politically but departmentally as well, that the States had ever seen. The situation therefore was quite unique and the Chief Executive found himself in a position where he and other senior officers were being criticised, were being attacked and you might even say verbally abused.”⁵

6.27 Mr Walker, O.B.E. went on to sum up the political environment at that time:-

“The political environment? By that you mean the climate, I guess, the mood of the day. It was pretty excitable, may be one way of describing it. Nervous, because we were embarking on a massive change and no one at that juncture knew precisely what the change would entail, knew precisely what the effect would be on them and I am talking here about States Members and officers in the system. I think everyone was, how do I describe it? Wound up, perhaps. As one frequently is when faced with colossal change and I have no doubt that contributed to the environment. Of course we had no idea in March of 2005 who

⁴ Page 3 Transcripts of Mr M. F. Dubras from 16th April 2010

⁵ Page 5 Transcripts of Mr F. Walker OBE from 16th April 2010

was going to be Chief Minister, we had no idea what the makeup of a Council of Ministers would be, we had no idea whether the whole new system was going to work and, not surprisingly, people were nervous.”⁶

6.28 It is not possible to review transcripts of the States for this period because Hansard did not start until 5th December 2005, the date of the election of the first Chief Minister. However, oral evidence provided to the Committee shows that opinion of the political environment at that time was extremely poor. This created instability and uncertainty amongst the workforce which in turn lowered morale.

KEY FINDING

6.29 The political environment was extremely poor prior to the move to Ministerial Government, creating instability and uncertainty amongst the workforce which in turn lowered morale.

Letter from the Chief Executive Officer [2nd March 2005]

6.30 Paragraphs 18 and 19 of the Comptroller and Auditor General’s report, ‘The Former Chief Executive – Compromise Agreements’, shows that on 2nd March 2005 the Chief Executive Officer wrote to the President of the Policy and Resources Committee expressing concern about the terms of his employment.

6.31 Not only had the original post to which he had been appointed changed, but he explained that he did not want to leave the Island but realised that because of exhibitions of political instability and vitriolic attacks on senior officials, he was obliged to re-examine his options. He considered that he had the following two options:-

1. start looking for an alternative job;
2. negotiate greater security into his contract.

6.32 The Chief Executive went on to make a number of proposals for a resolution to the issues:-

1. *inclusion in the contract of a provision that it might be terminated by mutual consent with a settlement of 2.5 times annual salary.*

⁶ Page 5 Transcripts of Mr F. Walker OBE from 16th April 2010

2. *amendment of the existing provision concerning a breakdown of normal relationships to provide that where it was agreed that there had been an irrevocable breakdown in the normal relationship between the Chief Executive and the Council of Ministers the contract may be terminated and the Chief Executive would receive a payment of 2.5 times annual salary.*
3. *replacement of the normal redundancy payment rules with a provision that there should be a fixed payment of 2.5 times annual salary.*
4. *amendment of the disciplinary procedure to clarify that if poor performance had resulted from political interference or lack of support for delivery of the strategic plan, the disciplinary procedure should not apply and termination could only be by application of the mutual agreement provision.⁷*

Human Resources Sub-Committee response: hasty decision?

6.33 The Human Resources Sub-Committee of the Policy and Resources Committee met on 9th March 2005 and discussed the letter dated 2nd March 2005 from the Chief Executive Officer. The Sub-Committee, having acknowledged that the changes sought by the Chief Executive Officer were in the interests of both the Employer and the employee, accepted the proposal and authorised the necessary amendments to the contract.⁸ As explained within the report by the Comptroller and Auditor General, the contract was amended in the following ways:

- (1) *A new clause 27 was inserted in the main contract to provide that: "This contract is subject to termination by mutual agreement in which case the Chief Executive will be entitled to a non pensionable settlement of 2.5 times his annual salary".*
- (2) *Clause 22 of the original contract was amended by deleting the final two sentences and replacing them with the words: "However, if as a last resort the Chief Executive is to be made redundant he will receive a non pensionable payment of 2.5 times his annual salary".*
- (3) *The disciplinary code applying to the Chief Executive and attached to the main contract was revised to state that if the Chief Executive were accused of poor performance and that poor performance could reasonably be demonstrated to be the result of political interference with or lack of support for action to deliver the*

⁷ C&AG report 'The Former Chief Executive – Compromise Agreements. Page 11.

⁸ HR Sub Committee Minutes 9th March 2005

then strategic plan, the disciplinary procedure would not apply and instead termination of employment could only be by application of the mutual agreement provision or the breakdown of normal relationships provision. An appeal procedure was also introduced in the event that the Chief Executive were dissatisfied with the outcome of a disciplinary hearing at which he had alleged political interference or lack of support.”

- (4) *The disciplinary code was also revised to provide that: “In the event that it is considered by the Council of Ministers that there is an irrevocable breakdown in the relationship that normally exists between the Chief Executive and the Council of Ministers, the contract may be terminated and the Chief Executive would receive a non pensionable payment of 2.5 times his annual salary”. An appeal process was also introduced for a situation in which the Chief Executive had suggested that there had been such a breakdown but this had not been accepted by the Council of Ministers.”*

6.34 Examination of a calendar for March 2005 shows that there is one week [five working days] between Wednesday 2nd and Wednesday 9th March 2005, leaving the Public Accounts Committee questioning how advice could have been obtained to guide the Sub-Committee through the process of considering the detail of the complicated and potentially expensive proposals. There is no formal record of any discussion relating to the actual proposal, but it is accepted that it could have been discussed by Members of the Human Resources Sub-Committee. However, this could not have been in a formal Committee meeting context as an independent record would have been provided.

6.35 During the hearing with Mr Dubras the following exchange took place⁹;

Deputy R.J. Rondel:

“Did the committee ever obtain any advice from either recruitment consultants or specialist lawyers from the mainland to deal with it?”

Mr. M. Dubras:

“I do not believe so, no.”

Deputy R.J. Rondel:

“What about locally?”

⁹ Page 12 Transcripts of Mr M. Dubras from 16th April 2010

Mr. M. Dubras:

“It would not have been normal for us to do. I cannot recall any discussion with the law officers, but there was a law officer who dealt with the H.R. Department. It could well be that there were discussions going on at that time. I cannot recall.”

6.36 The hearing with Mr Walker, O.B.E. dealt with the same matter¹⁰;

Deputy R.J. Rondel:

“Did you seek any advice from outside the Island or from any other professional outside the Island?”

Mr. F. Walker, O.B.E.:

“No. We did as I recall look at scenarios outside the Island but the advice was obtained pretty well entirely from within the States.”

6.37 The evidence suggests that no outside assistance was obtained when the Human Resources Sub-Committee considered the proposed changes to the Chief Executive Officer’s contract. This encouraged the Committee to identify what measures had been taken to ensure that the terms of the renewed contract (as stipulated in 6.40 below) could not become an unnecessary financial liability to the States on behalf of the population of the Island in the future.

6.38 The new contract stipulated that termination of employment under the following conditions would trigger a payment of 2.5 the annual salary of the Chief Executive Officer;

“...This contract is subject to termination by mutual agreement in which case the Chief Executive will be entitled to a non pensionable settlement of 2.5 times his annual salary”.

“...However, if as a last resort the Chief Executive is to be made redundant he will receive a non pensionable payment of 2.5 times his annual salary”.

“In the event that it is considered by the Council of Ministers that there is an irrevocable breakdown in the relationship that normally exists between the Chief Executive and the Council of Ministers, the contract may be terminated and the

¹⁰ Page 7 Transcripts of Mr F. Walker OBE from 16th April 2010

*Chief Executive would receive a non pensionable payment of 2.5 times his annual salary*¹¹

6.39 The Public Accounts Committee recognised that this was an unusually high figure to apply to the termination of employment. Given that the Chief Executive Officer was pivotal to the transition to Ministerial Government, was the sum contained within the contract reasonable? In response to this question at Hearings, Mr Dubras stated that he was *“not relaxed about the arrangement”*.¹² and Mr Walker, O.B.E. stated that he was *“not comfortable with the situation ...it was the right balance between losing the Chief Executive Officer and keeping him.”*¹³

6.40 The hearing with Mr Le Sueur, O.B.E. had the following exchange;¹⁴

Senator S.C. Ferguson:

“Yes, so far as you were concerned the Chief Executive gave you 2 and half times his salary as one of the things he wanted and you just accepted it. Did you not query that? Did you not check anywhere to see whether that was reasonable?”

Mr. T.A. Le Sueur O.B.E.:

“I suppose the simple answer is probably not, because it is hard to remember 6 years ago now but I think my honest answer now would be probably not.”

Senator S.C. Ferguson:

“Why not?”

Mr. T.A. Le Sueur O.B.E.:

“I suppose because there was a general consensus view of the committee that this was a necessary thing to do.”

Senator S.C. Ferguson:

“You felt that the ...”

Mr. T.A. Le Sueur O.B.E.:

“I think the decision would not have changed whether it had been 2 and a half times, 2 times or 3 times.”

Deputy R.J. Rondel:

¹¹ C&AG report 'The Former Chief Executive – Compromise Agreements. Page 12.

¹² Page 15 Transcripts of Mr M. Dubras from 16th April 2010

¹³ Page 7 Transcripts of Mr F. Walker OBE from 16th April 2010

¹⁴ Page 5 Transcripts of Mr T. Le Sueur O.B.E. from 8th May 2010

“So there was no measure taken for that figure from anywhere?”

Mr. T.A. Le Sueur O.B.E.:

“No. The risk of losing that person at that time was felt to be an unacceptable risk.”

- 6.41 So given that the risk of the Chief Executive Officer leaving was considered too great at that time, how much thought was put into the actual worth of the position and protection of States interests in the future?

Deputy R.J. Rondel:

“At any cost is what you are saying really¹⁵.”

Mr. T.A. Le Sueur O.B.E.:

“At any reasonable cost. Our view was that that was a reasonable cost in relation to the whole operation.”

Senator S.C. Ferguson:

“But do you really think that that was protecting the States interests?”

Mr. T.A. Le Sueur O.B.E.:

“Absolutely. To go into a changing government of the magnitude suggested without anyone effective at the top would have been asking for trouble for the whole Island.”

Risk Assessment.

- 6.42 The Committee wanted to understand the procedure undertaken to assess the risks of accepting the sum of 2.5 times salary within the contract revision. Mr Walker, O.B.E. who was President of the Policy and Resources Committee at the time concerned, stated:-

“I am very, very confident today, never mind then, that the cost of losing [the former Chief Executive] at that particular time would have been far, far greater than the payoff he has received in recent times.”¹⁶

- 6.43 There is no formal risk assessment available within the files and all witnesses spoken to in relation to this matter confirmed that no formal risk assessment was undertaken. The subject was covered during the hearing with Mr Dubras, who was chairman of the Human Resources Sub-Committee at the time the contract was re-negotiated. The conversation covered

¹⁵ Page 6 Transcripts of Mr T. Le Sueur, O.B.E. from 8th May 2010

¹⁶ Page 7 Transcripts of Mr F. Walker O.B.E. from 16th April 2010

consideration of aspects of risk analysis such as 'likelihood' and 'impact'. Mr Dubras summarised the position by saying:-

"...and we entered into that renegotiated contract with the full expectation that it would never be called upon..."¹⁷

- 6.44 All discussions with witnesses relating to other alternative options met with the response that there '*were no other options*'.
- 6.45 Despite suggestions of informal or unrecorded discussions, the five working days between the writing of the letter by the former Chief Executive Officer and consideration by the Human Resources Sub-Committee, suggest that there was no time for proper consideration, negotiation, or examination of either the risks or options available to the proposed revisions of the contract. More worryingly, nor did there seem to have been any intention to even consider negotiation or examination of risks or alternatives to reach a conclusion which may have been less expensive to the Island.

Time Limit

- 6.46 If the contract were agreed, amongst other reasons, because the former Chief Executive was considered pivotal at that time, the option of an embedded time limit of perhaps three years to the unusual 2.5 times salary within the contract, needed to be considered. An open ended agreement may have provided a perverse incentive for the contract clause to be triggered.

KEY FINDING

- 6.47 Given that the decision makers may have been keen to retain the officer through the pinch point of the change to Ministerial Government, no time limit was placed on the unusually generous agreement of 2.5 times salary. It appears that this was simply not considered, leaving the huge cost to be met at any point the officer might leave further down the line. This was unacceptable and expensive.**

KEY FINDING

- 6.48 There was one week [five working days] between the letter from the Chief Executive Officer dated 2nd March 2005 [in which he requested changes to his contract which could result in a large settlement agreement] and the decision being made on 9th March 2005. There is no evidence to show intention to consult, undertake risk assessments or examine options during that short period of time. Indeed as far as the**

¹⁷ Page 20 Transcripts of Mr M. Dubras from 16th April 2010

PAC can determine, this important matter was decided in an extremely short time frame without any of the above having been examined.

Value for Money

- 6.49 On questioning whether the best value for money had been obtained, the Committee learnt:-
Mr Le Sueur O.B.E. when asked about this, stated: *“Our view was that that was a reasonable cost in relation to the whole operation”* and by Mr Walker, O.B.E. as *“...the right balance.”*
- 6.50 At the time, the decision was considered to be value for money given the overall cost of the change to Ministerial Government.

Was the payment of 2.5 annual salary a good decision?

- 6.51 In examining the adequacy of corporate governance arrangements within the States and assessing whether the commitment of the use of public funds to finance 2.5 times the salary of the former Chief Executive was considered indicative of sound financial practices, the Committee had to establish whether the decision was reasonable at the time it was made.
- 6.52 Such a judgement can only be subjective. The Committee considers that the evidence supplied during the review, combined with the Comptroller and Auditor General’s report, makes it well positioned to make the following observations:-
- a) The employer had backed themselves into a corner because of the failures listed above. Given the position that the Human Resources Sub-Committee found itself in, the decision to accept the unusual request for 2.5 times salary settlement within the contract appeared to have been reasonable at that time;
 - b) The Committee cannot accept, however, that the decision was adequately considered, risk assessed or compared against other options. The decision was therefore unreasonable. The Committee would not expect to see a repeat of such an occurrence in today’s environment.

KEY FINDING

6.53 Without the clause of 2.5 times annual salary, the former Chief Executive Officer would have more than likely received 1.5 times annual salary (£327, 802.50)

7. FORMER CHIEF EXECUTIVE OFFICER 2005 TO 2011

Move to Ministerial Government: political structure

7.1 On 1st November 2005, the States adopted P225/2005: Standing Orders of the States of Jersey. Included in these was a Code of Conduct for Elected Members.¹⁸ Paragraph 6 of Schedule Three dictates the procedure to be undertaken should there be a complaint by an elected member about a States employee:-

“Elected members who have a complaint about the conduct, or concerns about the capability, of a States’ employee or officer should raise the matter, without undue delay, with the employee’s or officer’s line manager (or, if he or she has none, the person who has the power to suspend the employee or officer), in order that the disciplinary or capability procedures applicable to the employee or officer are commenced, rather than raising the matter in public.”

7.2 In December 2005, the States of Jersey Law 2005 came into force bringing Ministerial Government to Jersey.

7.3 Article 18 of that Law relates to the functions and proceedings of the Council of Ministers and the related functions of the Chief Minister.

7.4 It is clear that the function of the Chief Minister is to “*discharge the function of the Council of Minister*” through a co-coordinating role. With each Minister having corporation sole¹⁹ the Chief Minister has no powers to do otherwise.

7.5 Nor does the Chief Minister have any direct power to dismiss a Minister. Article 21 of the States of Jersey Law deals with dismissal of Ministers: the Chief Minister may take a proposition to the States for the dismissal of a Minister after he has given the Minister concerned the opportunity to be heard by other Ministers and the majority of those Ministers agree with the proposition being placed before the States.

7.6 The fact that the Chief Minister has neither control over, nor responsibility for the actions of the individual Ministers in policy development and only performs a co-ordinating role for the Council of Ministers, points to a serious fracture in the political responsibility matrix.

¹⁸ Standing Orders of the States of Jersey: Article 155 and Schedule 3.

¹⁹ Article 26 States of Jersey Law 2005

KEY FINDING

7.7 The lines of responsibility and accountability are fractured within the political structure as the Chief Minister has neither control over, nor responsibility for the actions of the individual Ministers. The role is merely one of co-ordination

Move to Ministerial Government: operational structure

7.8 Although this has previously been mentioned, it is so crucial to the outcome of our investigation that it is worthy of re-iteration: Chief Officers are accountable only to the Minister who has been appointed to oversee their Departments and not to the Chief Executive Officer.

KEY FINDING

7.9 The lines of responsibility are fractured within the operational structure as the Chief Executive Officer has neither control over, nor responsibility for the actions of the individual Chief Officers. The role is merely one of co-ordination..

7.10 The problems have been publicised in the past. PAC 4/2010 Addendum²⁰, presented to the States on 16th March 2011 deals with these matters in some detail and contained the following recommendation;

“The role of the Chief Executive needs to be re-examined to ensure that checks and balances are improved – as a Chief Officer could look to the Chief Executive for support when necessary.

The basic concept – that Ministers should be responsible for Policy and Chief Officers responsible for implementation – cannot be achieved if individual Officers report to Ministers on implementation issues, and the Chief Executive has no sway over those Chief Officers’ actions. In terms of implementation, there is currently no Captain at the Bridge. The system allows too much interference by Ministers in operational matters. Consideration should also be given to removing the conflict that arises from the fact that the Chief Executive also holds a Chief Officer role in respect of the Chief Minister’s Department. The change to a ‘pure’ Chief Executive role – with no conflicts – should be examined.”

Ultimate Responsibility: political and operational

²⁰ Report on the Accounts of the States of Jersey for the year ended December 31st 2009 – Update.

- 7.11 The result of the two breaks in the lines of responsibility of both the Chief Minister and his Chief Executive Officer render them impotent. They are powerless and isolated. Their duties can only be carried out with the good will of their “subordinates” and the strength of character they can bring to bear.

RECOMMENDATION:

- 7.12 The review into the Machinery of Government being currently undertaken by a Sub-Committee of the Privileges and Procedures Committee must resolve the fractured lines of responsibility at the level of Chief Minister and Chief Executive Officer, because without clear lines of responsibility there are no clear lines of accountability.**

Performance Reviews

- 7.13 Performance review and appraisal is a powerful way to develop people, so that each employee may fulfil his/her full potential as well as play a part in ensuring the provision of an excellent service
- 7.14 From the employer's point of view, the process helps to:
- maintain and develop performance
 - improve the service provided overall
 - identify individual training and development needs
 - identify potential
 - bring about new ideas
 - improve communications
- 7.15 From an individual's point of view, the process is helpful because they need to:
- have their individual efforts recognised
 - have their individual potential recognised
 - have their individual training and development needs identified so that they can be equipped to perform well
 - be committed to perform well
 - be managed to perform well as well as manage themselves to perform well²¹

²¹ <http://soj/Management/People/Performance/PRA/Pages/WelcomePRA.aspx>

7.16 The process of annual performance reviews is policy throughout the States, regardless of seniority of the individual post-holder and is expected to be undertaken by every employee and supervisor, although the process changes slightly depending on the position. In the case of the Chief Executive Officer, it is the Chief Minister who is responsible for the annual performance reviews.

7.17 The former Chief Executive Officer complied with the annual performance review requirements by regularly preparing and filing his own self-assessments. The self-assessments should have been considered on an annual basis by the Chief Minister of the day to consider and record such matters amongst others as:-

- new objectives,
- identification of personal training and development needs
- persistent problems in order to air and aim to resolve.

7.18 The Committee can only find evidence to show that just one of these assessments had political input from a Chief Minister.

7.19 The inadequacy of the process was confirmed by former Senator and Chief Minister, Mr Le Sueur O.B.E.;

“...and indeed there was a formal appraisal process, although I understand it may not have been recorded as thoroughly as perhaps I would have liked.”²²

7.20 In January 2011, the Chief Minister, Senator Le Sueur O.B.E. filed the only performance review the Committee could find on record for the former Chief Executive Officer - for the year 2010; the only one made available since his appointment in 2003. This recorded review confirmed that objectives had been fully met, that targets in terms of agreed savings had substantially exceeded the original objective and the CSR was progressing in the right direction.²³

7.21 However, within that self-appraisal for 2010, the following was recorded by the former Chief Executive Officer yet no comments or follow-up action by the then Chief Minister can be found:-

²² Page 10. Transcripts of Mr T. Le Sueur O.B.E. from 8th May 2010

²³ Information on performance reviews of the former Chief Executive has been obtained from the C&AG report ‘The Former Chief Executive – Compromise Agreements.

“My relationship with the Treasury Minister is a source of significant discomfort. I seem to be unable to satisfy his expectations or at times even understand what is expected.”²⁴

KEY FINDING

7.22 In examining the termination of the former Chief Executive Officer’s employment, there were many failures revealed.

- **Performance management was woefully inadequate.**
- **The fractured lines of responsibility allowed the Chief Minister of the day to do nothing, despite his recognition of the problems brewing.**
- **The Code of Conduct for Ministers is deficient and offers no sanctions for transgressions.**
- **There was no management intervention in the longstanding deterioration in the relationship between the Minister for Treasury and Resources and the former Chief Executive Officer.**

KEY FINDING

7.23 It is the combination of these failures that left no option but to pay the £546,337.50 to the former Chief Executive Officer.

RECOMMENDATION

7.24 The Chief Minister must bring an amendment to the Employment of States of Jersey Employees (Jersey) Law 2005, compelling all employees to conform to a performance review process. This should include political oversight of the Chief Executive Officer and Chief Officers’ performance review and appraisals.

Letter from the Former Chief Executive [16th January 2011]

7.25 A letter dated 16th January 2011, which was written by the former Chief Executive to the Chief Minister and is quoted, in part, in the Comptroller and Auditor General’s report, makes the following points about his role:-

- The duties were not those originally agreed
- The pattern of organisation decided by the States of Jersey confused accountability

²⁴ C&AG report ‘The Former Chief Executive – Compromise Agreements, page 13.

7.26 The letter proposed a reorganisation of the Chief Executive Officer's role which would allow the former Chief Executive to leave his post "*without public difficulty*"

7.27 Other notes made separately show that there was an oral complaint made by the former Chief Executive about the behaviour of the Minister for Treasury and Resources over an extended period. That was confirmed in writing and included complaints of:-

- *Two years of sustained interference by the Deputy Chief Minister and Treasury Minister*²⁵
- *Each issue had been raised with Chief Minister*²⁶
- *Nothing had been done by Chief Minister*
- *Treasury Minister "Wanted to get rid of me"*
- *Further complaints to Chief Minister*
- *Still nothing done*
- *Disagreement on several matters on 11th January 2011*²⁷.

7.28 Interestingly, there is no direct power or responsibility line between the Minister for Treasury and Resources and the Chief Executive Officer. Issues between them need to be won over by persuasion and strength of character.

7.29 When the Committee discussed the relationship with the Minister for Treasury and Resources, he stated;

*"I think it is fair to say that there was a difference of style in the way that I would have approached matters concerning the Comprehensive Spending Review."*²⁸

7.30 It is apparent from the above that there was some smudging of roles between policy development (political - in this case the Minister for Treasury and Resources) and operational implementation (officials - in this case the former Chief Executive Officer). The Minister for Treasury and Resources confirms this in his evidence:-

"I think it is fair to say that I have and I had a difference of approach in dealing with some matters compared to the Chief Executive, which was well known and was discussed on a number of different occasions, which is documented in various

²⁵ The Deputy Chief Minister was the same individual as the Minister for Treasury and Resources at that time.

²⁶ Issues on file and seen by Comptroller and Auditor General

²⁷ A further example is that the new treasurer of the States had been appointed without the involvement of the Treasury Minister which antagonised the situation further.

²⁸ Hearing of 16th April 2012.

different email exchanges between myself and the Chief Minister and it is not for me to follow. It is for me to alert and alert I did.”

- 7.31 Use of terminology such as “*difference in style in the way in that I would have approached...*” and “*I had a difference of approach...*” alerts the Committee to the fact that the Minister was too involved in operational matters ie: style and approach, rather than setting the policy objectives and permitting the Chief Executive Officer to implement these in his own style and approach.

KEY FINDING

7.32 There is no clear demarcation of boundaries between policy setting by States Members and operational implementation by officials. Blurring these lines can lead to destabilisation of relationships and derailment of operational matters rendering them ineffective.

- 7.33 Matters had deteriorated during a discussion between the Minister for Treasury and Resources and the Chief Executive Officer on 11th January 2011. The Minister for Treasury and Resources referred to that meeting as follows:-

“I certainly do have my own note regarding the meeting with the Chief Executive on 11th January, but I do not think it is appropriate to discuss that in public forum unless you decide subsequently to release some information.”²⁹

- 7.34 The Committee received numerous documents from the Minister for Treasury and Resources. These documents show that the Minister raised various issues relating to the performance of the Chief Executive with the Chief Minister, Senator Le Sueur O.B.E. There is also evidence that no response was received from the Chief Minister. However, the documents were not initially produced with the intention of being made public and the Public Accounts Committee considers that the publication of the documents would not add value to the enquiry. The point is that they verify the position of the Minister and have been seen by the Committee.
- 7.35 It is apparent that the relationship between the Minister for Treasury and Resources and the former Chief Executive was under significant pressure.
- 7.36 When asked what could have been done about the problem, Mr Le Sueur O.B.E. said:

²⁹ Hearing of 16th April 2012.

“The only effective solution is to get the two of them to agree between themselves, facilitate it as far as possible by a third party.”³⁰

7.37 When asked if he had done that, Mr Le Sueur O.B.E. said;

“I did not do that to the extent that maybe I should have done but I felt it was a situation that needed an independent person rather than myself to be able to do that. I did not, at the time, see the availability of such a person.”

KEY FINDING

7.38 Two very senior individuals were unable to resolve their differences and no intervention was made by the only person who could be viewed as having overarching responsibility: the Chief Minister. He allowed an acknowledged pressurised relationship at an importantly high level to worsen. This is testament to the inadequacies of the systems and processes available and being employed at the highest levels of the organisation.

7.39 Again the Committee was drawn back to the fact that the responsibility matrices are dysfunctional both at political and operational levels individually.

7.40 The Chief Minister can, and did, “sit on his hands, however. If the Chief Minister is not the ‘manager’ of the topmost staff, who is? When discussing the responsibilities of ‘management’ within the top posts,³¹ Mr Le Sueur O.B.E. points out that the “...*structure we have becomes quite tricky.*”

7.41 It would be easy to attribute the blame for the departure of the former Chief Executive Officer at doorstep of the Minister for Treasury and Resources; after all, he was involving himself in operational matters under the remit of the former Chief Executive Officer which was one of the factors that tripped the compromise agreement and consequential payment of £546,337.50. However, both the Minister for Treasury and Resources and the former Chief Executive Officer were victims of a system which had been rendered faulty, as previously explored.

7.42 It could also be argued that the then Chief Minister was also a victim of this faulty structure, however, the Committee is taken aback that a person in such a senior position, aware of the

³⁰ Hearing of 8th May 2012.

³¹ Hearing of 8th May 2012. Page 15.

increasing pressures between two senior persons, with whom he worked closely took no action to intervene. He had been instrumental in the original decision to revise the former Chief Executive Officer's contract to include the clause of 2.5x his salary and would have known the likely cost to the Island if this were to be invoked.

KEY FINDING

7.43 The then Chief Minister did not react to serious concerns raised and therefore allowed an already pressurised relationship to get worse. Given his knowledge of the contractual agreement with the former Chief Executive Officer, his lack of action was directly responsible for the resultant large cost to the Island upon the departure of the former Chief Executive Officer.

7.44 Until the responsibilities of the Chief Minister and Chief Executive Officer have been revised, until there is a clear demarcation of political/operational roles, until there is training for Ministers and Chief Officers in this area and clear sanctions for unacceptable behaviour that situation is unlikely to change.

RECOMMENDATION

7.45 Serious concerns relating to behaviour have to be acted on promptly whether involving a Minister or public employee or both, appropriately recorded within personnel files and accompanied by an explanatory note on how it was resolved.

RECOMMENDATION

7.46 An independent mediator should be identified before the end of 2012 to work with the States Employment Board and the Privileges and Procedures Committee whenever serious concerns are expressed by the Chief Executive Officer and Chief Officers in respect of working relationships with Ministers.

Resolution of financial issues: political versus operational

7.47 It is worth noting that in terms of financial issues, there are procedures in place to resolve any operational concerns in respect of political directives. Financial Direction³² 2.2, paragraph 5.21 states;

“In instances where a minister in charge of a department is contemplating a course of action involving a transaction which is considered to infringe the requirements of propriety or regularity, or which relates to the accounting officer’s wider responsibility for economy, efficiency and effectiveness, the accounting officer should set out in writing their objection to the proposal, the reason for the objection and their duty to notify the Comptroller and Auditor General should their advice be over-ruled. If the minister decides to proceed the accounting officer should seek a written instruction to this effect. On the receipt of such an instruction the accounting officer must copy it to the Treasurer and the Comptroller and Auditor General. On the assumption that this procedure has been followed the Public Accounts Committee can be expected to recognise that the accounting officer bears no personal responsibility for the transaction or action.”

KEY FINDING

7.48 There is no such similar procedure to assist with matter of a more general nature such as the breakdown of working relationships between politicians and officials.

Harassment and Bullying in the Workplace

7.49 As a point of interest, the problems outlined above between the two individuals are not uncommon in an organisation the size of the States of Jersey. The behaviour is well catered for within States of Jersey policies for States Employees within the ‘Tackling Harassment and Bullying in the Workplace Policy.’

³² This financial direction has been issued under Article 38 of the Public Finances (Jersey) Law 2005

7.50 The definitions in the policy are;

Harassment is:

“Unwanted conduct that violates people’s dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.”

Bullying is:

“Repetitive offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means which undermine, humiliate, denigrate or injure the recipient”

7.51 Post holders of top public positions can be expected to be capable, confident individuals with extensive skills of persuasion and significant strength of character. Whilst robust and challenging conversation is an essential element in negotiation in any environment, including the top echelons of the States of Jersey, forays into bullying and harassment must not be tolerated. Both the medium and the fortitude to deal with such behaviour must be, not only available, but expected to be deployed.

7.52 Section 9 of the policy outlines the role of the manager receiving the complaints and although it is clearly aimed at the general population of the workforce rather than at a political level, the duties of the recipient of the complaint are clear.

7.53 Draft Amendment (No 1) of the Standing Orders of the States of Jersey (P.225/2005) related to the procedure to be adopted by elected members in regard to complaints about States employees. The Appendix to that Amendment specified the procedure to be followed in detail. Despite the amendment being accepted and therefore present in an abbreviated form within Standing Orders (Schedule 3 Code of Conduct for Elected Members, Paragraph 6) the appendix to the report in full has not been found in any policy documentation.

KEY FINDING

7.54 Procedures to be adopted by elected members in regard to complaints were agreed by the States, included in an abbreviated format in Schedule 3 of Standing Orders but not provided in full to States Members.

KEY FINDING

7.55 It is the absence of the former Chief Minister's intervention that provided the catalyst for the loss of the former Chief Executive.

RECOMMENDATION

7.56 The Privileges and Procedures Committee must ensure that the Appendix of (Amendment No 1) of the Standing Orders of the States of Jersey (P.225/2005) [*Procedure for dealing with a complaint or concern about capability from an elected Member*] must be included in the States Members Handbook so that Members are fully aware of the procedures to be followed. (included as Appendix 2 of this report)

Consideration of Termination of Employment of the former Chief Executive

7.57 The Chief Minister sought advice in respect of the offer of resignation of the Chief Executive Officer as described in the report by the Comptroller and Auditor General.

7.58 The contract of employment of the former Chief Executive provided that;

"19.1 With effect from 10th March 2005, this contract is subject to termination by mutual agreement in which case the Chief Executive will be entitled to a non-pensionable settlement of 2.5 times his annual salary."

7.59 It also contained a clause allowing termination of employment in relation to poor performance.

7.60 As already discussed, there was no documentary evidence to support any claim of or to show poor performance on the part of the former Chief Executive Officer. The only performance review that existed showed that expected performance levels had been attained or exceeded. Therefore the acceptance of a mutual agreement to terminate the contract on the grounds of a degree of breakdown in the relationship between the Minister for Treasury and Resources and the former Chief Executive was the only option available.

7.61 One of the emails supplied to the Committee in confidence by the Minister for Treasury and Resources, was sent from him to Senator Le Sueur O.B.E., the Chief Minister at 15.48 hours on 6th March 2010. This document questions the actions of the former Chief Executive in relation to failures in the Treasury Department. If these issues had been acted upon and

recorded at that time, other options may have been available to the decision makers about the termination of the former Chief Executive's contract. Indeed, the request to terminate the contract may never have been made had the necessary intervention by the then Chief Minister taken place.³³

- 7.62 Unfortunately this lack of intervention meant that those deciding on the Chief Executive Officer's departure had to seriously consider whether it could have culminated in the States having to defend itself in an investigation, possibly a tribunal or other legal involvement. Those processes could be protracted, politically sensitive, possibly damaging to the reputation of the States, and in the case of failure, be even more costly than an agreed pay off.

KEY FINDING

7.63 The continued failure to properly deal with performance reviews and appraisals, to record concerns relating to performance, to address working relationships which were heading for irretrievable breakdown, placed those deciding on the release of the former Chief Executive Officer from his post in an invidious position and left them little option but to agree to the terminations of the contract.

Tribunals

- 7.64 The breakdown in relationships, management restructure or poor performance can all lead to termination of employment. If the process of termination is incorrectly dealt with, an employment tribunal may be requested to resolve outstanding grievances.
- 7.65 The establishment, powers and procedures of the Jersey Employment Tribunal are provided for in the Employment (Jersey) Law 2003. The Tribunal presides over matters of terms and conditions, financial and other disputes including the termination of contracts. The 7.65 Tribunal has powers to make awards relating to infringements of the rights of employers or individuals.
- 7.66 Tribunals have an important role in resolving disputes and protecting the rights of individuals. It is the view of the States of Jersey, as an employer³⁴, that tribunals may be time consuming and bad publicity. Regardless of the judgement, they tend to be expensive and harmful to the reputation of one or both parties. In addition, the outcome is uncertain and the process can be

³³ E-mail supplied in confidence to the PAC by Senator Ozouf. (2.6)

³⁴ Briefing from the Human Resources Department.

drawn out, which also adds an element of risk to any public money invested in presentation or defence of a case.

- 7.67 The role of the Human Resources Department is to ensure that employment processes are complete and adhered to. Most tribunal cases are lost on poor process procedures. The Committee (and the Council of Ministers) has been advised that the States of Jersey Human Resources Department currently has insufficient resources to be able to manage the necessary processes.³⁵

KEY FINDING

7.68 The Human Resources Department is not currently fit for purpose in order to meet modern day Human Resource requirements for the Public Service.

- 7.69 The above considerations meant that the prospect of the former Chief Executive going to a tribunal was not attractive to the States.
- 7.70 On 16th February 2011, the States Employment Board (the Board) met, chaired by Senator T. Le Sueur O.B.E., then Chief Minister. The meeting was held in private. The Committee was briefed on the circumstances relating to the request of termination of the Chief Executive Officer. It was recognised that the consideration of termination of employment was the responsibility of the Board.³⁶
- 7.71 The Board considered that in respect of the 2005 contract amendment, the inserted mutual termination clause had been too generous and took steps to ensure that a decision to pursue mutual termination would not set a precedent. The Board noted that the Chairman supported mutual termination on the basis that the Chief Executive worked a proportionate notice period to ensure an orderly transition.
- 7.72 Having obtained legal advice concerning the available options and the implications arising from those options, the Board decided that it would be mutually beneficial to pursue mutual termination of the contract. The Chief Minister was delegated to negotiate the termination of the Chief Executive's contract of employment, resulting in a payment to the officer of £546,337.50.

³⁵ HR Business Plan April 2012.

³⁶ Article 8(2)(d) of the Employment of States Employees Law

7.73 By way of comparison, to identify how much would have been paid to the former Chief Executive Officer if it had been under normal circumstances rather than the 2.5 times salary, the following would apply.

- The maximum settlement amount should not normally exceed the equivalent of one year's pay subject to the agreement of SEB; the mandate and discretion to vary this rests with SEB. Although the SEB retains discretion to approve a total sum exceeding the equivalent of one year's salary, it has confirmed that it would only be minded to consider payment of a greater sum if it was presented with an exceptional and compelling business case
- The total payment is not to exceed number of months' pay that would have been received to normal retirement age (not applicable in this instance)
- Notice is normally payable in addition to the settlement amount

8. Other Compromise Agreements

- 8.1 The third Term of Reference for the review was:
To examine the risk assessments made in relation to compromise agreements which have been triggered since 2005 and identify whether value for money has been achieved.
- 8.2 Details of other compromise agreements over the previous five years with senior staff have been supplied within two reports by the Comptroller and Auditor General. The first, 'Utilisation of Compromise Agreements' was published and is a publicly available document. The report lists ten cases of the use of compromise agreements over the last five years.³⁷ As the Committee has no intention of discussing each case in detail, they are not reproduced in this report. The agreements have been used in cases such as;
- stress related illness that has connections to poor performance;
 - management reorganisation where the post has been eliminated or changed;
 - continuation of an existing contract for various reasons;
 - allegations of bullying.
- 8.3 The Comptroller and Auditor General's report referred to above was supported by a more in depth examination of the individual contracts which was supplied to the Chairman of the Public Accounts Committee. This annex was by its nature confidential. It dealt with named individuals who are protected by the Data Protection (Jersey) Law 2005. The details are also covered by confidentiality agreements between the employer and the individuals concerned. The Committee will respect the confidentiality entrusted to it and this report will not contain information relating to identifiable individuals.

Use of Agreements

- 8.4 The invocation of compromise agreements is a judgement call by decision makers depending on the circumstances of each individual case. The Committee does not intend to second guess every decision made over the last five years. The interest of the Committee is focussed on whether value for money has been achieved for the public of the Island.
- 8.5 In the instance of cases relating to poor performance, for example, it appears that the payment was no more than would be expected in order to conclude a contract where the employment of an individual has become untenable and would therefore be considered value for money.

³⁷ Comptroller and Auditor General report 'Utilisation of compromise agreements'. Page 12 to 14.

- 8.6 In allegations of bullying, any decision to make a payment over and above the minimum necessary to remove the individual must be questionable. Allegations of bullying and harassment against the employee and discontent on the part of senior management about the employee's management style would suggest to many that other methods of concluding contracts should be available to any employer. Maybe the option taken was simply the 'easy answer'.
- 8.7 Over all, the compromise agreement has been used to deal with the termination of employment in many different circumstances. As discussed above, the option of going to a tribunal can have significantly greater financial consequences. At the very least, compromise agreements allow the employer to retain some element of control on the termination of employment where the continued employment of an individual has become untenable for whatever reason, without risks of financial and reputational damage to the States.
- 8.8 The ten compromise agreements over the last five years, contained within the Comptroller and Auditor General's report along with that of the former Chief Executive Officer have cost the States of Jersey approximately £1.4 million.

The Private Sector

- 8.9 Within the Private Sector, the use of compromise agreements is an established and accepted method of dealing with employees that are no longer required in their current role. It allows an agreement to be reached, which is to the mutual benefit of both parties. They occur regularly within the Private Sector without comment as they are rarely made public by either party.
- 8.10 It is recognised that if someone has a valid employment contract, employers cannot just dispense of their services without a valid reason. In an ideal world, compromise agreements would be avoided by good Human Resources forward planning and by providing and managing the on-going training of staff. Unfortunately with the fast changing world that we live in this is not always possible or practicable.
- 8.11 Considerations in the private sector with regards to any compromise agreement include:
1. Are there robust performance reviews and appraisals in place to ensure that compromise agreements can be avoided as far as possible?
 2. Is the level of payment agreed fair and reasonable?

- 8.12 From a business point of view, the private sector appears to have no problem “paying off” someone with a payment if it can re-coup that cost within a “reasonable” time period, especially if there are compelling reasons to do so.³⁸ Reputable companies will be offering support systems for staff including the use of the Jersey Advisory and Conciliation Service.
- 8.13 The need to restructure a business is understood in a chameleonic and competitive world. This may involve the necessary redundancy of numerous people, many of whom have been hard working, productive and loyal for long periods of time. In such cases, compromise agreements will be used. The value for money is judged on how the cost balances against the financial benefits of the changes. It is apparent that a three year period to regain the cost is frequently an acceptable financial structure, dependant on the individual circumstances.

KEY FINDING

8.14 Relating to other compromise agreements entered into by the States over the last five years, the Committee noted that the private sector has no issues with compromise agreements. They are used as a tool for many reasons and money spent is recouped over the following period.

Confidentiality

- 8.15 Public sector workers are generally protected by data protection laws from personal details being made public. It may be considered reasonable that privacy is respected as it would be in the private sector. However, there is a counter argument that money used to meet salaries and compromise agreements is from the public purse and therefore should be transparent and open to public scrutiny.
- 8.16 In March 2009, the Australian Treasurer and Minister for Superannuation and Corporate Law announced reforms aimed at curbing excessive "golden handshakes" paid to company executives. The community had been offended by directors and executives being rewarded for poor performance. The reforms empowered shareholders to reject such payments where they are not in the interests of the company, the shareholders or the community by lowering the threshold at which termination payments must be approved by shareholders from the current level down to one year's average base salary.

³⁸ Due to the personal and confidential nature of the information supplied to the Committee, regarding compromise agreements in the private sector, the references are retained in confidence and the information has been de-personalised for this public report.

- 8.17 There is clearly no substitute for properly managed performance reviews backed by competent management with timely and sufficient management intervention when necessary. Failure to meet these standards leaves the employer open to being squeezed into compromise arrangements when it may have been possible to deal with matters in a different manner. The former Chief Executive case is a classic example of how serious problems can be encountered.
- 8.18 Where individuals working in the public arena receive large amounts of money, the public frequently consider the arrangement to be a 'waste of taxpayer's money'. This may be the result of the need of the public to understand where public money has been spent. However, it is equally likely to be because the privacy and confidentiality surrounding such contracts may appear to suggest a lack of transparency covering up incompetence or even conspiratorial behaviour. The Committee questions whether the issue is moreover a lack of public understanding of such agreements.

KEY FINDING

8.19 Lack of understanding is a likely factor in public discontent over the use of compromise agreements.

Tax Incentives

- 8.20 Compromise agreements are tax free for the first £50,000. Any award beyond that is taxable at the standard rate. As a comparison, the UK applies a £30,000 cap on tax exemption for receipt of monies from a compromise agreement.
- 8.21 The Committee questions the morality of a tax exemption for any money received as part of a remuneration package which is over and above the standard tax allowances.

9. THE WAY FORWARD

- 9.1 The Public Accounts Committee based this review on the recommendations of the Comptroller and Auditor General (Appendix 1). The Committee is pleased that the Chief Minister has responded favourable to these stating:-

“Maybe I should make it clear that I accept all the C&AG’s recommendations and intend to implement them.”³⁹

- 9.2 Both reports by the Comptroller and Auditor General have a recommendation relating to the development of the Code of Conduct for Ministers for dealing explicitly with the relationship between Ministers and officials.
- 9.3 The Chief Minister has agreed with the recommendation, stating that work was already being undertaken in that area. For any Code to be functional, however, it must include sanctions and clarity about who has the authority to invoke the sanctions.
- 9.4 Prior to this, however, a major issue inherent in the creation of such a document needs to be addressed: that of the lack of corporate responsibility within the Council of Ministers, as mentioned earlier in this report. This in itself, impacts on the full impact of any Code which could currently be developed.

KEY FINDING

- 9.5 A Code of Conduct for Ministers for dealing explicitly with the relationship between Ministers and officials is an appropriate tool. However, it is useless without the ability to sanction when someone breaches it.**

RECOMMENDATION

- 9.6 The Privileges and Procedures Committee must draw up a thorough and robust system of investigation and resulting sanctions which can be implemented to ensure compliance with the Code of Conduct for both States Members and the Council of Ministers.**

³⁹ Public Hearing Monday 16th April 2012. Page 7

- 9.7 A second recommendation contained within both reports relates to establishing arrangements for independent oversight of the relationships between Ministers and officers. Committee Member Mr A. Fearn asked the Chief Minister for his view on independent oversight:-

"I am absolutely committed, and it is one of the big themes about modernising the public service that I am starting to talk about..."⁴⁰

KEY FINDING

9.8 A modernisation programme is under consideration.

- 9.9 The third recommendation in both reports related to performance management and dealing with behaviour that impedes effective performance management, The Chief Minister was asked about this and stated:

"You are absolutely right, the most difficult are the Ministers and the chief officers, and the most difficult of those difficult ones is without doubt the Chief Executive and the Chief Minister. The current Acting Chief Executive has carried out thorough performance reviews of his chief officers, which have involved the Minister concerned, and I remember being involved with performance appraisals for my chief officer at Social Security. The review of the Acting Chief Executive is undertaken with involvement of an independent individual."⁴¹

- 9.10 When discussing the ways in which the difficulties surrounding the Chief Executive's position may best be addressed, as contained within the Comptroller and Auditor General's report, 'The Former Chief Executive – Compromise Agreement', the Chief Minister expressed the opinion that;

"the law does not give the post holder the abilities, or the accountabilities to be responsible. That has to be addressed."⁴²

- 9.11 The Chief Minister was very positive in the direction he wished to move forward. All the Comptroller and Auditor General's recommendations would be examined and implemented where possible, some may be a challenge but an attempt at them all would be made.
- 9.12 However positive the Chief Minister's comments may have been, the Committee noticed that the promises to the future contained no time lines or fixed targets and is therefore concerned that they may amount to nothing.

⁴⁰ Public Hearing with the Chief Minister on Monday 16th April 2012. Page 8

⁴¹ Public Hearing with the Chief Minister on Monday 16th April 2012. Page 12

⁴² Public Hearing with the Chief Minister on Monday 16th April 2012. Page 15

KEY FINDING

9.13 The Chief Minister appears to be committed to meeting all the recommendations within the Comptroller and Auditor General's reports, but there is as yet insufficient information regarding timelines and target deadlines.

RECOMMENDATION

9.14 The Chief Minister must provide the Corporate Services Scrutiny Panel with a timeline as to when he intends to change his policies in respect of the recommendations contained within the reports of the Comptroller and Auditor General.

9.15 As to the future, will there be further cuts after the Comprehensive Spending Review is completed? That is not known; what is known is that there will be changes. Some of these changes may be significant. One submission from the private sector stated:

"...if there was serious management/ministerial effort to reorganise the States work force into a more efficient unit then I would expect the level of compromise agreements to be higher than 10 [over the last 5 years].

This does not suggest to me a dynamic management team looking to make real and effective long term change in order to optimise the way that the States deliver on its responsibilities."

Value for Money

9.16 In the round, having considered the facts available and the evidence presented, the Committee notes that there is a promise by the Chief Minister to rectify the faults of the past to ensure they do not happen again.

9.17 The Committee has a duty to comment on the use of compromise agreements in general. The decision as to whether compromise agreements are value for money is not as subjective as may at first be perceived. The balance needs to be based on each and every case. It is more complicated than simply whether the amount paid to an individual is excessive, reasonable or minimal. The cost of not terminating a contract when the employment of an individual becomes untenable, for whatever reason, must be considered.

- 9.18 In addition, Jersey must keep abreast of best practice elsewhere ensuring competitiveness in the national job market.
- 9.19 In cases of a fixed project, such as a bridge or building, value for money can be established by asking three key questions;
1. Does the completed project provide what was required?
 2. Did it come in at or under budget? and
 3. Did it get completed on time?
- 9.20 If the answer to those three questions is “yes”, value for money can be assured. Failure in one or more areas raises doubts until the failures add up to the project failing to be value for money.
- 9.21 Compromise agreements do not fall into the category that allows those questions to be simply or directly applied. However, with some consideration, the principles remain the same.
1. Did the agreement allow the employer to terminate a contract in a manner that satisfied both parties?
 2. Did it cost less than doing nothing or going to a tribunal might have done?
 3. Did it allow the employer to move on with the minimum interruption to best service?
- 9.22 If the answers are yes, it becomes difficult to suggest that the cost was not value for money.
- 9.23 Despite the apparent lack of trust, or misunderstanding held by the public, there is a place within the employer’s toolbox for expedient use of such agreements.
- 9.24 Each case has to be examined in detail to establish its value for money. In most cases, the compromise agreement appears to have been triggered by one or more failures on the part of the employer. This has been shown to be particularly relevant in the case of the former Chief Executive, the payment of which overshadows all the other agreements.
- 9.25 In the case of the other agreements examined, some appear at face value to be money well spent in order to achieve management aims of reorganisation, others appear to be nothing more than dispensing of an employee that was not performing, at minimum cost. Others yet, need closer examination to be able to arrive at a conclusion.

9.26 The Chief Minister summed this up:

"...the reality is, doing it the right way, doing performance appraisal, performance management, takes time, it takes effort, it takes people, and it takes money."⁴³

9.27 In order for the Chief Minister to meet the required standards, the Committee recognises that investment will need to be made in significant upgrading of the Human Resources Department. Implementation of achieving value for money will be the responsibility of that department and will fail if attempted with the outdated resources available at this time.

KEY FINDING

9.28 Good value can only be obtained on the proviso that performance management is maintained at a sufficiently professional level, and for all levels of public employees, to prevent default to compromise agreements.

9.29 The Committee asked the recently appointed Director of Human Resources a hypothetical question:

"If the States of Jersey had a fully up to date and efficient HR department, how might the events leading up to and including the departure of the former Chief Executive have differed?"

9.30 The answer was interesting:

"...if we had effective and modern HR systems and processes and the necessary HR resources much of this should not have happened."

9.31 The Director of Human Resources went on to explain some examples as to where modern Human Resources' systems and processes could have changed the outcome⁴⁴ [see also Appendix 3 of this report]:

1. An effective performance management system from the Chief Minister down
2. Development systems
3. Succession planning systems
4. Code of Conduct for Ministers and Politicians
5. Lack of Change management ability
6. Modern HR practices

⁴³ Public Hearing with the Chief Minister on Monday 16th April 2012. Page 14

⁴⁴ The Committee is mindful that the Human Resources Department is currently pursuing an increase in budget to create a modern and efficient HR function.

7. Creating an engaged and empowered culture within the organisation

9.32 All these matters have been discussed in this report; however, full details of these comments are reproduced in Appendix 3.

KEY FINDING

9.33 An overly frugal approach to Human Resources is a false economy.

KEY FINDING

9.34 A strong, modern and efficient Human Resources Department should supply the wherewithal to achieve those standards. There is a place for compromise agreements as a management tool when appropriate but all the other management structures must be in place first. Every agreement should be considered on its worth, based on good performance management records and consideration of the options available.

KEY FINDING

9.35 The business case submitted by the Human Resources Department should be considered favourably by the Council of Ministers in order to create value for money across the whole organisation.

10. COMMITTEE MEMBERSHIP

The current membership of the Public Accounts Committee (as at the date of the presentation of this report) comprises:

States Members

Deputy Tracey Vallois (Chairman)

Senator Sarah Ferguson* (See note below)

Deputy Shona Pitman

Deputy Richard Rondel

Independent Members

Mr A. Fearn

Mr S. Haigh

Mr C. Evans

Note: *On Tuesday 12th June 2012, Senator S. Ferguson lodged 'au Greffe' "P61/2012, Vote of Censure: Minister for Treasury and Resources". At that point the Senator declared that a conflict of interest may be perceived and detract from the value of the report. She has taken no further part in the work.*

Officer Support: Mick Robbins

11. THE ROLE OF THE PUBLIC ACCOUNTS COMMITTEE

The primary function of the Public Accounts Committee is defined in Standing Orders⁴⁵ to review reports by the Comptroller and Auditor General and to report to the States upon any significant issues arising from those reports regarding :-

- The audit of the Annual Accounts of the States of Jersey
- Investigations into the economy, efficiency and effectiveness achieved in the use of resources by the States, States funded bodies, independently audited States bodies (apart from those that are companies owned and controlled by the States), and States aided independent bodies
- The adequacy of corporate governance arrangements within the States, States funded bodies, independently audited States bodies, and States aided independent bodies,
- and to assess whether public funds have been applied for the purpose intended and whether extravagance and waste are being eradicated and sound financial practices applied throughout the administration of the States.

The Public Accounts Committee may also examine issues, other than those arising from the reports of the Comptroller and Auditor General.

The Public Accounts Committee represents a specialised area of scrutiny. Scrutiny examines policy whereas the Public Accounts Committee examines the use of States' resources in the furtherance of those policies. Consequently initial enquiries are made of Chief Officers rather than Ministers.

⁴⁵ Standing Orders of the States of Jersey 1st January 2006, No. 132.

12. APPENDIX 1: RECOMMENDATIONS OF THE COMPTROLLER AND AUDITOR GENERAL'S REPORT

"My recommendations may be summarised in the following way:

(1) Performance review and appraisal of Chief Officers

The duties of Ministers with regard to performance reviews and appraisals of Chief Officers (and of all senior officers with regard to the review and appraisal of others) should be re-stated and compliance reviewed regularly.

Comment: it is important that these reviews are carried out and recorded consistently so that good performance is recognised as consistently as bad performance. Failure in this respect can be expected to have an impact on the willingness of the rest of the organisation to take performance reviews seriously.

(2) Specification of the Chief Executive's position and role

Consideration should be given to ways in which the difficulties surrounding the Chief Executive's position may best be addressed.

Comment: as a result of changes made as the relevant legislation passed through the States, the authority of the Chief Executive was constrained and the chance of corporate policies being upheld was reduced. The result is a post which attracts expectations which frequently exceed the post holder's powers to ensure delivery.

These issues may best be addressed in the review of the Machinery of Government being led by Sir Philip Bailhache.

(3) Code of Conduct for Ministers

Consideration should be given to the development of the Code of Conduct for Ministers to deal explicitly with the relationship between Ministers and officers, taking appropriate account of the guidance currently available in other jurisdictions.

Comment: It is unrealistic to expect that a culture based on mutual respect can be created in the States if Ministers believe they are entitled to behave (and are known to behave) without regard to that culture.

When that guidance is revised, it should make clear how corrective action will be taken in respect of cases of non-compliance by ministers.

Comment: There is no obvious reason why a Minister's failure to behave appropriately should not be a subject for appropriate disciplinary action.

(4) Conduct of ministers affecting contractual commitments to officers

Consideration should be given to establishing a protocol for the conduct of Ministers in respect of the States' contractual commitments to staff and to the way in which the importance of proper conduct in this area is made known to Ministers.

Comment: It is folly for anyone, let alone a Minister, to act in way that affects the States' contractual relationship with a member of staff without understanding that position beforehand and agreeing the course of action with those responsible for managing that relationship.

(5) Independent oversight

Consideration should be given to establishing arrangements for independent oversight of the relationships between Ministers and officers.

Comment: It is best to attempt to improve relationships before they have broken down irretrievably. The current arrangement in which there has been no independent source of counsel or guidance has not worked satisfactorily.

13. APPENDIX 2: PROCEDURE FOR DEALING WITH A COMPLAINT OR CONCERN ABOUT CAPABILITY FROM AN ELECTED MEMBER *(Appendix from Draft (Amendment No. 1) of the Standing Orders of the States of Jersey (P.225/2005) adopted 1st November 2005.*

PROCEDURE FOR DEALING WITH A COMPLAINT OR CONCERN ABOUT CAPABILITY FROM AN ELECTED MEMBER

Investigation of a Complaint/Concern about Capability

Where the relevant officer receives a complaint or concern from an elected member and it is confirmed that the elected member wishes to pursue the matter formally, the officer will request a written statement setting out the grounds of the complaint or concern. The officer will then institute appropriate investigations and will instigate relevant disciplinary action where this is considered appropriate. The elected member who raised the matter will be notified of the outcome of the investigation and of any resultant action.

Review process

If the elected member is not satisfied with the outcome of the above investigations, he or she should initially discuss the matter with the officer who undertook the investigation. Where this fails to resolve the matter, the elected member will call for a review of the original decision. In this event, the review will be carried out by the following –

T h e Chief Officer of the relevant Department, where the investigation has been carried out by a Manager of that Department;

T h e Chief Executive to the Council of Ministers, where the investigation has been carried out by a Chief Officer;

T h e Chief Minister, where the investigation has been carried out by the Chief Executive to the Council of Ministers;

T h e Council of Ministers, where the investigation has been carried out by the Chief Minister.

Conflict of Interest

Where the person to whom the complaint has been addressed or who would be expected to undertake the review has been involved in the matter, or there is a conflict of interest, an independent person will carry out the investigation or the review.

14. APPENDIX 3: RESPONSE FROM HUMAN RESOURCES DEPARTMENT TO COMMITTEE QUERIES

The Committee asked questions of the Human Resources Department and received the following response;

Q. If the States of Jersey had a fully up to date and efficient HR department, how might the events leading up to and including the departure of the former Chief Executive have differed?

If we had effective and modern HR systems and processes and the necessary HR resources much of this should not have happened. Having recently arrived in Jersey I have noted that HR is regarded as an administrative function. This is a significant difference from the UK, for e.g. in the NHS in the UK, HR is a core strategic function. In particular in NHS Scotland, and in private sector organisations which I have worked, HR leads the change agenda. In Jersey, HR is used in a personnel/ER role only and as a result you get what you sow. (NB:- The HR department does work hard! - it is just that they are doing administration and do not have all of the skills, experience and tools to do what a modern HR department should be doing). Ultimately it is not only about having a properly resourced HR department. It is about having an HR Department which is appropriately positioned and capable of leading organisational change and improvement in order to deliver the organisational vision.

Q. Rather less subjectively, if the outcome would be expected to be very different, what deficiencies allowed it to happen, what needs to be done to upgrade HR to an appropriate standard and what would the cost be?

Some examples as to where modern HR systems and processes could have changed the outcome:

1. **Performance Management System** – *If we had an effective performance management system from the Chief Minister down, where the Chief Executive received his strategic objectives from the Chief Minister and then cascaded them down throughout the organisation, the COM could have been able to assess the former Chief Executive's performance in an objective and transparent manner and address and support any short falls where necessary. Included in this system should be behavioural competencies – so that the former Chief Executive's leadership style was also being reviewed and systems put in place to address any issues.*
2. **Development systems** – *all leaders, even politicians, have development needs. Systems should have been in place to identify gaps and development mechanisms put in place to address short falls. CMB and COM leadership development should have been in place to ensure that both these groups had the necessary leadership competencies to lead the Island and the organisation. We cannot expect people to have these skills just because they are elected/ appointed – they need to be developed and supported.*
3. **Succession planning systems** – *when the former Chief Executive threatened to leave in 2005, if the States of Jersey had been developing some of its Chief Officers or senior managers, we would have had a successor or two in the wings. Succession planning takes years and would involve gaining experience off island in the UK or in other island authorities – one example of such a gap is the lack of MBAs at a senior level in the organisation. In addition, many of our Chief Officers only have experience of one area of*

- the business instead of having been developed across the whole organisation. There is a focus on operational management rather than corporate strategic impact.*
4. **Code of Conduct for Ministers and Politicians** – *If we have respect, trust and clear boundaries for how Ministers/Politicians should or should not behave then some of the behaviours the former Chief Executive was exposed to could have been addressed quite simply via the code. Instead, there were no guidance/rules – so people did not understand what was not acceptable behaviour. The development of a new Code of Conduct and independent oversight is clearly a priority.*
 5. **Lack of Change management ability** – *The failure to deliver against the change agenda was in part due to a lack of Change management skill in the organisation, a function HR should provide. This in turn led to further frustrations with the former Chief Executive's performance. The modus operandi of the organisation is to do things in Silos' and with a lack of transparency, which in part leads staff to feeling disengaged from the organisation and does not allow us to use effectively the wealth of talent we have within the States of Jersey.*
 6. **Modern HR practices** – *As a result of 3 above - It was necessary to change the former Chief Executive's contract. However, any "golden parachute" should have been time limited to for example three years, after which the Ministerial Governmental System would have been embedded. To have an open ended agreement was a perverse incentive as it encouraged such actions and the inevitable happened. In addition, our inability to deal with grievances/poor behaviours at the senior level has left us exposed to inappropriate behaviours and a culture where bullying can pervade.*
 7. **Cultural change** – *We have not done any work on creating an engaged and empowered culture within the organisation, where staff are allowed to challenge. A blame and fear culture exists – where people are scared to challenge inappropriate behaviours from both senior officers and Ministers. We do not have an open culture. Creating the right environment for an organisation to flourish is a key role for any modern HR function.*

Q. What is being done about HR meeting the needs of a modern employer?

The cost of creating a modern and effective HR function is hugely offset by the saving which the organisation will make as a result of being effectively managed, developed and by having a culture which encourages ownership and discretionary effort.

The HR business case (which you have) in essence captures how you would address many of these issues and further identifies some very conservative savings and returns of investment.