

STATES OF JERSEY

OFFICIAL REPORT

THURSDAY, 30th APRIL 2009

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

PUBLIC BUSINESS – resumption

1. Suspension of States employees and States of Jersey Police Officers: revised procedures (P.46/2009) - amendment (P.46/2009 amd.) - continued

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

Before the proposer sums up, could I ask for a point of clarification. It has been said by a couple of people this problem that we have in this proposition with the police can be sorted out with negotiations. The Chief Minister said he was willing to talk to the Deputy of St. Martin and while that is all very well, it is so embedded in the proposition, I am wondering whether it is feasible for it to be taken out at that stage or whether there is nothing they will, in fact, be able to do about it.

The Bailiff:

Clarification from whom, Connétable?

The Connétable of St. Saviour:

From you, Sir, as to whether the matter of the police being involved in this proposition can come out before it comes back to the States.

The Bailiff:

I think that must be a matter for the proposer of the motion. If the proposer is prepared to withdraw part of it, that is a matter for him, but if he is not then I am afraid the answer is no. Deputy Hilton.

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

I just wanted to say that I support the spirit behind the proposition but for all the reasons outlined by the Minister for Home Affairs yesterday I will not be able to support it. I did not speak on the main proposition yesterday.

Deputy P.J. Rondel of St. John:

Can we have clarification prior to that from the Deputy of St. Martin whether or not the proposition will read in the last line under (a) that the States of Jersey Police in fact will be removed from that. If not, does it stay, and therefore it makes a difference to how some of us may vote?

The Bailiff:

Shall we wait and see what the Deputy of St. Martin has to say in his closing speech? I call upon the Deputy to reply.

1.2 Deputy F.J. Hill of St. Martin:

It has been almost 5 hours and I thank every Member who spoke and also to Mr. John Moulin and Ms. Karen Huchet for their letters of support. They are 2 people who really know of the stress and hardship that has been suffered from suspension irrespective of its length. One thing that is proven is that despite regular questions being asked by the Connétable of St. Lawrence, very little has been done to remedy the ever-increasing number of suspensions. Even in Annual Report RC28 which was lodged only last month, the States Employment Board made no reference to suspensions even though last year saw the highest number of suspensions since records began in 2002. We have heard from the 4 States Employment Board members. I think the Chief Minister is now going to support my proposition. Senator Perchard wanted to refer my proposition to Scrutiny. Senator Ozouf has repeated his usual reasons for opposing my propositions on the ground that my proposition is flawed. The Connétable of St. Brelade must have been out of the Chamber during my debate if he is claiming there are not so many employees suspended. I repeat that during the course of 2008 there were 36 suspended States employees. Last year the cost for covering the suspended Home Affairs and Health Department employees was £956,000; that was just for 2

departments. I know how hard Senator Ozouf works - he is even out working out of this Chamber at the moment; the energy he gives to his many jobs - but that is the problem: too much responsibility is given to too few Members whereby **[Approbation]** they spend their time flitting from one meeting to another without addressing the very matters which they have placed lower down on their list of priorities. He has said he is not going to support my proposition because it is flawed. I hope that he will accept that my proposals will go a long way to easing the suffering of these employees and saving the taxpayer a considerable amount of money. To do nothing is not an option. Deputy Green has asked if the proposed panel will be independent. Again, he, too, must have been outside the Chamber or not read my report. What I said when I said how it would function, it will be an independent body but for the benefit of the Members who were out of the Chamber I will repeat how the panel will function later in my summing-up. Deputy Le Hérissier was concerned that the delayed discipline hearing was being caused by sick notes. I would remind the Deputy that my proposal is not about disciplinary hearings but a suspension review. Also it would only operate when an employee has been suspended and has not been given a discipline hearing or court date. Also I understand that employees can no longer play the sick card, as they are now subject to the 3-strike rule and their disciplinary hearings will go ahead in their absence even if they are still on a sick list. However, again, I repeat, my proposal is nothing to do with disciplinary hearings. I think I need to clear up the police issue. I believe my proposal should involve every employee in receipt of a salary paid from the public purse. It should be particularly relevant to police officers who, by the very nature of their job, make them very vulnerable to accusations, some of which are often frivolous or malicious and often unfounded. Deputy Fox rightly pointed out that the suspension is going to affect the officer's family. The police force is also very much a family and suspensions can have a life-changing effect on the officer's lives. I was disappointed by the response from the Police Association member and question whether this is a true reflection of the rank and file of its membership. I could not believe that a person with the responsibility for the welfare of his police officers could not support my proposal and he is out of step with every other State employee or representative that I have spoken with. As Deputy Le Claire rightly pointed out, the police should be no different from any other States employee, even if they perceive themselves to be different. A suspended police officer should have the right to attend a review for his suspension. Apart from the human cost, police suspensions cost the taxpayer over £264,000 last year and goodness knows how much more it is going to cost this year. I was amused when I heard the Minister and Chief Minister say how concerned they were about getting employees back to work. It was a pity that neither of them were in the Royal Court last week to witness a highly paid Q.C. (Queen's Counsel) informing the court that on behalf of the Minister for Home Affairs they were now not opposing the Chief Officer's request for a judicial review. How much better it would be if all the cost of that court time was put to investigating whatever allegations had been levelled against the Chief Officer. I, too, have a letter from the Police Association. The reason the Police Association's decision **[Interruption]** not to support my proposal is because ... with respect, I am speaking.

The Bailiff:

Is it a point of order, or is it a point of ...?

Senator B.I. Le Marquand:

I think it is a point of order, I have noted on many occasions in this House proposers raise new matters in their reply which deprives other speakers of the opportunity to respond in any way. I have been ambushed this morning by this proposer because he has done exactly that: deprived me of an opportunity of responding. Is that not the function of a closing speech to deal with the matters which have happened and not to raise new matters?

The Bailiff:

That is a perfectly proper point of order. It is the purpose of a closing speech of a Member to deal with matters which have been raised during the debate by other Members to reply to any points that have been addressed. It is not right that new matters should be raised in a closing speech because it does deprive other Members the opportunity of participating in a debate on those matters. Now I think, Deputy, you must therefore steer away from that particular aspect of that matter.

Deputy G.P. Southern:

Can I ask what is the supposed new matter?

Senator B.I. Le Marquand:

The matter is principally with myself in relation to judicial review matters. The judicial review matters have not been raised at any point before in this debate. In my view, they are not even relevant, but they certainly have not been raised. I am being attacked on the basis of a judicial review matter and having no opportunity to respond on it.

The Deputy of St. Martin:

No, you are not being attacked.

The Bailiff:

Can we steer away from judicial review, please, Deputy?

The Deputy of St. Martin:

Yes, I was just making a point how lengthy suspensions can cause the taxpayer and the suspended person a load of grief.

The Bailiff:

I think the Minister's point is that that has nothing to do with a judicial review.

The Deputy of St. Martin:

Well, yes. I mentioned I have a letter from the Police Association and their decision not to support my proposal is because although they fully accept the reasons behind my proposal to refuse the burden of the public purse and the welfare of persons who are suspended for lengthy periods, they do not believe my proposal will shorten the time of the police officer who is suspended. That is their reason. It should be noted that it has nothing to do with confidentiality. Nothing to do with confidentiality. It may be of interest that when officers are suspended, it is a formal process in line with my proposal. They are also entitled to be represented by a legal adviser. As mentioned earlier, police are out of step and I believe that their officers should be entitled to have their suspensions formally reviewed. The Connétable of St. Helier and the Deputy of St. Mary have both remarked on the Chief Minister's comments when he questioned my integrity. It is a pity that the Deputy Bailiff did not allow me to respond to the Chief Minister's comments in my main speech because I would have answered all the Chief Minister's claims which would also have been very helpful to States Members. I will not waste my time responding to the Chief Minister's comments other than to regret that the Chief Minister had to discredit my report to support his amendment which he has now removed and has withdrawn. **[Approbation]** For the Members who were out of the Chamber when I made my speech, I will repeat how my proposals will operate and I would ask maybe if it would help if Members looked at their proposition. In paragraph (a)(i) and (ii), which I hope everyone will support, is that when an employee is suspended it will now be a formal process similar to that operated by the States Police. The employee will be given written reasons for suspension at the time of the suspension and may be accompanied by a union representative, workplace colleague or friend. I would hope that we have put to bed the "friend" issue. The purpose of being accompanied is to support and comfort the employee, to witness the process and not to participate in it. Regarding paragraph (iii), at present if after 28 days a suspended employee has not been notified of the date of disciplinary hearing or a court hearing, the Chief Officer will

review the suspension. However, instead of merely reviewing the suspension in isolation, an independent panel drawn from across the public service will be appointed by the States Employment Board. The Chief Officer will attend before the panel to justify the continuation of the suspension that he or she has imposed. The suspended employee may also attend and be accompanied by a union representative, workplace colleague or friend. The review - I repeat, the review - is not to investigate or try the disciplinary case. It may well be that the Chief Officer is able to justify the continuation of the suspension. If that is the case then the suspension will continue. If the continuation cannot be justified, the panel will make its recommendations to the States Employment Board. If the panel is of the view that an investigation is being delayed without good reason, the panel will also report its findings to the States Employment Board and will take the appropriate action. The reviews will be administered by the Employee Relations section. It should not require any additional manpower and if there are less employees suspended and for shorter periods, then there will be a huge human and financial saving. Paragraph (iv) will allow for the suspended employee when attending the 28-day review to be accompanied by a union representative, workplace colleague or friend. It would be perverse to vote for (a)(i) and (ii) which allows for the suspended person to be accompanied at the initial suspension process and not allow for that same arrangement for the review. Regarding part (b) of my proposition, Members have already approved Home Affairs amendment to exclude the police from being required to amend this procedure within 42 days. However, we have now heard from the Attorney General who has confirmed my assertion that the police suspension procedure is not governed by any statutory laws or regulations but is similar to other States employees' procedures. I, again, believe that Members should support this proposal so that police officers are included or not separated from it. So in conclusion it is apparent that with the ever-increasing number of lengthy suspensions that the present arrangement is not working satisfactorily. As each year goes by the number of suspensions has increased. I believe my proposals will be an improvement and will benefit all States employees, and I ask that Members give their full support to the request the States Employment Board and the Minister for Home Affairs to amend whatever policies and procedures in relation to the discipline of States employees and States police officers. I make the proposition.

The Bailiff:

The appel is called for. I ask any Members in the precinct who wish to vote on the proposition to return to their seats. The vote is for or against the amended proposition of the Deputy of St. Martin.

Senator S.C. Ferguson:

Are we able to vote for each paragraph?

The Bailiff:

Not unless the proposer of the motion wishes to divide it up.

The Deputy of St. Martin:

No, I think it is too important to split; it would de-value it, so if Members wish to vote against it, so be it.

The Bailiff:

The proposition will be voted on as a whole. I ask the Greffier to open the voting.

POUR: 29	CONTRE: 19	ABSTAIN: 1
Senator B.E. Shenton	Senator P.F. Routier	Senator T.A. Le Sueur
Senator A. Breckon	Senator T.J. Le Main	
Connétable of St. Ouen	Senator F.E. Cohen	
Connétable of St. Helier	Senator J.L. Perchard	

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

2. Child abuse compensation claims: freedom of expression for survivors (P.49/2009)

The Bailiff:

The next item on the Order Paper is Projet 49: Child abuse compensation claims, and I ask the Greffier to read the proposition.

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

I wonder if this is an appropriate time for me to make a request to the States to defer debate on this proposition. I did allude to this in a statement on Tuesday but did not at that time formally propose the deferment because at that time there was no amendment lodged before the House. I did yesterday lodge that amendment and I think I am now in a position to formally request a short delay.

The Bailiff:

Senator, are you prepared to defer the matter as requested by the Chief Minister?

Senator S. Syvret:

No, Sir, I am certainly not. As I observed when the Chief Minister made his statement the other day, in my view the amendment is out of order; it negates the proposition; that is the effect of it. The objective of the proposition is to ensure that there is complete freedom of expression for abuse survivors. To that purpose that objective is negated by this amendment. On those grounds I do not believe there is any merit in delaying the debate today. There are a number of people out there and there is a degree of urgency associated with this matter. There are a significant number of survivors out there, potential claimants, who are, in fact, under a variety of pressures, sometimes, even frankly, inappropriately from their own lawyers to accept ...

The Bailiff:

Senator, may I interrupt you for one moment, please, in the interests of good order. Are you making a formal proposition, Chief Minister, that this matter not be debated this morning?

Senator T.A. Le Sueur:

I was going to ask if this was an appropriate time, and that is what I did, and I would then follow it up by making a formal proposition to that effect which I am prepared to speak.

The Bailiff:

The proposition of Senator Syvret has been properly listed for debate, the Council of Ministers have lodged an amendment, you have requested Senator Syvret to defer the debate on his proposition; Senator Syvret has refused. It is open to you to propose formally that the States do not debate the proposition of Senator Syvret if you wish to do so.

2.1 Senator T.A. Le Sueur:

I would like to formally propose that we do not debate this today and I will now briefly explain why I believe that is an appropriate course of action for Members to take. I must begin by apologising for the lateness of this amendment but I should also point out that the subject matter under discussion, despite what the Senator says, can hardly be described as that urgent since the resolution of any such claims is still some way off, probably several months at least. On that basis, it is more important in my view that we make the correct decision rather than simply a snap decision, a potentially unwise decision, just because Standing Orders say that it is a possibility. I think if we were just to debate the Senator's proposition that could lead to an unwise decision. Members who have had the chance to read our amendment will see that it is broadly similar in substance to that which I presented on Tuesday. However, as I indicated on Tuesday, the final wording still had to be determined at that time and the amendment has now been narrowed down to the very narrow point of the financial terms relating to the financial sum of any settlements. I hope that goes some way to reassure those Members who felt that the draft amendment was simply a negation of the proposition. I want to make it quite clear that this is only a narrow point on the financial settlements rather than the heart of the proposition. This more restrictive scope of the amendment compared with what I presented on Tuesday does indeed reflect a variation on that proposition rather than a negation. Indeed, Ministers were anxious to ensure that our amendment was not a negation of that proposition because we were very clear that we shared in every other respect the views expressed by Senator Syvret in his proposition and we did not want it to appear that this move in any way was a backdoor means of opposing it. The report to our amendment makes it abundantly clear that the Council of Ministers completely agrees with the spirit of the Senator's proposition. What I am asking at this stage is for Members to agree a short delay in debating Projet 49 in order that my amendment could be validly lodged for the minimum time period and then debated at the same time. If any Members are unclear as to why our amendment is necessary, I can only urge them to read that amendment. I do not really think it is appropriate for me to detail the arguments in favour of my amendment at this stage other than to say that I believe any fair-minded Member will appreciate the wisdom of not taking a hasty and potentially dangerous decision in the absence of the full effects. As I have already said, a short delay will not prejudice any victim of abuse but hopefully will allow a better outcome to be achieved for the victims as well as for the States of Jersey. I apologise again for the late lodging of this but I again ask them to support my proposition for a short deferral.

The Bailiff:

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

2.1.1 Senator S. Syvret:

I remain of the view that the amendment, even though slightly altered to the one that was put before us the other day, does indeed still have the effect of negating the prime purpose of the function of the original proposition. We have had some discussion to this effect when the Chief Minister made his statement. It has the effect of negating the proposition in that it could conceivably have the effect of stopping survivors from speaking to each other or survivors' lawyers from speaking to each other about the quantum of damages they might receive for the wrongs done to them. Indeed, it was said quite frankly that this was one of the objectives of the amendment. Now personally I think to try and stop the survivors working together ...

The Bailiff:

Senator, we are not debating the merits of it; we are debating the question of whether there should be an adjournment of it.

Senator S. Syvret:

Yes, I am coming to that point. But the fact is that this is an urgent matter. It is certainly true that final settlement of various agreements may be some way off but I can assure Members that in many cases, certain of the law firms are well advanced down that path of shepherding - if I might use that expression - survivors and certain groups of survivors into agreeing to certain things. Indeed, I have 2 such potential agreements that have been on the table here: this one is dated, for example, 17th March; there are others of other dates. So this is an urgent matter. There is a danger other settlements could be agreed, at least perhaps not between the States and the legal representatives, but certainly some survivors could find themselves in a position where they agreed to certain terms and certain conditions with their lawyers who then went on to negotiate on that basis, so there is a degree of urgency. I also have to say that the purpose of the amendment is misconceived and we should proceed with the debate today. It is misconceived for this reason: in that I do not believe it is properly enforceable on this Assembly. We have to reflect upon such considerations as freedom of information. Do we not, as representatives of the public, conceivably want to have a right to know the quantum of these settlements? Is that not important public information? Perhaps the Comptroller and Auditor General would wish to report on them. We need to know what taxpayers' money or insurance payouts or the cost of premiums have cost the public. There is simply no merit in this amendment and the fact that it has been brought forward at this very late hour I think it really is an insult to the Assembly [**Approbation**] and another attempt by the Executive to try and hold off and thwart the actions of a back-bencher. I would strongly urge Members to continue with the debate today. If there are Members in the Assembly who oppose my proposition, I would ask - and I would have more respect for them - if they simply voted against it rather than adopt this wrecking tactic.

The Bailiff:

May I just say from the Chair that Senator Syvret is of course entitled to his view as to the amendment but the amendment is not out of order; it does not wholly negate the proposition which is the wording in Standing Order 21(b). The original amendment proposed in the statement made by the Chief Minister would have been out of order but the amended terms of the amendment are in order otherwise they would not have been approved by the Chair.

2.1.2 Deputy G.P. Southern:

The motion is before us to defer debate of this proposition on the grounds that quite simply the Council of Ministers has been slack in its work. This proposition was lodged on 6th April, the amendment did not arrive until 29th April. Now while one might forgive a hard-pressed back-bencher for being dilatory when giving his response, one can hardly offer the same ... and by the way, the House very rarely does that. If you produce an amendment late, very often you have to lump it, as I know all too well. But one cannot offer the same excuse for the Council of Ministers with their tens of civil servants and innumerable secretaries to get a response out in time in order to

have a debate today. The fact is, this is within Standing Orders, the amendment was late, the Council of Ministers were slack and this is just a procedural device. There is absolutely no reason why we should not debate this today. **[Approbation]** The motion is clear; the amendment is clear and very simple. It can be done and dusted today and dealt with either for or against. With or without the amendment today, there is absolutely no reason why we should not be getting on with it and it is an affront to the rights of back-benchers that the Chief Minister should be suggesting otherwise.

2.1.3 Senator J.L. Perchard:

The House is being asked to delay this debate for 2 weeks and the opponents are saying that there is some urgency to hold the debate today. I can assure Members that there is no confidentiality agreement on any person who has been a resident of any children's home at the moment. There is not going to be one in the next 2 weeks, so this urgency does not exist. Anybody who has an opinion now about their treatment in a children's home can give it. There is no current confidentiality agreement and there is no dialogue directly as of this stage with the States. There is dialogue, of course, with ...

Senator S. Syvret:

The Senator was in error when he said that; there certainly has been a dialogue.

Senator J.L. Perchard:

Not with the States insurers and in official capacity in regards to a quantum of settlement. There has been no dialogue in that respect.

Senator S. Syvret:

The quantum that has been spoken of is a maximum potential payout of 300,000 Euros via a Redress Board.

Senator J.L. Perchard:

The Senator is quoting information that I do not think even the Chief Minister is aware of but he perhaps will touch on this in his summing-up. This urgency does not exist, I am afraid. It just simply does not exist. There is no confidentiality agreement currently. The amendment can be considered in 2 weeks' time as a part of the substantive proposition because there is no intention. I am sure there is no intention on behalf of any Member of this House to gag or create some mystery and some denial of the rights of people who have been residents of children's homes; their right to be heard. There is no intention of that. There are some very serious issues with regards to the States of Jersey insurance here and the comments of the Council of Ministers in the paragraph finally before the conclusion informs this House that the insurance position needs to be considered. The insurers have not come back to the States of Jersey as of yet with their formal advice but advice there will be. There are consequences and Members need to be fully informed before making this decision and a delay of 2 weeks, as I say, will not cause any problems to anybody other than, it seems, Senator Syvret.

The Bailiff:

I hope we are not going to have a long debate on this.

2.1.4 Deputy R.C. Duhamel of St. Saviour:

I wonder if I might suggest to the House that perhaps there is an alternative way forward and that will be to suspend the relevant Standing Order to allow the amendment to be taken today. **[Approbation]** Can I propose?

The Bailiff:

Well let us, first of all, ask the Chief Minister whether he would like to respond to that and indeed respond to the debate.

2.1.5 Senator T.A. Le Sueur:

I would certainly be prepared to debate the amendment today alongside Senator Syvret's proposition. I was not anxious to recommend that, having lodged it yesterday. I think in fairness to other Members who have lodged things less than 2 weeks and have been told to abide by the Standing Order, as I recall, regards the reason for earlier debate as being of such importance to the Island that to defer it would be prejudicial to the good of the Island. I cannot in all justification say that a deferral of this would be prejudicial to the immediate good of the Island. I think while the contrary is true that to debate Senator Syvret's proposition today without the amendment would not be in the interests of the good of the Island, it is a rather peculiar argument. So I think I would say provided it could comply with Standing Orders, I would be prepared to debate the amendment this morning.

The Bailiff:

Well, I put the proposition of the Chief Minister. The appel is called for. The vote is for or against the proposition of the Chief Minister that the proposition of Senator Syvret be not debated today. The Greffier tells me that procedurally it would be preferable to fix a date as an alternative, so perhaps the proposition should be therefore not to debate the proposition today but to defer it for 2 weeks until the next meeting of the States. That is the proposition before the Assembly and I ask the Greffier to open the voting.

POUR: 28		CONTRE: 20	ABSTAIN: 1
Senator T.A. Le Sueur		Senator S. Syvret	Connétable of St. Mary
Senator P.F. Routier		Senator B.E. Shenton	
Senator T.J. Le Main		Senator A. Breckon	
Senator J.L. Perchard		Connétable of St. Helier	
Senator S.C. Ferguson		Connétable of St. Lawrence	
Senator A.J.D. Maclean		Deputy of St. Martin	
Senator B.I. Le Marquand		Deputy R.G. Le Hérissier (S)	
Connétable of St. Ouen		Deputy J.A. Martin (H)	
Connétable of Trinity		Deputy G.P. Southern (H)	
Connétable of Grouville		Deputy of Grouville	
Connétable of St. Brelade		Deputy P.V.F. Le Claire (H)	
Connétable of St. Martin		Deputy S. Pitman (H)	
Connétable of St. John		Deputy K.C. Lewis (S)	
Connétable of St. Saviour		Deputy of St. Mary	
Connétable of St. Clement		Deputy T.M. Pitman (H)	
Connétable of St. Peter		Deputy T.A. Vallois (S)	
Deputy R.C. Duhamel (S)		Deputy M.R. Higgins (H)	
Deputy J.B. Fox (H)		Deputy A.K.F. Green (H)	
Deputy of St. Ouen		Deputy D. De Sousa (H)	
Deputy J.A. Hilton (H)		Deputy J.M. Maçon (S)	
Deputy J.A.N. Le Fondré (L)			
Deputy of Trinity			
Deputy S.S.P.A. Power (B)			
Deputy I.J. Gorst (C)			
Deputy of St. John			
Deputy A.E. Jeune (B)			
Deputy A.T. Dupré (C)			

Deputy E.J. Noel (L)				
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Deputy P.V.F. Le Claire of St. Helier:

May I please ask a request of the Chief Minister at this stage?

The Bailiff:

We have passed Question Time, Deputy. In relation to what?

Deputy P.V.F. Le Claire:

Rather unusually I make this request at this stage because of the fact given the short time of lodging and the fact that it is now on 12th May, we have now been told we have 2 weeks, I have had a look at this this morning and I do not find within the report the sorts of circumstances that the amendment says. For example, in the amendment it says: "With the exception that there may be circumstances in which commercial terms ..." I wonder if the Chief Minister may be able to circulate to us a fuller report as to what circumstances he envisages those to be, please, because without those we will be 2 weeks down the road and none the wiser.

The Bailiff:

Deputy, would it be sensible for you to go and discuss the matter with the Chief Minister, and the Chief Minister, if he feels there is a point, can certainly send a note around to all Members.

Deputy P.V.F. Le Claire:

I just thought that maybe perhaps he might consider this for all Members, but I will speak with him.

Senator T.A. Le Sueur:

I will endeavour to provide as much information as I possibly can, recognising that in terms of legal agreements, one has to be certainly a little bit circumspect.

3. Appointments Commission: appointment of member (P.51/2009)

The Bailiff:

Very well, we come to the next item on the Order Paper which is Projet 51: Appointments Commission: appointment of member, and I ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion in accordance with Article 18(1) of the Employment of States of Jersey Employees (Jersey) Law 2005, which is concerned with the appointment of Commissioners to the Jersey Appointments Commission, to appoint Mr. Julian Rogers as a Commissioner for a period of 4 years.

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

Hopefully a more straightforward proposition now. The Appointments Commission has been well served over recent years by the current membership: Mr. Liston, Mrs. Rees, Mr. Curtis and Mr. Soar. It is now proposed that we appoint for the next 4 years to give a period of continuity, Mr. Julian Rogers. Mr. Rogers should be known to Members as Chairman of the States Members Remuneration Body but has also had a variety of other roles as set out in the report attached to the proposition. In making this proposition for the appointment of Mr. Rogers, could I also take the opportunity of thanking the retiring member of the commission, Advocate Rose Colley, who has done 2 terms and served 7 years with that commission and provided valuable assistance, support and guidance? Her services will be missed but I have no doubt that Mr. Rogers will be an excellent replacement for her services and I propose his appointment.

The Bailiff:

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

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

I know Mr. Rogers to be a fine person and the valiant work he is doing almost is King Canute to offset pressure for remuneration for ourselves is, again, perhaps a thankless task which he carries out with great aplomb and stoicism. But 2 questions, if I may, about the Commission itself. Is the Chief Minister happy, despite the fineness of individuals on this highly-esteemed body, that it has as broad a representation of Island society as indeed it should have? Secondly, as was alluded to earlier this week, is he happy that the Commission's policies which are policies where they are fulfilling, to be fair, their official remit, are policies that are supporting proper succession planning within the States given our apparent inability to develop so many people for so many positions from within our public service?

3.1.2 Deputy D.J.A. Wimberley of St. Mary:

It is just a short comment. It is a request to the Chief Minister, in view of the importance of the Appointments Commission, I wondered if he could circulate to Members later the role description and person specification for an Appointments Commissioner.

The Bailiff:

I call upon the Chief Minister to reply.

3.1.3 Senator T.A. Le Sueur:

In response to Deputy Le Hérissier, yes, I am happy with the broad representation. With all these things it is good to have a wide cross-section as one possibly can and that is why this post was advertised within the Island, publicly advertised, and a proper selection process was undertaken and, clearly, Mr. Rogers was the best person of those who applied for the job. In terms of the policies of that panel, I am happy to circulate them to Members if we need to but I think in terms of succession planning, that has to be the remit of the States Employment Board and the States itself to set those policies. I believe that the policy and the policy remit of the Appointments Commission is to ensure that the selection process is properly carried out, its objective is fair and comes to the correct conclusion. I think it would be invidious of us to ask the Commission to do the States work for us. To the Deputy of St. Mary, would I be prepared to circulate a job description for this post, certainly I would. I think, as I say, the post was advertised publicly, a job description was available at that time but if Members want to see it, I see no reason why it could not be made available to Members as well. I maintain the proposition.

The Bailiff:

I put the proposition. The appel is called for. Can I ask any Member who wishes to vote to return to the Chamber. I ask the Greffier to open the voting which is for or against the proposition of the Chief Minister.

POUR: 39	CONTRE: 0	ABSTAIN: 0
Senator T.A. Le Sueur		
Senator P.F. Routier		
Senator T.J. Le Main		
Senator B.E. Shenton		
Senator J.L. Perchard		
Senator A. Breckon		
Senator S.C. Ferguson		
Senator A.J.D. Maclean		
Senator B.I. Le Marquand		
Connétable of Trinity		
Connétable of Grouville		

Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérissier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

4. Oral Questions with notice: abolition of time limit (P.59/2009)

The Bailiff:

We come next to Projet 59: Oral Questions with notice: abolition of time limit in the name of Deputy Tadier and I ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion (a) to agree that the current time limit of 90 minutes allowed for oral questions with notice should be abolished, and that the period for such questions should continue without time limit until all the questions have been answered and (b) to request the Privileges and Procedures Committee to bring forward the necessary amendments to the Standing Orders of the States of Jersey to give effect to the proposal.

4.1 Deputy M. Tadier of St. Brelade:

It seems there have been a few gremlins in the system over the past few days with the heating and one thing or another and I have been, unfortunately, subject to the same - or perhaps different - gremlins myself in the preparation, which is why you will be getting a circular coming around to you at the moment. I have not had time to staple it but ...

The Bailiff:

Through the Chair, please, Deputy.

Deputy M. Tadier:

Sorry, you will please beg my indulgence as it is my first proposition but I will try at all times to stick within Standing Orders. So, first of all, I will talk a bit about why I see it is necessary to bring this proposition and I will try and keep it very brief because I know that it is essentially the essence of the main arguments about this. There certainly needs to be a trade-off if we are to make any compromise between the amount of time we spend in the States, but also the fulfilling of our democratic obligations to ourselves and to the public. So let me just read the background to the report. The asking and answering of questions in public is an essential part of any modern democratic government. It provides a vital tool for the non-Executive to hold the Executive to account and to do it in an open and transparent manner. I believe this is something that we are all in agreement about. To quote the Deputy of St. Martin: "If a question is worth being asked and it has been approved, it is worthy of an answer." However, at present, it is a lottery as to whether the question will be asked. This situation has become even more acute in 2009, partly due to a new intake who are more keen to ask questions and partly as a natural result of previous Members becoming more au fait with the system as time goes on. While it can be expected that the number of oral questions submitted will stabilise as the new Assembly finds its feet, so to speak, it is also obvious that the overall number of questions being asked now will, on average, perhaps be higher than in the previous Assembly. I can see that this is a moot point but that is one of the possible outcomes and that seems to be one of the trends and this is, in my view, to be welcomed. Presently it is not uncommon for oral questions to tally between 20 and 30, however, it is rare that any more than 15 or so will be answered in any 90-minute session. I think it is worth mentioning at this stage that yesterday we had 17 questions submitted and, personally - I do not know what other Members think - I think yesterday's session was an ideal example of how Question Time can work very efficiently. We had 17 questions, all of which I believe were answered within the 90-minute framework and I think we had some very good chairing from the Deputy Bailiff yesterday in moving things along, using discretion, allowing time for questions which needed extra and then moving things along. In some ways the system is not necessarily completely broken but it does depend on a lot of discretion. I hope people have had a chance to have a look at the handouts. If you do not necessarily have one yourselves, I will be reading them out. But the first thing I would like to do is just to address the comments from the Council of Ministers and to deconstruct them ... do excuse me, I am going to take my jacket off. **[Members: Oh!]** Not allowed? I think that is another proposition waiting to happen. **[Laughter]**

Deputy R.G. Le Hérisssier:

Is the handout coming around or ... I know the Deputy is doing a very good job but we have not seen the handouts.

The Bailiff:

The Chair does not have a copy, certainly.

Deputy M. Tadier:

If I could ask maybe for the help of the ushers in this. There are still some on the printing machine downstairs. I had trouble with saving a document. It is a long story; I do not need to go into it. It may be helpful if people have a copy in the vicinity so they can refer to it but I will be going through it as we go along, so even if you do not have a copy, hopefully things will be quite clear. What I do hope, though, is that people have a copy of the Council of Ministers' comments in reference to this projet. Now when I was reading the Council of Ministers' comments, I turned to the back page and I half expected the words: "Benson and Hedges" or "Silk Cut Red" to be written on the back. In other words, it was evident to me that this had been given very little thought and may as well have been done on the back of a cigarette packet. The reason I say that is not to be unduly harsh on the Council. We have seen this week that they no doubt have a lot on their plates - perhaps more than they can handle - but from the cursory research I did into the issue it was quite

evident that most of the material, or certainly the entirety of their material, had been pulled off Wikipedia, not that there is anything wrong with that per se. Certainly that was one of the many websites that I consulted in doing my research. It will become evident why I make this assertion in a moment. But perhaps the worrying thing is that even though, as a G.C.S.E. (General Certificate of Secondary Education) student might well refer to Wikipedia, copy and paste information, this was not even done correctly and I will start by deconstructing some of what I see are certainly flawed and, at some times, flagrantly false claims that have been put across. So if you do have the comments you will see that a table is presented of jurisdictions throughout selected parts of the world and we have the United Kingdom, Northern Ireland, Scotland, Australia, Canada, New Zealand, India, Japan - that is exactly the same list as was on Wikipedia. Let us put this in context: the reason for the comparison is to say that Jersey, at the moment we have 90 minutes for questions with notice and we have half an hour for questions without, so we have a total of 2 hours for Question Time. Now if you compare this to the Council of Ministers' comments it will say that there is one hour for Question Time and there is half an hour once a week for Prime Minister's Question Time, so you would think from that the logical conclusion is that Jersey is better placed than the U.K. (United Kingdom) in the asking of questions whether it be with or without notice. But a fair comparison, if you look at the handout that some of you all have, is that in fact Question Time in the U.K. lasts for 4 hours a week while Question Time in Jersey lasts for 2 hours every 2 weeks. So, in fact, on average, we have one hour a week of questions; the U.K. have 4 hours every week or 8 hours every 2 weeks. So that is the first point I want to make. If we scroll down to Australia now, first of all, there is an assertion which says: "Normally one hour ..." and I cannot take any issue with that. Then it goes on to say: "... although the Prime Minister will terminate when he or she sees fit." Now this is simply not true. They simply have not understood what Wikipedia was telling them here because if we look at footnote 2 - and I have provided quotes for this in the references - what it does say on the Wikipedia site is: "It is possible for the Prime Minister to prematurely terminate Question Time, although this is never done due to the political implications it would have and bad publicity it would create." So, clearly, at very best, it is misleading to say that the Prime Minister will terminate when he sees fit because, in fact, this is never done. Wikipedia does go on to say in fact that there was one occasion a long time ago when a Prime Minister attempted that and what he faced was a back-bench mutiny and there were all kind of protests that went on and he certainly never did it again. So that is not true, that there is not some kind of mechanism by which someone can guillotine Question Time. It remains possible but it is never done, so that, again, is misleading. Now let us look at Canada. I believe it is said that Canada's Question Time lasts for 45 minutes. Well if that is the case, Jersey is doing very well, is it not? We have 2 hours of Question Time compared to 45 minutes, so that is a clear 1.25 hours more than Canada had, but let us look at what it says again. So again go to Wikipedia. Question period lasts 45 minutes pursuant to Standing Order 30(5) beginning no later than 2.15 p.m. or 1.15 p.m. It goes on to say that typically this happens on Monday through Thursday. So Monday through to Thursday, and also Friday starts at a different time. So, in fact, you have not got just one session of 45 minutes; you have 5 sessions of 45 minutes which, in my maths, works out as 3 hours 45 per week. So compare that to the Jersey of 2 hours, and if we want to compare like for like, then it is not a very true analysis. So Canada, the U.K. have got more than us, and Australia, we have seen a false argument being used there again. Okay, let us look at New Zealand. They have a slightly different system which I believe is with merit. They do not try and limit the time of questions, for they limit the number of questions which is quite commonplace. Some places do both, but they just limit the number of questions to be asked. So there are 12 oral questions, but these are asked every day. So if we look at footnotes 4 and 5, in New Zealand, oral questions are asked at 2.00 p.m. on each sitting. Twelve principal oral questions are asked, and then it goes on to say 12 questions, but every day. If you look at the New Zealand website which is printed there - and if you have not got a copy, I can certainly furnish Members with it afterwards -, you will notice that already this week, from Tuesday to Thursday ...

The Bailiff:

Deputy, I am sorry to interrupt you, but if you do not correct the habit at an early stage, you will never do it. You must not say “you”. You must use the third person and speak through the Chair: “Members must not do this.”

Deputy M. Tadier:

Thank you, Sir; I appreciate the correction. It is slightly more difficult under duress than when perhaps one is asking questions at question time, but I appreciate the intervention. So Members will note that already this week, between 28th and 30th April, there have been 3 sessions of 12 questions, so 36 questions effectively have already been asked this week. As I said, we usually manage between, say, 13, 15, and we managed 17 this week. So the point I am really making with this is the Council of Ministers’ document is nonsense. It is not a lie. Certainly I think they went into this with the right intentions, but they obviously did not charge their officers to do significant research and I think it has been shown that the comments from the Council of Ministers can be completely disregarded, and I hope that they will withdraw them and save face as they have withdrawn other things this week. If you want to make a fair comparison, you would have thought that you would have looked a bit further abroad. Now, I tried to think what other jurisdictions that Members might want to compare to Jersey. You might want to think of an English and French-speaking island, one which is significantly smaller than countries like the U.K. or Canada or Australia or New Zealand; a place which perhaps has its own level of autonomy which is comparable to Jersey. One might turn one’s attention to the island of Mauritius which, as you know, is both French and English speaking; predominantly French speaking but the Parliament would use English. They sit for 3 hours each Tuesday, which again is getting back to where Jersey is but we have not quite reached the same level of question time as these other places. So, at best, what I am saying is that the comparison is not fair. The Council of Ministers’ comments must fall. Conversely, what I am saying is that if we do want to increase question time, that there is a good argument to do it. After all, we are masters of our own destiny. So let us get back to the proposition in hand. Now, I want to address what I see as the main argument for this, and I would also like to say to the Members who are in the Chamber at the moment that I welcome this opportunity because whether it passes or not, I think it is always healthy that we can constantly review the processes that we have. I hope that Members will agree with my first point that question time is certainly something that needs to be kept. It is a good thing. It is transparent, and asking questions in public is what the public expects and it is the way that we show that we are accountable as a government. So the first argument I come up with is one of fairness, and that hinges on the premise that any back-bencher or any Member effectively - although it does tend to be back-benchers - will submit questions and it seems fairly arbitrary that a question could either be placed right at the beginning of the question paper or it could be put at the end. If you submitted 2 questions, there is just as much chance that your questions will both go to the end and not be answered, if there were a lot of questions submitted, as there is that it will go to the beginning. So this does not seem particularly fair. Under this proposition, any question that will be submitted will receive an answer on the floor of the House. So that is fair first of all. To do with accountability, as I have mentioned, it is very important that the public know what is going on in here and that questions can be asked. If Members will read through with me, what it does say about accountability, the first point is that if questions are not answered on the floor of the House, it negates the function of an oral question. As Members will know, it is current practice to receive a written answer, although it is not by any means standard practice. We are indulged, if you like, by Ministers and Chair people so that an answer can be provided and it is circulated among us afterwards. This does pose problems. First of all, it negates the function of an oral question. So if a Member wanted a written response, surely she would have submitted a written question, and receiving a private written answer to a public oral question is simply not satisfactory. As was confirmed by the Deputy Bailiff during the sitting of 10th March, any answers circulated outside the States Chamber after question time are not covered by parliamentary privilege. So this raises a

couple of problems: firstly that the answer will be the answerer. I have called it the “answerer” which is not technically correct English, and that is because it is not necessarily a Minister. It could also be a Chairperson. So the person answering will be leaving himself or herself open to prosecution if any of the material contained in the answer is likely to be libellous. That may not be too common, but it is a possibility and that is why it is preferable for answers to be circulated or answered on the floor of the House. The second point is that the answerer may well be more cautious with the answer given and may provide a watered-down answer compared to the one he or she would have given on the floor of the House. It is also unclear whether the written answer is confidential or not and whether a Member, in a private capacity, would be entitled to disseminate this answer to a member of the public or the media. This proposition, if we did adopt it today, it would solve the problem of what happens to unanswered questions by ensuring that all oral questions are answered on the floor of the House. Now, one of the other benefits of this proposition is that it would, I think, encourage more concise answers by Members, by Ministers and by Chairpersons. I do not want to tar everyone with the same brush. There are certain Ministers who give short answers, some give longer answers, but at the moment there is absolutely no incentive to give a short answer. You could argue, in fact, if you want to go the whole hog, that there is an incentive to give very long-winded answers because that means that the Ministers do not have to give as many answers. So if you can make your answer as long and drawn-out as possible without necessarily giving any information, that means you answer fewer questions. If there is no time limit at all, there is no incentive to do that, so people would be giving shorter answers so that we do not have to stay here all day. We have seen in the past that it has become common to request to lift Standing Orders. It has happened already a couple of times, I think, since I have been in here. While this is a mechanism which one would hopefully think would be used sparingly, it seems to be coming more and more common. This is certainly not ideal for anyone. I voted on several occasions to lift Standing Orders, purely because I think it is important that questions do get answered, and Members, depending on the day, may or may not vote in favour of that. I will quote from the proposition: “Sometimes it will go in the Member’s favour, sometimes not, and that depends on what petty prejudices or factions are operating at the time.” I mean, that is natural, that is politics, but it seems again a fairly arbitrary way. So you may have 3 questions being asked. If Members’ questions have already been asked, then it is perhaps unlikely that you will vote to lift Standing Orders. If you have still got a question remaining, you may well vote to lift Standing Orders. That seems fairly arbitrary. So again, if we adopted this proposition, it would do away with the constant need for back-benchers to move to lift Standing Orders, thus making the process more efficient and less open to political game playing. There are invariably arguments against this proposition and I do not deny that, but I would suggest that the arguments in favour are very much more compelling. I want to go through some of the arguments which Members have presented to me, some of them even before the proposition was lodged. I believe Members will have all received an email that I circulated just asking everyone to go into this with an open mind. I am sure we will all do that. The reason I circulated that is I had Members coming up to me before the proposition had even been lodged and saying: “This is a complete waste of time. I am not going to vote for it.” Although it was a minority, I think this is a sad reflection of how some politicians may operate and obviously we all have political inclinations but I would hope certainly in this case we would weigh it up and see what is best. So one of the arguments put forward is that question time is a waste of time. Clearly, no one among us takes this extreme position. The merits of having a period of time set aside for back-benchers to question seems to be clear to me. However, there is also a similar argument which is off the bat. It will hamper the execution of more pressing business. This is to a certain extent perhaps a valid claim. People do not want to get tied down in endless questions while we have got other States business, as we have seen in the last few days, and it definitely can take a long time, but I would highlight the point here. I am not asking for question time or the number of questions to be extended. I am simply asking that if it ever happens that we get questions which might be slightly more than we would usually get, that they should be allowed to be answered. I go on to say that there is no evidence that lifting the time limit will affect the

number of questions being submitted, if anything ensuring that all questions are answered on the day they are submitted. This will stop the same question being resubmitted at the next sitting. That is reducing the number of questions. One other argument, we would have to spend more time in the States, although this sounds kind of superficially almost churlish. I think this is perhaps one of the arguments we are all worried about. We do not like to spend necessarily lots of time in the States because it can be sometimes thrilling, it can be other times slightly more tedious, but essentially we are employed to work in the States. When we took our oath, we were compelled to attend the meetings of the States, and that is our primary function, if you like, although we have to balance that certainly with other functions. So I do not think those arguments in themselves are valid. An interesting argument was put to me that most of the questions are unnecessary anyway. This may or may not be the case. It could well be that oral questions do not necessarily need to be asked. It could well be that the information could be sought informally from the Minister by emailing the department. It could well be that the information could be sought in the form of a written question. That is quite possible, but nonetheless it must be noted that there is a strict procedure for the submission of oral questions with notice, that they have to be ruled on by the Chair, by the Bailiff, to see that they are in order, and also that there is a lot of liaison that goes on with the Greffe's department to make sure that the questions are valid. So that is really an argument to do with the submission of questions, not so much to do with the questions themselves. If an oral question can be submitted and it is in order, then surely there is no reason that it should not be answered. I do not want to keep Members any longer than necessary. Before I conclude, I am trying to pre-empt as many arguments as I can so that people do not necessarily have to come out with them. One of the issues that has been flying around is the work that officers and Ministerial departments have to put in when researching questions and answers, and it has quite perversely been suggested in my mind as an argument that because Ministers and their departments have to research, that this is a reason not to extend question time. It actually seems to me the logical position, if you have spent time researching a question, it is only fair that that question gets answered and it gets answered in a timely fashion because, as we know, some questions have, if you like, a shelf life. There is no point in me submitting a question in 2 weeks if the relevance of that question has gone out the window. All this work has been done. If questions remain unanswered, that work is effectively wasted. If we lift the time limit, either completely or extend it, then at least that means more questions will get answered and all this work does not go to waste. I am going to leave it there because I will have a second bite of the cherry. To conclude, I believe it has been demonstrated that question time is an essential part of our democratic process. It also follows then that having unanswered questions at the end of 90 minutes is therefore far from ideal, both for the public and Members alike, and I would also venture to suggest that there is nothing sacrosanct about the 90-minute time period. I mean, there might be something sacrosanct about the 20 per cent tax, but there certainly does not seem to be one about the 90-minute time period. We know that that has already been changed. It was 60 minutes. The States decided that it was necessary to have a bit more time, so it was put up to 90 minutes. I would appreciate it if people were not talking at the back. It is slightly off-putting. So I would also venture to suggest that there is nothing sacrosanct about 90 minutes, but by the same token, any kind of time limit is, in a sense, arbitrary if you are going to have 60 minutes, 90 minutes or even 120 minutes as the good Deputy of St. Martin is suggesting. That still does not solve the problem in its entirety. So just to conclude, I am not asking Members to stay in the States an unnecessary amount longer. I am asking that questions be asked and answered in a simple and timely fashion, concisely, and that we have simply the flexibility to say, if there are more questions, then we will extend the time until all questions are answered. I am going to leave it there and I invite Members to speak if they feel it necessary. I will be certainly interested in what Members have to say, those of you who have been good enough to be in the Chamber while I have been speaking.

The Bailiff:

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

4.1.1 Senator P.F.C. Ozouf:

Members will have noticed that the Chief Minister is not in the Assembly at the moment. He has gone to a funeral and he has asked me to make some remarks that he would have made on this issue. I want to start by saying that all of the Council of Ministers believe that question time is absolutely vital. I think it is vital. Since I have been in the States in the last 10 years, I think that we have made considerable reforms to question time. We have introduced written questions. I was one of those people on the introduction of Ministerial government that suggested, much to the chagrin of some, questions without notice. I think that questions without notice is a key reform to holding Ministers to account, and might I say that it also is extremely useful for Ministers because it ensures that their department briefs their Minister on a much more complete basis. Woe betide a department which has failed to inform its Minister of something important that is raised at question time by a Deputy of St. John who has heard something in the Parish lanes of St. John **[Laughter]** and the Minister of a problem in the harbour or something that we are unaware of. Questions without notice, Ministers clearly are shown before the Assembly, in public, to be in touch of their brief, and questions without notice are a key reform which is good for the Assembly and good for Ministers too. I respectfully suggest to Deputy Tadier that there is, however, a need for balance. This Assembly's time must inevitably be organised, as all parliaments around the world, organised with different areas of responsibility. Question time is important. It is not only about oral questions. We also have to have proper time spent for legislation, for Ministerial legislation, back-bencher legislation and all sorts of other debates. Deputy Tadier may be absolutely correct in pointing out that there are some interpretations about the timing in the Council of Ministers' report on the individual timings that he makes. The point is that, in broad measure, we are advised that those minutes that are in the Council of Ministers' comments are correct, but they do need to be put into context and there may well be further information necessary. We are not Canada, with an Assembly of more than 100 members with a bureaucracy and officials running around the corridors, able to assist. I think it is important that we compare Jersey with other small jurisdictions with the resources that we have available to us. There is also, I would respectfully say to Members, the other side of questions. I understand the frustration that back-benchers may have in asking questions and not being able to have an oral question that has been submitted answered, and I am going to come on to potentially a solution from that, but I just want to say, from a Minister's perspective, there is a huge burden, and quite rightly so, of answering questions. I think that I could speak for all Ministers and previous Presidents of Committee when I say that there is a huge amount of time that is taken in answering and preparing for question time. I would typically spend probably three-quarters of a morning on Monday in finalising answers, in researching and preparing them, and that is just my time. There will be inevitably officers across the departments that will have been working on questions on the Thursday and the Friday, and there is an email exchange that goes right the way through the weekend in preparing for answers, and that is absolutely correct. It must be right that we have to answer questions and we have to answer them completely and openly and with as much detail. I think that the solution to Members' frustration about oral questions can, however, be achieved potentially in another way. I think that we do need and the P.P.C. (Privileges and Procedures Committee) need to consider reforms of the way that the Assembly works. I am not going to speak for half an hour on this issue. I think if you cannot get your point across in 5 or 10 minutes, maybe on an issue like this one, you should not even be standing up. I think that we need to consider timeslots and time limits in relation to not only answering questions but in speeches too. **[Approbation]** We do, as an Assembly, like other parliaments, need to consider time slots for different types of debates. I am afraid question time is no different. There does need to be a limit on oral question time, and maybe what needs to happen is that there needs to be a rule established that if the Chair considers that 90 seconds or 2 minutes is the available slot for each oral question, that maybe if there were more than 20 questions submitted, that automatically if there were more than 20 oral questions submitted, that they automatically are not pulled out of the hat and put in the Order; they are automatically turned into written questions.

I know from my part every oral question that is submitted needs research, needs preparation, and it is frustrating for us too that after having carried out that preparation, we cannot then turn that information into a proper question. Maybe the solution is to keep a limit for question time, which I think has to be the right thing to do for orderly conduct of the Assembly, but for P.P.C. to consider revised arrangements in place to deal with the oral questions that cannot be answered. The inevitable questions that cannot be answered because they are simply going to come too far down on the list and immediate arrangements in place for oral questions that are not answered, and P.P.C. should perhaps consider changes of Standing Orders to allow them to be turned into written questions as they have said. There is, however, goodwill that is required on both sides of the Assembly in dealing with questions. Ministers will attempt to answer fully and completely all questions that are submitted and do the right preparation, but on the other side, back-benchers do need to be cognisant of the enormous amount of time that is taken which may be diverted from other Ministerial duties that we have. There is a requirement of balance and, I think, a respect on both sides that we both have responsibilities to do our jobs in respect of Scrutiny and Ministerial duties as well and there has to be some sort of organisation. There has to be some sort of discipline in dealing with it. I do not think we can have an open-ended oral question time. We will come to the second debate about whether or not we need to extend it completely.

4.1.2 Deputy S. Pitman of St. Helier:

I am just really following on from the Senator. We have around 31 non Executive Members and we can submit 2 questions each. Now, if we did that and we had 10 minutes per question, allowing questioning and answers of the Executive, that is, I have worked out, around about 10 hours. Now, I know that is 10 hours of oral question time. I know that is extreme, but even if that was cut in half, it would be 5 hours. We do need a definite time, as the Senator has said, to get through our States propositions which, in my view, are the absolute priority of States debates, and we do have room for written questions as well. However, I do believe that we do need more time for oral questions, and that is why I will be supporting the Deputy of St. Martin's extension of 2 hours.

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

I believe that question time is our way of holding Ministers to account in public. Often we get long, drawn-out answers that do not always give an answer to the question, as the Deputy touched on in his speech. Also the fact that, as far as I am aware, not once when we have requested the Standing Orders be lifted have we got that through. Oh, once. I stand corrected. Once.

The Bailiff:

Twice this year.

Deputy D.J. De Sousa:

These questions have obviously been asked for a reason, so they deserve an answer. Some Ministers take an awful lot of time in answering their questions, therefore providing much less time for us to ask the questions that we have tried to. I realise that occasionally we also get written answers for those that have not been answered in a sitting, but Ministers are not obliged to do this and some do not. I will be voting in favour of this proposition.

4.1.4 Deputy G.P. Southern:

We are debating question time. I have got a question. Where are the Senators? Where are the Constables? It looks like there are only the Deputies here. The Deputies are most interested in the question time and asking questions. However, on a more serious point, let us take a look at the development of our government just briefly. Here we are, just over 3 years into Ministerial government. Prior to that, there are still some Members of the House, grey-haired or otherwise, who remember the old days **[Laughter]** and remember the motives for moving towards Ministerial government, but there are some, not very far away from me, who I believe really do appreciate the advantages of the old system, the committee system. One of the things it did produce is that more

than one person knew what was happening in a particular area. Information was shared. Arguments were had on committee that otherwise would not be had and otherwise, I believe, do not get had today because they are all on Part B minutes and nobody gets to find out about them until they become not policy information but policy done and dusted, and then Scrutiny, if it has got the time, can take a look at it and see whether the process by which those decisions were arrived at were sensible, logical and the right way to go and whether the decisions themselves, the policies themselves, were worth anything at all, if they have got time to do it. What we have got, in moving to Ministerial government, is a contraction of information. Fewer people know more about what is going on than previously. So we do not have a healthy debate and the information that we are all, in principle, in favour of. Yes, we should communicate fully and freely wherever possible, freedom of information should be a principle we should be adopting but has got restricted under Ministerial government. Fewer people know about the background decisions and the way decisions are happening than previously. Power, such as it is, but information certainly has been restricted to fewer and fewer hands, mainly the 10 Ministers, and depending upon which department they are in and which Minister they work for, even some Assistant Ministers do not appear to know which way up is in terms of what is happening because the Minister sometimes does not even tell them. Chief Executive Officers know what is happening and Ministers know what is happening, we do not in general. Certainly nor does the public. What do we have? We have Scrutiny. Where does Scrutiny start? I believe Scrutiny starts with question time. The asking of the correct question to achieve an answer: "What are you doing about ...?" "What is your policy on ...?" "What is effectively happening in ...?" "Please answer in public because it is important that we know and the public knows what is going on in ..." is, I believe, at the very heart of Scrutiny. Now, every Member in this House will, hand on heart, support, in principle, Scrutiny. Therefore every Member of this House, I believe should be looking at and examining the possibility of better, wider, deeper Scrutiny, which I believe starts with question time. In seeking the correct balance we have moved some way already from where we started. When we started we had an hour's worth of question time, it soon became apparent that in seeking the balance between the number of questions and the depth of questioning, the number of supplementaries, either people got short, sharp questions but did not really get answers because there is 3 supplementaries to be asked and explored or we did explore - not that the Chair is in this quandary - the questions fully and a whole pile of questions did not get asked or, indeed, answered. So after a certain length of time of bedding in we decided to move it to 90 minutes. Now, again, we are on a stage further, we have got a new crop, a new intake and, lo and behold, we must have been doing something right in the previous 3 years because, by gosh, they do not half want to ask questions and find out what is happening. The number of questions has, quite literally, no, no do not do it, metaphorically rocketed. The number of questions being asked and the depth of those questions and the information sought is increasing. In seeking for a balance, I believe it is appropriate now to move further and to devote more of our time to questions. I think it is appropriate. I would even go so far as to say in order to resolve that problem about the depth of answer and the number of answers one can explore one has to take the time limit off. I think that is a way forward and it is a way forward that can be made to work. Obviously the counter-argument would be used mainly, I have to say, by the Ministers and not by anybody else, but that is a dangerous path to follow, because obviously we do not want to occupy too many people by asking too many questions. There must be some sort of limit. We have limits, we have a maximum of 2 questions in oral time, restricted to a certain length of question. I forget what it is, 75? Seventy words. Similarly written questions, 5 writtens, we have restricted that and, again, a limited but a more generous number of words in the question. But we are told: "Hang on, you are clogging up government here. We are answering so many questions we cannot get on with other things." There are 2 ways to approach that, either you restrict Scrutiny, you restrict Back-benchers right to ask questions and that is always a possibility and a threat I believe to the open nature of our democracy or, here is a thought, why do Ministers not give the fullest, open, frank answers they can first time **[Approbation]** and then we would not have to keep coming back to the question slightly amended because we have learnt a little bit more, because they accidentally

slipped something out by accident on a supplementary or we realised we asked not quite the right question because the questions coming down this route and the answers coming down this route, i.e. nothing to do with the question. So we have to ask the question 3, 4 and 5 times in order to get a proper answer out. That is without the blatant obvious holding answers that say: "Here you are, here is 100 words, read them very carefully. If you can extract any meaning from them whatsoever you are a better man than I, Gunga Din." So let us stop playing political games with question time and get on with it and let us have proper open, frank and honest answers at the early stage and then perhaps we can get on with some other business as well. Now, the question is a question of balance. The words "question of balance" were used by Senator Ozouf in his speech. I believe his vision of balance is perhaps a little skewed towards his Ministerial hat and his busy lifestyle, making decisions left, right and centre. I believe ... my view, oh, is that to the right? **[Laughter]** A little to the right. My view is somewhat different and I think the balance can be made and should be made with a greater openness and a greater commitment on behalf of the public to ensure that we let them know what we are doing. The best way to do that in the situation we have got, in the system we have got, with the balance of power that we have got, is through question time. I will be fully supporting taking the limit off question time altogether. I will be supporting this proposition today.

4.1.5 The Deputy of St. John:

Quite useful following the previous speaker because if Members look at the comments by the Chief Minister, this is a prime example why you would put a question. Because the comments on page 2 where it gives the time restrictions, are only in part complete. **[Approbation]** We have the comments from Deputy Tadier who has taken the trouble of researching the actual times, therefore you never ask a question unless you know the answer. Those are the best questions because then when you are being fed a load of information which is incomplete - incomplete as has happened today with the Council of Minister's comments - you can tear them to pieces.

Senator J.L. Perchard:

Would the speaker mind if I intervened to ask a point of order? Why would he ask a question if does know the answer?

The Deputy of St. John:

It is quite simple, so the public get to know the truth and it gets into the public domain. I would have thought having been a Minister, Senator - through the Chair - that you would understand we need to get the truth in the public domain. So getting back on to this. We have 2 pieces of paper, one which I consider to be 100 per cent complete with the information and the other one which is only 75 per cent complete. So therefore, as far as I am concerned, question time is very important. That is why you should always try and have the information 100 per cent in the back of your mind before you put the question. Given that Members are only permitted to put 2 questions at any sitting, I think 25-30 may be the maximum that we get, we have had maybe one or 2 more but I doubt it, on average I should think it is 25. I do not think it is beyond the Members to work out how long it will take to complete the question time, if the Chair is holding the question times reasonably tight. But not too tight because the idea of question time when it was put in place just before I left the Chamber previously, was that it was going to be done in such a way that Members as Back-benchers could get to the meat of the issue, not be cut off at the knees as had been happening previously. That said, I, in my time, have put one or 2 questions. To prove a point how useful they are, some months ago now when I first came back, I put a question in this Chamber on energy. I think the Minister for Treasury and Resources, in fact, was quite grateful that the question was put on energy because that is an area that he is quite keen to see savings in, as I am. So there is a whole host of reasons why you put questions. Most of the time it is because you want to bring things into the public domain that the public wish to know about because under the old system as well as under the new system of Ministerial, committees used to meet, now Ministers met

and they will make their decisions and for some reason the B part of any agenda seems to take a long time before that gets into the public domain. By that time it is usually too late to alter things other than bring a proposition to this Chamber to have that particular item altered. But the B agendas were to get into the public domain somewhat earlier than I am sure possibly question time might drop off somewhat because you could approach the various Ministers and convince them that the right way forward is to look at this from a slightly different angle and they would go away ... as happened in the past from time to time under the previous system, you could talk to the president of a committee and say: "If you do this, this and this, have you have looked at it from this particular angle?" and they would go away and come back with a revised proposition. Honestly, I think the Deputy of St. Brelade, Deputy Tadier, is absolutely right in trying to extend the period of time we have for questions so all questions are properly answered by the Ministers, or in some cases the Deputy Ministers if the question permits.

4.1.6 Senator S.C. Ferguson:

Yes, I do agree with the importance of question time and for new Members I was going to suggest that they study the techniques of our 2 most prolific and effective questioners, the Deputy of St. John and Deputy Southern, although I think possibly from the length of experience, the Deputy of St. John has the edge. Questions are as much for information as to bring a matter of public interest ... an important point to public interest. However, I do have reservations about just saying question time will go on until we finish. I think there is an advantage to having the discipline of working within a timeframe because I would remind Members of that quotation from that distinguished resident of Guernsey, Mr. Parkinson - Charles Northcote Parkinson - who said that work expands to fill the time available. I rather fear that if we did with question time ... if we just took a limit off then Members might well - and one knows how politicians do like to talk - just continue *ad infinitum*. I am afraid I have more sympathy with the following proposition.

4.1.7 The Deputy of St. Martin:

It is quite strange to follow Senator Ferguson because the Senator has not asked a question this year and yet been quite an important person on Scrutiny. We have an opportunity this morning having 2 bites of the cherry. Of course if this proposition does not succeed we will certainly have another one, but I would hope it is unnecessary. I think it is important to know that since the formation of the new House, and I have been doing a bit of work so it may be of interest to those who want some statistics to get their pens out. There are 25 Members who have asked 142 oral questions since the formation of the new House and we have had an average of 20 oral questions per sitting. Of interest only one Connétable has asked a question and on that particular day he asked 2. Five of the 7 sittings time has run out before all of the questions have been asked and a proposal has been put to the House, normally by me, for the Standing Order to be suspended. Of the 5 occasions, 2 have led to Standing Orders being lifted. One was by way of a standing vote. Of the 4 appels taken Members have only voted once to suspend Standing Orders for additional questions. It might be of interest for Members to know where the opposition is to allowing for all oral questions to be asked. On 24th February a proposal to suspend Standing Orders was lost by 18 votes to 29. Of the Ministers who voted, one was out of the Chamber, one voted for - that is the Deputy of St. Ouen - 8 Ministers voted against. Of the Connétables, one was out of the Chamber, one voted for - the Connétable of St. Lawrence - and 10 voted against. On 10th March a proposal to suspend Standing Orders was lost: 22 votes to 20. One Minister was out of the Chamber, one voted for - the Deputy of St. Ouen - 8 voted against. Of the Connétables who voted, 3 were out of the Chamber, one voted for - the Connétable of St. Lawrence - and 8 voted against. Proposal to suspend Standing Orders on 24th March, lost again just by one vote: 23 votes to 22. The Ministers: one out of the Chamber - always someone out of the Chamber - one voted for - the Deputy of St. Ouen - 8 voted against. The Connétables: 3 out of the Chamber, one voted for - the Connétable of St. Lawrence - and 8 voted against. Proposal to suspend Standing Orders on 31st March, hooray, we won: 24 to 18. That will be quite explanatory. Ministers out of the Chamber, one; 2 voted for - the Deputy of St. Ouen and

the good Senator Maclean; and of course 7 voted against. This was probably why the vote was won. Of the Connétables: 6 were out of the Chamber, of course if you work out the figures we would not have won - I say we, but the proposal would not have won; one voted for - guess who **[Laughter]** the Connétable of St. Lawrence - and 5 voted against. So there we have it. I believe the question time is a vital part of good government. However, at present we know it is a lottery, literally a lottery, because not only are you ... do the questions go in the hat and I am convinced - and I know the Greffier will not agree - that mine are always left to the last, that is why they do not get asked. But of course it is also a lottery whether there is going to be enough time to get your question asked and that, I think, is a great pity. It is open to every Member of this Chamber to ask a question if they wish to. Likewise it is down to every Member of this House to choose not to. But what I do ask is that those who do not want to ask a question do not stop those who do. **[Approbation]** I suppose one could consider - and I hope I am going to be wrong, I am hoping we are going to get everyone here today to respect the right of every person of this House to ask a question and, indeed, if they do ask a question they will be allowed the time for an answer. So, Members, I would ask save us having 2 debates let us vote for this one rather than having to wait for mine, because there is a fair possibility if this one does not succeed it is unlikely that mine will either because those same people who vote against and been shown to consistently vote against are probably likely to vote against today. So I ask those who have consistently voted against, think carefully what you are doing, let us have a democratic sort of government, let us all be open about asking questions.

4.1.8 Deputy S. Pitman:

I have a point of clarification for the proposer. I just wondered if his proposition is to ensure that all oral questions are answered and/or is it about allowing unlimited time on each question as opposed to the current 10 minutes on questions in response to Ministerial answers.

The Bailiff:

That is a matter of order. The proposition is that the current time limit of 90 minutes should be abolished and the result of that will be that all the other inhibitions and rules relating to questions remain in place.

Deputy M. Tadier:

I am happy to address that in summing up because I think it is a relevant point.

4.1.9 Connétable D.W. Mezbourian of St. Lawrence:

[Approbation] May I thank the Deputy of St. Martin for giving evidence of my inclination towards supporting the necessity of question time within the House. Brevity though does not restrict us from making our point. For good government questioners must be more precise. Respondents must be more concise. **[Approbation]** My feeling, though, is that question time *ad infinitum* will only give us more words, not more information. I will not therefore support this proposition **[Approbation]** but will definitely support that of the Deputy of St. Martin.

4.1.10 Deputy K.C. Lewis of St. Saviour:

In a similar vein, it is a question of time and as a previous radio commentator would often say: "If you have nothing to say, kindly resist the temptation to say it." Many, many hours of officer time is spent compiling answers to questions and we would get an awful lot more business done if both questions and answers were both precise and concise. Thank you.

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

John Stuart Mill described one task of the legislature as to watch and control the government, to throw the light of publicity on its acts. Ministers can be required to explain to parliament what is done by them in their capacity as Ministers or by their departments so that Members of Parliament can, where necessary, criticise the way the public affairs are being administered and public money

is being spent. I believe that question time is a vital element in holding our Ministers to account and for letting the public know what is going on in this Island. The other vital element is Scrutiny, but Scrutiny is limited in terms in the range of matters that it can address. Questions, however, can be asked on any topic and help identify the topics which need further in-depth research by the Scrutiny Panels. I do not believe that by removing the time limits to questions that more questions will automatically be generated and that the time that will be spent at the Assembly on these questions will automatically increase. There is a time limit to my curiosity and I am sure other Members' curiosity. There are propositions that we want to bring and legislation with which to amend, and other matters we wish to scrutinise in greater depth. I will be supporting this proposition because it does throw a light on our government.

4.1.12 The Deputy of St. Mary:

I do agree with some of what the Minister for Treasury and Resources said about the overall conduct of the House and the fact that we need to look at the way we conduct our business. In specifics on that with the detail of question time, that should be included, it needs to be looked at. I personally find that the restriction to the first question and then one supplementary leads ... when you have a Minister who is intent on evading the question, leads to not much light being shed. So that is just an opening remark but I do want mainly to talk about trust and accountability and how that connects to this issue of question time. The situation is really dire and I want to spell out just how bad it is with respect to trust and accountability. Yesterday we were told in the Council of Ministers' comments on the Deputy of St. Martin's propositions about the suspension issue, we were told the report - that is the Deputy of St. Martin's report - says that: "The suspended person is presumed guilty therefore there is no need to rush things." Then the comments proceeded to rubbish that assertion supposedly made by the Deputy of St. Martin. When you check what he wrote in his report he said no such thing. So that is the kind of comments or that is the kind of level of factual statements that we sometimes, not always, get from either the Chief Minister or the Council of Ministers or other Ministers. Today, in this debate as the proposer took us through the comments of the Council of Ministers, now that table of what other jurisdictions do with respect to question time, there is a comment just after than in the report: "Parliamentary democracies around the world apply time restrictions to the questioning of the Executive to ensure that the questions and subsequent answers are focused and concise." That is the gloss, that is what this table refers to and we are then given a set of figures which are misleading and, in one case, completely untrue. In the case of Australia we are told that question time is normally one hour although the Prime Minister will terminate when she or he sees fit. Now, the Minister for Treasury and Resources, in commenting on these comments, on behalf of the Chief Minister, said that in broad measure this table was correct. I am sorry, in broad measure it is incorrect and anybody who reads what the proposer put out in response to these comments can see that the comments were not correct. That is my second example. The third example is the written question, the answer to written question 12 given by the Minister for Treasury and Resources on Tuesday. He was asked by Deputy Pitman, this is a written question: "Would the Minister clarify the exact total figure as of 1st April 2009 of the additional cost to the Island's taxpayers resultant from the failure of the previous Minister for Treasury and Resources to ensure that the exchange rates for the party incinerator contract to be paid in euros was fixed before the rate dropped?" Now, his answer was: "The C.A.G's (Comptroller and Attorney General) report identified the cost of not hedging the foreign currency element of the E.f.W. (Energy from Waste) Plant to be £3.06 million." That is being extremely economical with the truth. That is the reason why limiting questions means that we are going to limit the amount of real information we get under current practice, because we are not being dealt with frankly and openly. By extension the public is not being dealt with frankly and openly. We cannot run Jersey in this way. We cannot face the challenges ahead which are going to be serious if we have a situation where the public simply does not trust what comes from the Council of Ministers or individual Ministers. So let us look at this £3.06 million. In fact the figure is £8.31 million so far consisting of £3.62 million which was the additional cost already by the date of the

debate. The proposition was lodged on 20th May 2008 and the cost of the incinerator was given as £106.31 million. By the time the incinerator was debated on 8th and 9th July that cost was already £109.93 million, and you can check this in the Comptroller and Auditor General's report.

Senator P.F.C. Ozouf:

On a point of order, the Deputy of St. Mary is putting before the Assembly facts which are erroneous. He is suggesting that there is a fixed element of the euro exchange rate, the matter has been clearly explained that the position remains unhedged and as of today the figure is less than those figures published. He is attempting to suggest that there is some certainty in the amount. There is not, he is misleading the Assembly.

The Bailiff:

Deputy, I was poised to interject to ask you to come back to the motion which is before the Assembly, which is a very straightforward motion, which is that the time limit of 90 minutes should be abolished. May I ask you to do that, please?

The Deputy of St. Mary:

Yes, Sir, I am making the point that we would not need to limit in this way if we had a more open and honest approach from the Council of Ministers. What I am demonstrating with 4 examples, of which I got to the second, is that we do not get frank, open, answers. Because of this we are in a dilemma about when we ever can get to the truth of the matter. Sorry, I am on the third one.

Deputy I.J. Gorst of St. Clement:

If the Deputy would give way. Maybe I am misunderstanding what the Deputy is saying but I believe he is referring to a written question and the proposition is about an oral extension. I am not sure if that is relevant to the debate.

The Deputy of St. Mary:

It is relevant because what is at issue with questions is, as I said, about one question and supplementary would normally be enough if the Minister in question was being open and trying to be helpful, but in fact that is not the case and I am demonstrating this and therefore we may have to go with Deputy Tadier's proposition even though it does raise problems or other issues. But the point is, if we had a reliable system; if, as the Deputy of St. John pointed out, people were open; if we could get to the bottom of all kinds of issues then we would not need, perhaps, a longer question time but the problem is that you cannot trust the answers you are given, they are evasive in many cases, not always. Not always but sometimes in my experience they are evasive and sometimes openly misleading. That is the issue which I am trying to establish. So refer to this written question, a written question is one where there is time to get the right answer and the true figure. All right, I will not lift up the C.A.G's report and go through the relevant tables, but it is £8.31 million and not £3.06 million. The Minister for Treasury and Resources knows that perfectly well. My final example of this issue of trust and accountability is the oral question which I asked on Tuesday to the Minister for T.T.S. (Transport and Technical Services) about the additional cost of the incinerator at the time of the debate over and above the price when it was lodged. He said that no information was withheld on 8th July 2008. In other words, the fact that the cost had already gone up by £3.62 million was of no consequence. Those are the examples that I bring to the House and that is why this proposition really matters. Trust is important and if we cannot rely on the answers we are given then we have to be given time to dig. If we could rely then the situation might be different. If we could know that spin was not the order of the day and I have other example that I will not go into. The word "spin" just rings kind of bells in my head. But I will not go there. It is enough to say that these issues really are important. It is a fundamental issue of whether we can trust each other, whether the back-benchers can trust the Council of Ministers and whether the public can trust what they hear from this House. So I do think this proposition has merit.

4.1.13 Deputy T.M. Pitman of St. Helier:

First of all I would really like to thank the Deputy of St. Martin for destroying the quite scurrilous myth that the Constables generally vote *en bloc*. As we have seen, completely untrue. I take my hat off to the Constable of St. Lawrence, that is why she is my favourite Constable - after St. Helier obviously. **[Laughter]** Because this is really about time, I am not going to repeat the issues raised very well by the Deputy of St. John and Deputy Southern about B agendas, because I think that is very, very relevant. What I would say is if perhaps on occasions the majority of the House had been respectful enough or considerate enough to allow the question time to continue when there have only been 2 or 3 questions to finish, maybe these propositions would not have been brought. Nevertheless, I think that the Minister for Treasury and Resources - sorry, he has disappeared very quickly - and Deputy Tadier are not that far apart. This is about timing and we do need to be concise and measured. I think Deputy Tadier has revealed here he is not a real radical because if he had been possibly he would have worked in some kind of mechanism for ensuring that speeches were short. I mean we have got electricity, it would be really easy to have some sort of electrode or cattle prod if you went on too long, but what about a bell, like at the hustings that we all had. That might help. If I could be sure that the House would agree to the Deputy of St. Martin's proposition then, bearing in mind the consideration that we do have to have constraints and people are not always going to stick them, I am afraid, then I would be persuaded not to support this proposition but to support the Deputy of St. Martin's. But I am afraid I do not have that faith so I will be supporting Deputy Tadier's proposition.

4.1.14 Senator P.F. Routier:

I know many of us really enjoy the cut and thrust of question time. I certainly have done in the past when there has been real good bits of fun between myself and Deputy Southern, being asked questions about Social Security matters, thoroughly enjoyed it. I enjoy a good game of table tennis, backwards and forwards across the Chamber, but half the time I did wonder what we had achieved because questions were being asked and at the end of it I thought - sort of a few weeks later or months later - "What happened? Did anything come of that? Did a proposition come forward? Did the public get any extra services? Did the public get any benefit from that?" More often than not that was never the case. So I do believe that we really need to ... when people are asking questions, and I have asked questions as well myself, is we have to be really focused on the questions that we do ask and to ensure that we use our time very effectively. I think it was Deputy Southern who was saying we should stop playing political games. Yes, I fully agree with that. Question time should not be a thing about ... I think it was the Deputy of St. John who said you only ask a question when you know the answer, and why do you do that? Because you want to tear the Minister apart. Well, if that is what this is all about, I am afraid I have little truck with that because I think what this Assembly is all about is providing services for the community. It is not playing political games, trying to pull each other apart. We should all be trying to provide services, debating real issues, debating things that we want to achieve for the public, providing new services and not pulling each other apart. We should be trying to work together. **[Approbation]** It is sort of saying that what they want to do is to get things into the public arena. Agreed. I do not know if they have noticed how the media are covering the questions recently. They hardly touch them. They pick one or 2 here and there **[Interruption]** ... well, I have just made an observation. I am not saying whether that is right or wrong. I am just saying that if questioners are thinking they are going to get their questions and their answers into the public arena, well if you look at the detail of that you will see that very, very few are in the public arena. I just make that as an observation. So all I would really say is that I would implore questioners to be really focused on the questions that they ask to ensure that; also, for Ministers and Assistant Ministers to answer them effectively. I have to say, I was very, very disappointed in the comments from the Deputy of St. Mary about the mistrust there is in the answers which are given. For my part, and I know for the other Ministers, we try and answer the questions as openly and as honestly as we possibly can. If we are not asked a question in a way that is possible to give the answer to which the questioner is asking, it would be

far better for the questioner to come and speak with the Minister and the Assistant Minister to find out what the thing is. If they are not satisfied with it then come public and ask a question. I think what we have to do is to use our resources that we have - and they are all limited - our resources are limited. I can recall questions in the past; of being asked: "Why are you not providing such and such a service? Why are you late, not providing a service?" The answer is: because you are answering questions all the time. **[Laughter]** I would just implore Members; I believe the level of questioning time that we have is a sufficient amount of time for questions. The House can focus on the real issues of asking pointed questions. There are plenty of opportunity to ask lots and lots of written questions; to get really detailed answers to questions. I believe that we should focus our time in this Assembly on debating real issues which matter to the community, and to providing services. I will not be supporting this proposition.

The Deputy of St. John:

A point of clarification, if I may. I think I have been misquoted by the previous speaker. He was very selective with his cutting and pasting when he said I am tearing Ministers apart. He just used part of my quote.

4.1.15 Connétable J. Gallichan of St. Mary:

P.P.C. has already made its comments and has pointed out that the length of question time really is a purely political comment. As an independent politician, therefore, I will now make my own personal contribution. I think everybody acknowledges that the ability to question Members on areas of their official responsibility is an essential part of a politician's role. This can be achieved in a multiple variety of ways. As has already been said, the participation and Scrutiny function is extremely valuable; written questions, of course, which are unaffected by the propositions; questions without notice are often seen to be the most challenging option. Catching Ministers unaware can be productive at times. From my own personal experience, perhaps the most enlightening response is again from the unofficial questioning that happens in the coffee room, although, of course, that is not public. Looking at the figures for the number of questions which have remained unanswered, which are under P.P.C. comments, it seems that question time has exceeded the 90 minute allocation on 3 occasions. In the last Assembly only 7 questions remained unanswered in the entire 3 year period. This time - as I said - question time has exceeded 90 minutes on 3 occasions; on 2 occasions 4 questions remained unanswered and on an extraordinary day 16 questions remained unanswered. This week we know that all questions were answered within the allocated time. The Assembly is often accused of a knee-jerk reaction. In this case, it may well be that there is a new trend in question time which is emerging, which will require revision to the whole issue of question time, although I do not believe the case is made at this stage for a blanket deregulation of question time limit. P.P.C. has also indicated in its comments on the bottom of page 2 that, following the resolution of these particular propositions on the table today, it will undertake to consider the matter of unanswered questions further. The Deputy of St. Martin gave some statistics on previous votes to lift Standing Orders. What he fails to note - and perhaps to appreciate - is the reluctance to lift Standing Orders is not necessarily only related to a desire to terminate question time. From my own point of view, procedurally, I always have great concerns when lifting Standing Orders. In this particular case, the Standing Order that deals with the 90 minute question time limit is not limited to that particular issue. It is Standing Order 63 and it is subparagraph (1) which deals with the time limit. There are a whole host of other subparagraphs which would also be lifted if that Standing Order was lifted, which would in fact possibly work to the detriment of Members. For example, the ability to ask supplementary questions is contained in there and lifting Standing Order 63 does just that, it lifts the whole Standing Order. So I do believe that the Deputy of St. Martin may be perhaps surprised that there is not necessarily a direct correlation between the 2 things. Several Members have mentioned a couple of things that surprised me: some of the Members have mentioned 10 minutes allocation for questions. But, of course, 90 minutes is the allocation for the entire period of oral questions and it is obviously moved

along by the president of each session. I believe there is sometimes a fine line that the President needs to draw between when to move on to the next question and the supplementary questions, perhaps maybe there might be more that could be asked. It is a difficult challenge I am sure. Also, a number of references have been made under comments about the extra information that the proposer circulated. I can only say, a couple of weeks ago the Member to my immediate left coined what I thought was a fabulous phrase, that we have “descended into government by Google.” Now we seem to be dealing with “wisdom by Wikipedia.” Wikipedia is a fabulous resource for stimulating thought, for getting some good ideas and for basing some in depth inquiries. But it is moderated by those people who make the submissions. It is not an official publication. I personally think that our constituents deserve a bit more thorough, robust research than simply Wikipedia, much as I like to look at it myself and I do not deny that it has a place, definitely, in the modern age. The proposer himself said that this current sitting showed how well question times can work. He congratulated, as I recall, the Deputy Bailiff on moving things along during question time. We all know, as has been said by the Deputy of St. John, that the tabled oral question is usually not the most important one. Usually that will be the first supplementary question asked by the proposer, which he uses to get a little more in depth information. Even this week, however, I noticed on several occasions Members seemed to be drifting quite wide of the original question in asking their supplementaries. Questions are only valuable I believe, if we can be sure that the answer is meaningful and reliable. As I have said, questions without notice are often used to try and catch the Minister unawares. They are used to probe him to make sure that they have a full grasp of the width and the breadth of their portfolio. I think that is incredibly important. But where a Member is looking for specific information on a specific topic, there comes a point where extra information pulled out through more and more diverse supplementaries must lack the research that the Minister or the Member answering the question will have put into that first oral answer. I think there comes a time where we risk losing the meaningful nature of any responses. I share the views of the proposer and other speakers, that more restraint is necessary during debates from all areas of the Assembly in order to achieve more focus. I believe that extends to question time as well. I believe that if this proposition is carried it will only be an excuse not to improve the habits in answering concisely and in targeting sharp supplementary questions. I fear, in summary, that it will be very much a question of: never mind the quality, feel the width.

4.1.16 Deputy J.G. Reed of St. Ouen:

First of all, I would like to start by saying that I fully support Ministers being held to account by other States Members. However, I would like to deal with a couple of issues that Deputy Southern raised. One was the ability of States Members to access information, and the suggestion that the old committee system was better. I believe in some ways he is right. Information was able to be shared more freely, as meetings were held in private. This meant that all information, including that that would be regarded as confidential, would be known by all. Now, with our current system and the processes in place, most information supplied to Members and Scrutiny Panels is limited as the questioning - and indeed most of the meetings - are generally held in public. Therefore, confidential matters cannot be mentioned. The challenge for us as Members is, I believe, not to seek to extend question time but find the appropriate balance and solution to deal with this matter of the sharing of information in an appropriate manner. I do take exception with some of the comments made by the Deputy of St. Mary that suggests that Ministers do not provide frank and open answers. Indeed, I would say and encourage the Deputy - and indeed others - that a dialogue direct with the Minister, rather than a written request for an oral answer to be given, is a far better way of gaining more information and more appropriate information that clearly is being sought by the questioner. I will not be supporting this proposition.

4.1.17 Deputy R.G. Le Hérissier:

First - and it is so unfortunate he is out of the Chamber - I would like to congratulate Deputy Tadier, after a wobbly start, for mounting this proposition and for speaking so eloquently and at such length about it. It was my intention having compared the 2 - because he is on a roll at the moment - I was leaning towards the Deputy of St. Martin's proposition, but he seems to have performed a possible conversion on the road to Damascus. The reason I say that is there is this fallacy, which the Constable of St. Mary alluded to, that the longer speeches are and the longer question time is, so therefore the more democratic we are. Unfortunately, it does not work like that. I wish it did and I wish that trust was there that the Deputy of St. Mary, who apparently tells us he keeps hearing bells. **[Laughter]** As I am informed, they are bicycle bells. **[Laughter]** I wish that trust that the Deputy of St. Mary aspires to in his bell-less moments was here. Unfortunately, it does not work like that and the reality is of course - like so many things - we look at things through different ends of the telescope, there is no doubt, people like Deputy Southern. Despite his excellent robust defence of the purpose of question time, he is an expert himself in political theatre. In a sense, that is what question time is about. My view is lengthening it, per se, will not make things better. In fact, I was quite prepared with some reluctance to go for the Deputy of St. Martins' compromise. I thought it was a good compromise. I think if we just let it open ended we let it open ended to drift. Those, indeed, who are interested in the pace of debate in political theatre, to my mind they would look at the pace of the thing and they would look at the focus. Once you let the thing open ended we drift and drift, and heaven knows according to the public who are still out there listening to us - and they are diminishing by the minute - **[Laughter]** it is not a very edifying experience to listen to.

4.1.18 Connétable M.K. Jackson of St. Brelade:

Once again, I would like to follow the previous speaker in congratulating my Deputy for his efforts of bringing this proposition to the States. I would like to make one or 2 observations on it. The fact that it is a tool to hold the Executive to account I fully agree with and endorse. I would suggest that the number of questions from the start of this sitting has now stabilised, and will stabilise. I would expect at a new sitting for people to be finding their feet and perhaps for there to be a larger number than before. The Chair I think has the responsibility to move things along, which I think it does in an admirable way. It is a very difficult task but we have seen over the past few days - it is only on Tuesday - that was done admirably and the oral questions were answered. The public expectations which the Deputy referred to I think are satisfied with what we have. That is my feeling and that is what I hear on the street. I think the lottery with the present system is fair. It has to be by lottery and there may be more questions we have time for and there could not be a more reasonable way in which to deal with it. I am interested sometimes in the motive for asking questions. I know this is a political forum and motives vary but sometimes one feels the motive for the questions is not quite as it should be. It is not set to achieve the result that is in the interests of the general public. I think it is important for the questioner to make his notice clear and then the answerer has a better ability to deal with it. There is no doubt that I feel the lifting of Standing Orders is something that should be avoided. Standing Orders are there for a reason and lifting them should be something which should only be dealt with as a last resort. I am reluctant to talk about what can be considered as a perverse argument, that time spent by officers in preparing answers, or by Ministers in preparing answers, is not a subject for consideration. However, I think it must be considered that a balance is to be achieved, in that there is considerable officer time and cost connected with this. Depending on the depth of the question it can be quite involved, so there is a cost to the general public in following this through. I do not think it can be used as an excuse for not answering but I think questioners need to be aware of it. I think it also has to be taken in that different Members have a different style in approaching the Executive. Some prefer written questions; some oral; some prefer to operate via the media; some simply pick up the phone or send an email. As things settle down, we are finding who those Members are and that is perfectly acceptable. I think that Scrutiny should know what is happening and in order for our system to work properly it must; it should make it its business to do so. The need to ask several questions is

sometimes more easily answered by a phone call or meeting. Deputy Southern referred to political games, but I think that happens from both sides of the camp, if you like. I think perhaps there needs to be a better co-ordination between individual Members and Scrutiny, in that we have seen repetitious questions coming through which, of course, does waste time. One wonders whether questions should be put by Scrutiny Chairmen and then perhaps supplementaries coming from others. I think that I would like to say - certainly for myself and I am sure on the part of other Ministers - that I attempt to give honest answers to the best of my ability and to the best of the knowledge at the time of the question. We have had an example of a Member and the Deputy of St. Mary on one occasion not even turning up to put his submitted question, and even at the sitting on Tuesday changing his mind as to what he wanted to ask. I have to say, I do find that style particularly challenging. I would emulate my colleague Deputy Lewis' suggestion that precise questions and concise answers will satisfy the needs of this Assembly and, most importantly, the general public to whom we are all accountable.

4.1.19 Deputy J.M. Maçon of St. Saviour:

I would just like to echo what has been said by the Constable of St. Mary about the importance of supplementary questions, in that the original question you might not know the answer but the importance is in the supplementary questions, not only for the original questioner but also for other Members who are able to use that to demonstrate something else. However, I will make the point, if we are to extend the time indefinitely - which I would not suggest - it would of course eliminate what happens; although we have great talent among our Council of Ministers, they do have the ability to talk for a long time and some do look at the clock to carry on their answers. If we were to carry this on I do not think that would help question time. I will challenge Senator Ozouf's suggestion towards the P.P.C. regarding possibly limiting the time on answers because I am worried that that might lead to sound bite politics and not allow a Minister to give enough detail in his answer. Also, in addition to this, questions are given to allow imminent response from a Minister which perhaps has happened in a local event which does need to be given, which may not be appropriate for Scrutiny matters. Finally, yes ... everything else has been said.

4.1.20 Deputy S. Power of St. Brelade:

The first thing I would like to do is again thank my colleague of St. Brelade Deputy Tadier for bringing this proposition. I am not fully supportive of it, but I would like to make an observation - it is not a criticism - and that is that we spend an inordinate amount of time in this Chamber discussing ourselves. **[Approbation]** It came home to me in 2 elections - more so in 2008 than in 2005 - that when you meet people on the doorsteps they say: "Can you please get on with making some decisions which are of relevance to those people who live in Jersey" **[Approbation]** and stop talking about ourselves. That is the first thing I wanted to say. I have a big reservation about bringing propositions to the Assembly because I think we are overloaded with propositions and reports, and all sorts of things. I struggle at the moment. So that is the first thing I wanted to say. I have problems to do with the whole process of oral and, indeed, written questions. It is principally not so much to do with the time that is allowed for oral questions, but how we handle time and time wasting. The whole potential advantage of a parliamentary question - the oral in this case - can be summarised in 2 words: accountability and transparency. Through the process of the oral question we, the representatives of Jersey, can seek a response from a Minister or Ministers who hold ultimate responsibility for one particular area. Now, 30 years ago question time would have been dramatically different to what it is in this Assembly today. Questions today - and indeed 30 years ago - do serve to show how the policies, whether of committee in those days or Ministers now, are operating in practice, pointing out gaps, deficiencies in policies and service delivery. But there is one fundamental difference to us in this Chamber today, and to our predecessors, 30, 60 or 90 years ago, and that is the whole parliamentary process has changed dramatically because of the information age. Both the Constable of St. Brelade and the Constable of St. Mary have alluded to different areas of that. People's expectations - Jersey, Ireland, anywhere else - are right for us to

access. We have a right to access information. As a result of the worldwide web, the Internet, technology has enabled the process of asking a question to be simplified, with questions now being submitted electronically and the amount of information that is available to us, and to this Assembly, is vast. The particular advantage of the oral question in the Chamber is that it allows a Minister to elaborate on an issue which of concern. If the President of the Assembly permits, normally supplementary questions are allowed. There are 2 issues in my view that pertain to the way we ask oral questions, and to the way the oral questions are responded to. I will deal with 2 specific issues: sometimes a questioner - and I include myself in that in the recent past, in the last 3 years - we ask a question and we may speak at length after the reply on something that we have a political opinion on. The result of that is that over the years governments have regulated the time that is given to the response to oral questions, and to curb various government's Assembly Members to curb their loquacious tendency to waste time during question time. That is the reason we have a time limit. I would refer to a questioner asking questions and using the question process to make a political statement. The alternate situation also exists where a Minister is asked to provide clear information to a question and in reality the response may not be the case. I am aware of a number of occasions in the last 3 plus years, where I asked many questions and the response to my questions bore little or no resemblance to the actual question posed. I have received unsatisfactory responses to oral questions and, indeed, written questions. I would summarise some of those responses as brush-offs, complete brush-offs. The issue to me, therefore - and I say this to both Deputy Tadier and to the Deputy of St. Martin - is that there is a fundamental problem with the way we use questions and the way questions are loaded and the amount of time it takes to respond to a question in a department. So my suggestion is that there is possibly a need for reform in certain areas. I do not know whether this has been considered in the past and I stand to be corrected, and that is if a Member has not received what he perceives to be an appropriate answer to a question - and if he considers that the Minister or the department has not furnished a proper reply - a development might be the creation of some sort of a panel, perhaps under P.P.C., perhaps under the President of the Assembly or a combination of, which would allow the Member to make a complaint that his or her question has not been answered properly. So there are issues with question time. I will not be supporting either Deputy Tadier's or the Deputy of St. Martin's proposition. I think that in the way we look at this whole area it is a question of the quality of the question, the way the question is structured and the quality of the response. That has not got much to do with time. So, I would suggest that, depending on how this turns out today, that there is some work to be done on question time and there are questions in my view to do with questions. I would summarise finally by saying - and I agree with the Deputy of St. Ouen that sometimes it is good to phone a Minister and Assistant Minister and ask for specific information, as I have done in the past and in actual fact, it can be more productive than oral question time in the Chamber, that oral question time in the Chamber, as Senator Routier said, is part of the cut and thrust of what this Assembly does, for better or for worse. In the case of time, time is a very scarce resource. It is a very scarce resource and Members should be conscious of the fact that we do not waste it.

4.1.21 Senator T.J. Le Main:

I would like to follow a little bit from the last speaker, but certainly in the last 3 years I have found that some of the questions that I receive on housing matters are of poor quality. Questions are often asked by Members - some Members - that ask questions on comments they have received or persons misunderstanding of rumours, and it just is very difficult sometimes and time wasting. It would be far better at times that Members contacted the Minister to seek clarification on some of these questions they are asking or some of the issues that have been raised by parishioners or by questioners. Also, the issue about the way that the questions are often framed are not always the best for the questioner, in as much that the Minister often can - as required by a Standing Order - just give a very short, yes or no, answer and sometimes the questioner is not totally happy with the way it is answered. I would urge, particularly in my role of Housing, that some of the questions that are put to me I would be very happy to in fact respond by email or by call, telephone message

with the Member if they have any worries or otherwise. As I say, I do find some of the question I receive are of poor quality and are very difficult sometimes to respond to. The question about - particularly Deputy Southern - always accusing the Ministers of evading the truth on question time, well, that is like calling the pot black that is. Quite honestly, that is ridiculous. **[Interruption]** You all know that I am a very honest man and I **[Laughter]** respond to my questions in total honesty. So I stand up unconvicted of that. Thank you very much. **[Laughter]**

The Bailiff:

I call on Deputy Tadier to respond.

4.1.22 Deputy M. Tadier:

Thank you and thanks to everybody who spoke and especially a big thank you to those who did not speak. But in all seriousness, I am glad that people spoke both for and against. I was worried for a moment that I would have lots of people voting against the proposition but nobody speaking against it and I think, if nothing else, all of the contributions did show that there are certainly issues, irrespective of how this or the subsequent vote goes that do need to be addressed. I am just going to take every speaker in order. So first of all we heard from Senator Ozouf. The first point that I noted was one about the preparation of answers and certainly this is one of my main areas of concern. Questions are being prepared by officers, by the departments and perhaps by the Ministers themselves. I see this as an argument for lifting the time, not for restricting it, because if work has been done it is essential that that be given and come to fruition. Currently, with questions being unanswered - and it may not be in all cases, it is perhaps the minority of cases, that work - effectively, goes to waste. So if we want to have respect for the very good work that our civil servants and States officers do, I think it is only right that their work should be given ... submitted in a due way. Then the Senator raised a very salient point, I thought, about the whole time limits for speeches. Now, I do not want to get into this. This is certainly going to be a controversial issue if ever it comes to the House. But I am grateful for him in raising that insofar as this is a point that I missed in my initial speech. I wanted to make the case that it seems unfair that we limit question time when we do not limit speeches. So that seems an argument for me in terms of equality and fairness, seeing as there is no limit for speakers, that there should also be no limit to question time. It is interesting that although the Senator maybe feels strongly about it and other Members feel strongly about imposing time limits on people that they do not agree with. Of course, that is not the prime motivation. There is an argument to be had there. But the point is that this has not happened up until now. People are allowed to talk for as long as they want to and question time is equally essential. I believe that it should be allowed to go on - not for as long as it needs to necessarily, but certainly until all questions are asked. I want to address this point very early on, and Deputy Shona Pitman raised it and other Members have also raised it. This proposition is not talking about open-endedness in the sense of an infinite amount of time. The questions will be limited. There are a finite amount of questions in any one States sitting. We know beforehand how many questions will be submitted and ultimately there is an upper limit. There are 2 questions per Member. To all intents and purposes most Members will not submit 2. We know that it is traditionally only back-benchers that submit questions and we know that normally they may be anywhere between 10 and 20 and perhaps the very maximum will be something like 25 to 30. So we are not talking about an open amount of time. Each question presumably would still be limited. The Chair would carry on using his discretion; questions will not be allowed to go themselves *ad infinitum* so there will be a limit, perhaps 5 or 6 minutes. We saw on Tuesday that most of the questions, I believe, 16 were answered in that time. That works out roughly at 5 minutes per question. If we do the maths, even call it 6 minutes, 6 minutes for 20 questions would be 2 hours. That would be exactly what the Deputy of St. Martin is asking. In fact, I see my proposition as being the middle road insofar as it does not impose a time limit. It says that if we are done after 65 minutes, if we are done after 75 minutes, that is fine. So to address Senator Fergusson's point where the work expands to fit the time, if there is no time limit then surely work will not expand to an infinite amount of time. If

there is a 90-minute limit, if there is a 120-minute limit or 3 hours, then perhaps that argument would be valid. But all I am asking for is the questions that have been submitted, the work has been prepared for these questions; let them be answered. We heard from Deputy Southern and he again emphasised the importance of question time. We heard previous to that the need for balance, so it is a trade-off, effectively, between how much time we use for answering questions and how much time we used for other States' important business. This is something that worries me, that there seems to be a dichotomy here where we are saying there is question time and then there is important States' business. I think the subjective definition is a dangerous one. Surely question time can be just as useful and just as effective as open debate, if you like. The Deputy of St. John, again, he pounced upon my handout that I gave out. Really this gets to the heart of the problem. There is a mistrust between back-benchers and Ministers, whether we like that or not, whether that is fair or not, I think that is the case to a certain extent and there are certain Ministers, certainly, who perhaps do give more open and clear answers. There are other Ministers who perhaps give clear and honest answers but not necessarily concise ones. There are all kinds of combinations and permutations there. But there is a mistrust and that is I think a reflection of the public's mistrust within the House. I think that is one of the underlying issues that will need to be addressed. I will not dwell on that too much because it is only of tangential importance to this debate. But the fact remains that the comments from the Council of Ministers I think shows contempt for the House. Surely the argument is: is there is a clear logical argument to be made against the abolition of a time limit or even the extension of a time limit, then why not use those arguments rather than using basically specious and flawed statistics which are being demonstrated not to be true. We need to compare like for like. This is partly the underlying issue. This proposition would not be being brought today, you could argue, if, indeed, we were provided with the correct information in the first place. So I think that has been useful in demonstrating that point. I have already addressed Senator Ferguson for her contribution, for which I thank her. The Deputy of St. Martin, I thank for his contribution. He spoke in particular about Standing Orders. Now, many Members did speak about the need to lift Standing Orders. Personally I would share my chairman of P.P.C.'s view, that lifting Standing Orders is not satisfactory, normally speaking. I think I may disagree in individual circumstances about the flexibility of needing to do it. But certainly it is not a solution to what is an underlying more serious problem. That is why, in fact, I am bringing this proposition, so that we do not have to keep on lifting Standing Orders if ever we need to get questions answered. Deputy Shona Pitman raised a point of clarification which ties in with the speech from the Connétable of St. Lawrence. I have partly addressed it already. This proposition is not asking us to stay *ad infinitum*. It is merely asking that all the questions that have been approved, that have been submitted, have gone through a very strict screening process to make sure that they are in order, that they are less than 70 words long and that have been approved by the Bailiff get answered. I am not asking for each individual question to be allocated an infinite amount of time. That would certainly be ridiculous and I hope that clears certain things up for certain Members. So we are still looking at roughly 5 to 6 minutes. The Chair would ultimately have the discretion and things would be kept moving along. This only in circumstances when there are unusually high levels of questions and it would not be on every occasion. Indeed, if I may give the example, this week, we have had to stay a bit longer because Members were electing a Minister for Health and Social Services, very important business, of course, as is all States business, you could argue. But we are willing to make these extensions every now and again when it is necessary. But I do not think this would be any different. I am not asking Members to stay an extra hour or 2 every week, although, obviously if I were, that does not mean it is a reason to object to it either. But I am not. I am simply asking that all the questions that be presented be answered. Deputy Lewis, I could not gauge quite whether he was supporting this particular proposition or not. But I certainly got the spirit of his argument: that answers need to be concise. But I would also suggest that they need to be, to as far as an extent as possible, honest, so that we get the information we are seeking. Deputy Higgins talked about shining a light into departments. Obviously oral questions which are done in public, they do differ from written questions, which, for some, may never see the light of day. This

is a way in which we can hold Government to account. So I think it is important, ideologically, as I have said before, it is arbitrary if you say: "These questions can be answered; those cannot be answered." Again, my proposition does away with that issue. The Deputy of St. Mary talked about accountability. If information was given in the first place we would not need to come back each time. While I do not want to go into the exact specific details and examples that the Deputy gave, I think his overriding point was relevant because it shows the need for lifting a time limit so that we can have questions answered and answered correctly. As I said before, one of the by-products of this proposition, were it to be successful, would be that there is no incentive for any Minister to give a nebulous or long-winded answer because if it is not done the first time, the Chair can pull him or her up and say: "You need to give an answer" and there is no incentive to play the clock out, so to speak, as a football team might do 90 minutes before the end when they are one nil up. But this is not about point scoring. We heard a point from Deputy Trevor Pitman, and, quite interestingly, he compared the politics or perhaps the drive and commitment of myself and Senator Ozouf to making sure that the States is run efficiently. I believe this is a fair comment. I believe essentially we are perhaps looking at the same problem but through different ends of the telescope. Obviously this one area that I am interested, being on P.P.C., the whole area of time limits may need to be looked at. It may not be. It is a debate for another day. One concern I would have, of course, that it might be used to ... well, we would need to have a debate about how it affects individual Member's privilege. But we will leave that for another day. Now, we were particularly treated to the speech Senator Routier gave, and he knew I was going to talk about him in the order. So he likes the rough and tumble of politics and I think there are certainly many of us in the States Chamber who do. I was quite fascinated because if you take the essence of his argument, it is almost that he would be saying he would be happy to get rid of question time completely. Although that may be unfair. But again, there seemed to be this dichotomy of what is relevant States business and what is not relevant States business. Question time, I think, is essential, and, certainly as back-benchers, I would encourage my fellow Deputies and other bank-benchers to really emphasise that this is about our democratic rights to hold Ministers to account. Then I would say that is a false argument. We cannot compartmentalise States business into what is essential and what is not essential. Of course, there is a need to focus but I would give an example of when I asked a question on Tuesday about the cash machine at the airport and it was very difficult to get a specific answer. I wanted information, for example, of when the Ministers first found out about it and whether an alternative had been found. I did not get that on the floor. I had to seek that information afterwards. Now, we were told also about the multiple reasons that people have, so the hidden motives for asking questions. Now, it is very difficult to legislate when you submit a question what are correct motives and incorrect motives. Anyone who may have studied the work of Sigmund Freud would know that he talked about over-determination in people's actions. This, in layman's terms, means that people have many motives for doing things, so that there may be a superficial apparent motive for doing something but there are many motives when bank-benchers ask questions. Initially it could be to seek information that we have not been fruitful in getting in the first place. It may be that for some of the less scrupulous Members, to make the Minister squirm. I would hope that would not be the case. But essentially it is to find information and it is to hold them to account. That can mean many things to many different people. So I think we are skating on thin ice if we start to talk about "many motives". This is something which will come up again. But, again, I think this does highlight once more the mistrust, rightly or wrongly, that there is between bank-benchers and Ministers, and I hope that this is something which will be addressed and we can all work to have a greater openness because ultimately it is the public we are here to serve. The Constable of St. Mary quoted some stats. Now, personally I do not think that the stats give a definitive answer one way or the other. So I will leave those aside. There could be an argument to say that because certain questions are not being answered we should abolish the time limit. But that could also be an argument to say that it does not happen regularly enough to have established a pattern. So I will not challenge or talk about that so much. But what I would like to do is just bring attention to the comments of P.P.C., of which the Connétable is the Chair. I will

quote: “Both States Members and officers can spend a significant amount of time establishing the answer to an oral question and this should be lost should the question remain unanswered.” If the proposition of the Deputy is rejected and a maximum time limit for questions is retained, there will always be a risk that some questions may not be answered within the allotted time. So that is just part of a report from P.P.C. and maybe that is slightly different to what the Chair would have given in her individual capacity as an individual States Member. I want to challenge the whole idea about this Wikipedia thing because inevitably what has come out of today, if nothing else, is the fact that we have seen the contempt that the Council of Ministers have shown for a proposition, my first proposition, and it has been treated ... obviously this has been given to whoever: “Do some research on this.” The first thing that comes up: it is evident that it comes from Wikipedia and I can give some categorical proof because many of the quotes are the same. Anyone who has got the comment of the Chief of the Council of Ministers ...

Senator P.F.C. Ozouf:

Would the Deputy give way? I can give a categorical assurance that the information contained in the Council of Ministers’ proposal is from a parliamentary website. I will circulate the references for each of the matters so that they can see it. It is not correct that it has been taken from Wikipedia. It is from parliamentary sites.

Deputy M. Tadier:

That has obviously touched a nerve. I think I can give a quote which is identical on Wikipedia to ...

Senator P.F.C. Ozouf:

Wikipedia will have got it from somewhere.

Deputy K.C. Lewis:

Can I also point out that Wikipedia, although an excellent site, is completely unregulated?

The Bailiff:

Deputy, would you conclude your speech, please.

Deputy M. Tadier:

Well, I will conclude it when I see fit. **[Members: Oh!]**

The Bailiff:

Deputy, that is not an appropriate remark to make to this House.

Deputy M. Tadier:

I see fit to conclude it fairly quickly.

The Bailiff:

No, that is not an appropriate remark to make and I ask you to withdraw it, please.

Deputy M. Tadier:

Okay, well, I apologise if it sounded insolent. It was not my intention.

The Bailiff:

Thank you very much. Please continue.

Deputy M. Tadier:

First of all, I would question the Senator. I thought there were no time limits. I do apologise but obviously I am on a steep learning curve. I would question how the Senator knows where this

research has come from unless he has done it himself. But perhaps that is a question we can talk about ... let us refer to the individual quote itself. So if you look at quote 3. In fact, let us move on. I think it is probably best not to get bogged down in these things. That was initially meant as an aside, so I will carry on. The whole point about Wikipedia, I mean, there is nothing wrong in one sense with it because I believe that ... it has been said that it is not regulated, so in defence of both myself and the Council of Ministers, who I maintain ... certainly, from my part I have looked at it as part of my research, as well as other websites, is that the benefit of it is it is regulated and edited by people, so it benefits from not just being partisan in that respect. Deputy Reed gave us a comparison between current government and previous ones. I do not think that is the place to ... Like the Chief Minister, I am quite capable of reading the mood of the House so I am going to cut my speech short slightly. But I will ask for a slight conclusion to be allowed. We have talked about motives. There were lots of motives for asking questions. I believe we cannot test these motives. We have to start from the position that questions are allowed to be asked. There is a process by which questions are asked. Just quickly to refer to Connétable Jackson of St. Brelade's point, he mentioned that it might be ... there are 2 ways: written questions and oral questions. It may well be something that we need to look at insofar as written answers might be more pertinent for certain types of questions, and oral answers for others. There seems to be an issue here with the actual deadline. So somebody may have missed the deadline on the Monday and because they cannot submit a written question they submit an oral question where it may not be appropriate and in that case do it on a Thursday. So that might be an area for P.P.C. to look at if written and oral questions are both submitted at the same time and then the Greffier's Department could rule on whether or not a written answer was more suitable. So I think I will cut my speech short there. As I have said, I am all for brevity in the States and I would just call for the appel.

The Bailiff:

Very well. I ask any Member who in the precinct who wishes to vote to return to his or her seat and I ask the Greffier to open the voting, which is for or against the proposition of Deputy Tadier.

POUR: 14		CONTRE: 35	ABSTAIN: 0
Senator S. Syvret		Senator T.A. Le Sueur	
Senator A. Breckon		Senator P.F. Routier	
Connétable of St. Helier		Senator P.F.C. Ozouf	
Deputy of St. Martin		Senator T.J. Le Main	
Deputy J.A. Martin (H)		Senator F.E. Cohen	
Deputy G.P. Southern (H)		Senator S.C. Ferguson	
Deputy of Grouville		Senator A.J.D. Maclean	
Deputy S. Pitman (H)		Senator B.I. Le Marquand	
Deputy of St. John		Connétable of St. Ouen	
Deputy M. Tadier (B)		Connétable of Trinity	
Deputy of St. Mary		Connétable of Grouville	
Deputy T.M. Pitman (H)		Connétable of St. Brelade	
Deputy M.R. Higgins (H)		Connétable of St. Martin	
Deputy D. De Sousa (H)		Connétable of St. John	
		Connétable of St. Saviour	
		Connétable of St. Clement	
		Connétable of St. Peter	
		Connétable of St. Mary	
		Deputy R.C. Duhamel (S)	
		Deputy R.G. Le Hérissier (S)	
		Deputy J.B. Fox (H)	

	Deputy of St. Ouen	
	Deputy J.A. Hilton (H)	
	Deputy P.V.F. Le Claire (H)	
	Deputy J.A.N. Le Fondré (L)	
	Deputy of Trinity	
	Deputy S.S.P.A. Power (B)	
	Deputy K.C. Lewis (S)	
	Deputy I.J. Gorst (C)	
	Deputy A.E. Jeune (B)	
	Deputy A.T. Dupré (C)	
	Deputy E.J. Noel (L)	
	Deputy T.A. Vallois (S)	
	Deputy A.K.F. Green (H)	
	Deputy J.M. Maçon (S)	

5. Oral Questions with notice: extension to 2 hours (P.40/2009)

The Bailiff:

We now come to the proposition of the Deputy of St. Martin and I ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether of opinion, (a) to agree that Standing Orders 16 and 33 should be amended to extend the current 90 minutes allowed for oral questions with notice from 90 minutes to 2 hours and (b) to request the Privileges and Procedures Committee to bring forward the necessary amendment to give effect to the proposal.

5.1 The Deputy of St. Martin:

I take it from the result of the vote and the comments made by various speakers who spoke earlier that while Members are happy for an extension of question time, they would rather it be within a specific time and that is what my proposition is about. I think all the arguments have been heard and I would ask that people will consider - if they want, please do - but what I will do, I will make the proposition and ask for a seconder. **[Approbation]**

The Bailiff:

What a splendid speech. **[Laughter]** Is the proposition seconded? **[Seconded]** Does any Member wish to speak?

5.1.1 Deputy P.V.F. Le Claire:

I did not speak or vote for the previous proposition because I am supporting this one. That is the reason. I shall be supporting it.

5.1.2 Deputy G.P. Southern:

Just briefly. I just want to mention that some Members have spoken about it might be better to approach Ministers direct, including some Ministers, and we would get better quality answers. I would point out that the only place in Standing Orders where a time limit is applied to seeking answers or to giving answers is in public questions. So that is the reason why people use it, I think, in many cases, because it guarantees that in a certain time scale you are going to get some sort of answer, whereas you would be waiting, in some cases, sadly, for many weeks to get a response from a department or from a Minister, in some cases.

The Bailiff:

I call upon the Deputy of St. Martin to reply.

5.1.3 The Deputy of St. Martin:

See, we can be brief when there is a need to. I thank Deputy Le Claire for his support. I would like to guarantee I am going to get 2 votes. I maintain the proposition and ask for the appel.

The Bailiff:

Very well. I ask any Member in the precinct who wishes to vote to return to his or her seat. I ask the Greffier to open the voting, which is for or against the proposition of the Deputy of St. Martin.

POUR: 25	CONTRE: 23	ABSTAIN: 0
Senator F.E. Cohen	Senator T.A. Le Sueur	
Senator A. Breckon	Senator P.F. Routier	
Senator S.C. Ferguson	Senator P.F.C. Ozouf	
Senator A.J.D. Maclean	Senator T.J. Le Main	
Connétable of St. Ouen	Senator B.I. Le Marquand	
Connétable of St. Helier	Connétable of Trinity	
Deputy of St. Martin	Connétable of Grouville	
Deputy R.G. Le Hérissier (S)	Connétable of St. Brelade	
Deputy J.A. Martin (H)	Connétable of St. Martin	
Deputy G.P. Southern (H)	Connétable of St. John	
Deputy of Grouville	Connétable of St. Saviour	
Deputy J.A. Hilton (H)	Connétable of St. Clement	
Deputy P.V.F. Le Claire (H)	Connétable of St. Peter	
Deputy S. Pitman (H)	Connétable of St. Mary	
Deputy K.C. Lewis (S)	Deputy R.C. Duhamel (S)	
Deputy of St. John	Deputy J.B. Fox (H)	
Deputy M. Tadier (B)	Deputy of St. Ouen	
Deputy of St. Mary	Deputy J.A.N. Le Fondré (L)	
Deputy T.M. Pitman (H)	Deputy of Trinity	
Deputy A.T. Dupré (C)	Deputy S.S.P.A. Power (B)	
Deputy T.A. Vallois (S)	Deputy I.J. Gorst (C)	
Deputy M.R. Higgins (H)	Deputy A.E. Jeune (B)	
Deputy A.K.F. Green (H)	Deputy E.J. Noel (L)	
Deputy D. De Sousa (H)		
Deputy J.M. Maçon (S)		

Deputy M. Tadier:

I would just like to say I have been out in the corridor and I have been intimidated by Senator Ozouf, who made menacing threats to me to tear me apart.

Senator P.F.C. Ozouf:

I did not say that. I said I would tear his arguments apart if he persisted in suggesting that Members and Council of Ministers' Members do not tell the truth in the Assembly.

The Bailiff:

I wonder if Members would wish perhaps at this stage to hear the statement of the Minister for Health and Social Services. Minister, will you make your statement.

STATEMENT OF MATTERS ON OFFICIAL RESPONSIBILITY

6. The Minister for Health and Social Services regarding the developing situation with swine flu

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

I am aware that Members are anxious about the developing situation with swine flu and I would like to give Members an update on Jersey's current position in relation to the outbreak, which appears to be of growing global concern. Last night the World Health Organisation raised its flu pandemic alert from phase 4 to phase 5, which means it considers a pandemic to be imminent and all countries need to activate their pandemic preparedness plans. Jersey's Health and Social Services Department have already set up a Health Task Force to assess all the international information as it emerges and to take action as necessary to protect the Island's health. Jersey's preparations for a flu pandemic, should one be announced, remain among the most extensive in the world. Yesterday we heard that 3 Islanders were being tested for the new swine influenza virus and treated with Tamiflu at home. The results of one of these 3 people had come back negative to Influenza A. Today there are 2 more suspected cases which are being tested. They are all suffering from a flu-like illness, having recently returned from areas which are judged possible sources of the new swine flu. Tests have been carried out on samples at a specialist London laboratory and the results, which will be announced when they are available, will show whether or not they have contacted the new H1N1 virus. The people affected have been advised not to mix with others and doctors have prescribed Tamiflu for all those who have had close contact with them during the relevant period. Having flu-like symptoms does not necessarily mean that a person is suffering from a new type of flu. However, Jersey doctors are following the national guidance and are testing anybody who falls ill after returning from Mexico or neighbouring countries. Jersey's Medical Officer of Health, Dr. Rosemary Geller, is also advising children and healthcare workers returning to Jersey from Mexico or neighbouring U.S. (United States) states to stay off school or work for 48 hours after returning to Jersey. This new policy is now considered necessary, as more information about the scale of the outbreak in Mexico is becoming apparent. The fast-changing situation is being kept under close and constant review and Dr. Geller, who is meeting her health team daily, will be issuing regular statements as things develop. Our Emergency Planning Officer is arranging regular meetings of the Emergency Planning Board and tomorrow the Emergency Council will meet with detailed briefing and to prepare to take appropriate action, should the pandemic alert phase move from 5 to 6. Travel advice remains the same. The Foreign and Commonwealth Office is advising against all but essential travel to Mexico.

6.1.1 Deputy G.P. Southern:

Does the Minister have any fresh information on the numbers of deaths other than those in Mexico at present?

The Deputy of Trinity:

Only what was broadcast on the news this morning. I understand that there was one in Texas, if I remember rightly. But just to make a point here, that the situation is changing rapidly. As you see on the fifth paragraph down, when I first approved the first statement, that 3 Islanders were being tested, but good news, that one of those 3 from yesterday has proved negative and that is very ... so it is being updated regularly.

6.1.2 The Deputy of St. Mary:

Two questions on this: one is, does the Minister have firm data on the incubation period? Secondly, what on earth constitutes essential travel to Mexico in the light of this outbreak?

The Deputy of Trinity:

I think your first question was about incubation. I understand that the tests go to the laboratory and it can take up to 36 hours if necessary and the Foreign Office leave it up to the person to see what they think essential travel is. If necessary, there are helplines which have been set up at Cyril Le Marquand House and if anybody thinks that they have any queries is to contact them.

6.1.3 Deputy P.V.F. Le Claire:

Would the Minister agree with me, that, having moved now from level 4 to level 5, we are in a serious position, not only as an island community but as a global community: one stage away from the final level, level 6, where pandemic exists and is beyond control, in certain respects? Would the Minister agree with me that now is the time for us to set aside partisan politics remarks and disputes and to focus on working together for what will be a concerning time for the community in making sure we work for the community in being ready and prepared for any eventuality?

The Deputy of Trinity:

I fully endorse the Deputy's last comments and thank him for making that. I have every confidence in the team at Health and especially with the M.O.H. (Medical of Health), who is a direct link with the Health Protection Agency in the U.K. who in turn has direct links with the World Health Organisation. The matter is changing rapidly, we are being kept up to date and our links in with the Emergency Planning Board is important and also that meeting with the States Emergency Council tomorrow is important.

6.1.4 Deputy C.F. Labey of Grouville:

Have the 2 people with flu-like conditions currently being held in quarantine and have these suspected cases been reported to the World Health Organisation?

The Deputy of Trinity:

They are being treated at home with Tamiflu. I cannot give any details about if they have been reported to the W.H.O. (World Health Organisation) or not because there is a set procedure and I need to confirm this, I think. Once they are confirmed ... because at the moment those people are still on the suspected list and at the moment that is some very good news and one of them ... and I think we should be very thankful that one of them was proved negative.

6.1.5 Deputy D.J. De Sousa:

Can I just ask the Minister ... the Deputy of St. Mary, I believe, asked what was the incubation period of contacting and coming down with the flu, rather than, as I think she answered, which was how long does it take to get the results back to confirm whether it is this strain of flu or not. That is the first thing I have. Also, we need to err on caution here as well. Although it is possible that we are going to move up a stage, we do not need to panic. Most of the deaths so far seem to have been contained to Mexico. There are probably reasons for this.

The Bailiff:

Deputy, sorry to interrupt but this is not a debate. You must ask questions of the Minister.

Deputy D.J. De Sousa:

Sorry. Does the Minister agree that the probable reasons are because in the other parts of the world where the illness has become apparent, have better health facilities, better family facilities and does the Minister agree with this and that we should not panic at this stage?

The Deputy of Trinity:

I thank the Deputy for her comments and yes, I think panic is the wrong thing to do. Everything possible is being monitored, regular updates, and that is the most important thing and that we do have an emergency planning scheme already in place and those Connétables who took part in Operation Cold Play at the Radisson Hotel 2 or 3 months ago are well aware that if - and it is very

much and if - it does go up a scale, which will come from the World Health Organisation, that plans are in place to help Islanders and to protect them. I am not sure of the actual incubation period as such but the M.O.H. has issued guidelines. If you feel ill 4 days after return from somewhere to contact your G.P. (General Practitioner). That is good advice. The M.O.H. will still be offering good advice regularly during the day and whatever days necessary in front of us.

Deputy G.P. Southern:

Minister, if I may, one point of correction. The Minister said: "Contact your G.P." Arrange for a visit from your G.P. Do not go into the surgery and thereby spread any potential disease.

6.1.6 Senator S.C. Ferguson:

Perhaps I could assist the Minister in that I understand that official notices say that the incubation period is, in fact, 24 hours.

The Bailiff:

This is a question?

Senator S.C. Ferguson:

I have got a question. My sister, the pharmacist, tells me. She has just got her package from the U.K. Government. As Deputy De Sousa has already said, the fatalities are either at present in Mexico or of Mexican nationals, including the one in Texas. Has the Minister received any information as to why this should be so?

The Deputy of Trinity:

Just to address her first points: I want to be really clear that there have been some messages about 48 hours or longer or shorter. I will make sure by the end of today that the correct information is given out, which I know the M.O.H. officer is doing. But I will make sure that it is sent out to all States Members so that we are absolutely clear, and that is the most important thing. Giving mixed messages does not help anybody.

6.1.7 Connétable S.A. Yates of St. Martin:

Could the Minister confirm, please, that the emergency plan for the pandemic would be passed to the emergency immunisation centres, i.e. the Parish Hall, which will be the interface with the general public of the Island, in the event that the risk level went up to maximum, which hopefully it will not? But at the present moment unless something has been delivered within the last 24 hours, the emergency centres, the Parish Halls, do not have details of the emergency plan. I would like to think that that would be sent with some urgency.

The Deputy of Trinity:

Just to confirm that we are on level 5, which means: "on the way, get ready", and that the Emergency Planning Board have met and there is the Emergencies Council meeting tomorrow. I know that the Connétables have a representative on that and very much welcome that. The plan will be set in place if it becomes necessary. I am sure that part of the plan will ... the Constables know about and the Parishes have an important part to play with that if it becomes necessary to go that stage.

The Bailiff:

That concludes the period set aside for questioning on a Minister's statement

Senator S. Syvret:

I had my light on the entire time.

The Bailiff:

You had your light on immediately after the Constable of Grouville, who was the next on the list.

Senator S. Syvret:

No, that is not correct. I switched my light on immediately when the Minister finished her statement.

LUNCHEON ADJOURNMENT PROPOSED

The Bailiff:

Yes, the adjournment is proposed. If Members agree, we reconvene at 2.15 p.m.

LUNCHEON ADJOURNMENT

PUBLIC BUSINESS - resumption

7. Arrest and detention of Senator Stuart Syvret and associated matters (P.60/2009)

The Bailiff:

We come now to the proposition of Deputy Southern, projet 60 and I ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion (a) to express their concern in respect of the apparent interference in the communications between elected representatives and their constituents which arises from the arrest and detention of Senator Stuart Syvret on 6th April 2009, (b) to further express their concern in respect of the suppressing effect of such actions upon other elected representatives and members of the public, (c) to further express their concern in respect of the searching of premises without a search warrant and the consequent taking of communications between members of the public and their elected representatives, (d) to request the Minister for Home Affairs to make an urgent statement concerning the decisions, whether operational or political, taken by the States of Jersey Police and the Minister in relation to the arrest and detention of Senator Stuart Syvret, (e) to request the Privilege and Procedures Committee to make an urgent statement explaining the extent of the protection offered to States Members and their constituents by parliamentary privilege.

7.1 Deputy G.P. Southern:

May I suggest firstly that if any Member wishes at this stage to defer this debate that they speak up as early as possible because I do not want to get halfway through this debate and then have it deferred? This particularly applies because there has been a late amendment lodged by the Privileges and Procedures Committee, which has been lodged for only 2 days. I wish to inform Members that I will be, if allowed to debate as amended, I will be accepting this amendment. It certainly seems to me that it adds clarity to the purpose that I had put in my proposition originally in some haste because I thought it was a matter of some urgency and because of its seriousness. But I will be accepting it and therefore that would require us to lift Standing Orders in that respect. So if anybody is uncomfortable with that as a potential way forward, please would they speak now and we will see where we are. I have got a lot of papers in front of me but I will try and be as brief as I can, just by the length of those papers, and what they consist of, basically, is the 83 pages that consist of the Police Procedures and Criminal Evidence (Jersey) Law 2003, which I will refer to as P.P.C.E. from henceforth. The first thing to state here is that while the actions and the consequent concerns raised by the police action ...

The Bailiff:

Deputy, I am sorry to interrupt you. I hope I am not interrupting you halfway through your speech. You mentioned the question of the amendment of the Privileges and Procedures Committee. I would just like to clarify that position before we go any further because the amendment was lodged

on 27th April and it is not possible for the States to debate that under Standing Orders unless the relevant minimum lodging period can be lifted. Frankly, the Standing Orders, I think, make it quite difficult to justify taking that course of action, so that if the States is going to debate your proposition today, then it cannot debate the amendment. I just think it worth perhaps making that point at the beginning.

Deputy G.P. Southern:

Fair enough, and procedurally how do we go forward with that?

The Bailiff:

Well, the amendment is simply left on the sidelines and the States will either adopt your proposition or not adopt it.

The Connétable of St. Mary:

I would like to make a suggestion. It may not be entirely satisfactory to the proposer, but it may get us out of the situation. If the Deputy were prepared not to propose paragraph (e), I have already given an undertaking in the written answer that was circulated this week that Privileges and Procedures is working to the effect that we will be able to produce a report. We are working on that report. If the good Deputy could take me at my word and did not propose paragraph (e), I think that might get us over the problem.

Deputy G.P. Southern:

So we are talking then about a spiritual sense in which we are talking about the absence of paragraph (e) but the assurance from the Chairman that what I want to happen will come to effect?

The Bailiff:

Yes.

Deputy G.P. Southern:

I think I am prepared to do that.

The Bailiff:

That seems a sensible way forward, Deputy. So you will move then paragraph (a) to (d) inclusive?

Deputy G.P. Southern:

In good time, I will move paragraphs (a) to (d) and omit (e).

The Bailiff:

Very well. Thank you very much.

Deputy G.P. Southern:

Thank you. That is that one sorted. Right. So, despite the circumstances and the concerns being raised by the arrest and detention of Senator Stuart Syvret and at the risk of causing the Constable of St. Clement to once again guffaw, I state, as I do on page 6 of my proposition, this proposition is not about Senator Syvret as an individual but about what those actions ... his actions, represent. It is not about the merits or otherwise of any allegations or charges being made or brought against him by the police. It is not about the content of Senator Syvret's blog. What it is, is about the principles embodied in the actions taken around the arrest and detention of Senator Syvret. Basically this proposition seeks to express the concern of this House, of this body, at those actions. I believe what we are talking about today is about 2 things, essentially: fundamentally, the upholding of the law and the enactment of the law and the extent to which we are protected from certain actions by parliamentary privilege. Both of those issues seriously impinge not only on Senator Syvret, whose case illustrates this issue, they also extend to every Member of these States,

and, indeed, in terms of the action, the enforcement of the law and the protections envisaged under the law, they extend, in fact, to every resident in Jersey. They are serious issues indeed. In addition to expressing concern about the searching, about the arrest, about the detention of Senator Syvret and its consequent effects on States Members and their individual rights and the individual right of Members, residents of the Island, indeed, it is about accountability. One of those accountabilities is to define for the Privilege and Procedures Committee the extent and the limitations on parliamentary privilege, which I believe is a serious issue and one which ought to be addressed. Secondly - and this is vital and important on this issue - the accountability of the police in taking the actions that they did. Now, in this, that obviously refers to the Minister for Home Affairs, who has to take political responsibility and political accountability for those actions. It is also, as we shall see, a minefield in terms of the law and what is allowed: what is legal and what is not. It is alleged that the Senator's home was searched extensively, although no search warrant was issued for the alleged offence under schedule 9, Article 50 of the Data Protection Law 2005. Certainly the information I have is that the police were aware that they wanted to arrest and detain Senator Syvret and to search his premises on data protection issues. Now, Data Protection Law, under Article 3 contains 3 additional conditions for the issue of a warrant: the Bailiff or Jurat shall not issue a warrant unless satisfied that the Commissioner has given 7 days' notice in writing to the occupier of the premises in question, demanding access to the premises. That either access was unreasonably refused or the occupier unreasonably refused to comply with the request from the Commissioner - second condition. Thirdly, that the occupier has, after the unreasonable refusal, been notified by the Commissioner of an application for the warrant and had the opportunity of being heard by the Bailiff or Jurat on the question of whether or not it should be issued. So 3 very clear safeguards that presumably this House, containing some Members currently present, had debated carefully and thought carefully about before putting the ability to search premises into the Data Protection Law, those were the conditions, safeguards to protect ordinary members of the public.

Connétable D.J. Murphy of Grouville:

Excuse me, sorry, can I interrupt just for one moment, please, because you seem to have missed out condition 2 on the warrant, which says that subparagraph (1) shall not apply if the Bailiff or Jurat is satisfied that the case is one of urgency or the compliance with the subparagraph would defeat the object of the entry.

Deputy G.P. Southern:

Indeed, and I thank the Constable for drawing that to my attention. It is indeed relevant because we may well see - and I expect we shall see - that no search warrant was applied for under any law and therefore no Bailiff or Jurat was involved in the process whatsoever. Never mind that those conditions were not adhered to. But anyway - and, again, I thank the Constable for prompting me, that focuses down on the incident itself. In what circumstances are you suggesting that a Member of the States was likely to do with given 7 days' notice; burn everything, destroy everything, so that there can be no evidence left? Is that the actions of a States Member? I do not believe so. There was absolutely no reason to believe that Senator Syvret was likely to do that or to interfere with a search in that way and I doubt whether any Bailiff or Jurat would have suggested that that was the case. We are not dealing with what we call serious crime here. We are talking about a Senator doing his duty, as he sees it, by his constituents, and in a way which he believes serves the public interest and that process has been interfered with. One has to ask, since it was clearly an issue of data protection, the Data Protection Law was not the law that was used in order to search those premises and to arrest and detain the Senator. One has to ask - and here is a serious worry - whether, indeed, the arrival of 8 officers in 4 cars at 9.00 a.m. at the Senator's residence was, in fact, an extreme action, an over the top action, and, indeed, an intimidatory action and one which might give every Member of the States reason to think: "Well, could that happen to me, and if so, how would have I reacted?" or even to say: "Well, thank God it happened to him and not to me" in

some cases. So what we have instead is that we believe the Police Procedures and Criminal Evidence (Jersey) Law 2003, P.P.C.E., has been used instead. Under Article 29(1), which was reproduced in the proposition, it says: "A police officer may search an arrested person in any case where the person to be searched has been arrested at a place other than a police station if the police officer has reasonable grounds for believing that the arrested person may present a danger to himself or herself or to others." A pretty extreme condition. One has to ask did that apply on that morning to Senator Stuart Syvret? Did he come out of his residence with a shotgun under his arm? Did he in any way make threatening moves towards any of the 8 policemen surrounding him? Did he come out saying: "Jimmy was right. It is the end of me. I am a goner." I do not believe he did. It then goes on to say: "A police officer shall also have the power in that case [in that case, a threat to himself or others] to enter and search any premises in which the person was when arrested, or immediately the person was arrested, for evidence relating to the offence for which he or she has been arrested." So there is the bit of the law, Article 29, that has been used to arrest, search and detain. We have to turn, I think, to P.P.C.E. and examine how come it has taken priority. Now, one of the issues I have come across in examining this case is that where 2 laws appear to contradict each other, the rule of thumb, if you like, practice, is that the later law should prevail. So in a matter of data protection, the later law should prevail and what we are talking about here is the Data Protection Law (Jersey) 2005 or the Police Procedures and Criminal Evidence Act (Jersey) Law 2003. The later law, which I believe should prevail, says those conditions should be applied in cases of data protection issues and not the earlier ones as under P.P.C.E. One then has to look at what P.P.C.E. was designed to do. I was involved quite peripherally in the old committee system on Home Affairs as this law was coming to fruition after an extremely long time and it was, I believe, designed to deal with serious offences and one has to ask the extent to which a data protection issue is a serious offence. It says on page 13, Article 3 of the law: "The meaning of a serious offence. This Article has effect for determining whether an offence is a serious offence for the purposes of this Law contained in Part 1 of Schedule 1." Part 1 Schedule 1, serious offences: treason, murder, manslaughter, gross indecency, publication of obscene material." There are others, kidnapping. Pretty serious; more serious than data protection issues, I would add. It then goes on: "May also be in Part 2, offences contained in Article 3(2)(b). French laws now, Articles 2 and 3 of the Loi (1884) sur les matières explosives. Explosives, official secrets, drug trafficking, aviation and maritime security, protection of children. Serious offences indeed when one might expect some pretty sharp practice on ability to search premises and search people and arrest them and detain them. It then goes on to talk about items subject to legal privilege and excluded material and special procedure material in Article 6. Article 6(2) says: "A person holds material other than journalistic material in confidence for the purposes of this Article if the person holds it subject to an express or implied undertaking to hold it in confidence or to a restriction on disclosure or an obligation of secrecy contained in any enactment, including an enactment passed after this law." So the material was taken some of which was communications with constituents. One has to ask if when receiving material from constituents concerning serious cases, serious issues of abuse in Senator Syvret's circumstance or other, whether those are taken under an express or implied undertaking to hold it in confidence. I would argue, and I think anybody would, that when we receive material from constituents by and large where it covers sensitive material, it is held in confidence. There can be no doubt about that, certainly not in my mind, and those materials would only be revealed with the express permission of that particular constituent. We then go on to Schedule 2, special procedure, and that talks about: "If on application made by a police officer, the Bailiff is satisfied that one or other of a set of access conditions in paragraph 2 is fulfilled, the Bailiff may make an order under paragraph 3 to get access to this material which is said to be excluded or special procedure material." So if you want to go for that material, the Bailiff or Jurat has to let you do it, has to allow you to do it, i.e., give you a warrant to do it. We then move on to Schedule 3, enactments confirming power to issue a search warrant. So you go the Bailiff, the Jurat, and say: "I want to search these premises." A whole list of things, Housing Law (1949), Public Health (Control of Buildings) Law, Weights and Measures Law, Protection of Children

Law, Computer Misuse Law, Customs and Excise Law, Conservation of Wildlife Law, allow you to get a warrant to search a premises. Remarkably absent is Data Protection Law. So all the conditions here, serious offences ranging from murder on downwards, special materials, which are held in confidence, need a warrant, enactments conferring power to issue a warrant not containing Data Protection Law. Okay, let us move on. Article 16: “A police officer may obtain access to excluded material or special procedure material” by making an application under Schedule 2 and in clauses within that Schedule. Article 15: “On application made by a police officer, a Bailiff or Jurat may issue a warrant authorising the police officer to enter and search premises.” Warrant, warrant, permission to, permission to, seek permission. Safeguards to those warrants, execution of those warrants. Eventually we come to Article 20: “Entry and search after arrest. Subject to this Article, a police officer may enter and search any premises occupied or controlled by a person who is under arrest for a serious offence or other offence the punishment for which is imprisonment by a term of one year or more - does not seem to fit to me- if the officer has reasonable grounds for suspecting there is on the premises evidence other than items judged strictly subject to legal privilege that relates to the offence.” Here we come to the crunch. “Subject to paragraph 5, the powers conferred by this Article may not be exercised unless in the case of the Force, an officer of at least the rank of Inspector or in the case of an Honorary Police officer, a Connétable or Centenier has authorised them in writing.” So it is, as I believe the Attorney General said, possible to search premises without a warrant if an officer of the level of Inspector or a Connétable or Centenier has authorised them in writing. At the end of this chain is for any serious offence - look at Schedule 1, murder on downwards - or for an offence punishable by a term imprisonment of one year or more. These are serious cases. The fundamental issue here for every one of us and every resident of this Island is how can that be allowed? Under what circumstances - and these are extremely public and sensitive circumstances - are the police allowed to ignore the conditions contained in a piece, the Data Protection Act that we have carefully placed there to protect our citizens and go straight to P.P.C.E. which is designed to deal with very, very serious offences and obviously takes some of those protections away in order that the police can be effective in issues such as murder and terrorism and fraud, whatever, serious offences. Yet the police have been allowed to do exactly that. I believe that that has serious repercussions and the chain of accountability comes straight through the Minister for Home Affairs, and he must be telling us why, in this particular case, and perhaps in others, he feels that the police have acted properly. If they have not acted properly and reasonably and proportionately, then we, as a body, through the Minister for Home Affairs, must be doing something about it. That is the key to the intense concern that I felt at the time and that I still feel and that is why I asked at the time that we call an extra meeting, that we should get down to dealing with this the way a parliamentary body should because the issues that are raised are manifold and very serious. Already I see that the reputation of Jersey is at risk. Police can act in this way. That does not shine a great glowing light on Jersey’s democracy. It has implications in the confidentiality of papers held by States Members for parliamentary privilege, clearly. It is, I believe, or could be, a complete and utter misuse of the Police Procedures and Criminal Evidence (Jersey) Law 2003 and I go further and say I believe that means that it is double standards on behalf of the police. We must examine it and be careful about what protection is afforded States Members as they go about their business in the public interest and in the interest of their constituents. I urge Members to support this proposition which expresses, as we say, concern about the actions and a requirement for the Minister for Home Affairs to stand up and be counted on the actions of his Police Force.

The Greffier of the States (in the Chair):

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

7.1.1 The Connétable of Grouville:

Firstly, I am not going to apologise for not being here when this was debated originally. I was on holiday when the decision was taken to recall the House and I am unaware of any circumstances

that would have really brought me back unless they had been dire. I also think that perhaps we should look at if you are going to do this calling people back from their holidays, there should be some form of compensation for expenses created in doing that. When I first heard about the proposition to return, I wondered who had brought it and then I thought to myself: “Well, you can permute any 7 from 17, really” and, sure enough, there they were, all except - and I was very surprised to see his name on it - the Deputy of St. Martin who, as an honourable ex-serving officer in the Metropolitan Police, I thought would have been backing the force against anything like this. I would have wished that he would wish to ensure that justice would be ...

Deputy M. Tadier:

Can I make an interjection?

The Connétable of Grouville:

Pardon? I have not allowed you to interrupt.

Deputy M. Tadier:

I was asking the Chair, Sir.

The Connétable of Grouville:

Unimpaired by practical politics.

The Greffier of the States (in the Chair):

Well, if it is a point of order, Deputy.

Deputy M. Tadier:

It is a point of order. I infer from the comments of the “17”, the fact that you drew attention to the Deputy of St. Martin and called him “honourable” implies that the remainder of the 16 or 17 are not honourable. **[Approbation]** Could we have a ruling on that, please?

The Connétable of Grouville:

The Deputy must read it as he wishes to read it. That was not what was meant. If he wishes to take it, Sir, that is fine.

The Greffier of the States (in the Chair):

Listening from the Chair, Constable, I thought you were coming a bit close. I was about to make sure that it went no further.

The Connétable of Grouville:

Thank you. Yes, it was not meant to. The proposition of P.60 was then brought forward and I checked with some emails I had received from Senator Syvret prior to this and found that part 5 of P.60 was, in fact, identical to parts of these emails. This led me to presume that Senator Syvret had, in fact, had input into the report and that Deputy Southern was, in fact, acting as a front man for this report. I suppose that when you really need good help, it is always useful to be able to call on the “bovver boys” of the J.D.A. (Jersey Democratic Alliance) to help you out. **[Laughter]**

The Greffier of the States (in the Chair):

Constable, can you please withdraw those words?

The Connétable of Grouville:

I am terribly sorry, Sir, I do apologise. It was purely a figure of speech.

Senator S. Syvret:

On a point of information, as the question has been raised. I did, in fact, contribute to the writing of the report and proposition and there was absolutely nothing whatsoever in any Standing Order or part of the States of Jersey Law that prevents Members from co-operating on propositions. I know Members from all sides of this Assembly.

The Connétable of Grouville:

I was not imputing any bad thoughts to the Deputy by doing it, Sir. I know I [Laughter] there again, if you want to point the finger at yourself, by all means, go ahead. Now, I shall respond to the questions put in the report but it may help Members if I were to read the full list of questions which had originally been asked by Senator Syvret in these emails. They comprise mainly a lot of threats, intimidation, innuendoes and half-truths, as well as the questions. Some of them constitute an attempt to coerce me into giving information about police operations in Grouville. Given that a negative reply can also be useful to miscreants, I am now assured that answering these questions which were originally put to me will not affect a fair investigation or prosecution of alleged criminality. Now, this is the original email from Senator Syvret to me: “Please be warned that you and your Honorary Police officers will be among those subpoenaed and questioned under oath when this matter comes to court in the future. A week ago today, a raid by the States of Jersey Police took place on the home I share with your Parish Deputy. I was arrested after stepping out the front door. The action was taken against me as a device designed to furnish the police and Attorney General with an excuse to mount an unlawful search of our home, a procedural fig leaf with which to attempt to conceal the fact that their action was criminal in the absence of a search warrant. There is no established Western democracy in which such a raid and search would be allowed short of police having evidence or grounds to believe that they had become a terrorist even if a search warrant would have been obtained. This brings me to the questions I must ask you. Question 1: Were you or any other members of the Honorary Police Force of the Parish of Grouville in any way aware that the raid on our home was going to be undertaken?” No, absolutely not, no way. “If so, at what stage were you and your Honorary Police officers informed?” Under the normal communication between the Honorary and the States Police, our Duty Centenier was informed in the afternoon after the raid had taken place, “raid” not “search”. “Did you or any of your Honorary Police officers, in fact, initiate the raid, take part in its planning or engage in other discussions concerning the action?” No again, absolutely unequivocal. “Did you or any of your police officers, in fact, participate in any way in the raid?” No. Having said that, I must say that the Honorary Police in Grouville and the States Police, when they are working together, will facilitate each other. If the States Police had come around and asked us and said: “Look, we need a car with officers”, then they would have obviously been happy to oblige but they were not asked, very simple, they were not invited. “If the answers to the above questions are all negative, can you assure me, in writing, that no officials within your municipality of the Parish of Grouville had any prior knowledge of the raid?” Well, I cannot do that. I have asked all the Honorary Police officers. I have not asked the gravedigger. I have not asked the Roads Inspectors. I have not asked the Rates Assessors, and they are all officers of the municipality. I do not think they would have had anything to do with it anyway, but there we are. “In the event that you and your Honorary Police officers or any other of your Parish officials had any knowledge of the raid, understand I ask the following questions. The unlawful raid, search without a warrant, resultant theft of property, including a substantial amount of privileged data was a crime. I am now officially reporting these crimes to you. Would you, without delay, instruct a senior Centenier to make contact with me so that they may attend our home and be in receipt of a formal criminal complaint concerning burglary, unlawful detention and resultant theft of property.” I do not have that power. As Members may know, police actions by the Honorary Police or police operations are governed now by the Chef de Police, not by the Connétable, so I do not have the power. The Chef de Police was well aware of what was going on and he was in touch with the States Police anyway. Now, 7, this is where we get on to the nasty bit.

Deputy A.K.F. Green of St. Helier:

Can I seek clarification? You made one statement saying the Honorary Police had no advance information and you just stated that the Chef de Police did.

The Connétable of Grouville:

No, I did not say that. What I said was that the Honorary Police - the Chef de Police through the Duty Centenier was informed after the event, not before it, okay, which is the police procedure now. The police do not have to ask us to go into the Parish. They tell us after they have completed their business. Yes, I did say that actually. Your interruption was very timely. "Would you please explain to me in writing exactly what business or other beneficial relationships exist between yourself, Senator Terry Le Main and Mr. Geoff Noel?" I will explain this in a moment. Let me just finish these questions first, okay? Senator Le Main and I have had a business relationship. It was in about 1988 when we had a guesthouse and we were hiring cars from him for our guests. That was it. "Would you explain to me what, if any, contact of any kind you have had with Officer Dave Minty of the States of Jersey Police Force during the last 12 months?" None, do not know Dave Minty, sorry. Obviously, Senator Syvret is more acquainted with the States Police officers than I am. "Would you explain to me what discussions have taken place between yourself and the Attorney or Solicitor Generals, Bailiff or Deputy Bailiff, in connection with the subject matters of the previous questions?" I will come on to that. "Would you explain to me what discussions have taken place between the Attorney or Solicitor Generals, Bailiff or Deputy Bailiff, in connection with the subject matter of questions 1 to 6?" Now, this refers to a story that is being pushed around by the Senator about the purchase of the land field 148 at Gorey which is a deal that is being done between a benefactor, Mr. Kirsch, and Mr. Noel who owns that field. I have no part of it, I have absolutely nothing to do with it at all except that I pushed for the Parish to get a share of the houses that are to be built there for our older people and that is it. Senator Le Main is a big boy. He can speak for himself but there has been absolutely nothing at all between the rest of us. "As I said, these matters are material to the forthcoming legal action and you and others will be subpoenaed and questioned under oath on these matters, so full and frank answers should be furnished without delay." Now, the way I read this is why on earth did he throw in these innuendoes - they are not even allegations - about Senator Le Main, myself and Mr. Geoff Noel at the end of asking me a load of questions about the movements of the Grouville Honorary Police on an operation where, in fact, a negative answer can, in fact, prove helpful to a wrongdoer? So I refused to answer it. I did not refuse him the right and what I have said to him was: "Senator, if and when proceedings are instigated or I am approached for a statement by a member of the police, judiciary or your legal representative in a case, and as I am going on holiday tomorrow, I will not answer any questions until the Parish are legally represented", which I think is pretty straightforward. I have never seen such a load of legal gobbledegook in all my life. Now, I then got another one back. "If you do not tell me right now, you will be subpoenaed. I suggest you cancel your holiday immediately. After all, your Parish Deputy has had her holiday destroyed through the activities of you and your fellow conspirators." I will come back to "conspirators". There seem to be an awful lot of them around at the moment. "But perhaps you have nothing to hide." Well, you got that right. "Perhaps your close friend, Senator Le Main, obtained his information from some other source when he said to me during the last States meeting, 'I know you will be in jail soon.' If you are innocent of any involvement in this criminal act of oppressive government, I very strongly suggest that you cancel your holiday as you are presently in the position of being the Connétable who destroyed the position of the Connétables in the States. In the meantime, I shall have to seek answers to questions concerning any financial or beneficial relationships between Senator Le Main and Mr. Geoff Noel by explaining my understanding of your activities on my blog and asking for readers to submit any knowledge they may have." Now, let me just explain to those Members who do not know about Senator Syvret's blog. It is probably the nastiest, most vilifying, horrible blog I have ever seen in my life. It is not one your Facebooks; it is not one of your Twitters. This is nasty, horrible stuff. In fact, Senator Syvret complained bitterly about Senator Perchard telling him to "top himself", I think was the expression. I have had people on to me on Mothering Sunday

afternoon saying they were feeling suicidal because of what he had said about them on his blog, the lies, untruths, innuendo and half-truths and I think that, in fact, an apology is due for the amount of rubbish that goes on that situation. Now, I do not want to appear on that blog, nobody does, but I think it is better to have these things out in the open and discussed. I am challenging Senator Syvret to go to the press, make his allegations regarding myself and Senator Le Main, and let us get on with it. **[Aside]** I am not putting up with these lies, innuendoes, half-truths, any longer. **[Approbation]** His parting shot: "In the interim, you may wish to reflect upon the fact that my grandfather fought in World War 2 against people like you." Well, in World War 2, I was a baby, a prisoner of the Nazis in Jersey so you make your own mind up about that. That is the end of this sad, sad missive. I really am very annoyed about this. Apparently, I have been threatened with being sued as well for some reason, I do not know why. We had nothing to do with it. I have had nothing to do with it. The first I knew, in fact, of this raid was when I was having a very pleasant lunch with Deputy Pryke and the Constable of St. Brelade was out in St. Brelade's Bay. That was the first I heard of it and I did exactly what Senator Syvret did in that case. You do not phone your lawyer, you phone the *J.E.P. (Jersey Evening Post)*, do you not, the rag, the mouth of the establishment, blah, blah, blah, which is what he normally describes it as. When he is in trouble, he phones the *J.E.P.*, phoned up Ben Queree. I phoned Ben to find out what was going on and that is when I found out about it, so that is the end of it. Now, if you believe that the entire police force is corrupt, then you must back Deputy Southern on this. If you believe that the whole system of justice here is corrupt, you must back Deputy Southern. If you believe that Senator Syvret is above the law, then you must not back him. You must make your own minds up.

7.1.2 The Deputy of St. John:

In my time within law and order in this Island, Centenier in 2 Parishes, I always used to look for the facts. In fact, the proposer of this proposition mentioned that there was something like 8 police officers that attended at the scene of the arrest of Senator Syvret. I would give way if the proposer wishes. Has the proposer checked his facts, that there were 8 police officers? I am prepared to give way here and now if he wishes.

Deputy G.P. Southern:

As far as I know, and it has certainly been widely reported, I believe - and I do not have firsthand information on that - but it has been widely reported there were 4 cars and 8 policemen on this search.

The Deputy of St. John:

As I say, usually - and I think Senator Ferguson referred to it earlier today or yesterday, Phil Rondel does not usually ask a question if he does not know the answer. I checked to see how many police officers were on the scene. In fact, there were 6 police officers attended with an additional 4 which, in fact, makes 10 who were outside of the premises when the Senator was arrested, so 10 police officers, not 8. It is important, when bringing a proposition to this House, that the facts are correct because if those facts that we have been given by the Deputy are incorrect, then what other information has he got that may also be incorrect because it is hearsay. I will not give way at the moment.

Senator S. Syvret:

It might be helpful, it is a point of information.

The Greffier of the States (in the Chair):

If the Deputy will give way.

Senator S. Syvret:

I concluded that there were 8 officers because that is approximately the number that I saw in and around the property at the time. It was difficult to be precise under the circumstances.

The Deputy of St. John:

But it is important. We are dealing here with an important proposition on the floor of this House and the facts must be correct if we are bringing something to this House. People just making assumptions that there were X when, in fact, there were more or less, makes a big difference to the way, in fact, that I will look at the proposition. If I bring something to the House, and it is not often that I do, but when I do, I try to get all the facts correct and I double check them whenever possible. Given that this is a debate about and asking, in fact, were our States Police out of order, well, if we cannot in the first instance when you are making your proposition give the exact facts that there were 10 police officers because I am sure if you had probably asked the Police Chief how many officers were involved, he would have probably told you that there were 10 or asked the Minister for Home Affairs himself, he would have told you. He is a very approachable person and I am not giving way again. **[Interruption]** I am not giving way again. I asked the Minister himself how many officers were involved and, in fact, he told me there were 10, so it is as simple as that. If you are not sure, ask and get the facts. I am not saying any more than that but the whole proposition stands or falls on correctness. Was the work done by the uniform police, the States of Jersey Police, done correctly? Well, as far as I am concerned, if the proposition is not correct or the words from the proposer are not correct, therefore I have to fall on the side of the States Police, that they have done their work correctly. I am sure, given that the Senator is a high-profile politician within the Island and whether it was him or any other politician, I am sure that all the boxes were ticked. I am sure all the boxes would have been ticked to make sure that nothing was out of order in the way the proceedings were undertaken. There are areas which I have been hearing and it does concern me because I am a politician, I am quite vocal and at times I do stand on people's toes, that I want to make sure that everything is in place to protect politicians and their sources of information but when we come to this House with an important proposition of this nature, in particular, and we are claiming there were 8 police officers when, in fact, there were 10, it means that the research that has been done has not been done in enough depth for me to say: "Yes, I can put my weight behind this because I am aware that all the research has been double-checked." That is all I will say.

7.1.3 Deputy M. Tadier:

I just really want to make some observations so I will not keep it too long and it is maybe slightly peripheral but it is relevant to what we are talking about, I believe. What it really is to talk about is the polarisation that seems to be occurring here between essentially focusing on personalities rather than politics. While it is very healthy to have political differences, and we have seen those today, I would hope that those should always remain political. First of all, I think it is very important to stand up to some of the comments of the Constable of Grouville **[Approbation]** in attempting to somehow insinuate that there is a homogeneous group who will always try and make trouble. I think one of the words was "miscreants". I personally would like to make a statement while Senator Syvret is in the Chamber that I think it is wrong to name people who may be innocent, whether that is on a blog or elsewhere, because I believe very strongly that someone is innocent until proven guilty and that is an area which I do have concerns about. **[Approbation]** I know that many of my colleagues, all of whom are honourable, also have their own take on that and I think that is an issue but that is a separate issue, that is an issue for Senator Syvret to decide what he wants to do with that and that is not something that I back but I do back the freedom of expression. I think it is very important to make these distinctions when we are all being banded together, so to speak, or tarred with the same brush. I would suggest that the Constable of Grouville has to take some responsibility for this personality politics when he tries to imply that we are not honourable and that is the reason I raised the point of order earlier because he mentions: "I could normally predict the 17 permutations thereof who sign this proposition but I am very surprised that the Deputy of St. Martin was on there because he is an honourable man." That clearly sends out the message to me, if you infer it, that the rest are not honourable. That is the reason I interjected **[Approbation]** even though he was hostile to the initial interjection. The main thrust of my intervention here is can we finally get past this kind of personality politics. It does not help the

public image that we are already suffering from, I believe. Let us keep politics healthy with dialectical debate but let us try and keep personalities, as far as possible, out of it. Now, the reason I signed this proposition and it is to deal with the false dichotomy, I believe that the Constable of Grouville provided us with you either can vote for this proposition and if you do that, apparently you are admitting that the whole of the police force is corrupt and if you vote against it, you are saying that Senator Syvret is not above the law. Now, again, this is completely polarised. This is not necessarily what you are saying, one way or the other, depending on how you vote. The reason I signed this was first of all part (a) says to express concern about the apparent interference in communications with elected representatives. I think that is perfectly valid. I think this issue and the arrest of Senator Syvret has certainly raised these concerns within the House and with the public in general. I believe it is also appropriate for us to express our concern as a House, as an Assembly, with regard to the suppressing effect of such actions upon we elected representatives of the people. I believe (c) is also valid, that we should be expressing concern about the searching of premises which seems to have been done without a warrant, and I think that is perhaps the most concerning of all for us and for the public. I also think that (d) is perfectly valid, to request the Minister for Home Affairs to make an urgent statement concerning the decisions regarding these operations. Now, all this sounds perfectly reasonable to me. I think, as I said, there was a false dichotomy offered by the Constable of Grouville. This is all we are asking for, nothing more, and so I would suggest that Members, although they will have to search their conscience, can quite happily support this proposition and I would urge them to robustly do so.

7.1.4 Deputy P.V.F. Le Claire:

I would like to agree first of all with 2 elements of what the previous speaker has said. The first is the way in which Senator Syvret puts things on his blog in a way that alludes to matters and then affects people and you cannot stand by it. I know that this kind of politics has helped to drive a coach and horses through the consensus that was in the Assembly when I first came here. When I first came to the Assembly, Senator Syvret was then described as the “enfant terrible”. Subsequently, he has gone beyond that in many people’s views, but one has to recall that on his journey, he has been, in one instance, effecting a crusade against a very difficult subject that has blighted our community and been highlighted in the most recent past by the revelations in respect of the child abuse and the historic cases therein. Yesterday, I sent an email to congratulate the Minister for Health and Social Services’ mother on her daughter’s success and I noted from the balcony that she was very pleased and so she should rightly be pleased, to be sitting in the gallery at a time that her daughter steps into such a position. Having been a former Constable in the States of Jersey, and having been here with her, I was quite touched to receive a reply this morning by email in which she pointed out that the climate in the Assembly has changed noticeably and she said she realised, having known me, that it must have an effect on me as well because I do not enjoy the confrontational aspect of sides of politics that we have seen in more recent times. It is quite funny really, having spent a life in the military and in bodyguarding, that I am quite averse to confrontation, maybe because I have been a little too close to the dark side of the confrontation itself to enjoy it. I think we have far few opportunities in life to work for each other for the benefit of all and it is much more productive than spending all of our time trying to score points and getting nowhere. I do not think Senator Syvret is beyond redemption in some of the areas that people feel he is. I just feel that perhaps, given the circumstances and the cases that he has been involving himself with, that that has had an effect on him just as my exposure to certain elements of things has had an effect on me. I am very disappointed to have listened to what was, in parts, a good speech from the Constable of Grouville but what was, in parts, a deplorable speech from the Constable of Grouville. **[Approbation]** To suggest for one minute that those of us that would be minded - and our views still can be changed - but to suggest for one moment that if we vote for this, we believe the entire States of Jersey Police force is corrupt is to suggest that you will be recognised and remembered when it is written in the *J.E.P.* as to who is with the police and who is not with the police and who feels that the entire police force is corrupt and you will be marked men

and women in a guarded way. That is the innuendo that I felt when he said those things. That is how his speech affected me. That was my view of his speech. It may not have been his intention but it certainly was a deplorable way to put this debate and to suggest, conversely, that if you have faith in the justice system that you should throw out Deputy Southern's proposition is just as pathetic. Now, I have had an interesting life. My mother was a police officer in Scotland. Came to Jersey because she won the first "Opportunity Knocks" on the radio when she played the piano and sang and came here, brought up 5 children, and we went on into the military, some of us in our family, and we have been here. Our father is from Jersey. He was here as a prisoner as a child during the Occupation, and yet I have seen in more recent times some of the actions of police officers, some of the actions of States of Jersey Police, up front and close and personal that have had me scratching my head about what the situation is. One thing I think for certain is that we all engage in private conversations and private emails with each other about our colleagues. Sometimes you do it after you have had a glass of wine, sometimes you do it after you have had a cup of coffee, and some things we say to each other may be fuelled at the time by emotions at the end of a tired day. I do not know how many times in the past I have woken up and thought: "Oh, I wish I had not sent that email." Did it most recently with Senator Perchard - had to apologise - and also to Senator Shenton. I woke up the next morning and thought: "Oh, no, what did I do that for?" and I had to quite rightly send out an apology to them both for my tone. I said they were pathetically lost in a situation. That was unparliamentary and it was not right, it was not right. [Aside] No, it was not true, it was unparliamentary and it was not the right thing to do. However, I also think that there comes a time when if you persist in kicking that dog - or it is the opposite way around - nobody wants to kick a dog unless the dog is biting everybody and then you look the other way. If you persist and persist and persist and persist in sending out demeaning and defamatory and upsetting and damaging communications, you are acting in your own sense in a bullying way and in an intimidatory way and I certainly hope - because I do not believe he is beyond redemption, Senator Syvret is a much smarter politician than I am - that he fixes that crack in his game because that is not doing him any favours. To move into the proposition as a whole, I would like to do so just by turning off by saying I do not think it is appropriate for Members to criticise publicly the Law Officers or the Bailiff even if - and I say this quite meaningfully - even if we do privately because their positions are one like ours, vocations. There is more money in the corporate sector than there is in the public sector for this sort of business and at this end, this sort of business requires the brightest minds. We have seen people who have given the very best of their lives for this Island and whether or not you like their politics or whether or not you do not like the fact that they have changed your report or denied your question, you cannot question their vocation and their chosen vocation. I think we have all got to stop doing that because everybody that does it is dragging the entire States down in the eyes of the public, and in my view, in our own eyes as well. I spoke in my speech about the Health Department needing people to have belief in their vocation and support in what they were doing and a belief that what they were doing was right. I do not think for one minute that Deputy Southern, regardless of who helped him do this proposition, has done this for partisan reasons. I think Deputy Southern has done this because he sincerely believes - as do the other people that have signed this proposition - that there are serious issues about the trail of events that has led to Senator Syvret's arrest, including the actual effect of Senator Syvret's arrest. I was speaking to a prominent member of the media recently - some of them are left - who said to me: "You know, this is the sort of thing that goes on in other countries where the rule of law does not normally stand the test of democracy. Politicians being dragged off into jails." Now, what concerns me - and I will only just touch on this little part and then not touch on it again - because obviously there are probably going to be lawsuits and more revelations. When the Data Protection Registrar came to see us at P.P.C. before we passed this law, we were guarded about passing the law and we asked her what about on those instances when we discussed private matters with other Members and what about on those instances when we leak information to the media. Now, I have been in this for 10 years and probably one of the reasons why I am not getting any positions is because I do and have and will leak information to the media when I see and think and

believe that it is in the wider public interest to do so. I do not keep quiet about polluted oyster beds to protect polluted oyster bed fishermen when I think those polluted oyster beds are a threat to public health. I do not keep quiet about issues that may affect the overall standing of the States of Jersey when I think it is in the wider public interest. I told the Data Protection Registrar that that was the kind of person I was and I was going to have a problem with supporting this Data Protection Law and she said quite unequivocally, having spoken to Her Majesty's Attorney General, that the one "get out" in the Data Protection Law for all politicians was the claim in a court of law that they believed it was in the wider public interest. Now, that was her information to us on the Privileges and Procedures Committee of the States of Jersey prior to the introduction of this law based upon information that she had received from our Law Officers and we relaxed and passed the law because knowing that the caveat was operating in these areas which are a little bit murky, leaked information, et cetera, we would always have the defence of we thought it was in the wider public interest. So my question there is - and I will get off it now - why on earth was that law used to bring Senator Syvret into jail when in the defence he will always be able to use that? No doubt, we will hear why not but that would be the first thing I would be asking my lawyers about if I was going to court. Why are we told by the Data Protection Registrar, as legislators in the States of Jersey, prior to publishing the law, that this is the "get out" clause for all politicians to have the confidence to pass this law and then the knock on the door comes - well, they did not even reach the door - and they are arrested and taken away under that law? That is where ...

Deputy A.E. Jeune of St. Brelade:

On a point of clarification, could I ask a question. If I could ask the Deputy, when he had this conversation with the Data Protection Registrar, was he assured that you could give information if you thought it was in the wider public interest whether it was true or not?

Deputy P.V.F. Le Claire:

It is an interesting question. I do not see what the relevance is because information that one leaks or gives into the hands of the media sometimes contains hundreds and hundreds of pages. I remember when I leaked the 2020.je report and I was rather upset that it had not been published. There we are, so I was the one that leaked it. I tell you that today. Radio Jersey was talking about the fact they were not able to put it on because they could not trust the source and they did not know what it was and if they had it: "Oh, well, you know, if only we had it, if only we had it", and I was listening to this on the radio and I thought I know they have had it for 5 days because I gave it to them. So I phoned them up and I said: "You know, I am rather disappointed, Mr. Price, that you are going on in these terms about this report and pretending that you do not have it when I know that you have it" and he very embarrassingly said: "Well, what are you going to do about it, Senator?" because, at the time, I was a Senator and I said: "I am not going to do anything about it." I said: "It is your job as the media to report these types of things because it is in the wider public interest." Now, in that information, it spoke about Alice in Wonderland and part of the critique of that £125,000 spent was the fact that the pages contained reflections on Alice in Wonderland. Now, I leaked a document that contained Alice in Wonderland. Does that mean to say I had to believe it was true or I had to believe it was not true? Did I have to ascertain whether or not Alice in Wonderland was real or the thoughts and opinions in that report were real? It was a report. It contained opinion. It was in the wider public interest in my belief to have leaked it. Subsequently, the next day, Radio Jersey broadcast continuously the full details of that report. My point is that we were told at Privileges and Procedures by the Data Protection Registrar not at a meeting, not a cup of coffee meeting. She came to the committee, Deputy Roy Le Hérissier's committee. She came, sat down in front of us and she gave evidence to that committee and that is what she told us. Now, either she misinformed us and was wrong, in which case that is really not good enough, or she was right. But my point, as I say again, that left me scratching my head was why, then, was this law employed? "The proposition: To express their concern in respect of the apparent interference in the communications between elected representatives and their constituents which arises from the arrest

and detention of Senator Syvret on 6th April 2009.” I express my concern and support part (a). Part (b): “To further express their concern in respect of the suppressing effect of such actions upon elected representatives and members of the public.” I express my concerns. I support part (b). People will be scared to talk to me. People will be scared to talk to each other. I will be scared to communicate with members of the public and States Members will be scared to talk to each other. That has and will have an effect on our duty to the public as elected representatives to oversee and protect us from our own government. Part (c): “To further express their concern in respect of the searching of premises without a search warrant and the consequent taking of communications between members of the public and their elected representatives.” Until and unless I hear somebody stand up in this debate today - and I would hope the Attorney General might do that - to confirm that there was a search warrant or unless somebody else has some information for the Minister for Home Affairs, until and unless I have evidence that there was a search warrant, I shall support part (c) and further express my concern in relation to part (c). Part (d): “To request the Minister for Home Affairs to make an urgent statement concerning the decisions, whether operational or political, taken by the States of Jersey Police and the Minister in relation to the arrest and detention of Senator Stuart Syvret.” To request the Minister to make a statement does not put any onus on him. If he feels, as he is rightfully allowed to do, that he does not wish to, then I will stand by that because I do have confidence in the Minister for Home Affairs, and if he has reasons or information for not wanting to make a statement, that is fine. He will not lose my confidence over that but I will support that request. Part (e): “To request ...”

The Bailiff:

(e) has gone.

Deputy P.V.F. Le Claire:

(e) has gone. So am I.

7.1.5 Deputy T.M. Pitman:

As you might expect, I do feel I have to comment on the comments of the Constable of Grouville. I must admit that listening to his speech I did wonder if they had started to serve alcohol at States lunches. Nevertheless, I am not really troubled by his blustering demeanour. As a dog lover, I know Poodles do sometimes masquerade as Rottweilers. Perhaps this is a similar phenomenon. I have a number of good friends in the police, some of nearly 40 years' standing and to suggest, as the Constable seemed to imply, that the 17 or the signatories of this proposition do not respect the police generally is quite wrong. Indeed, I say it is shameful and I hope he did not mean that.

The Connétable of Grouville:

Can I intervene here? This seems to be getting out of hand. What I said was that he has had an honourable career and I have it written down here if you care to see, and I am sure that Deputy Hill was listening to that one. He heard that. I said “an honourable career”. I did not say he was an honourable person. Mind you, I would not dispute that. **[Laughter]** But it was said he had an honourable career and that is a lot different to saying he is honourable compared to you.

The Greffier of the States (in the Chair):

Constable, I think as you have taken the trouble to clarify, it may also assist the Assembly if you clarify that you had no wish to imply that the other Members were not honourable.

The Connétable of Grouville:

Absolutely, I thought I had already done that, Sir.

The Greffier of the States (in the Chair):

Thank you. That may help to clarify, thank you.

Deputy T.M. Pitman:

I will move on.

Deputy P.V.F. Le Claire:

Before he does move on, I think it would be helpful on a point of order. One Member cannot impugn the motives of another Member and as it stands - and I am sorry to say this - I feel that the statement by the Constable of Grouville that if we vote for this, we believe the police - needs to be withdrawn. I am sorry but I think that is going too far.

The Greffier of the States (in the Chair):

I think the Constable is entitled to that view, Deputy, even though you may not share it.

Deputy T.M. Pitman:

At least I am getting some exercise. My main reasons for supporting this proposition were the questions that really sprang to mind. Where does this leave private and confidential email correspondence from constituents shared with us and then perhaps with another politician, in this case, Senator Syvret? I have to express the view that this can only be a negative because of intimidating members of the public, I think, into not bringing forward information that might be of great importance, perhaps, for the worst case scenario of importance, with regard to whistle blowers. These actions can only have a damaging impact on that. I have to ask the question with the Senator's computer disappearing for some considerable time, where is the material on it now and, certainly, information that people had sent me, constituents, who has got that and what is it being used for? If anyone does not feel that is a concern, then I really think they are not fit for office. The other reason that also raised concerns to me and to people who got in touch with me was about whether there was any political motivation for such a raid and the style of it, and I am afraid it is a real concern. I will not repeat all the details because I think Deputy Southern has done it very well, but why was this aspect of the law utilised when it appears that the Data Protection Law was the one the previous Assembly had discussed and agreed it should be the right one to be applied? What is the point of having that legislation if we are not going to pursue it? I, for one, have seen no evidence that Senator Syvret fitted into any of the little slots described in that law. Deputy Le Claire, among other things, was talking about how people must not - I am not quite sure of the terms he used, I am sure he will correct me - that we must not question the police or Crown officers. Well, I think we are all accountable, every one of us, whether it is to the electorate or if we do something wrong. As we all know, we get our collar felt. There is nothing wrong in questioning the police or Crown officers.

Deputy P.V.F. Le Claire:

Could I ask the Deputy to give way. I certainly did not intend that we should not question them. What I said was I do not think that we should slag them off, Crown officers, I was talking about, not the police.

Deputy T.M. Pitman:

Well, I do not think the Deputy used that term but ...

The Greffier of the States (in the Chair):

I don't think I recall that.

Deputy T.M. Pitman:

Well, I have not been slagging them off but I certainly reserve the right to question and challenge and if they are doing something wrong, I will highlight it and I will continue to do so and that is part of the reason I was elected.

The Greffier of the States (in the Chair):

I think we have had enough slagging and slanging across the Chamber.

Deputy T.M. Pitman:

I would not dream of slagging off the Deputy. To suggest, as has been mentioned by others, that if we support this proposition, we are in some way taking a disrespectful stance or supporting perhaps everything that is on the Senator's website, is completely wrong. It is missing the point. This does throw up serious questions about our privilege and what is expected of us by the members of the public and the trust that the members of the public have in us, and I will support it because I think there are answers that have to be made and certainly I think the Minister for Home Affairs has really got no choice but to stand up and give some answers just to put people's minds at rest and I really would urge him to do so.

7.1.6 Senator B.I. Le Marquand:

I had wanted to go slightly later in the debate so that I could ensure that all accusations that have been made against the police had already been made. I am risking, of course, that happening subsequently without my having any right of reply, but I think it is right that I make my speech at roughly this point.

Deputy A.E. Jeune:

May I just ask - I am not sure whether it is yourself or whether it is the proposer - that being is in the proposition, it is being requested that the Minister for Home Affairs does give us information. Could that then be given without him losing his right to speak again?

The Greffier of the States (in the Chair):

No, I do not think so, Deputy. In fact, the proposition in its literal sense would request the Minister to make the statement after the proposition is adopted, so he is giving information at this stage.

Senator B.I. Le Marquand:

Yes, this is for the avoidance of doubt, this is not intended to be a formal statement. This is merely my speaking within the debate. People who know me reasonably well know that I am, by nature, a peacemaker but that I am also a man of strong principle. I have to say with some sadness that this is, in my opinion, a thoroughly misguided proposition. Whether it was the intention of those who attempted to requisition an emergency meeting or not, the bottom line is that this proposition is effectively, in parts (a) to (c), an attempt to attack the important principle of the operational freedom of the States of Jersey Police. We, the Members of the States, are being invited to interfere with this by criticising the police while they are still in the middle of an investigation. Now, Deputy Southern, when he spoke on the previous occasion, rather gave the game away as far as he was concerned when he talked about wanting to take control or at least the States wanting to take control because that can only be interpreted as seeking to take control of operational matters. I wanted again to explain why this principle of freedom in relation to operational matters is an important principle. It is important because it is one of the fundamental safeguards in a democratic society. We have a number of independent institutions which must remain independent as a safeguard against the unlawful use of power or position by government or other politicians. Those safeguards include, firstly, a non-political and operationally independent police force. This means a police force which is free to make operational decisions without political interference, either from the Minister for Home Affairs or from the States itself. There are safeguards in relation to this and I will come to these later. Secondly, we must have a non-political and independent prosecution service. The role of the police is to investigate and the role of the Prosecution Service, which in Jersey is the Law Officers' Department, is to advise on the investigation to determine if any charges should be brought and, if so, which charges and to prosecute any such charges through the criminal courts. The third important constitutional safeguard is a non-political and independent judiciary, working, of course, in certain cases in conjunction with a jury. The role of the judiciary is to ensure that there is a fair trial and, where appropriate, to sentence offenders. Fourthly, in the context of the

matter which we are discussing in general, we have a non-political and independent Data Protection Registrar. Although the Registrar has various administrative roles, there is also an enforcement role in relation to possible offences under the Data Protection Law. Those 4 principles are extremely important safeguards within any democratic society. Without the important safeguard of operational freedom, the police and the process of investigating crime would be subject to political control with disastrous effects. The Minister for Home Affairs or the Council of Ministers could decide who should be investigated and for what and who should not be investigated, but a principle which applies to a Minister or to the Council of Ministers equally applies to the whole House or to a group of Members of this House. The police must continue to enjoy full operational freedom. I come next to the safeguard and I referred to this in passing in the answer to questions on Tuesday. The safeguard is that the police are accountable, firstly, to the Minister for Home Affairs. This House appoints and can remove the Minister for Home Affairs and so, ultimately, the police are responsible to this House, even though, by law, the direct accountability is to the Minister. That accountability can apply even to the way in which operational matters are dealt with but it cannot and must not apply while the operational matters are continuing. Once the matter has been dealt with, the Minister for Home Affairs can inquire into any matter and can bring the Chief Officer of Police to account if matters have not been dealt with properly. Members may have noticed that one of my current, and I may say, more unpleasant duties relates to just exactly that, the holding to account of the Chief Officer of Police. However, the lower ranks of police officer are also accountable, partly through the Independent Police Complaints Authority and, of course, through the more senior police officers. The next serious problem with this proposition is that it implies that Members of this House should be above the criminal law; because we are elected representatives, we should have special rights. Well, we do have special rights but these are carefully limited. We have the right to speak in this House without fear of being sued for slander. I described this in a previous debate as a high privilege which should not be abused. We have access to all sorts of confidential information. What we do not have, and should not have, is the right to break the criminal law. No Member of this House is above the law. Parliamentary privilege does not and cannot extend to a criminal act. I therefore ask this House to roundly reject parts (a) to (d) of this proposition on these grounds alone, the constitutional interference principle. However, I want to deal next with the matter of a statement. I have been asked to make an urgent statement. I was asked by the Deputy of St. Martin to do that the day after matters became public and I replied to him indicating why I did not and I believe I gave my reasons again in answer to a question earlier in the week. Here are my reasons. I do not believe that the Minister for Home Affairs should make such a statement in relation to an operational matter. If a statement is to be made, then that is a matter for the police. If the Minister starts to make such a statement, then that will firstly give the public the incorrect view that the Minister is in charge of the operation, which the Minister should not be. Secondly, in a case like this involving a politician, to give the impression that the case was being treated differently because a politician is involved. I am very strongly of the opinion - and I expressed this again on Tuesday of this week - that cases should not be treated differently, either more seriously or less seriously, because of the identity of the person being considered. I passionately believe in the principle of equality before and under the law. Thirdly, in making such a statement, the Minister would be in danger of saying things in defence of the police which he should not say because they might adversely affect the fair trial of the person involved. This House is being asked to make a decision on matters of fact and on matters of interpretation of the facts which are disputed based mainly on one side of the argument. That, I think, was partly what the Deputy of St. John was talking about in his speech. The fact is that although I am able today to make some observations on facts and interpretations of facts, and I believe I can do this without taking the risk of accidentally affecting a fair trial, these are matters which may come before a court in due course. The police and the prosecutors have exactly the same problem in saying anything in relation to such matters because there is a risk of affecting a fair trial. We must not in any way prejudice any future trial of Senator Stuart Syvret. They cannot start revealing publicly the reasons why they have acted in a particular way. That is why prosecutors rarely say

anything at all. So if this House is to consider detailed fact, as would be required by parts (a) to (c), then it would be doing so hearing one side of the matter and only part of the other side, which is not satisfactory. This is a situation which has unfortunately occurred over and over again in recent months. Attacks have been made on the police or on prosecutors or even on judges who cannot answer back and defend themselves because that is inconsistent with their role and with the proper administration of justice. That is grossly unfair and it is not right that Members, who should be aware of this fact, have continued to repeatedly make such attacks. I welcomed the speech - he is not here now - of Deputy Le Claire because he also alluded to this principle. Notwithstanding this, I am able to say a number of things. I wanted to deal first with the power of arrest. That is set out in Article 3(1) of the Police Force (Jersey) Law 1974 which reads: "Where a police officer with reasonable cause suspects that any person has committed, is committing, or is about to commit an offence, the police officer may arrest that person." There is no limitation on the nature of the offence, of gravity of the offence, or whatever, so it is abundantly clear from the wording of that paragraph that, in this case, the police had a power of arrest. Now, the issue as to policy in relation to the usage of a power of arrest is, of course, a matter for the Minister for Home Affairs to discuss with senior police officers. My own personal view, which I believe to be shared by the Acting Police Chief, is that the power of arrest should only be used when necessary. That is a policy statement as far as I am concerned. Now I wish to come to some of the facts and, again, I believe I may properly say these are facts which, of course, are based entirely upon information provided to me by the police.

Deputy J.M. Maçon:

If the speaker will give way. The speaker was talking about the power of arrest but has not talked about the power of search. I would like him to clarify if he will get to that in his speech.

The Greffier of the States (in the Chair):

I imagine the Minister is getting to that maybe at this point.

Senator B.I. Le Marquand:

I am indeed, Sir, I am indeed getting there. I wanted to deal with the facts next and then go on to the issue of the power of search after that. Firstly, in terms of facts. At the time of Senator Syvret's arrest, 6 officers in 3 unmarked vehicles had attended his address. There was a fourth vehicle which contained 4 officers which for a short period entered the driveway and then retreated to nearby. I want to explain what those officers were there for. There was, firstly, an arrest team of 2 officers, not 8 officers as has been suggested in the press, an arrest team of 2 officers. There was a supervising officer, that is 3, an officer whose sole duty was to identify Senator Syvret's home address, that is 4, and 2 officers who were trained in forced entry if that was needed. In fact, they were not needed, but that was the sole purpose why they were there. That is 6. There were 4 additional officers who were not involved in the detention of Senator Syvret but were involved in the search of the premises. Suggestions of 8 officers attending to arrest Senator Syvret are therefore incorrect; 2 officers did for that purpose. The other 8 were for different purposes. It should be noted that Senator Syvret was not handcuffed and although he was arrested and taken to police headquarters, he was not at any time placed in a cell area or placed in a cell. He was arrested at 9.15 a.m. and released at 3.42 p.m. after having had an opportunity to be questioned with legal representation. He was also afforded all other ...

Senator S. Syvret:

Could I just ask that the Minister give way just for a moment. Perhaps he is being pedantic about the term "cell". The fact is throughout the entire time at the station, I was locked into one of 2 rooms. The vast majority of the time, I was locked into a tiny windowless interview cell which I had no means of leaving on the ground floor and the other occasion, I was in the actual interview room itself where the tape recordings were, so I was, in fact, locked in.

The Greffier of the States (in the Chair):

Senator, I was going to ask you when you wish to speak in the debate, just for the record, to declare the interest you clearly have in this matter. If you could do that.

Senator S. Syvret:

Certainly, Sir, yes, I declare an interest.

Senator T.J. Le Main:

I was going to ask some advice on that. I just find it strange. In fact, I am completely baffled and amazed to think that we have a debate involving a Member and that Member is involved in that debate where it involves a police investigation currently. **[Approbation]** Over the years, one has to declare an interest, a financial interest, but I am amazed that Senator Syvret has the gall to get involved in debating an issue that is related directly to himself being involved in a current police investigation. I am ashamed to be a States Member that this House allows it, Sir.

The Greffier of the States (in the Chair):

Well, you have had your view, Senator but it is perfectly in order for the Senator to declare his interest quite rightly. It is not a financial interest. He does not have to withdraw. It is a matter for him. You were being interrupted, Minister.

Senator B.I. Le Marquand:

It is correct that Senator Syvret was held in a room. My information did not tell me whether that room was locked or not but it would be normal police practice for that room to be locked and if the Senator assures me that was so, I accept his word. I am not going to comment on the reasons for the decision to arrest Senator Syvret other than to say the following. Firstly, that police action resulted from a number of complaints from the public of alleged unlawful disclosure of personal data on Senator Syvret's blog. Secondly, that a controlled co-ordinating group was established by the police to manage the operation, which is routine and good practice. In other words, a proper structured controlled group which would have contained officers at different levels was set in place. This was not a knee-jerk reaction. This was properly thought through and planned by the States of Jersey Police. Thirdly, that the police acted with the benefit of legal advice from a senior prosecutor in the Law Officers' Department, not the Attorney General, not the Solicitor General, but a specialist in criminal matters who, in particular, advised them in relation to powers of search. Fourthly, that the arrest of a person may be to the advantage of a person in that it provides the person with clear rights and requires the police to act in a disciplined and structured way in accordance with the P.P.C.E. Law and the codes attached thereto. If a person is simply invited in for a cosy chat, that, in fact, can lead to a situation where they do not receive the rights, the warnings, et cetera, which they should do and that is not in their interests and, in fact, can lead to injustice. I move on next to the power of search. Article 29(2)(b) of the P.P.C.E. Law, Police Procedures and Criminal Evidence (Jersey) Law 2003, is set out helpfully on page 4 of the proposition and Members may wish to refer to that. As I say, the power relied upon by the police is Article 29(2)(b). If there are any arguments as to whether this was or was not an appropriate power, well, ultimately, in such matters the courts decide but, of course, I have already expressed a view in relation to this, as has the Attorney General. I want to explain the reasons why I believe that this gave the necessary power to the police. The structure of this Article, as it starts with Article 29(1), which was correctly quoted by Deputy Southern, says: "A police officer may search an arrested person in any case" - and I want Members to note the words there "in any case" - "where the person to be searched has been arrested at a place other than a police station." It then goes on to give a further paragraph which is the basis of the power to search the person. It says: "If the police officer has reasonable grounds for believing that the arrested person may present a danger to himself or herself or others." In other words, a police officer may search an arrested person if the police officer has reasonable grounds for believing that the arrested person may

present a danger to himself or herself or others, but the contention of Deputy Southern was that for paragraph 29(2)(b) to operate, that danger would have to exist but if one looks at 29(1), it is quite clear that those extra words are there to give the power of search of the person and not in relation to the subsequent powers. I am going to explain why because if one looks then to paragraph 29(2), which says: "Subject to paragraphs 3 to 5 (which are not applicable) a police officer shall also have power in that case." Now, the words "in that case", in my view, refer back to the words "in any case" in paragraph 1 and the words "in any case" are confined to "in any case where the person to be searched has been arrested at a place other than a police station." [Aside] No, no, that is my contention, that is the advice which was received. [Aside] That is the opinion, I believe, of the learned Attorney, that the words "in that case" are confined to the words in - because if that were not so, then you require the same criteria for a personal search as required to check out the other parts. I would remind Members that I have been a lawyer for more than 30 years and a judge for quite a considerable number of years and so I have a certain degree of expertise in relation to this although, of course, I am today playing the role of Minister for Home Affairs and not of adviser to the States. But the fact is that we now have 3 senior lawyers; myself, the Attorney General and the professionally qualified lawyer working for the Law Officers' Department, who indeed advised on this, who took the same view in relation to this matter. Now, in addition to Article 29 I would point out that there is a power of search under Article 20 which also does not require a warrant but that power of search did not apply in this particular case because it is confined to serious offences or offences which carry a maximum penalty of 12 months or more. Interestingly enough, although in Jersey Article 55 of the Data Protection (Jersey) Law, to which I will refer shortly, carries only an unlimited fine. It is my understanding that it is in the U.K. a situation where it also carries a 2-year sentence. In other words, it is now being treated elsewhere much more seriously than it is in Jersey and I will come back to that in a moment in a different context. I think there is a confusion in relation to understanding the interplay of the power to obtain a warrant in a Data Protection Law and the P.P.C.E. Law. The fact is that the P.P.C.E. Law gives the police powers in relation to all offences. The power to obtain a warrant in relation to the Data Protection Law is a power for the benefit of the Data Protection Registrar. It is not a power for the benefit of the police because they do not need any such power because they have other powers elsewhere. This is not unusual and, indeed, in passing Deputy Southern referred to a schedule which mentioned a number of different laws which had references to such powers. Most of those powers, many of those powers but not all, give powers to officers such as Housing enforcement officers or Customs officers or other non-police officers to obtain warrants in particular circumstances. Now the fact is this, that when you have got powers in different laws to do things the effect of them is cumulative. They apply together. The fact that the Data Protection Registrar is given a power in the Data Protection Law does not mean that it takes away the power of the police in the P.P.C.E. Law. So, my view is that the police clearly had a power under Article 29 to search without a warrant. Now, in the interests of openness and honesty I need to bring to the attention of the House a strange quirk of this particular matter which is this, that in fact the police did apply for and obtained a warrant in relation to this matter but, unfortunately, when this warrant was shown, I believe to the senior prosecutor I have mentioned, he pointed out that this warrant, which was granted by a Jurat at the Royal Court, should not have been granted because it was under Article 15 and Article 15 only applies to serious cases but my understanding is that at the same time he advised that it was possible to proceed under 29(2)(b). So here we have an irony because those who say: "Well, surely this was not approved by a Jurat." Ironically, a search was approved by a Jurat but under a mistake of law that they could issue that particular matter. I mention that for the sake of honesty and completeness in relation to this matter. There is one other matter which I would mention. It may be that some Members of the House may now feel: "Well, perhaps we should not have voted for it. Perhaps we should not have agreed to the powers given to the police under Article 29." Well, the fact is those powers were given in 2002 and ironically, because I have been provided today with a copy of the States' minutes of that day, it is ironical to find that Senator Syvret, Senator Le Claire, Deputy Duhamel, Deputy Martin, Deputy Southern and many others, in fact voted for [Interruption] ... well, that may be,

that may be. I am going to come back to the issue that was raised, I cannot remember by whom, by Deputy Le Claire. I want to come back to the issue raised by Deputy Le Claire later in relation to what he said was said by the Data Protection Registrar. I have not overlooked that particular issue. Now, under the terms of Article 29 the power to search is and, indeed, was limited to evidence relating to the particular offences for which the arrest took place. There is no power to search willy-nilly. There is no power of a fishing expedition to look for anything. The search is severely limited. The police were aware that issues might arise as to the existence of matters which were subject to legal or parliamentary privilege and because they were aware of that they made prior arrangements to put in place safeguards to cover that very possibility. Accordingly, acting with advice, they made prior arrangements for an independent lawyer to examine the documentary material seized, join the search to ensure that none was subject to legal or parliamentary privilege. I want to explain clearly what this means. The police were aware of the possible sensitivity of material which a States Member might have. They were only interested in relation to matters relating to the investigation and to avoid the allegation, which of course is still being made, of rifling through confidential papers which might be subject to legal or parliamentary privilege. They put in place this safeguard. They got an independent lawyer to look at it first to screen it to make sure that they only looked at what was relevant to the matters which were relevant to them. In other words, they sought to safeguard legal and parliamentary privilege in this way. Following this independent review an examination was made by a senior police officer to establish if possession of the material found constituted a breach of any legislation. It was decided that the documents, the laptop and the hard drive, which was not subject to searching, should be returned to Senator Syvret and efforts to do this were made from the 9th April - my memory is a relevant date we are talking about was the 6th April - so within 3 days efforts were being made to return these matters to Senator Syvret. A copy of the P.P.C.E. search record was left at Senator Syvret's premises in accordance with the law and a schedule listing all material seized was prepared and posted to him by recorded delivery on 14th April 2009. Before I move on I need to refer briefly to what I will describe as the more exotic complaints which have been made by Senator Syvret including relating to the removal of numbers from his telephone and hacking into his blog. These are all denied by the police. I now want to refer to Article 55 of the Data Protection (Jersey) Law 2005 because I believe that it is in relation to Article 55 that the principal investigation was being made and this reads: "A person shall not, knowingly or recklessly, without the consent of the relevant data controller (a) obtain or dispose of personal data or the information contained in personal data or (b) procure the disclosure to another person of the information contained in personal data. A person who contravenes paragraph (1) is guilty of an offence" and I comment the penalty is an unlimited fine. Paragraph (3) contains various defences with the burden of proof being on the person charged. The defence in paragraph (d) reads: "(d) In the circumstances of the case [this is a defence to a person accused of a charge under Article 55] if they can prove [what we call a balance of probabilities, in other words that he is more likely than not] in the circumstances of the case the obtaining, disclosing or procuring was justified as being in the public interest." Here we come to the issue, referred to by Deputy Le Claire, of the public interest test. Now I will comment on this, if it is very difficult for police officers who are investigating a matter to seek to assess a public interest test. What I have been told by them is that normally they conduct their investigation, pass the matters to the prosecutors and then the prosecutors look at that aspect of the matter. Now although this is a matter which is going to, in due course, come before the court if a charge is brought, my own view of the public interest test is that it is an objective test. In other words, it is not a question of what is in the mind of the person, it is whether on an objective test a third party looking in from outside and assessing it, as it were, as to whether that would apply or would not apply. It is unfortunate if Members, and particularly Deputy Le Claire, either misled or failed to understand what was being said to them in relation to the meaning of the public interest test at the time the law came in but there it is. It is in the statute. It is an important safeguard and I will come back to that right at the end of my speech. It will be said by some people that matters investigated are only data protection matters. Well, the Data Protection Law is one of these laws which contains

a vast range of matters, some less serious and some more serious. I have to remind Members that in the U.K., as I understand it, the equivalent legislation carries a maximum of a 2-year prison sentence. It is, therefore, looked upon more seriously than it is in Jersey. I want to explain to you why the Data Protection Law is important and I want to do that in the context of explaining my position in relation to the Sexual Offenders (Jersey) Law. Members will be aware that the Sexual Offenders (Jersey) Law is a law designed to effectively control the activities of people who have previously been convicted of criminal offences by way of sex offences, particularly paedophiles, and other people who are deemed to be a risk to young people. When I inherited the draft law, which I withdrew from debate in the States in February, I discovered that it contained a draconian and unacceptable power under which it would have been a criminal offence for a person to use information, which was available under the Sexual Offenders (Jersey) Law, other than with the consent of the Chief Officer of Police. I think that was simply not appropriate but what I am being advised is this, that data protection legislation is sufficient to safeguard this. Now, let us think about what this means in the context of data protection because here we are going to have highly sensitive information in relation to people who have committed previous criminal offences as to where they are, what they are doing, when they want to go away on holiday, et cetera, et cetera. If such information were to be misused and made public that will have an utterly devastating effect on the lives of those people who have been sentenced, who are seeking to get their lives back in order again and, frankly, who may face lynch mobs on matters of that nature. Now, some Members may take a view that those who have committed such offences deserve everything that they might get. I do not take that view. Once they have served their sentence it is in the interest of society that they be rehabilitated. It is vitally important that the public, and in particular children, be protected against them but, nevertheless, it is also vitally important that sensitive information be protected. Now, I have been told that it should be sufficient to rely upon the Data Protection Law for that purpose. That makes data protection considerations of some weight, of some importance. This is not a lightweight issue. I mention that in that context just to try to illustrate how serious matters can be. I return to where I started, parts (a) to (d) of this proposition should be rejected. It represents, whether intentionally or accidentally, a very clear attempt to interfere with the operational freedom of the police and of prosecutors. The details of the complaints made are matters for the court to determine in due course and a number of matters are clearly disputed. That of course, when the dust ultimately settles on this matter, is up to me to decide whether or not I will call for a full report which will indicate exactly why the police did what they did, what their reasons were, what their thinking was, et cetera, et cetera, to hold them to account. However, before I close I want to say that I have some sympathy for some of the concerns of Members in relation to this area. That simply does not extend to the position of the police but it extends to the need for Members to have better guidance which, indeed, is contained in paragraph (e) of the proposition in relation to what the legal position is. I have some sympathies because I can see how Members can easily find themselves in a difficult dilemma. What if they are provided with confidential information which is leaked to them? What if they believe that a States department or other administration has been covering something up? No, I have not researched this but I believe that this dilemma could equally be presented under the Official Secrets (Jersey) Law 1952. How is a Member to know whether the revealing of this information will or will not be viewed as being in the public interest? That is difficult and I accept that it is reasonable that Members be provided with some guidance in relation to this. Indeed, I think it is vital and that is why part (a) of the proposition is ... I would have supported it in the amended form **[Interruption]** ... yes, I support the spirit of what is behind that. I note some advice had already been given to P.P.C. and of course the P.P.C. have now produced even more, but the fact is that parliamentary privilege can never cover criminal behaviour. No Member of the House is above the law but, nevertheless, I believe that Members are very much in need of clearer guidance in relation to the difficult area which I have set out. Nevertheless, I oppose parts (a) to (d). I probably have already made the statement indirectly. In any event, in the course of this debate, I oppose them. I strongly oppose any attempt to interfere with operational freedom of the police.

7.1.7 Deputy J.A. Martin of St. Helier:

I would like to go straight back to what the Constable of Grouville was saying. He seemed to put us in a dilemma where if we supported this we were saying that the police had acted unlawfully and Senator Syvret was above the law. Now I am glad I waited to speak until after I had heard Senator Le Marquand because he goes further and says that parts (a) and (b) are wanting this House to interfere with police procedure or even take control. I do not read it as that. I feel that his last comment that the Minister for Home Affairs made about parliamentary privilege and State Members not being above the law is quite right but if we can have States Members who you would think, would you not, that every step of the way the law had been followed to the letter by the police, that if that can happen to, say, a high profile States Member what hope have the public got? I think people who have been contacted over the years and have told us stories of what had happened to them by the police, sometimes we may think that they are exaggerated, sometimes we may think that they have not. I really do not think this is interfering. I am concerned the way this was carried out. By no means do I believe any person is above the law but are the police above the law as it should be carried out? Now, this is the case I have concerns about. The Senator also went on and told us a bit more information. He told us why there was not a search warrant. In fact he said there was one but it was issued under a wrong law and the Jurat then had to point out which law could be used to actually search. I go to that part of the law and under (3) it says: "If you believe (b) is related to (1)" which I do not and I am not a lawyer. I am just interpreting it only the way that Deputy Southern does. I think that is stretching (2) but (3) says: "The power of search conferred by paragraph (2) is only a power to search to the extent that is reasonably required for the purpose of discovering any such thing or any such evidence." Again, we have "reasonable". By all intents and purposes we had the house turned over and also we had a police attending to ... I think the Senator, the Minister for Home Affairs said: "who could force entry into the house." So, was this a bit above what was needed for a breach of data protection? I personally think it is. So, I am sorry if people think that, you know, we are not the people to challenge the police. Well, who are? Can they really find different ways and be told by a Jurat: "Well, no, you cannot search under this because that is just such a criminal offence but if you really look there is a law there that you possibly would get away with it." We were told, I think it was by the Constable of Grouville: "Well, of course the police would have ticked all the boxes because it was a high profile politician that was being ..." oh, sorry, I am quoting the wrong person. Somebody did say that you would have thought that all the boxes had been ticked which you really would have done but that even makes me more - the word is probably, I have to say - suspicious because again if they have not, in my opinion, ticked all the right boxes, got the right search warrant, carried out this procedure in a way that you would expect it to be done, again I go back to the ordinary man in the street and I would not hold out much hope for him. I fully agree that sometimes, probably in the last few years in this House, you know, we have had to question the law officers, we have had to question procedures of the police but just because we have had to do it does not make it wrong. In fact, the more we have to do it makes me think that something is very wrong or going wrong. So, I am sorry that the Minister for Home Affairs thinks that in any way this proposition is interfering or would prove to be interfering. It is just States should express concern and further express concern. (a), (b) and (c), and especially (c), I still believe that the search and the way this was carried out was over the top, it was not done under one law so they found another one and I am very sorry but I cannot be persuaded, even after hearing the Minister for Home Affairs, that there is a lot to answer for and it does go on further. They say we have no privilege. I did listen in last week when Senator Breckon, he is not here this afternoon, made a valid point that we do not, as States Members, just hold confidential information given to us by departments. I have 3 files in this building and 2 of those are personal confidential information supplied to me by constituents. I choose to keep it locked in this building but if I was searched like Senator Syvret I am presuming all that information would have been taken down to the police station. A lot of it probably, you know, is to do with income support. It might be to do with housing. It might be to do with different problems, even

education, even health that people have had but people entrust that information to me expecting me to keep it confidential and not having the police come in and take it away, and then I do not know what they would do with it. So, the word “express concern” in respect of the apparent interference in the communication between elected representatives and their constituents really, really hits home. So, I think I have said enough. I do not believe that I am saying the police are totally at fault and I am certainly not saying that Senator Syvret is above the law but there is something gone wrong here and it is no good us all looking at each other saying: “Oh, no, we cannot criticise” because if we do not do it it will just carry on and on and on.

Senator J.L. Perchard:

Sir, can I give notice of my intention to propose closure to this debate. I think it is highly inappropriate that we should be debating something so relative to a police investigation and I intend to propose closure in half an hour.

The Greffier of the States (in the Chair):

Very well, that is noted.... Deputy of St. Mary, you are next to speak.

The Connétable of Grouville:

Sir, I am sorry. It is an intervention, Sir. I believe it has been brought to my attention that Deputy T. Pitman, at the end of his speech but I did not hear, imputed that I had been drinking during my lunch hour ... exactly, and it is absolutely and completely untrue and I would like him to withdraw that allegation and to apologise. Thank you.

The Greffier of the States (in the Chair):

I am not sure he said it directly but ...

Deputy T.M. Pitman:

Sir, I raised the issue at the beginning of my speech so I will just clarify that. I am happy to withdraw and perhaps the Constable just had no need to talk. That is nonsense about bovver boys at the J.D.A. so, happy to withdraw under those circumstances.

7.1.8 The Deputy of St. Mary:

People notice I am a fast learner about where to sit and so on. **[Laughter]** Yes, this debate is about process. It is not about the operations of the police. It is about correct procedures and the application of law. It is not about operational details. I am going to confine my remarks to (b) about the suppressing effect of such actions. I am concerned particularly about the area of whistle-blowing. I noted in the elections for Minister for Health and Social Services that all the candidates referred to whistle-blowing. Deputy Le Claire: “Whistle-blowing is an important mechanism.” It would have been a top priority had he been elected Minister for Health and Social Services. Deputy Southern: “Essential in any organisation especially Health and Social Security and there would need to be a patients appeals and complaints procedure.” Deputy of St. Peter: “Whistle-blowing people should be able to voice their feelings about professional concerns.” He was worried about the small Island and “it must apply to all departments.” Senator Perchard: “Whistle-blowing, robust policy is in place. We need to protect clients, patients and the whistle-blower” and I lost my notes about the person who actually won the job. They are somewhere in this heap but I think that you may have mentioned whistle-blowing too. But anyway, the point is that it is a very important issue because I suspect that it is something to do with the reasons for this whole affair and I am not at all sure it is to do with Haut de la Garenne either by way of showing how important this is. Just what is at stake if we try to suppress or oppress this connection between the whistle-blower and the person who makes or might seek to make something public. I refer to something on Senator Syvret’s blog. Now, as other speakers have said, I very often am dismayed at the tone of the blog. I just sometimes skip whole paragraphs or pages and think: “What on earth is he going on about?” But there are the nuggets which are, I assume, why people read it and then comment at

length, and there are many debates on there. In particular I want to refer to the blog about a month and a half ago now, I think, a month ago, when he referred to ... when he copied a report by Detective Inspector Y, and I will remove all the names from this. But I just want to highlight what is at stake when we talk about serious concerns. These are all quotes from this report: “Incident 1, nurse A. As normal ...” Members may not be aware of this, not all of us ... I am not an avid reader of the blog but occasionally my attention is drawn to something and then I go looking. “Incident 1, nurse A ...” This is all part of Detective Inspector Y’s report: “As normal the nurse checked on her patient and discovered to her horror that the glucose drip had been disconnected from the patient and a bung put into the base preventing the substance from leaking. The patient ...”

The Greffier of the States (in the Chair):

Deputy, I am just concerned. I would like to seek the advice of the Attorney if these are matters that should be rightfully addressed during this debate.

Mr. W.J. Bailhache Q.C., H.M. Attorney General:

I think the Deputy might like to ask himself whether it is appropriate, remotely, to say these things in this Assembly today. It is a matter for Members. Members have freedom of speech in this Assembly, freedom of expression. I defend Senator Syvret’s right within the rules of this Assembly to say in this Assembly whatever he wishes to say but it really is not appropriate and Members should be asking themselves the question about whether it is necessary to draw attention to these sorts of things in this Assembly.

The Connétable of Grouville:

If I may intervene here with your permission; that his person you are referring to was named in that blog and that blog went around a lot of people, and I am sure that a lot of people now will be identifying that person, in their minds, with what you are saying and I must tell you this person has denied all these allegations, and the police have denied these allegations. So I shall be very careful where you are going on this one.

The Deputy of St. Mary:

Thank you for these comments. I did think whether I should go into these quotations and I am taking what the A.G. (Attorney General) and the Constable of Grouville is saying, and I can see my initial decision to quote what was said on the blog was in order to substantiate the importance of whistle-blowing, I may even have said enough already, but I take your point that because it is possible to go back from a quote and then find the name, then because Senator Syvret named the name I cannot say any more, which is very unfortunate, because if he had not mentioned the name then I would have been able to establish quite firmly that whistle-blowing is a really, really important part of our democracy and we need to protect it. That is just to substantiate that (b) is certainly correct. I do not wish to say anything about the other points except to comment, in closing, what the Constable of Grouville said in his opening, in his remarks, way back, when he said that this was about backing the force ... he referred to Deputy Hill, then he said he would have been expecting him to back the force against, I think it was criticism or attack or - I did not note the actual word - backing the force against. I am sorry, this is not what this debate is about and to polarise it as if those who vote in favour of this proposition are sort of anti-police is completely absurd. In fact, the reverse is true. If we insist, and we are right to insist that the police behave in accordance with the highest standards, and I want to put on record that the police do a valuable and difficult job, and we do support them. It goes without saying they are the guardians of the law but with that goes the responsibility of course to act with the right procedures and to act with respect for the people that they are serving. So that is really what it is about and it is not pro or anti us or them, that is just nowhere to go, and I am very surprised that the Constable could have said any such thing. It is not about whether we like or do not like the police. We support them in what they

do if they do it correctly. This proposition is about the rule of law and it is about the relationship with the police with the community they serve. That is enough.

7.1.9 Deputy M.R. Higgins:

First of all, I am grateful to Senator Le Marquand for his speech outlining things, that was very helpful. He knows very well where I am coming from on this. I am one of the people who signed this proposition and, in fact, to clarify some of the views expressed that Senator Syvret wrote the proposition, it is rubbish. He did circulate bits and pieces. Other Members circulated bits and pieces. I put my own input in as well. There are many people who are party to the construction of the report that went with it so let me dispel that it is Senator Syvret's document. This House is a divided House on the issue. It is divided between those who are blinded to the issues because of their personal dislike of Senator Syvret. Perhaps because they have been rightly or wrongly attacked by the Senator on his blog. I believe that they cannot see the issues beyond their own personal feelings. There are others in this House, like myself, who are concerned with what they believe are important constitutional legal and political issues; freedom of speech, the lawfulness or otherwise of the police action, the status of Members correspondence with their constituents. The accountability of the police, and I make it quite clear here; I am not one who wants to see political control of the police. I want to see as soon as possible an independent police authority **[Approbation]** because just as States Members are told they are not above the law, neither are the police and everybody needs to be accountable to someone. Now, since I came to this Assembly, I have tried to be even-handed. I happen to admire Senator Syvret on one hand, and on the other hand I deplore some of his actions. I admire him for his dogged determination to expose wrong doing and I believe that he, like all other Members of this Assembly, has a duty to disclose information in the public interest, if it is revealing, for example, criminal activity, miscarriages of justice and so on, but I know that Senator Syvret has been attacked for alleging wrongdoing on the part of civil servants who work in health relating to children, and he has been vilified for that. I know that the previous Minister for Health and Social Services has attacked him on this thing. I have personal knowledge, information that I had been given, of civil servants who prevented people in the children's home going to see Senator Syvret and make their complaints or to go to Kathie Bull when she did her report. So he is being attacked, I think, very often wrongly when he has exposed things that need to be exposed. Now, on the other hand, as I say, I do not agree with him for, perhaps, naming names and for a lot of the personal attacks that he has made on his blog or in correspondence to others. Yes, that is just not my, sort of, approach but I do believe that he has a duty to reveal many of the things that he has done and I believe that even if only 10 per cent of what he says is right, that they need to be investigated because they are very, very serious allegations. Now, just going through a number of things: the actual proposition I do not think is an attack on the police at all and it is not really ... and, in fact, people have accused us of defending Senator Syvret. We are expressing our concern in respect of what we believe is an apparent interference with a communication that is between elected representatives and their constituents, arising from the arrest of Senator Syvret. It was not only Senator Syvret whose computer they took. There were other computers belonging to other people in the household **[Approbation]** that were taken away and examined. Also they took his key fob. Now, okay, we all have these little fobs to enable us to get into the States computer system, together with, if his passwords were - I forget my passwords; he may have had some written down - having his password to the thing. Did the police, for example - I know we were hearing that independent lawyers got involved but you wonder - get into the States network and read all the correspondence between Members? I think it is an issue that we need to find out ultimately whether our own correspondence has been read, and I might add it is not only just Senator Syvret who receives allegations of wrongdoing or corruption in this Island. Going back to some of the other points made by Senator Le Marquand; it is certainly not ... sorry, just going back to the proposition, I should say, it is not an attack on the operational freedom of the police. I have already made it clear where I am coming from. We are expressing our concern in respect of the suppressing effect of some actions upon the elected representatives

and members of the public. There are members of the public who will be reluctant to provide information to States Members if they think the police may raid the States Member - they may take their computers, take their correspondence and so on. As to some States Members, maybe some are intimidated, others are not. Asking the Minister for Home Affairs to make an urgent statement; well, I am pleased he has. He has given us some information that has been very helpful and hopefully he will be able to make a proper statement at the end of it. As far as privileges and procedures are concerned, I think it is vital that States Members understand what their rights are and privileges. Now, those rights and privileges are not for our benefit; they are for the benefit of the wider public. It is so that we can represent them in this Chamber and elsewhere. In terms of one or 2 other points he made, I just want to give States Members some information, by the way, because Senator Le Marquand is wrong with regard to the Official Secrets Act. I have got here some statements taken from a Parliamentary Privileges Report in the United Kingdom. It says: "It is self-evident that Members should wilfully divulge classified information of the House only in the most exceptional circumstances and after long and careful thought. The more highly classified the information, the more exceptional the circumstances will be. It would be a serious step to limit the freedom of speech by making Members liable to prosecution under the Official Secrets Act for what they say or do in parliamentary proceedings. It is notable that even on the outbreak of war, and in the context of a threat to disclose secret information regarding the state of London's anti-aircraft defences, the House of Commons Select Committee accepted that disclosures made in the course of parliamentary proceedings were protected by Article 9 and rejected any suggestion that the privilege should be limited. Now the House of Commons Privileges Committee came to this overall conclusion. Any Member must be free to make public in the course of proceedings in parliament, information which he believes should be published. For example, he may well consider that certain facts, perhaps about the spending of large sums of money on major weapons systems, should be disclosed in the wider public interest, even though others may think it damaging to national security. So that is national security. The same, I think, applies to things that could be covered by the Data Protection Act. Basically, if there is information that should be disclosed in the public interest, it should be. Going back to some of the other points that were made by Senator Le Marquand. He mentions States Members should not be treated any differently to ordinary citizens. I agree with that and one of my concerns is the way that the apparent use of the law, whether it be the Data Protection Act or the Police Criminal Evidence Act, whether that is being used for other laws and how they are manipulated. I believe that everybody has a right to be treated in the same way when it comes to the application of law, whether it be arrest and search and so on, and I have serious concerns about what has gone on here. I might also add, this is not the first time that a States Member has been arrested, his offices searched, in fact, one States Member was even strip-searched - my understanding was - and that was a former Constable in relation to matters a few years ago relating, I think, it was to the Roger Holland case. I might add that even there, from what I have heard of that particular aspect, I have got serious concerns about the way that these matters were handled. Now also, it was mentioned that the police took this action and I am somewhat puzzled as this was a data protection issue, why was it not the Data Protection Commissioner who has brought the action. I really am puzzled by this. If there were these breaches, why did she not take the action? She has got the powers under the law; she could have gone for the search warrant and so on, or was it the fact that Senator Syvret did reveal on his blog the document that the Deputy from St. Mary was telling us about, alleging serious criminal activity at the hospital by a member of the hospital staff, which, as it turned out, was not fully investigated and I believe the police did launch another inquiry back into the matter after the Senator revealed it.

The Bailiff:

It was alleged criminal activity.

Deputy M.R. Higgins:

Sorry, yes, I did not make that point, I should make it alleged criminal act. Thank you. So, I am somewhat concerned that what was supposed to be a data protection issue was not followed through by the Data Protection Commissioner; it was followed through by the police, right after this particular piece of information was revealed. Going back to what Senator Le Marquand said, for example, about the sex offenders legislation; yes, I can understand his concerns on that. I happen to share his concerns. I do not want to see people subject to vigilante law any more than anyone else does but I also believe that if there are allegations of child abuse, et cetera, that all these things should be investigated. There should be no one that is not investigated. He also mentioned, too, that the Data Protection Law is a serious offence in the U.K. that carries a 2-year sentence. We do not apply the U.K. here, we apply our own law. We have identified it as an unlimited fine; not one year, not 2 years' imprisonment. So I think that is the relevant point that is being made. In fact, I think that is the main points that I have made, but what I would say, though, is that there are quite genuine concerns that do not relate to Senator Syvret, and people should look beyond their own personal animosities to Senator Syvret and address the real issues behind it

7.1.10 The Deputy of St. Martin:

As I have said before, and I will say again, it is unfortunate that Senator Syvret does use the tenor in his language and I wish he would not, and I think Deputy Higgins, again, hit the nail on the head really, but the fact was, it seems to be that if one associates with anything to do with Senator Syvret it means that you are anti everything else and it is not. I wish people would get that out of their heads. We can look at a cause ... it could be said, sometimes, good cause, poor hero, but at the same time it puts people like myself in difficulty because, as indeed the Constable of Grouville has assumed, why is someone like me with an honourable career signing a form like this requisition which involves Senator Syvret. Well, as the Constable of Grouville knows, he did write to me after my question and I said to him ... in fact, the Constable of Grouville said that he was surprised that someone like me with an honourable - I would not argue whether it was career or what not but I am grateful you think I did something honourable - but the fact was that how I could be associated with asking the question that I was. I emailed him back and I said: "Well, I would have done it if it was you or anybody else because that is how I see it." In fact, I will say that he did congratulate me on my proposition I brought; the suspending employment and, of course, I was delighted to see that ... I was disappointed because I see he did not vote for me this morning, so there we are. Anyway, I really was concerned about a colleague being arrested and considerably about data protection matters and, of course, I knew of other Members who had been involved themselves with data protection offences and had not been arrested. I was looking again for even-handed process; that is all I was asking for. I think it is quite fair that I should send an email to the Minister - it was an open email so everybody knew exactly what I was asking for - and I did ask the Minister to make a statement about the arrest, particularly about the issue of the warrant. Again, maybe because I may have had an honourable or dishonourable career, but I certainly know a little about search warrants and I know how they can be abused. Of course, as often as not, prior to having P.A.C.E. (Police and Criminal Evidence), et cetera, you could use a common law. Right, you arrest someone so you went through the house on a common law. Of course, quite rightly the law has been changed to make sure that you do not get abuse but what I would like to know, of course, was that when someone does search, then certainly if they go through someone's home, and the fact is here what are they looking for and where do they go looking? Do they go through someone's cupboards or through people's underwear? A whole lot when ... to me it gives you that feeling of feeling unclean and I have been to a number of houses where there have been burglaries and people have been feeling: "Oh, people have been rummaging through my ... what right?" and I am sure ... I have got the Deputy of Grouville here to my side, but the fact is - I do not know how she must feel about it - but I would feel very, very upset. I am sure my wife and my family would. Put yourself in that position; your home is being rummaged through without a warrant. Even if they had one, would it make any difference? Also, how was the search conducted? Was the officer or was Senator Syvret present when the search was done, because I certainly know - and not for one moment am I saying

at any stage that the police officer is corrupt - but I have had experience, unfortunately, of corrupt policemen where they will plonk things on someone. That is the danger of when a search ... you see, when a search is being carried out the search is conducted in the presence of the person whose home it is. I do not know whether on this occasion, and maybe the Minister could tell us, but to me these are very, very, important things. Again, as we know ...

Senator B.E. Shenton:

Can I just ask the Deputy, if this is not specifically about Senator Syvret, why has he not raised these issues before? He has been in the States a long time and there have been thousands of searches taken place on the Island?

The Deputy of St. Martin:

That is a good question but no one has raised it with me and it has to come up now so I am taking it to task, and so I am asking the question. So again, Senator Shenton, had it been you I would have been raising the same concerns if we were in the same circumstances.

Senator B.E. Shenton:

If it had been me, Deputy, I would not now be in the Chamber.

The Deputy of St. Martin:

Sorry, I did not hear that, Sir?

The Bailiff:

I think it was an objection that probably does not need a reply, Deputy. Would you please continue?

The Deputy of St. Martin:

Again, I was disappointed that the Minister for Home Affairs declined, but again that is his privilege and I could not do any more but, again, I made the comment that one finds out more from a *J.E.P.* than one does from a Minister. In actual fact, I could honestly say as well, it might have been helpful if we had have got a statement from the chairman of P.P.C.; again reassuring Members that they were not likely to have their homes rummaged because they may have something which people may well feel is data protection. However, I mention about my contact with the Connétable of Grouville and it gave the impression that by even asking the question, I was not supporting the police or I was questioning the authority of the Crown officers. I wish people would not think that because you are carrying out your job, you are anti something. I am doing my job because that is the way I see it and I certainly have every respect for the Crown officers, as I do for all the colleagues here, but at the same time if there is something which I feel I ought to question ... that is why I am the States Member, that is why I am here representing it. I am no longer a police officer, I am doing the job as I have been elected to do. Again, I was asked if I would sign a requisition and I declined. The first time I declined because I said I do not sign anything unless I know what I am signing. It was the principle whether I would sign and eventually there was a draft which was circulated and the more that was put together the more I felt that I could put my name to it and in fact I think Deputy Higgins has said that a draft report came around. I know I made a number of contributions there because what I wanted to be seen was it was even-handed, as if it was any States Member involved. That is why I signed and I am pleased; I have no regrets for my signing it. It does not mean I am anti police, it does not mean I am anti Crown officers; I signed it because I was concerned that it was affecting States Members. Now, I cannot see a problem with what we are being asked to agree with and again what I would ask Members to do is to look at the proposition and if one would say to express their concern in respect of an apparent interference in the communications between an elected representative and the constituents which arises from the arrest and detention of the Connétable of Grouville. Now, how would that sound? Would we then say: "Ah, well, yes, we are going to express our further concern" et cetera, and because it is the

Connétable of Grouville, we will then express our concern about the search. Does that sound better if it was Connétable of Grouville, here, rather than Senator Syvret?

The Connétable of Grouville:

If I can just say, I think I would be far too embarrassed to sit here and listen to this debate if it would concern me.

The Deputy of St. Martin:

If it does not help ... if the Connétable of Grouville does not, well what about if it was the Deputy of St. Martin. I suppose he would be put in the same bracket as Senator Syvret. But the point I am trying to make is it should not matter whose name is on it, it is the principle. That is what we are here for, to discuss the principle. I know I am getting some wry smiles from across the way there, but that is how I ask people to look at it. I can see no problem in expressing our concern about suppressing the fact. That, to me, is what we are here for; we are representatives and we should be looking after each other as, indeed, we should be looking after everyone outside this Chamber. Again, see again, I cannot see a problem with that. I am delighted and I would like to compliment the Minister for Home Affairs. I thought you were superb this afternoon and I even heard every word of it and I wished you would keep your voice up every time you do speak but it was ... I very much welcomed him, but as I mentioned yesterday, the trouble is with 2 lawyers they cannot always agree and I made the point yesterday about the Attorney General having a view of something whereas the other Attorney General, Mr. Birt, had a different view. Of course, that is just the point, but I thought they had a different view anyway, or I will get myself in deeper trouble. Again, I thought the Minister was very good with it and I only wish ... and what was wrong with not saying it when I requested it? I think the House have all been ... I think our eyes have been made wide open this afternoon by what we have heard and what we have ... oh, well, not seen because we have not seen anything, but from what the Minister was saying. I think that it is tremendously helpful and only wish you will learn from the experience that we have had today and see that when something like this does arise that Members, and indeed the public, are given a bit more information if only for reassurance. It looks better, I think, if you have been seen to be supporting the police in their actions rather than as if giving the impression that we have got something to hide. It is important about openness but I welcome what the Minister had to say. In actual fact, we almost do not need to agree today because we can take it as read, because we have already got now a very useful statement. Unfortunately, I would say the timing was wrong but at the same time we are here to vote for it and I will certainly be supporting it. Again, we have seen that P.P.C. have seen that there is a need for them to have an involvement and that, again, is because, albeit a bit late in the day, they have brought an amendment which the Deputy Southern is going to agree to, and I think it makes all better reading. So, again, Members, please do not put this down as Senator Syvret, just put any other name on there and say, if it was not Senator Syvret, it could be me, it could be any other one here, would you support it and I would ask you would you.

7.1.11 Senator S. Syvret:

I have already declared an interest but for the record I will just do so again. I have obviously a direct interest in this matter. I will not address the speech of the Connétable of Grouville as 90 per cent of what he said was simply irrelevant to this debate. Yes, the Connétable is waving my emails and those emails are irrelevant to the issues that are pertaining to this debate which are the issues of parliamentary privilege and the right of people in this community to communicate in confidence with their elected representatives. So, I repeat, 90 per cent of what the Connétable said was simply irrelevant and, in fact, we could assume, for argument's sake, that everything he said about me, every criticism he made against me and that indeed every allegation that other Members make against me was all 100 per cent true. Let us assume, for argument's sake, that I am a cross between Stalin, the anti-Christ and Bakunin, it would make no difference whatsoever to the substance of this debate and, as the Deputy of St. Martin just described, Members, if they are going to do what is

right in terms of the public interest, really need to substitute my name from the page of the document and imagine their own in it, because that is the broad principle that we are speaking of. However, as I said, today's debate is not about me as an individual; we are here today to discuss fundamentally important matters of democracy, of free speech, parliamentary privilege, issues that go to the very heart of functioning democracy and because those issues are so transcendently important we can see that Senator Le Marquand is wrong in his opposition to the proposition on the grounds that it is supposedly premature or supposedly some kind of interference with the operational freedoms of the police. It plainly is not. In any event, we are not here to debate my specific case; we are here to debate, really, the underlying principles. The centuries-old concept of parliamentary privilege for elected Members and the consequent freedoms of their constituents are of such importance that the other grounds on which Senator Le Marquand opposes this proposition are equally misguided. As I said, even if I were, hypothetically, guilty of all offences alleged against me, such a state of affairs would be irrelevant to the key points. For the subjects of this debate are issues such as proportionality, reasonableness, and whether such actions as the wire tapping and monitoring of elected politicians are necessary in a democratic and lawful society. In this debate there is simply a fundamental question which Members must address, which is this; can the mass police raid on a politician's home, the arrest of the politician, his detention in a police cell for 7 hours, the ransacking of his home, extraordinarily in the absence of a search warrant, the interference of family members' computers and other possessions, the theft of privileged communications between a politician and his constituents, be remotely adjudged to be in the public interest when waived against the comparatively trivial nature of the data protection allegations which have been made. Is the public good served by such manifestly excessive actions or do such harassments and oppressions for trivial matters harm the public good? In fact, do such actions effectively amount to an assault upon free and democratic society when undertaken against elected representatives merely because they attempt to do their political duty such as holding the Executive and associated power structure to account? I am certain Members will be very familiar with the case of the Conservative M.P. (Member of Parliament), Damian Green. In the course of undertaking his political duty, Mr. Green was in receipt of leaked information, made available to him by sources who courageously placed the public good over their own jobs. The information thus supplied to Mr. Green enabled him to hold the Government to account for its deficiencies and failures in respect of its immigration policies. He would not have been able to undertake his job so effectively on behalf of the public interest if he had not been in receipt of the information supplied to him by whistle-blowers. As Mr. Green has himself recently said, and I quote: "This was the first time since we became a democracy that an opposition had been arrested for political work. Of course M.P.s are not above the law but, by any standard, what I was doing was political work of the kind that has been done by politicians for years, notably and very successfully by Gordon Brown. Arresting opposition politicians is something you associate with police states." Now those are the words, not of Stuart Syvret, but of a conservative Member of Parliament. The subject that we have to be concerned with is parliamentary privilege and we do have to examine the morass of conflicting and range of laws and the supposed privileges of this House and its Members and of the people we represent and try and pick our way through the resultant minefield, because at the moment it appears very much from things that the Attorney General has said on other occasions, and that the Minister for Home Affairs has said today, that the authorities have a broad panoply of legislation which they are at liberty to pick and choose from and intermingle according as to whether it suits their particular objectives at the time. Now, I was told by the police when I was arrested that I was being arrested for data protection offences. Now, this is not the first time that data protection supposed issues have been raised with me and, in fact, I could confess to a quite significant record, I would say, of frankly harassment by the Data Protection Commissioner and the person who advised her throughout the episode, the Attorney General.

Senator B.E. Shenton:

Sir, I thought this proposition was not about Senator ...

The Bailiff:

Is the Senator giving way or is it a point of order?

Senator B.E. Shenton:

It is just that I did not think the proposition was about Senator Syvret's case and yet the speech seems to be about Senator Syvret's case.

Senator S. Syvret:

The speech is about the biased and irregular and inconsistent application of various laws; laws that appear for all the world to have been used and applied selectively to certain Members of this Assembly and not others. Laws that, in fact, make the process of law enforcement in Jersey dangerously, very dangerously, appear to be politicised. So, I do have to refer to the experiences I have had because these could apply to any other Member of this Assembly. I know that the Attorney General was advising and guiding the Data Protection Commissioner throughout much of the last 18 months or so, because he even said so to me once in an email, and it is plain from correspondence received from the Data Protection Commissioner that, in effect, the Data Protection Law was being used, stretched, twisted and misapplied in an effort to effectively deny me my rights to free speech. It was, essentially being claimed by the Data Protection Commissioner that by naming somebody on my blog and making allegedly defamatory remarks about them, that somehow this was a criminal offence of the Data Protection Act. Of course it is not and I have taken some very heavyweight legal advice from people in the United Kingdom on this and they metaphorically laughed the claim out of court. If I say things that are defamatory on my blog, that is a matter which lays in the civil legal sphere. If people consider that I have defamed them, they have the option open to them to take me to court for defamation. What is extremely dangerous is when we start getting into the territory where statutory powers, the powers of the State, start getting cited and used, instead of and as an alternative to the individuals who are allegedly defamed having to go to court. Effectively we see people here, and I am absolutely certain 99.9 per cent of people in our community would not have this facility, certain people appear to be able to make the request to the Data Protection Commissioner, the Attorney General or the police, and then the apparatus of the criminal law is swung into action against me, rather than the individuals concerned suing me for defamation. I know why they do not want to sue me for defamation; because they do not want all of the issues that would have to be explored coming out in open court, not least because they are true. That view, that I am effectively being harassed by the use of legal powers, criminal powers, was further reinforced by a letter I received very recently from the police which was dated 14th April. Although none of this was mentioned at the time of my arrest, and only mentioned very briefly in passing when I was let out of the police station, this was a - it says "restricted" - States of Jersey Police Allegation of Harassment Form and it suggests that I am under warning of a charging or prosecution because having written certain things on my blog about certain people amounts to an act of criminal harassment. **[Approbation]** Now, in respect of this law and, indeed, of Article 29 which I will come on to later, if it is so that this law was being correctly cited and used against me then when I get home this evening I am going to write a formal complaint to police against the editor of the *Jersey Evening Post* and probably half a dozen members of this Assembly and a number of bloggers and all kinds of other people, because if writing trenchant comments on my blog is a breach of this Harassment Law then other people's conduct, in the same format in similar ways, must also be a breach. However, we know perfectly well it is not because, again, I have taken some heavyweight legal opinion on this and this too is simply an attempt to twist, stretch and distort an aspect of the criminal law to try and deny me my right to free speech as defined under the European Convention on Human Rights. However, indeed, even if this law applied, even if it applied, I turn to paragraph 4 of the relevant law and this is entitled "Defence Charged with Harassment" and I will just quote this: "It is a defence for a person who is accused of an offence under Article 31 in relation to the course of conduct pursued by the person, if the person proves that (a) the course of conduct was pursued for the purpose of preventing or detecting an offence." Now,

that is plainly in the nature of the political work I have been doing, using my blog and other avenues and it is necessary, frankly, to use citizen media because, in many respects, over the decades the standards of the mainstream media in Jersey has been atrocious. Then we get, having considered those laws, to the question of Article 47 of the States of Jersey Law 2005 and again, this law must apply, presumably, as all laws do, and it says, and I will quote it: "A person who blackmails or attempts to blackmail, or who offers any threat, assault, obstruction or molestation, or attempt to compel by force or menace any Member of the States, et cetera, et cetera, or order to influence him or her in her conduct as such or for or in respect of the promotion or the opposition of any matter, opposition, question, bill, et cetera, or other thing submitted or intended to be submitted, to the States. Anyone who has committed such an offence or who is a party to such an offence shall be guilty of an offence and liable to imprisonment for a term of 5 years and a fine." Now, without question, I could make a very substantive, detailed and pretty well-evidenced case, and many of the actions taken against me by the establishment amount to a breach, a clear breach, of Article 47. However, of course, there would be a huge problem with that, would there not, because the determination of the merits of any criminal charge in that case would have to be made by the Attorney General, who sits across the Chamber over there and who we know had prime knowledge of the raid on me and is effectively, as I said, in an earlier debate, he is a *de facto* politician; an unelected politician. I will just turn to the Police Procedures and Criminal Evidence Law which was cited against me and, again, many people have suggested that I and other States Members are not above the law and, indeed, the Attorney General himself has said we are equal before the law. Now, I did ask him this question but he declined to give a clear cut answer and I put it to the Attorney General that if, let us assume, for argument's sake, that the claims by the Minister for Home Affairs are correct, and that Article 29 of the P.P.C.E. Law was appropriately, correctly, proportionately and lawfully used in this case. If it was properly used, then it is able to be and capable of being used against any other person, any other building, any other premises such as business premises, banks, accountancy firms or whatever. The police need only to get some evidence that gives them reasonable grounds for believing that a criminal offence has been committed and that there is evidence relevant to that offence contained within the building. Then they can circumvent completely and set aside all of the customary traditional judicial safeguards of having to apply for a search warrant. All they have to do is stand outside the building or wait there, all 10 of them, in their cars until a person emerges from the building, then that person is arrested on suspicion of the alleged offence in the immediate vicinity of the building and there you go. No search warrant at all and that could be PricewaterhouseCoopers up the road who could, in theory, have their entire building turned over, all computers taken and examined, written records, paper records, files, et cetera, et cetera, without even a search warrant. Now, if that could not happen, if there was something that made such a process unlawful, then by the same standard it was unlawful when used against me. Neither the Attorney General nor the Minister for Home Affairs can have it both ways, but I am advised, in fact, that the use of the law in this way was unlawful, certainly when one considers the Human Rights Convention. The use of laws has to be proportionate to the supposed nature of the alleged offences. I have taken, as I said, advice on this matter and I am reliably informed that there is no way on the face of the planet that the actions taken against me would stand as lawful in any competent and objective court in Britain. It is not even ambiguous and I have taken advice from people who perhaps might even be more learned than the Attorney General. Generally, in the circumstances, the States of Jersey has placed itself in a very, very difficult position. I have already quoted Article 47 of the States of Jersey law and the actions taken against me are a *prima facie* breach of that law and, indeed, I could cite, as I said, other examples, but I would like to address some of the things that the Minister for Home Affairs said in his speech. He emphasised the profound importance of there being an independent police force which is independent of politics, an independent Prosecution Service, an independent judiciary and an independent Data Protection Commissioner. All of that would be absolutely fine if such existed in Jersey but it does not. We have the Attorney General who is an unelected politician who engages in politics in this Chamber regularly who is the sole head of the Island's Prosecution Service, our

judiciary persist in insisting that the strange overlap that we have between the 2 can continue and, indeed, we have a Bailiff who makes political speeches - I refer you to Liberation Day last year just as an example of that - a politicised judiciary and we have a Data Protection Commissioner who the Attorney General himself admitted he was advising and guiding her in a number of matters. I am hardly surprised at this because every complaint, virtually every complaint that was made against me and in part against the employee whistle-blower I was helping by people from the establishment, as it were, was upheld; virtually all of them. Every single complaint that we made of Data Protection Law breaches was rejected; every single one, including one made by the ex-employee which was a really quite grave matter that involved, in fact, the identification of minors and, moreover, minors who had been in the child criminal justice system. Now this breach of the Data Protection Law was, in fact, effectively committed by the former Minister for Education, Sport and Culture. It was complained about. Absolutely nothing; nothing was done whatsoever. So I do not think that it is credible, unless people seriously underestimate the intelligence of the public, to suggest that we cannot have this kind of debate because all of these various law enforcement pieces of apparatus that we have are absolutely impartial and meet the test of appearing to be objective and are in no way political and in no way biased. It just does not stack up, I am afraid. The Minister for Home Affairs said we cannot have a Minister or other politician telling the police who they can and cannot investigate but, again, I make the point that the Attorney General is *de facto* a politician and, as I said, Article 29 must apply to everyone; if it applies to me. It was also mentioned by the Minister for Home Affairs that they had received specific complaints from individuals concerning alleged Data Protection Law breaches. Well, that is the first I have ever heard of specific complaints against me and I very much look forward to the police telling me who the complainants are, because my understanding was that if you are accused of an offence you have a right to know who your accusers are; who it is that is alleging that you have committed a crime against them. So I am going to certainly be writing to the police and asking for that information. Some other strange things emerged in the Minister's speech. He said that there was a warrant but the warrant was deemed to be then not applicable. The Minister for Home Affairs also went on to say that an "independent" lawyer and I will be very curious to see the identity of that lawyer because it is impossible to imagine any lawyers that work for or in the Law Officers Department as being impartial; they are agents of, they work to, the Attorney General. Anyway, it was suggested that the information that was taken from my home was not legally or parliamentarily privileged. Now, quite how that squares with the claim that the computer, for example, was not searched and so on, I just do not know. I am afraid there is rather a quite serious contradiction there because the computer was taken, it contained data, information, that was legally privileged - certainly legally privileged - as indeed were some of the written hard copy material that was taken and certainly it was parliamentarily privileged too. It is absolutely nonsense to suggest otherwise. There are also other exclusions within the Data Protection Law that confer protection on certain categories of information. I forget them all now but, for example, one was information held for journalistic purposes. There are all kinds of other exclusions that protect about the use of certain data in the public interest. That takes me on to the public interest test. The Minister for Home Affairs said that the Sexual Offenders Law was coming in and he felt it was very, very necessary to protect the identity of those who may have been convicted, served their time, done their penalty and so on and protect against vigilantism and so on. I fully endorse that view, however, what stops me embracing it entirely enthusiastically are the number of victims I know of child abuse; people whose age ranges from now about 16 up to about 79, dozens and dozens and dozens of people. What about their justice? Public administration in this Island has failed virtually all of them utterly and completely and, indeed, frankly, let us face it, now, it looks as though it is going to do the same again, at least in any terms of criminal justice. So what about them? If what I write on my blog is too aggressive, too blunt, too open for some people's tastes, just think of the victims and how they have been not heard and marginalised for decades and decades. So I make no apologies. These people have needed a champion for a long time and I do not care if it gets me into trouble, if the police come and raid me again, or if I get prosecuted and get the 2 years jail that the Minister for

Home Affairs mentioned. I make no apologies for fighting for these people. As I said, the Minister for Home Affairs made a quite heroic attempt to place a particular construction on Article 29 but it just does not, frankly, fly. Parliamentary privilege is the most fundamentally important here; fundamentally important issue. My constituents and, indeed, the constituents of every other Member in this Assembly, and that is not just limited to those who happened to vote for you, to vote for Members, or even those who voted at all; when you are an elected Member of the Assembly all of your constituents you are there to represent. Now, if we are seriously starting to go down a path where ordinary members of the public are frightened to communicate privately with their States Member and, indeed, States Members might start getting frightened of communicating independently privately with each other; if we are starting to go down that path then we are on the path to a police state. If such actions are to be undertaken against States Members, I can see that there are circumstances in which they would be justified and, again, the test I come back to is the one of proportionality. If I were, in fact, plotting some kind of terrorist atrocity or importing a yacht-load of cocaine ... no, no, that would not count because I would only get 270 hours of community service for that. If I were planning something of that nature, then, perhaps, the actions against me or any other Member, whoever it may be, would be considered, perhaps, proportionate; justified under the circumstances. However, there is simply no proportionality in this and we have to ask ourselves the question, is the public interest served? Has the public interest of the rights of people to communicate freely with their elected representatives been damaged? It plainly has. Has the cause of that damage, has the action against me, been of greater benefit than the damage it has caused? I do not believe it has for one instant. As an elderly lady said to me only yesterday, the last time that she ever heard of somebody having their home turned over without a search warrant in that way was back during the early 1940s. The States of Jersey has got some great difficulties and it had, frankly, before this issue. We have to address ourselves now, surely, to the conflicts of interest; unsustainable conflicts of interest that exist through this overlap we have between the prosecution system, the legislature, the Executive and we have not even mentioned the fact so far that the Attorney General is making determinations of whether to carry forward prosecutions, for example, in some of the child abuse cases, while at the same time giving legal advice to the Executive, to the Council of Ministers. It is plainly an unsustainable conflict of interests. So Jersey has got some issues that it is really going to have to address. We cannot have a respected, functioning democracy if the appearance of all of these conflicts and bias, remain unaddressed and there is more and more attention being placed on small jurisdictions like the Crown dependencies and Britain's overseas dependencies, and I would like to quote a little part from the debate on the Foreign Affairs Committee of 21st April in the House of Commons and I will quote. The gentleman speaking here is Mr. John Stanley, another Conservative M.P., and I will quote what he says: "With his usual acuity, the honourable gentleman has anticipated the next sentence that I was going to say almost word for word. That was indeed our experience when we went to the Turks and Caicos Islands. The written evidence clearly demonstrated that there was a climate of fear. When we arrived there that was wholly confirmed. We had to arrange meetings with individuals who were prepared to see us only on condition that the place, date and time of the meeting remained absolutely secret. Some were not prepared to see us at all under any circumstances because they feared it would result in reprisals against them." The Attorney General sits over there and laughs away quite happily to himself. I have to say that he is seriously out of touch with grass roots opinion, especially among many working class people and, indeed, many, many ordinary frontline States of Jersey employees. So I can tell him that that climate of fear exists in Jersey. It really does and we have to ask ourselves, are we not running the risk as a jurisdiction, going down that path? So here we are in Jersey, and I have an example of the information here that was taken by the police and the Minister for Home Affairs - and I absolutely take his word, he is an honest man, I believe him to be honest although mistaken in some respects - said that the computer was not examined and not copied and that other documents that were taken were not copied. I am sure that he says that in good faith because that is what he was told by the police, I imagine; rather like he was told that I was not locked in a cell for the best part of 7 hours. But I just do not believe a

word of it, frankly. The fact that the police would mount a raid largely designed to examine the computer and things of that nature for data, for information, and not look at it and copy it is literally incredible. The same has to be remarked as being true of documents like this. When this document, this is the original I had, was returned to me by the police, along with certain other things, I have to say I was utterly appalled. Utterly appalled. This invasion of the privacy of my constituents. This file I hold here is the record of a now past and over prosecution for child abuse. The people who provided me with this file wanted me to know what they had been through, frankly the - and this is their words not mine - incompetence and inadequacy of the Prosecution Service in Jersey and they wanted to see what they could do to discuss with me issues to try and help ensure justice.

The Deputy of St. John:

Would the Senator give way? Over an hour ago the half hour rule was called for at 4.28 p.m. by Senator Perchard.

The Greffier of the States (in the Chair):

It is a matter for Senator Perchard to make that proposition when the time comes, but it is always courteous not to interrupt a speaker when they are speaking.

The Deputy of St. John:

If that was the case at 5.00 p.m. the Senator was after the half hour rule.

The Greffier of the States (in the Chair):

It is the matter for the Senator to invoke.

Senator S. Syvret:

If it helps the Member, I am nearing the end of my speech. This data which contains profoundly personal statements of things that took place, things that happened, statements made to the police, all kinds of deeply, deeply personal information. This document was taken and indeed the police classified this as item 7 on their list. This document was taken. I have had to write to these people, as I have had to write to a number of other survivors and other members of the public, and tell them that the police have viewed their data following the raid. To say that many of those people are disgusted and horrified at this would be a very serious understatement. It frankly is appalling, that members of the public can have their privacy invaded when they have made private, personal communications with their elected Member, and that is the kind of thing that has occurred. The fact is, the Prosecution Service and the police, for whatever reasons, and I think we know the reasons, I have already described how first of all the Data Protection Law and then the Harassment Law have been used against me, both as to 2 different attempts to frankly stop my free speech and make me stop writing allegedly defamatory things about people on my blog. I think we know, frankly, what the real motivations of all of this exercise was. It was to intimidate me, to intimidate those who supply information to me, to intimidate other non-establishment Members of this Assembly, and none of that can remotely be in the public good. I will conclude by simply repeating the words of the Conservative M.P., Mr. Damian Green. Needless to say I will be voting for the proposition in its entirety and to be quite honest the proposition, when you read the actual wording of itself, is entirely moderate under the circumstances if Members could only set their visceral hatred of me to one side and consider the broad issues that have been raised by this matter. To quote what Damian Green M.P. said, and I repeat it: "This was the first time since we became a democracy that an opposition M.P. had been arrested for political work. Of course M.P.s are not above the law but by any standards what I was doing was political work of the kind that has been done by politicians for years, notably and very successfully by Gordon Brown. Arresting opposition politicians is something you associate with police states." As I said previously, those are the words not of Stuart Syvret but of a Conservative Member of Parliament. It is beholden

upon Members of this Assembly to recognise and understand the gravity of the issues that arise from this action.

7.1.12 The Attorney General:

I hope it will not be seen as arrogant but I do not intend to engage with the last speaker on the contents of his speech. It has long been impossible to do so rationally because he has a view to which he is extreme and wedded, and it makes debate impossible. I hope my sense of what Members expect is right. For the reasons that I cannot comment on an active police investigation I am not going to say anything about the circumstances of the Senator's arrest, but I do want to say something about the law. The Minister for Home Affairs has already spoken at some length about the power of arrest and the power of search. I agree with what he has said, but recognising that it is said by some that there is doubt about it, surely the right place for argument is in a court and not in this Assembly. Frankly, I trust the courts including the Superior Courts to get things right and I would not expect Members of this Assembly, however well meaning and careful, to get it right in this respect. Nonetheless because there is clearly some concern about Article 29(2) I do wish to make one comment which the Minister for Home Affairs has not made in relation to that Article. It is, I think, set out in full in the report accompanying the proposition. Article 29(2) of the Police Procedures and Criminal Evidence Law says: "Subject to paragraphs 3 to 5 a police officer shall also have power in that case" and the question is: does "in that case" mean a case where the person is arrested at a place other than a police station or does it mean the case where a person has been arrested at a place other than a police station and the officer has reasonable grounds for believing that the arrested person may present a danger to himself or herself or others. I think it is absolutely clear that that case is limited to the case where the person to be searched has been arrested at a place other than a police station, and one of the reasons, and there are others, I say that is that I have always assumed States Members to be sensible, and I do not think that Members would have adopted a provision which would make no sense if it means the latter of the 2 things, that there are both parts of the argument. Because what it would be saying is that the police officer shall have power to enter and search premises in which the person was arrested only where the police officer had reasonable grounds for thinking the arrested person may present a danger to himself or others. Now why on earth would you introduce that provision into a piece of legislation? It makes absolutely no sense whereas it does make sense to say that the belief that the arrested person may present a danger to himself or herself or others is the reason why you may have to search the person itself. It is quite obvious that you need to have a qualification for searching of the person, which is much more intrusive than searching of the premises. The next thing I wish to say is that this was an operational decision taken by the police. I wish to say that because it has been suggested, and probably suggested obliquely in the speech that has just been made, that in some way I was responsible for it. I am not responsible for the headline writers in the *Jersey Evening Post* but I will therefore read to you the statement which I made to the *Evening Post* which was this: "The police released a statement yesterday that they had arrested a 43 year-old man who had been held in custody while helping them with their inquiries. Subsequently Senator Stuart Syvret announced that he was the person concerned. He has alleged that the arrest was politically inspired by me. The decision to arrest him was an operational one for the police who are independent in the exercise of their functions in Jersey just as they are in the U.K. It is trite but true that Senator Syvret has the same rights as any other citizen, a right to a protection of the law and a corresponding duty to act in accordance with the law. Everyone is equal before the law and Senator Syvret is no different from the rest of us. It would be inappropriate for me to make any further comment at this stage as the police have said this is an ongoing investigation." That is what I said to the media, and to convert that into a suggestion that somehow I have changed my position because I agree that I knew in advance that the arrest was going to take place is, in my view, quite extraordinary. I now just would like to touch on 2 other things. The first is the question about privilege. I understand Members concerns about that and particularly about the confidentiality of communications from their constituents. Just to make sure that we keep it in proportion I want to

put an entirely hypothetical position to you. I will use the Senator because the Senators have an Island-wide mandate, but it is no reflection on any Senator for obvious reasons. Let us suppose that somebody sends paedophile images to a Senator, is that absolutely privileged? It is a communication from a constituent. Is it absolutely privileged? Is it impossible for the police to go and seize the computer and take that evidence if necessary? Obviously not. Every Member of this Assembly would agree, obviously not. So, I just invite Members to go easy on being too absolutist about the rules in relation to communications between constituents and the members of this Assembly. It is recognising that these sorts of problems arise, that I answered the question from the Deputy of St. John earlier this year that I thought it would be sensible for the Privileges and Procedures Committee to prepare a detailed statement about privilege, as is being prepared, and I am sure all Members are pleased that that is going to happen. The other thing I wanted to add was a comment about the rule of law. I want to add it for 2 reasons. First of all because the Deputy of St. Mary said he was concerned about the rule of law and, secondly, because when the proposer, Deputy Southern, was putting forward the proposition for this to be taken urgently the rule of law was used regularly as an expression ... or a breach of the rule of law was used regularly as a reason for this to be taken quickly. So, the expression "the rule of law" is to lawyers quite a sacrosanct expression. It has a particular meaning and it is important that Members understand what the rule of law really means. It is a rule of antiquity. It was one of the reasons why King Charles the 1st was executed because he was not above the law. It was restated by a great constitutional lawyer of the 19th century, Dicey, who really understood it to mean 3 things. Firstly of all liberty of action by the individual is conditioned by the regular rules of law which the courts apply. This excludes arbitrary interference by the Government. Dicey was here contrasting the rule of law with those systems of government which are based on the exercise of arbitrary power by the rulers. Secondly, it means this: the courts alone are able to determine what is or is not a breach of the law. They apply equally the law to all men and women. The official position and individual may hold will not protect him. He will be judged as an individual in both the civil and the criminal courts. The third meaning: "Although in other countries [said Dicey] rights can be guaranteed by the Constitution, in the United Kingdom where there is no constitution the rights are protected by the courts through the application of the common or customary law", and of course that today includes something which Dicey would not have recognised because it did not exist in the same form, and that is the control of administrative action by the courts through judicial review. A statement that there is concern that because a person who happens to be a Senator is arrested on suspicion of committing a criminal offence and his premises searched for evidence in relation to those offences, that it follows that the rule of law has been broken is wholly misplaced. It is completely the wrong way round. It breaches the second principle of the rule of law as to what the rule of law means, which is that the official position an individual may hold does not protect him. I have nothing else to add.

Deputy G.P. Southern:

May I seek guidance from the Attorney General as to what form of words I should use when I talk about the police's proportionate or disproportionate response in that arrest.

The Attorney General:

The reason the Minister for Home Affairs spoke as he did earlier was to emphasise that this is not a matter for this Assembly but is a matter for the private remedy of the person who has been arrested in challenging that matter before the courts because it is the courts which are responsible for adjudicating on these things.

Senator S. Syvret:

Could I just ask the Attorney General a question? He has not addressed in his speech the question of proportionality. He raised a hypothetical example of a States Member receiving child pornography, and certainly I agree with him that police intervention in that case, if the Member concerned was a wilful recipient of it and was concealing it, police intervention in that case would

most certainly be proportionate. The question is proportionality and whether the action taken against me was proportionate to the allegations.

The Attorney General:

I did not understand the debate to be about the Senator and I have already said I am not going to comment upon the particular circumstances around the Senator’s arrest.

Senator J.L. Perchard:

I consider this debate to be highly inappropriate at this time and as there is currently a live police investigation surrounding the substantive issues contained within this proposition and Members must not be fooled - this proposition is about Senator Syvret and we keep falling back into it, as an example has just been given of that by the Senator himself. I believe this House should not have embarked on this debate and having done so I now propose immediate closure and ask for the appel.

The Greffier of the States (in the Chair):

The Senator has given the appropriate notice as required by Standing Order 84. The Presiding Officer is not allowed to allow the proposer if it is an abuse of the procedure of the States but I think the procedure is in Standing Orders, the debate has continued for a considerable time, a number of Members have spoken, therefore I do not consider it is an abuse of the procedure. It is a matter for Members. Just to remind Members of the procedure. This must be put to the debate without any debate but if it is carried the proposer does still have the opportunity to sum up before the vote is taken on the substantive propositions. The matter for the Assembly is for or against the proposition which is seconded ...

Deputy S. Power:

Could you just clarify again what the procedure is after this vote is taken?

The Greffier of the States (in the Chair):

The procedure is if this proposition is rejected the debate will continue although we will need to address issues about timing, looking at the clock. If the proposition is adopted I call upon Deputy Southern to sum up. The vote is for or against the proposition put by Senator Perchard that the debate be closed and the Greffier will open the voting.

POUR: 34	CONTRE: 10	ABSTAIN: 0
Senator T.A. Le Sueur	Senator S. Syvret	
Senator P.F. Routier	Senator F.E. Cohen	
Senator P.F.C. Ozouf	Senator A. Breckon	
Senator T.J. Le Main	Connétable of St. Helier	
Senator B.E. Shenton	Deputy J.A. Martin (H)	
Senator J.L. Perchard	Deputy G.P. Southern (H)	
Senator S.C. Ferguson	Deputy P.V.F. Le Claire (H)	
Senator A.J.D. Maclean	Deputy T.M. Pitman (H)	
Senator B.I. Le Marquand	Deputy M.R. Higgins (H)	
Connétable of Trinity	Deputy D. De Sousa (H)	
Connétable of Grouville		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. Saviour		
Connétable of St. Clement		
Connétable of St. Lawrence		
Connétable of St. Mary		

Deputy R.C. Duhamel (S)			
Deputy of St. Martin			
Deputy R.G. Le Hérissier (S)			
Deputy J.B. Fox (H)			
Deputy J.A. Hilton (H)			
Deputy J.A.N. Le Fondré (L)			
Deputy of Trinity			
Deputy S.S.P.A. Power (B)			
Deputy I.J. Gorst (C)			
Deputy of St. John			
Deputy M. Tadier (B)			
Deputy A.E. Jeune (B)			
Deputy of St. Mary			
Deputy A.T. Dupré (C)			
Deputy E.J. Noel (L)			
Deputy A.K.F. Green (H)			
Deputy J.M. Maçon (S)			

The Greffier of the States (in the Chair):

Do I take it Members are content to allow the proposer to sum up this evening before we conclude? Very well, I call on Deputy Southern to reply.

7.1.13 Deputy G.P. Southern:

Just briefly then. I do want to address some of the issues and I do want to focus people’s minds on the issues involved in what is exemplified by this case. I do not wish to address the comments of the Constable of Grouville or indeed the Deputy of St. John. They seem to argue that because I had a number wrong the whole thing should be thrown out; I find that a rather spurious argument. What I would say though to the Constable of Grouville, while I did not agree with a single thing he said, and I thought he said it badly, I defend his right to say it and to say it under privilege in this House at any time whatsoever. I welcome his contribution even though I did not agree with a single word of it. Referring briefly to Deputy Tadier, I thank him for bringing us back, after those 2 contributions, to the proposition itself and going through the proposition which says this House will express concern about the issues around privilege and pressures placed on States Members. He pointed out that for the first time today, again, that this is not about political interference with the police and their actions. What this is about is holding the police to account and I will mention the first time, the question here is were the police’s actions proportionate or were they effectively holding themselves somewhat above the law, just in the way that no Member of this House nor any other individual can hold themselves above the law, so the actions of the police have to be proportionate, I believe, to the offences committed. Deputy Le Claire I thank for his contributions, particularly because it was his idea to bring this in the first place. He transmitted it to Deputy Pitman who passed it on to me, I did a draft. The Deputy of St. Martin contributed and redrafted. Deputy Higgins then brought order to the collective thoughts and was largely responsible for the final document and report and then, finally, the Bailiff advised me on matters of taste as to what was appropriate. Hyperbole never won any votes, he said, and wise words they were with the result that I took out “Banana Republic like Zimbabwe” and put in “democratically challenged republic like Zimbabwe”. So do enjoy your democratically challenged bananas. Then I turn to Senator Le Marquand. I really found his speech extraordinary. Again he brought us back to the words I used “to take control”. What I meant was to take control of the accountability. The police must be accountable to us. They do not have an independent authority over them. The only way of account is to this House through the Minister for Home Affairs, and I believe just in the way that proportionality of response has been already thoroughly investigated in the case of G-20

demonstrators in London, while there are charges involved and going on, police authorities there are taking charge of the situation and ordered investigations as to whether particular events were proportionate or not. This is the case here. Were the actions of the police proportionate? I believe that possibly they were not but what I must do is say that the Minister for Home Affairs must investigate it and decide if this is the way the police are to be expected to carry out their investigations then so be it, but let us be clear about it. I believe that effectively turning up with 10 police officers in 4 cars was intimidatory. Certainly if it happened to anybody else on an issue like this I would expect us to be holding our hands up in horror and saying: "Was this really appropriate, perhaps not." The Attorney General gave me the opportunity to return again to P.P.C.E. was brought in, and I was around when it was drafted, as indeed was Deputy Rondel, and I am sure he was under the same impression that I have, it applies to serious, serious offences. If there are extra powers in there the absence of the need to go for a warrant with safeguards is in there because it is about serious offences. Indeed, someone sending paedophile images to a Senator is there in part 1, what is serious offence? Publication of obscene material; is in there. It might well have been wholly appropriate to take Article 15 down to the Jurat and say: "I want a search warrant. I believe it involves obscene material" and I would not have any objection to that. Nor would that Senator. Nor would anybody, because that is an appropriate response. It is not an appropriate response to say: "I want a search warrant in a case of data protection involving this particular person who happens to be a Senator" and having it pointed out that: "Hang on, this is about serious offences. This is data protection. You cannot have a warrant under this. Anyway, you can go in under Article 29" which is attached, which is part of P.P.C.E. applied to serious offences and you can do it without a warrant. Now, is that appropriate, I believe it is not but certainly the Minister for Home Affairs ought to be making a statement about the limitation and the proportionality of police powers in this Island. He ought to be doing it as a matter of some urgency. Particularly because now that we have got some co-operation from P.P.C. one of those issues, as Senator Syvret keeps on telling us, is the limit and extent of confidentiality and parliamentary privilege applied to documents that we hold. Now, P.P.C.E. have produced the first paper and pointed out the complexity of defining whether, and it is. If for example Senator Syvret, as he did yesterday, took out a document and said: "I received this in confidence" and then in this House started to quote from it that would seem to me to become privileged material used in this House. He could not be sued for it. Because it is used in this House in the conduct of business in this House it automatically becomes privileged, but is it any less privileged when it is received in confidence? I would suggest that any material received in confidence under P.P.C.E. has to have a warrant, special material. That is what P.P.C.E. says and yet, in this case, despite the appearance of that material and the Minister for Home Affairs saying: "Oh well, we vetted everything, we vetted everything for parliamentary or legal privilege", well, hang on, we do not know the boundaries. Nobody does of parliamentary privilege so how can that be vetted. This is safe, this is not. In an area where we have got lots of ... no, I will not give way. We have lots of grey areas and we have not yet decided. So, that is the issue. Again, Deputy Le Claire, I think it was, or Deputy of St. Mary, talked about whistle-blowing and the need for protection, and Deputy Le Claire in the wider public interest. We all of us day in and day out take decisions as to what we consider to be in the wider public interest. Okay, sometimes publishing material that perhaps we ought not in the wider public interest and to the detriment of a particular ministry or whatever because we believe that that is the case and that is the way we should proceed. Deputy Martin, again, referred back to the law and talked about reasonable. Is it reasonable to take Deputy Syvret's partner's computer, the Deputy of Grouville's computer, her children's computer? I do not believe so. Was that appropriate? Again, Deputy Higgins referred to we must make sure that police do not consider themselves either to be above the law. Again, we come down to, was this an appropriate and proportionate use of Article 29? Did it in fact come to the stage where it trod on the boundary of Article 47 of the States of Jersey Law and constitutes ...

The Deputy of St. John:

Point of clarification please. The proposer mentioned the Deputy of Grouville's children's computers; were these taken? Can we confirm that they were taken?

Deputy G.P. Southern:

The question is, would that have been appropriate? Was that appropriate and proportionate use of Article 29, the searching of premises under P.P.C.E. without a warrant in this particular case, for these particular relatively minor and certainly not serious offences? Now, those are the questions Members must ask themselves and ...

Senator S.C. Ferguson:

We do not know what the offences are.

Deputy G.P. Southern:

They are brought under the Data Protection Act. They are offences under the Data Protection Act; the Data Protection Act, I remind the Member, contains 3 safeguards over seeking a warrant to search premises. Those were ignored in this particular case, they were data protection offences.

Senator J.L. Perchard:

I wonder if any charges have been brought at all?

Deputy G.P. Southern:

They were data protection offences under which Senator Syvret was arrested and detained.

Senator S. Syvret:

A point of clarification. To be quite clear about this, I have not yet been charged but we do know, because I have been told both verbally and in writing by the police that I was being investigated under the Data Protection Law for alleged offences under that law, so we do know what the subject is.

Deputy G.P. Southern:

The Senator is being investigated for alleged offences under the Data Protection Law.

Senator J.L. Perchard:

We do not know formally as a House.

Deputy G.P. Southern:

I encourage Members to vote with their consciences and not vote on the level of personalities. Important principles are at stake here. I encourage Members to please show their concern for the proportionality of police action, the defence of States Members privilege and to express their concern under (a), (b), (c) and (d). I wish all 4 parts to be taken at once because I believe they are all fundamentally linked. I call for the appel.

The Greffier of the States (in the Chair):

The appel is called for. I ask Members to be in their designated seats. The Greffier will open the voting.

POUR: 15	CONTRE: 29	ABSTAIN: 1
Senator S. Syvret	Senator T.A. Le Sueur	Connétable of St. Lawrence
Senator A. Breckon	Senator P.F. Routier	
Connétable of St. Helier	Senator P.F.C. Ozouf	
Deputy R.C. Duhamel (S)	Senator T.J. Le Main	
Deputy of St. Martin	Senator B.E. Shenton	
Deputy R.G. Le Hérissier (S)	Senator F.E. Cohen	

Deputy J.A. Martin (H)	Senator J.L. Perchard		
Deputy G.P. Southern (H)	Senator S.C. Ferguson		
Deputy P.V.F. Le Claire (H)	Senator A.J.D. Maclean		
Deputy M. Tadier (B)	Senator B.I. Le Marquand		
Deputy of St. Mary	Connétable of Trinity		
Deputy T.M. Pitman (H)	Connétable of Grouville		
Deputy M.R. Higgins (H)	Connétable of St. Brelade		
Deputy D. De Sousa (H)	Connétable of St. Martin		
Deputy J.M. Maçon (S)	Connétable of St. Saviour		
	Connétable of St. Clement		
	Connétable of St. Mary		
	Deputy J.B. Fox (H)		
	Deputy J.A. Hilton (H)		
	Deputy J.A.N. Le Fondré (L)		
	Deputy of Trinity		
	Deputy S.S.P.A. Power (B)		
	Deputy K.C. Lewis (S)		
	Deputy I.J. Gorst (C)		
	Deputy of St. John		
	Deputy A.E. Jeune (B)		
	Deputy A.T. Dupré (C)		
	Deputy E.J. Noel (L)		
	Deputy A.K.F. Green (H)		

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

The Greffier of the States (in the Chair):

We come finally to the Arrangement of Public Business for Future Meetings and I call on the chairman of P.P.C.

8. The Connétable of St. Mary (Chairman, Privileges and Procedures Committee):

The proposed order of business is as per the pink sheet M with the following changes. On 12th May the removal of P.61, Code of Conduct for Electing Members of the States Review lodged on 20th April by the Deputy of St. John and the addition of P.63 with the same title lodged on 28th April by the Deputy. Also the addition of P.49 which has been moved from today's sitting, the Child Abuse Compensation Claim: freedom of expression for survivors, P.49, and the associated amendment, P.49 amendment, in the name of the Council of Ministers. On 2nd June the addition of P.41, the Electricity Tariffs: Regulation under Article 22 of the Electricity (Jersey) Law in the name of Senator Breckon. That, I believe, concludes the alterations I have notice of.

8.1 The Deputy of St. John:

P.18, I note is up for debate and as the case will not have been dealt with until 20th of next month can I ask that that is delayed until 2nd June or later.

Deputy G.P. Southern:

Yes, I am totally in agreement with that.

The Greffier of the States (in the Chair):

Very well, Deputy Southern has asked that matter be deferred to 2nd June, this is the Public Elections Article 39A matter. Are there any other matters to raise under the Arrangements of Public Business?

8.2 The Deputy of St. Martin:

Just looking for the 19th, maybe there will be things moved around, but at the moment it looks as though we may only have one to debate because the Economic Stimulus Plan cannot debate until the day later anyway. So maybe concentrate people's minds at whether we need to meet on 19th and re-jig P.48.

8.3 Senator P.F.C. Ozouf:

Would it be in order for me to clarify now? I agree with the Deputy of St. Martin. I am keen for all the reasons set out in the proposition for the Economic Stimulus Plan to be debated on 19th May. Can I seek leave of the Assembly at this stage to agree that the lodging period will be short of one day so that we can go ahead on 19th May?

The Greffier of the States (in the Chair):

It is 2 days, it is a typographical error on the Order Paper. It is a matter for the Assembly. The use of Standing Order 26(7) is becoming a little bit frequent possibly to reduce these lodging periods.

Senator P.F.C. Ozouf:

I do acknowledge that. Obviously this is difficult times, parliaments around the world are debating at short notice economic stimulus packages and for that reason I think it is ... I appreciate your ruling but I would press for the debate to be allowed on 19th May.

Deputy M.R. Higgins:

There may well be an amendment to the Senator's proposition. If I could have the effect of what that would be.

The Greffier of the States (in the Chair):

You are formally proposing, Senator, the Assembly agrees if necessary to reduce the lodging period by up to 2 days to allow this to be taken on 19th May?

Deputy G.P. Southern:

Is it really a matter of such urgency that it imperils the future of the Island, or whatever the wording is?

The Greffier of the States (in the Chair):

The Standing Order conveniently places that matter at the judgment of Members, not the judgment of the Chair. It is a matter for the Assembly to decide if it feels that the matter is of such urgency and importance, there is no need for the Chair to intervene in that. Is that proposition seconded?

8.4 The Deputy of St. John:

Over the last 48 hours we have had a number of items come from the Council of Ministers that have been running, shall we say, late. Now, given that they have been in office for 4 months under their current guise, I think ... and the officers have been there for something like nearly 4 years in their current positions, I think it is totally discourteous for the paperwork to arrive and we are asked to suspend Standing Orders so that we can bring a debate forward by 2 days. The Council of Ministers and the Chief Minister, in particular, should be on the back of his officers to make sure that things are lodged in the correct time.

The Greffier of the States (in the Chair):

You must vote against if you feel that way, Deputy. Deputy Martin, briefly.

8.5 Deputy J.A. Martin:

I just wanted to second that proposition and say that I do think it is very urgent. I have got children leaving school at the end of May and if this stimulus is not put in place they are going to be down Social Security collecting their dole money, thank you very much. **[Approbation]**

8.6 Deputy J.M. Maçon:

If that is the case is the Minister proposing this willing to support any amendments and suspending any Standing Orders around that?

8.7 Senator P.F.C. Ozouf:

I know the Deputy of St. John feels very strongly about timing and lodging periods. The fact is, is that this is urgent and it is the latest information based upon emerging economic issues. That for the reasons that Deputy Martin is quite right to say, I would beg the indulgence of the Deputy of St. John on this occasion and, of course, to Deputy Maçon, amendments, whether that be from the Scrutiny Panel or whatever, Scrutiny is hearing tomorrow, that they may well want to propose amendments and there will be some discretion following. It is just the debate to release the money to allow a project going forward to keep people in work. Yes, of course, amendments in consideration. If any Member has questions we will answer it as soon as possible.

The Greffier of the States (in the Chair):

I put the proposition of the Minister that this matter be taken on 19th May, those in favour kindly show. Those against. The matter will be listed for that. Are there any further matters to raise under the Arrangement of Public Business? Very well, that is agreed. The meeting is closed. The Assembly will reconvene on Liberation Day at 10.30 a.m.

ADJOURNMENT