

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 10th MARCH 2009

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

STATEMENT ON A MATTER OF OFFICIAL RESPONSIBILITY

1. Statement by the Chief Minister regarding the signing of Tax Information Exchange Agreements

The Deputy Bailiff:

Now before we come to Questions, as Members know, the Chief Minister has given notice that he would like to make a statement and he has also indicated he has to leave the Island sometime this morning, I think, Chief Minister, is that right? So he has requested, if Members would agree, that he be able to give his statement at this stage. Do Members agree to that? Very well, Chief Minister, if you would make your statement then.

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

Thank you, I am grateful to Members for allowing me that because I have to leave shortly to go to London. But I would like to inform the Assembly that, in pursuance of our policy of signing Tax Information Exchange Agreements when it is in our interests to do so, I will be signing a Tax Information Exchange Agreement with the United Kingdom later today in London and with France later this week. I should add that I have the full support of Jersey Finance Limited for signing both these agreements at this time. It is widely known that Jersey is one of the highest quality financial services centres with a long-standing reputation for stability, effective regulation and co-operation in the fight against international crime, terrorism and tax evasion. The Island is accustomed to independent scrutiny having just undergone a full assessment by the I.M.F. (International Monetary Fund), a report on which is expected in a couple of months and is currently working closely with the U.K. (United Kingdom) Chancellor's Independent Review of British Offshore Financial Centres. It is our longstanding policy that when there is a level playing field which encompasses all major financial centres, we will enter into financial information exchange without the need for incentives. However, given the current absence of a level playing field, we have agreed that where another country is offering sufficient reciprocal benefits we will sign a T.I.E.A. (Tax Information Exchange Agreement) with that country. To date we have signed 10 T.I.E.A.s of which 8 are with O.E.C.D. (Organisation for Economic Co-operation and Development) member states including the U.S.A. (United States of America) and Germany. With the signing of T.I.E.A.s with the United Kingdom and France and shortly with Ireland and Australia, Jersey will satisfy the O.E.C.D. benchmark of T.I.E.A.s with 12 O.E.C.D. member states. With the T.I.E.A.s being signed this week, France has offered exemption from certain property related taxes for Jersey residents and companies and the U.K. has agreed that Jersey residents drawing a U.K. pension will only pay tax in Jersey. However, more importantly, both countries have recognised Jersey as a jurisdiction committed to international co-operation. To quote: "The United Kingdom recognises Jersey as a member of the community of jurisdictions committed to international co-operation and information exchange on tax matters and wishes to assure the States of Jersey that Jersey will be treated as such by the United Kingdom authorities." These are very important endorsements particularly at the current time. Members will be aware of the media coverage in the run up to the G-20 Summit on 2nd April in London. The Summit is intended to provide a forum for world leaders to co-ordinate their actions to support the world economy in order to manage the effects of the current world recession and financial turmoil. However, much media coverage also focuses on reported intentions to take action against so-called tax havens. Indeed, in the European context there has been considerable attention given to Switzerland and the requirements to ensure that they participate fully in international programmes. I and my Ministers take this very seriously and we are working hard to ensure that Jersey is not only predictive of any actions, but it is also well placed to enhance its standing as an international financial centre and thus grow out of the recession in a way which positively benefits all Islanders. I am pleased that the statements being made by the United Kingdom Prime Minister and other world leaders reinforce their commitment to a level

playing field and recognise that there is a clear distinction between those international financial centres like Jersey who operate to internationally accepted standards and who are co-operating with exchange of information on tax matters and others who do not. The same understanding is emerging from the United States as is evidenced by the provisions within the Levin Bill. To give one example, the President of the European Commission said, in a recent speech: "There is no legal definition in E.C. (European Commission) or international law for tax havens or offshore financial centres. We have to be clear that some offshore financial centres are co-operating and accept recognised internationally accepted standards and others do not." He then went on to say: "The O.E.C.D. global forum on tax matters is drawing up a new list of jurisdictions that are not co-operating for exchange of information on tax matters." We called in Berlin for a list of unco-operative jurisdictions and a toolbox of sanctions. I understand the proposals in relation to unco-operative jurisdictions will be discussed at the Finance Minister's meeting this coming weekend and will be reviewed at the G-20 London Summit. I know that some Members and people in the Island are worried by the reports from the media. I am determined to do everything possible to ensure that Jersey emerges from the current turmoil and uncertainty in better shape to benefit from our position as a leading international finance centre. We are not and will not be complacent but I believe that our actions in recent years in reforming our tax systems, seeking the highest appropriate standard of regulation and business performance and engaging positively in the T.I.E.A. process, means that we have nothing to fear from the G-20 and subsequent processes. Indeed, it seems to me that it is those of our competitors who are pursuing isolationist, non-co-operative agendas which should be fearful and I think their clients should be reviewing their positions very carefully. Of course, the G-20 Summit is only one step in a very long process and we have much more work to do. I envisage that some of our highest priority work streams in the near future would be to support, protect and enhance our finance industry as this will benefit all Islanders. I am committed to doing so and I will continue to report on progress as major issues emerge. Thank you. **[Approbation]**

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

Thank you, 2 related points; would the Chief Minister calculate for the House how much business approximately will be lost by this and, secondly, would he acknowledge that this is essentially the first step on what could be the demise of the industry?

Senator T.A. Le Sueur:

I do not believe that any volume of respectable business will be lost. If we lose some of the margins that is perhaps no bad thing, but I think, more importantly, by protecting our position for the future we stand to gain far more than we lose.

1.1.2 Deputy G.P. Southern of St. Helier:

Did the Minister in that previous statement imply or intend to imply that we have some non-reputable business?

Senator T.A. Le Sueur:

No, I meant to imply that some customers will choose to go to places where there are different standards adopted for their own particular reasons. It is those sort of clients, for whatever reason that they choose, who may well find that their chosen location is a different one. I believe that, on balance, we will be in a very positive position.

1.1.3 Deputy G.P. Southern:

Could the Minister outline to Members under what circumstances tax information will be exchanged and what type of businesses are concerned with the T.I.E.A.s he is currently signing?

Senator T.A. Le Sueur:

The criteria for allowing divulgence of information under a Tax Information Exchange Agreement is clearly set out in the individual agreements and certain criteria do have to be met. Providing they are met we will co-operate fully. What we will not do is engage in any fishing expeditions or other activities of that nature.

1.1.4 Deputy P.V.F. Le Claire of St. Helier:

Could I ask the Chief Minister whether Guernsey and the Isle of Man are also on track to do this this week? They have done it? Okay. Also, the quote on the front page is: "However, more importantly, both countries have recognised Jersey as a jurisdiction committed to international co-operation" and then the Minister goes on to quote. Could I ask who that quote is from, please?

Senator T.A. Le Sueur:

That is a quotation which we have requested from the U.K. authorities and which they are prepared to give and that puts us in a much stronger position and is one of the reasons why we are now agreeing to sign the Information Exchange Agreement. That quote does come from the U.K. authorities.

1.1.5 Deputy P.V.F. Le Claire:

Could I press the Chief Minister? Obviously making an international agreement in these times with our finance industry as the prime consideration for the future for employment for Jersey and acknowledging how important this is for the Island, it is important that Jersey does get these types of assurances from the United States authorities, but it is also equally important that when we are given these assurances, States Members know specifically who we are quoting, who are giving these assurances because if it is just somebody in the Back Benches of the Civil Service in England it is hardly adequate.

Senator T.A. Le Sueur:

The quotation does not come from the Back Benches of the Civil Service, whatever they may be, it comes from people in authority and able to speak on behalf of the authorities with authority and competence.

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

Could the Chief Minister tell us how much notice he had of this meeting and whether the Tax Information Exchange Agreement that he is going to be signing is the subject of negotiation with the U.K. Government or whether there are certain paths that have been imposed by the U.K. Government?

Senator T.A. Le Sueur:

Negotiations have been in train with the U.K. authorities for the best part of the last 12 months. We have been negotiating and pressing for better terms before Jersey is prepared to sign. That is why we have delayed signing in comparison with Guernsey and the Isle of Man who signed some time ago. We have now received all the benefits that we need including, importantly, that of endorsement by the U.K. authorities and having got that endorsement, it is now, in our view, better that we sign sooner rather than later. The U.K. shares that view and that is why they asked last week if we would be interested in meeting with them this week to sign the agreement. I said yes we would and today is the day we are doing that meeting.

1.1.7 Deputy M.R. Higgins:

Could the Chief Minister just again confirm that there were no conditions imposed by U.K. Government in that agreement?

Senator T.A. Le Sueur:

No conditions imposed other than the ongoing negotiation that there inevitably is with any jurisdiction to do with its services agreements. We have achieved a situation where the terms are felt satisfactory to us, satisfactory to the industry and satisfactory to the U.K. authorities. So as far as I am concerned it is a win, win, win situation.

1.1.8 Deputy M. Tadier of St. Brelade:

Many see the G-20 Summit as the beginning of the end for offshore finance centres respectable or otherwise. Does the Chief Minister acknowledge this remote possibility that it may be so and can he inform the House what 'Plan B', if any, he has if Jersey does need to restructure its economy very quickly?

Senator T.A. Le Sueur:

The Deputy is entitled to his opinions. I do not believe that this will be the beginning of the end for responsible and reputable off shore financial authorities, it may well be the beginning of the end for those who are unco-operative and badly regulated. Our objective is to make sure we are in a category of those who are complying, those who are seen to be responsible so that 'Plan B' is not required.

1.1.9 Deputy M. Tadier:

I did ask if the worst case scenario that happens is there a 'Plan B.' Is the Minister saying there is no 'Plan B'?

Senator T.A. Le Sueur:

Without knowing the extent of what the implications might be, it is difficult to concoct a 'Plan B.' It is far more important, in my view, that we do not need to get into that situation by taking all the steps we possibly can to protect ourselves and to demonstrate just how good and responsible we are and that is what we are doing.

1.1.10 Deputy P.J. Rondel of St. John:

Given we are being squeezed by the U.S. and the U.K. and others, who hold people without trial, can we trust these governments? We are seeing U.K. citizens being released after 7 years in Guantanamo Bay without being charged; are you happy that you can do business and trust the U.K. Government? Is the Chief Minister happy?

Senator T.A. Le Sueur:

If we do not have some degree of trust in the world it will never get anywhere and I have to believe and trust in responsible people taking responsible attitudes in a responsible manner and so, in short, I have full trust that the U.K. will deliver what they say they will deliver and that we will deliver what we say we will deliver.

1.1.11 Deputy G.P. Southern:

Can the Minister inform Members when he will be releasing the terms of the T.I.E.A.s signed so that Members can check whether they are broadly or narrowly drawn?

Senator T.A. Le Sueur:

Any Tax Information Agreement which is signed has to come before this House to be ratified. I have already done that in respect of some which rates the Nordic countries and they will be down for a session to debate shortly. When we do the U.K. one it will be no doubt in a couple of months' time when the paper work is all completed. But the T.I.E.A. does not come into effect until and unless it has been ratified by both jurisdictions.

1.1.12 Deputy R.G. Le Hérissier:

Would the Chief Minister confirm his statement about all the finance industry was in support? Would he say that was indeed the case and if not, what were the main objections that were received from that industry?

Senator T.A. Le Sueur:

It is not possible for me to ask every single practitioner in every single area of the financial services industry and that is why I got a view from Jersey Finance Limited as a whole, representing every sector of that industry. The response from Jersey Finance Limited was that the industry, as a whole, was supportive of pursuing with the signing of the Tax Information Exchange Agreement. There may be individual parties who have a different point of view. All I can say is that the majority view, a clear majority view expressed by Jersey Finance Limited, was that the industry was in support.

1.1.13 Deputy P.V.F. Le Claire:

I just wondered what the financial and manpower implications would be for Jersey in investigating the Income Tax Exchange Agreement for U.K. residents and what measures Jersey will be taking to investigate U.K. residents, what facilities have been afforded Jersey so that we can investigate the tax affairs of U.K. residents?

Senator T.A. Le Sueur:

It is hard to say how much the financial and manpower implications might be. Clearly there may well be requests, as there have been with, for example, in recent time the U.S. authorities, that does take some manpower and therefore some finance as well. All I can say is that whatever those costs are, they will be very small in relation to the positive benefit that we will get by being seen as being a co-operative jurisdiction.

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

Would the Chief Minister agree that if we are going to assess the risks facing the finance industry which there undoubtedly are, it is a good idea to engage with our critics and listen to what they have to say and see to try to scope the risks. In that connection, will Ministers and high-ranking officers of his department, take the opportunity of engaging with those who are coming to the seminar on Thursday evening organised by the Tax Justice Network, where people from all over Europe will be coming? Will he assure the House that he will take this opportunity of meeting with the critics?

Senator T.A. Le Sueur:

I am always ready to discuss these matters with informed critics who have come with a clear and objective point of view. I will not be attending the meeting on Thursday.

1.1.15 The Deputy of St. Mary:

Is the Chief Minister suggesting that the critics of the finance industry are ill informed?

Senator T.A. Le Sueur:

I am merely stating that I am not attending the meeting on Thursday. I cast no aspersions on the views of other people but I choose to take advice from people who I believe are competent to give advice.

The Deputy Bailiff:

Very well, that completes the time allowed for questions of the Chief Minister. So now we will return to the Order Paper and the next matter is Questions and first of all written questions.

QUESTIONS

2. Written Questions

2.1 DEPUTY T.A. VALLOIS OF ST. SAVIOUR OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING GST EXEMPTIONS:

Question

Would the Minister advise the possible implications with regards to exempting items from Goods and Services Tax and would he provide information in relation to any work completed by the Fiscal Policy Panel concerning exemptions?

Answer

This can be quite a complex issue; even the terminology used is somewhat confusing but I will attempt to provide a response in reasonably simple terms.

Under Jersey GST we can exclude supplies from the tax base by listing them under Schedule 5 as an Exempt supply or under Schedule 6 as a Zero rate supply. These are the standard methods of providing exclusions [used in all EU systems and the UK] but there is a difference between the two. This has been explained in the States before but it is worth mentioning again.

The difference between exempt and zero-rated supplies

If a business sells zero-rated goods or services, they are taxable for GST at 0%. If it sells exempt goods or services they are not taxable for GST.

Unlike zero-rated supplies, exempt items are not treated as taxable. No tax is payable, but equally, the person making the supply cannot normally recover any of the GST on their own expenses.

A business selling only exempt goods or services generally cannot register for GST or reclaim GST on purchases. If it sells some exempt goods or services, it may not be able to reclaim GST on all of its purchases and expenses.

Consequences of the difference for both businesses and customers of each can be summarised as:

- Exemption: increased costs to businesses due to irrecoverable GST on overheads and expenses, with prices to customers reducing – if at all – by the amount of GST less GST on the irrecoverable costs. Exemption provides partial relief for GST purposes.
- Zero rating: potential lower customer prices. Zero rating can provide full relief from GST.

Implications of exclusions to GST

If further exclusions (by zero rating or exemption) were to be approved by the States the main implications are as follows:-

1. The tax base is reduced and tax revenue is lost.
2. We complicate the system – which inevitably increases compliance costs for the business community and the administration costs for the revenue agencies
3. As a result of 2. further tax revenue will be lost from reduced compliance.
4. The agencies involved (Income Tax and Customs) will need additional resources.
5. The States would need to consider making up the short fall of revenue (e.g. by increasing the rate of GST; changing the income tax rates/allowances)

The extent of the impact on 1. to 5. above will vary depending on the nature and scope of the supplies involved. In the past most of the additional exclusions approved by the States have been supplies of services which have been added to the exempt listing and the impact as outlined above has been minimised.

By way of illustration I can provide some figures based on the forthcoming proposition P28/2009 lodged by Deputy Labey and due to be debated in the States on 31st March. If this proposition was approved in full with the supplies being treated as zero rated then the direct loss of revenue would be in the region of £6 million [over 10% of the domestic yield] and we would need to increase the staff resources by 3 (full time posts split between Customs and Income Tax).

In addition to the main implications mentioned above there are a range of other factors that would need to be considered if further supplies were excluded.

Other factors that would need to be considered

1. Implementation time:

- Legislative drafting and securing time in States Assembly,
- How long it would take businesses to make necessary changes to accounting and stock control systems, advertising and price marking – especially in-store.
- Consultation followed by design, agreement with businesses and trade bodies, of new Retail Schemes (to deal with mixed liability sales).

2. Extent of public information/education:

- Publicity campaign, involving all forms of media would be needed to explain to consumers the changes in tax liability,
- Public guides, Leaflets and Tax Information Sheets covering the different liabilities must be drafted, published and available and advance of the changes being implemented.
- Those taxpayers directly involved would require educational visits to explain the changed requirements.

3. Other impact on businesses:

- Does not simply affect those that supply direct to the public but also importers, manufacturers and wholesalers.
- Increased potential for delays at importation.
- Cost and availability of software. Many UK software suppliers will not supply into Jersey; they make most of their profit from post-sales support, and the costs of providing this to a customer in Jersey make it unattractive to do so.
- Many smaller businesses do not have computer based accounting so the impact of complex GST liability may fall disproportionately on them.

4. Increased complexity.

- Go from one retail scheme to at least six,
- Reduction in compliance (currently over 90% and better than for VAT in the UK),
- Increased scope for disagreements – appeals to Commissioners – impact of time and cost on business and Income Tax.

5. Public impact

- Would prices fall to reflect a change in GST liability to exempt or zero rate? We do live in an open market economy and based on international experience the potential savings seldom happen in full. Most recent example is the reduction of the UK standard rate from 17.5% to 15% in December 2008. Consumers appear to have benefited from the one off reduction mainly on single higher value goods (e.g. cars, electrical goods) and supplies in the service sector. Many retail prices have not changed at all but the VAT registered businesses will certainly be accounting for the tax [to UK Revenue & Customs] at the reduced rate of 15%.

Fiscal Policy Panel

The remit of the Fiscal Policy Panel is to advise the States mainly on high level macro economic issues. Under Section 5 of their 2008 Annual Report they recommended that *the States does not approve decisions as part of the Business plan or Budget that undermines the tax base*. More recently during a presentation in January 2009 to States members on their update, the panel commended the States for not exempting food from GST, on the basis that the States Policy of having a broad based tax with few exclusions, and increasing income support and tax allowances, provides far greater benefit to those on low to middle incomes than blanket exclusions. .

They are not alone in taking this stance. GST was the subject of an external post implementation review carried out by HM Revenue & Customs in December 2008. Their report, issued in January 2009 includes the following Recommendation – *“GST should remain substantially as implemented and bedded in for at least a period of 2 years without any significant changes”*.

Invitation to learn more

As I mentioned at the very start of this response many of the issues listed above are complex and I can extend an invitation to the Deputy to visit the Income Office to sit down with the experts in the GST team [some of whom do have extensive experience of the UK VAT system]. I am more than happy to make the necessary arrangements.

Because this is such a complex issue I have also requested the Income Tax Office to produce a brief explanatory note on GST exclusions which I will make available next week and States members will be invited to a short presentation on the subject nearer the debate.

2.2 THE DEPUTY OF ST. MARTIN OF THE MINISTER FOR HOME AFFAIRS REGARDING STAFF SUSPENSIONS WITHIN THE HOME AFFAIRS DEPARTMENT:

Question

With reference to the table of suspensions produced in answer to a written question asked by the Connétable of St Lawrence on 3rd February 2009, would the Minister inform members of the total paid to date to the 9 members of staff employed by the Home Affairs Department during their period of suspension since 2007, the combined total of which amounts to approximately 3 years and 4 months, and the total sum paid to date to staff for overtime or ‘Acting Up’ to cover the work not being undertaken by the 9 suspended staff?

Answer

The total paid to date to members of staff employed by the Home Affairs Department during their period of suspension is £209,712.

The total sum paid to date to staff for overtime or 'Acting Up' to cover the work of suspended staff is £55,091.

2.3 THE DEPUTY OF ST. MARTIN OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING STAFF SUSPENSIONS WITHIN THE HEALTH AND SOCIAL SERVICES DEPARTMENT:

Question

With reference to the table of suspensions produced in answer to a written question asked by the Connétable of St Lawrence on 3rd February 2009, would the Minister inform members of the total paid to date to the 15 members of staff from the Health and Social Services Department during their period of suspension, the combined total of which amounts to approximately 5 years and 8 months, and will he inform Members of the total sum paid to date to staff for overtime or 'Acting Up' to cover the work not being undertaken by the 15 suspended staff?

Answer

I can confirm that the total amount paid to the 15 members of Health and Social Services staff included in the table produced on 3rd February is £448,000. The combined total sum paid to staff to cover these suspensions has been estimated at £243,000.

Decisions taken to suspend or exclude employees from work are never taken lightly. They are invoked when there are concerns about the performance or conduct of staff in an environment where the maintenance of patient safety is paramount. All suspensions or exclusions within the Health and Social Services Department are undertaken in compliance with policies and procedures agreed by the States Employment Board.

I take no pleasure in identifying these costs, particularly in an environment where such resources should be invested directly in front line services in support of direct patient care. The time often taken, in relation to exceedingly lengthy police investigations and subsequent court procedures, inhibits our capacity to act and this remains a cause of considerable concern and frustration.

2.4 DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE INQUIRY INTO THE DEATH OF A PATIENT DURING AN OPERATION IN OCTOBER 2006:

Question

Will the Minister outline the procedure followed in appointing the organisation which will investigate the tragic death of the patient who died following an operation on 17th October 2006?

Answer

The Chief Executive of the National Patient Safety Agency was contacted by my officers to provide assistance in this important process.

The Chief Executive of the National Patient Safety Agency subsequently provided me with the names of three individuals who, in his opinion, possessed the necessary expertise, knowledge and experience required to undertake an investigation of this nature.

Having considered these individuals, I instructed my officers to approach Dr Adams and a team from the UK company, Verita, to undertake the independent Serious Untoward Incident investigation (SUI). I have satisfied myself that none of this team have had prior contact with the Jersey General Hospital, nor any members of the Clinical or Senior Management Team in Jersey. I have also instructed Verita that should they wish to draw on any external expert advice, this same condition must apply

I am currently agreeing the terms of reference that I will make public. I am very confident that this team will provide a rigorous independent report and recommendations regarding the circumstances that surrounded and led up to the tragic events of 17th October 2006.

2.5 DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE UNDERTAKING OF PRIVATE PRACTICE BY HOSPITAL CONSULTANTS:

Question

In the light of his recent comments in the Assembly on 3rd February 2009, in response to my oral question regarding the undertaking of private practice by Hospital Consultants, will the Minister confirm whether or not he will be changing policy in this area and, if so, how ?

Answer

As Minister, I am committed to ensure the safety of Health Services and improving the quality of care for patients.

I am in the process of finalising the detail of an independent review into the circumstances surrounding the tragic death of Nurse Rourke, which is to be undertaken by Verita. I will be instructing Verita as part of their Terms of Reference to advise on what actions can be taken to improve the safety and quality of Health Services in Jersey. Should this investigation identify any issues relating to private practice undertaken by Consultants I will, of course, need to consider whether there will be a requirement to revise the current arrangements.

At this time, I remain satisfied that the long standing arrangements in place continue to work well and are of benefit to both public and private patients in Jersey. As we are a community, with only one general hospital, it currently makes good sense for us to use the facilities that we have for the benefit of all islanders requiring treatment.

Health and Social Services derive annual income of approximately £3 million from Private Patient's services and this resource is ploughed back into improving patient services at every opportunity. Within the terms of service outlined in consultants' contracts allowance is made, in respect of their on call commitments, for consultants to take some time off to undertake private work, including limited sessions for private consultations in their rooms.

The service is proud of the very significant achievements made in abolishing waiting times for periods in excess of three months. In reality this means that the vast majority of public patients are seen within weeks, rather than months, and islanders will be aware of this from their own experiences. These achievements have been made possible through the hard work and commitment of many staff and through the application of strict scrutiny, in relation to the management of public

waiting lists for all specialities, so as to ensure that urgent, soon and routine cases are not compromised within the system as currently organised.

The harmonious co-existence of public and private patient care works well and continues to be a factor in attracting high calibre clinicians to live and work in Jersey through the provision of sufficient interest and variety in the work that they can be expected to undertake within the current system.

2.6 DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE MINISTER FOR SOCIAL SECURITY REGARDING THE PRESCRIBING OF ASPIRIN BY GENERAL PRACTITIONERS:

Question

Following his recent response to questions on 24th February 2009, would the Minister confirm if Asprin as prescribed by a GP is different to Asprin bought 'over the counter' and, if so, how ?

Answer

Aspirin 300 mg and 75 mg are medicines which are available to purchase without prescription or "over the counter". They may also be prescribed by a GP as they are approved medicines and therefore attract pharmaceutical benefit under the Health Insurance (Jersey) Law 1967. The inclusion of over the counter medicines on the Health Insurance Formulary provides doctors with the necessary flexibility to prescribe all relevant medicines for a person's medical conditions.

Aspirin 300mg (a non-opioid analgesia) is clinically indicated for mild to moderate pain and pyrexia as well as in the initial management of unstable angina. Aspirin 75 mg (an antiplatelet medicine) is clinically indicated for prophylaxis of cerebrovascular disease or myocardial infarction.

Whilst there is no difference in Aspirin prescribed by a doctor or Aspirin bought over the counter, there is a need to realise that over the counter medicine purchases of such items are not always appropriate and a prescription is required. The decision to prescribe Aspirin will depend on the person's medical condition; treatment duration and ability to manage medicines safely.

It is commonly believed that over the counter medicines are safe and carry little risk of side effects; however, all medicines (prescription only and over the counter) have side effects and there are risks as well as benefits in their use, particularly when used in conjunction with other medicines. In both doses of Aspirin, side effects such as gastro-intestinal haemorrhage may occur and there may also be detrimental interactions with other medicines. Therefore, the doctor may prescribe these medicines as part of the person's treatment plan. In particular, although many people will use Aspirin on an intermittent basis, to treat minor ailments, the long-term, regular use of any medicine, including Aspirin, should be monitored through a general practitioner.

2.7 DEPUTY R.G. LE HÉRISSEIER OF ST. SAVIOUR OF THE REGARDING THE ADMINISTRATION OF MORTGAGES FOR '(j)' CATEGORY PUBLIC SECTOR EMPLOYEES:

Question

Can the Minister confirm if the administration of mortgages for 'j' category public sector employees has been outsourced and, if so, to whom and at what cost per annum?

Answer

Until 2003, a scheme was operated enabling public sector employees to enjoy the benefits of property ownership through the operation of the Assisted House Purchase Scheme, as public sector employees had no other means of purchasing property in Jersey. This scheme operated on a wholly commercial and unsubsidised basis. It is now closed to new entrants, as public sector 'j' employees have the ability to establish their own company through which they can purchase property. This move reduced administration, and placed public sector employees on the same footing as private sector employees. The ongoing administration of this closed loan book is undertaken by a third party with expertise in loan administration, for which they are paid £1,400 per annum.

2.8 THE DEPUTY OF ST. MARTIN OF THE MINISTER FOR HOME AFFAIRS REGARDING COMPLAINTS MADE AGAINST THE STATES AND HONORARY POLICE AND REFERRED TO THE JERSEY POLICE COMPLAINTS AUTHORITY:

Question

1. Will the Minister advise the Assembly of the combined total complaints made against the States and Honorary Police and referred to the Jersey Police Complaints Authority for each year from 2001 to December 2008?

Answer

The total complaints referred to JPCA are as follows:

Total number of complaints annually

Number of cases referred	2001	2002	2003	2004	2005	2006	2007	2008
SoJP	17	20	30	34	26	28	32	25
Hon Police	0	1	0	3	4	2	4	2
Total referred	17	21	30	37	30	30	36	27

Question

2. In relation to the States Police, of the Complaints referred, how many were against –
 - (a) Police Constables and Sergeants
 - (b) all other ranks?

Answer

- (a) The number of complaints referred against Police Constables and Sergeants and
- (b) The number of complaints referred against all other ranks are noted in the table-

SOJP Complaints by Officer grade

Officer Grade	2001	2002	2003	2004	2005	2006	2007	2008
PC's/Sgts.	17	20	29	30	24	28	25	22
Other Ranks	0	0	1	4	2	0	7	3
Total	17	20	30	34	26	28	32	25

Question

3. How many of those complaints were investigated and substantiated?

Answer

All cases referred to JPCA were supervised by JPCA – investigations are undertaken by members of SOJP Police Standards Department or by members of an external UK Police Force, if appointed. The table shows the number of cases substantiated or partly substantiated in each year-

Cases substantiated against SOJP officers

2001	2002	2003	2004	2005	2006	2007	2008
0	1	4	4	3	1	2	3

Question

4. In relation to the Honorary Police of the combined total how many complaints were against –
- (a) Constable's Officers and Vingteniers
 - (b) Centeniers?

Answer

In relation to the Honorary Police the analysis of complaints split between

- (a) Constable's Officers and Vingteniers and
- (b) Centeniers is shown below-

Honorary police Complaints by Grade

Officer Grade	2001	2002	2003	2004	2005	2006	2007	2008
CO's + Vingteniers.	0	1	0	1	2	1	1	1

Centeniers	0	0	0	2	2	1	3	1
Total	0	1	0	3	4	2	4	2

Question

5. How many of those complaints were investigated and substantiated?

Answer

All these cases were supervised by JPCA with the same observations as regards the investigation process as noted in 3 above . The number substantiated is –

Honorary Police complaints substantiated

2001	2002	2003	2004	2005	2006	2007	2008
0	0	0	2	1	0	1	0

Question

6. What is the annual budget allocated to the Authority?

Answer

The annual budget allocated to the Authority remains £18,000; this is unchanged since formation.

Question

7. What formal and refresher training, if any, is given to members of the Authority to ensure consistency in the investigation of complaints?

Answer

The members of JPCA do not undertake investigations - that is not part of their remit under the relevant Law. Their role is to oversee, monitor and supervise the investigation to ensure that they are carried out in an impartial, thorough and meticulous manner. JPCA is required to approve the investigating officer in the first instance.

No formal training is given to members. Their role is to take an independent and reasonable view of the investigations, their handling and conclusions. All case files are reviewed by the Chairman of JPCA to ensure consistency of approach and periodic review meetings of all members are held.

Question

8. How many meetings are held annually by the Authority?

Answer

There are normally 2 meetings annually.

2.9 DEPUTY OF ST. MARTIN OF THE CHAIRMAN OF THE COMITÉ DES CONNÉTABLES REGARDING COMPLAINTS MADE AGAINST THE HONORARY POLICE:

Question

1. Will the Chairman advise members of the number of complaints made against Honorary Police Officers notified to the Comité des Connétables for each year since the Police (Complaints and Discipline) (Jersey) Law 1999 came into force in 2001?
2. Of that number how many complaints were referred to the Jersey Police Complaints Authority?
3. Of the number of complaints not referred to the Jersey Police Complaints Authority, how were –
 - (a) withdrawn
 - (b) resolved by informal resolution?
4. Of the number of complaints made how many were against Constable's Officers and Vingteniers and how many were substantiated?
5. Of the number of complaints made, how many were against Centeniers and how many were substantiated?

Answer

A "complaint" is defined in the Police (Complaints and Discipline) (Jersey) Law 1999 as any complaint about the conduct of a member of the Honorary Police which is submitted to the Connétable of the parish in which that member serves –

- (a) by a member of the public;
- (b) on behalf of, and with the written consent of, a member of the public; or
- (c) by a member of the Force, port control officer or member of the Honorary Police otherwise than in the course of his or her duty;

Complaints are notified to the Connétable of the Parish in which the officer serves and not to the Comité des Connétables.

All complaints are recorded, as required by the law, in a register maintained by the Connétable. The registers also contain details of some complaints which were deemed to fall outside the Law and these have not therefore been included in the answer to this question. Two complaints listed in one register related to officers of other Parishes and have also been omitted from the total for that Parish.

A complaint has to be referred to the Jersey Police Complaints Authority if it is incapable of, or not suitable for, informal resolution and the Chief Officer appoints a member of the States Police Force

or a police officer from some other force, of at least the rank of inspector, to carry out an investigation. All complaints referred to the Authority are listed in answer to question 2 even if the complaint was subsequently withdrawn.

A complaint is not referred to the Jersey Police Complaints Authority if it is suitable for informal resolution. Of those not referred, some were resolved informally and others were withdrawn.

The number shown as substantiated includes complaints where “words of advice” were given to an officer. Those complaints which concluded with a decision that no further action was required are considered to be unsubstantiated.

	2001	2002	2003	2004	2005	2006	2007	2008	2009
1.No. of complaints made against Honorary Police officers	7	12*	5	10*	8	5	6	5	1**
2. No. of complaints referred to JPCA	1	5	1	5	2	1	4	2	
3(a) No. of complaints not referred to JPCA and withdrawn	3	2	0	2	4	0	1	1	
3(b) No. of complaints not referred to JPCA and resolved informally	3	5	4	3	2	4	1	2	
4. No. of complaints against Constables Officers/Vingteniers	3	5	2	3	6	1	4	3	
No. substantiated	0	2	1	1	0	0	1	2	
5 No. of complaints against Centeniers	4	6	3	6	2	4	2	2	
No. substantiated	1	0	1	2	1	0	0	0	

* one complaint in this year referred to an officer who was not identified; these have been recorded as “withdrawn” and it is not possible to say whether it related to a Vingtenier/CO or to a Centenier.

** 2009 complaint is currently awaiting response from H M Attorney General as to the action to be taken.

2.10 DEPUTY S.S.P.A. POWER OF ST. BRELADE OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE CONTINUED DELIVERY OF DOMESTIC WASTE TO BELLOZANNE:

Question

Following his response to my oral question on 24th February 2009, confirming that the new Energy from Waste plant at La Collette will only receive rubbish directly from licensed commercial and Parish refuse vehicles and that there will be no weekend dumping facilities for private persons and small vehicles, will the Minister advise what future plans, if any, the Department has to mitigate the dust and air-borne particles that will continue to arise as a result of the continued delivery of domestic waste to Bellozanne and the resultant crushing of furniture, bedding, carpets, linoleum and other materials at the Bellozanne top yard?

Answer

I am grateful to the Deputy for the opportunity to clarify this situation.

Currently, public, commercial and industrial bulky waste is delivered to the Bellozanne Refuse Handling Plant where it is shredded prior to incineration.

The La Collette Energy from Waste facility is within the hazard zone for the neighbouring Fuel storage facilities and public access has to be restricted.

Instead, the intention is to develop a purpose built Re-use and Recycling Centre for the reception of public re-usable, recyclable and compostable green waste and bulky waste with the capital vote awarded to the Department in 2010. Potential locations are being considered for this site.

The new Re-use and Recycling Centre will only receive waste from the public – no commercial vehicles will be permitted. Therefore the impact of the public deliveries will be significantly reduced.

The site will be open throughout the week and at weekends for the convenience of the public.

There will not be any crushing or shredding of waste on site.

The majority of waste will be separated for re-use, recycling or composting and transported for reprocessing. The remaining residual waste will be transferred to the Energy from Waste facility at La Collette.

2.11 DEPUTY S.S.P.A. POWER OF ST. BRELADE OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE USE OF LIBERATION STATION AS AN EXTENSION TO THE MAIN TAXI RANK AT THE WEIGHBRIDGE:

Question

Can the Minister advise whether any thought has ever been given to using Liberation Station on Friday and Saturday nights for use as an extension to the main taxi rank at the Weighbridge and if not, why not?

Answer

The department advises that there were many discussions which took place prior to Liberation Station opening in September 2007 regarding the use of the outside stands. An extension or additional taxi rank operating on Friday and Saturday nights was one proposal and the views of interested parties, including the Police and the taxi drivers were sought. At that time, the decision was taken to maintain the main rank at the Weighbridge which is clearly well established, operates 24/7 throughout the year and is easier for policing the area. Furthermore, buses continue to operate from the outside stands up until the last bus departs which would curtail the area available for taxis.

2.12 DEPUTY S.S.PA. POWER OF ST. BRELADE OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE UPKEEP OF LA FOLIE INN:

Question

Can the Minister explain why La Folie Inn, owned by the States, has been left empty for over 6 years and can he advise the cost of re-roofing the building prior to its closure?

Answer

In November 2004, the Harbours and Airport Committee agreed to release the then licensee of La Folie Inn from his contract following notice to quit due to a downturn in business. As the property was included in the Jersey Harbours Master Plan it was not considered appropriate to enter into a long term lease without any assurance of redevelopment. Consequently it was proposed that a 3 to 5 year lease agreement with a new tenant be secured.

Expressions of interest in the site were received and a preferred developer selected, however unfortunately this developer failed to complete and the planning process ended. In 2006, the site was re-advertised for a short term lease; the long term intention always being to redevelop the whole area.

This process failed to find a suitable tenant as the building requires significant investment to make a return.

La Folie quay is currently being master-planned by Jersey Harbours, WEB and Property Holdings with the intention of maximising the greater value of the whole site for marine leisure in the long term.

The work to re-roof La Folie Inn was carried out in 2002 at a cost of £25,000.

2.13 DEPUTY S. PITMAN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING SUPPORT FOR THOSE MADE REDUNDANT THROUGH INSOLVENCY IN JERSEY:

Question

Will the Minister inform members what proportion of ex-Woolworth employees have now received their statutory notice payments through the Social Security Department, and if this is less than 100%, explain the circumstances preventing completion and the action he is taking to deal with it?

Will the Minister inform members of what he takes to be the terms of the 'moral precedent' referred to in the debate on P9/2009? Will he further inform members what actions, if any, he will take in the case of individuals made redundant through insolvency in Jersey throughout this year, and agree to publicise the system he has set in place to assist such individuals? In particular, will he state whether he is involved in assisting employees of Pound World with their claim for statutory notice payments?

Answer

Of the 43 former Woolworths employees, the employment data and notice payment entitlements of 34 former employees have been validated and confirmed. 21 of those 34 individuals have assigned their right to the States. Cheques have been posted to all 21 of those individuals totalling over £95,000, which represents more than two thirds of the total amount due.

Six individuals have outstanding issues regarding their start dates and continuity of employment. The employees' legal representative has been asked to confirm these details with their clients to enable the Department to determine the correct notice payments due to them at the earliest opportunity. The employment details of three employees were verified late last week and assignments are being prepared for signing.

Thirteen individuals have not yet come forward to sign the assignments that have been prepared for them.

The Social Security, Law Officers' and Viscount's Departments have done everything possible for the notice payments to be issued as quickly as possible.

The Minister believes that a moral precedent has been set for other employees in the Island who come to find themselves in the same situation as the former employees of Woolworths. The Minister is seeking appropriate funding to enable the Department to act upon this precedent, which would be effective from the date that the States adopted the Proposition (P9/2009); 4th February 2009.

Provided that funds are made available to the Social Security Department, plans are underway to enable the Minister and the Department to act upon the precedent. It would be necessary to establish whether the relevant criteria have been met in each case of an employer's failure to give statutory notice (or pay in lieu) where employees have been made redundant due to insolvency.

Members will appreciate that resources and funding must be identified and staff must be fully briefed in order to deal with what is an unquantifiable additional workload and cost, with unknown parameters. In addition to the resources of the Viscounts and Law Officers' Departments, the Social Security Department alone has provided the equivalent of one full time Officer since Christmas to address the outcomes of the closure of Woolworths, in order to provide the necessary advice, assistance and arrangements for making the notice payments.

The precedent would apply until such a time as an Insolvency Scheme is has been set up in Jersey. The Minister will receive a report on insolvency issues from Officers of the Social Security Department by the end of March and he intends that an insolvency fund would be set up by the end of 2009.

Officers of the Social Security Department have on numerous occasions during the past month visited and telephoned the managers of Poundworld to offer assistance, advice and presentations to staff, however despite the best efforts of the Department, those offers have unfortunately not been taken up. It is understood that the Jersey Advisory and Conciliation Service has had some recent involvement with Poundworld employees in regard to their rights under the Employment (Jersey) Law 2003.

The Department was advised by the administrators of Poundworld in mid February that it was intended to continue trading for at least a further six weeks. At that stage the administrators were not able to advise the Department whether statutory notice of termination of employment, or pay in lieu, would be given to the employees. As Poundworld will continue to trade until 14th March and closure is inevitable, the Minister is not aware of any reason why notice of termination of employment could not have been given to the employees sooner. Six weeks notice would have fulfilled the minimum period of notice requirements of the law for employees with less than 5 years service, and a payment in lieu of notice would not be required from the employer or the States.

The Department has not been provided with sufficient information to determine conclusively that adequate notice (or pay in lieu) has not, and will not, be given to the employees. The Minister understands from recent contact with an employee of Poundworld that there is still some optimism that any statutory periods of notice owed when the business closes will be paid in lieu.

When the Department has been provided with sufficient information to establish if and when notice was given to the employees, the Minister will be able to consider whether the moral precedent set by P9/2009 applies to the employees of Poundworld. If the precedent does apply and sufficient notice has not been given to each Poundworld employee, the Department will require further details of each employee's terms and conditions of employment for validation in order to determine what claims the employees may have to pay in lieu of statutory notice under the Employment Law.

2.14 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHAIRMAN OF PRIVILEGES AND PROCEDURES COMMITTEE REGARDING THE ENCOURAGEMENT OF POSTAL VOTING:

Question

Will the Chairman inform members whether additional measures were considered following the enactment of Article 39A of Public Elections Law (Jersey) 2002 on 31st October 2008 to –

- (a) encourage voting by post especially by the housebound and those with a learning disability;
- (b) inform constituents of the new regulations concerning postal voting;
- (c) display posters advertising a telephone number for those who wished to vote by post

and if not, why not?

Answer

An extensive advertising campaign was undertaken in 2008 to ensure that Islanders were aware of the elections and to encourage them to vote. The campaign, which included 2 inserts in the Jersey Evening Post, drew attention to the facility for postal and pre-poll voting and gave relevant contact information. Adverts also encouraged Islanders to phone their parish hall should they have any questions, and informed them that further information was available at www.vote.je. Although not all of the points raised by Deputy Southern were necessarily specifically addressed, measures have

been in place since the 2002 Law was brought into force for postal votes to be cast by persons unable to attend the polling station. The question is concerned with only Article 39A of the relevant Law and the changes made by that Article were communicated to every candidate in the Elections for Deputy.

Staff at the Island's parish halls were available to answer any queries, and would have been able to assist anyone who was not aware of the regulations concerning postal voting. They would also have notified interested parties of the provision under the law for anyone to request a 'sick' vote on the day of the poll and receive a personal visit from the Autorisé or his designated assistant.

All candidates were notified of relevant postal voting procedures by the Deputy Judicial Greffier in a letter dated 6th November 2008. That letter contained the following information relating to Article 39A –

"I draw your specific attention to Public Elections (Amendment No. 3) (Jersey) Law 2008, which came into force on the 31st October, 2008, and which makes it an offence for a candidate or a representative of a candidate:

- (a) to complete, or to assist a person to complete an application form to register as a postal or pre-poll voter;
- (b) to deliver, or cause to be delivered, to the Judicial Greffier, on behalf of such person any form or application for a postal or pre-poll vote; or
- (c) to provide transport for such person so as to enable them to make an application in person to the Judicial Greffier for a postal or pre-poll vote.

The law permits a candidate, or a representative of a candidate, to provide a person with a **blank** application form to register as a postal or pre-poll voter.

If you have any queries in relation to postal or pre-poll voting, please do not hesitate to contact *[NAME]*, the Postal & Pre-Poll Voting Officer, on 441314, or myself on 441383.

As a result of this letter all candidates were fully aware of the statutory procedures relating to postal voting and were therefore in a position to advise voters accordingly if asked.

I would like to inform members that, the Privileges and Procedures Committee will be considering all voting procedures in the Public Elections Law 2002 in the coming months.

2.15 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHAIRMAN OF THE COMITÉ DES CONNÉTABLES REGARDING MEASURES TO INCREASE VOTER PARTICIPATION IN THE NEXT ELECTION:

Question

What measures, if any, does the Comité have under consideration to increase voter participation in the next election, especially for those who are housebound or otherwise disabled and for whom a postal vote is essential if they are to vote?

Has the Comité considered the latest changes in the UK to render postal voting for persons with disability easier, and, if so, will the Connétables be adopting some or all of the initiatives?

Answer

The Comité has not, as yet, considered any measures to increase voter participation in the next election but it is intended to hold a meeting with the Jurats and the Judicial Greffier to highlight any concerns raised from the 2008 elections.

In relation to those who are housebound or otherwise disabled, every Parish makes provision to assist ill or disabled voters to ensure their vote is cast on polling day. The Gazette notice advertising the arrangements for polling day always refers to the availability of postal voting and electors who are unable to vote by postal voting, who are confined to their homes owing to illness or disability and who wish to have their votes recorded by the Autorisé or Adjoint, are requested to notify their respective Parish Hall so that arrangements may be made for the elector to be visited on polling day. The provisions in the Public Elections (Jersey) Law 2002 (and similar provisions existed in earlier laws) are as follows:

Article 35 Ill or disabled voters

- (1) In the case of a person entitled to vote who is ill, disabled or illiterate, the Autorisé or an Adjoint may take such measures as he or she considers appropriate for taking his or her vote, provided secrecy in voting is maintained.
- (2) Those measures may include a visit to the person for the purpose of delivering a ballot paper to the person, attending whilst the person records his or her vote on it, and bringing the ballot paper back to the polling station and placing it in the ballot box.

The Comité has not yet considered the latest changes in the UK to render postal voting for persons with disability easier and therefore I am unable to say whether or not the Connétables will be adopting some or all of the initiatives.

2.16 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING THE DELIVERY OF AN ‘ALL-YEAR- ROUND’ SERVICE TO STANSTED:

Question

Will the Minister inform members whether terms are included in the Service Level Agreement to ensure that the recently announced new all-year round air service to Stansted actually does deliver ‘all-year round’ and is not curtailed or vastly reduced in October, and if not, why?

Answer

I can confirm that no Service Level Agreement or subsidy is in place with the airline starting services to London Stansted.

We are pleased about the airline’s intention to offer this service on a year-round basis. The ability to sustain a year-round route, however, will be determined by the market’s demand for the service.

2.17 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING PROPOSALS FOR FISCAL SUPPORT TO HELP THE ECONOMY THROUGH THE RECESSION:

Question

Is the Minister able to inform members of the details of his proposals for fiscal support to help the economy through the recession and, if not, when will he be in a position do so?

Answer

The Fiscal Stimulus package is still being developed and the intention remains that it will be lodged alongside the Strategic Plan on April 8. In the meantime I will shortly seek public advice from the Fiscal Policy Panel on the key issues surrounding when and how we should use the Stabilisation Fund to support the economy. Their advice will help me develop the proposals I bring to the States in April and inform members of the Panel's views on some of the key issues. The FPP will also publish its annual report in May this year so that States members are fully informed before they are asked to vote on the Fiscal Stimulus.

2.18 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING TIMESCALES FOR DEALING WITH VARIOUS INCOME SUPPORT PAYMENTS:

Question

Will the Minister inform members what timescales he has targeted in the Income Support (IS) section of the Social Security Department for dealing with the following payments, and what current performance is for each:

- a. new IS applications and changes of circumstance
- b. special payments
- c. payments for medical supplies (bandages etc)
- d. impairment components
- e. payments to GPs for additional doctors visits for households with a Household Medical Account?

Answer

The general target turnaround time for dealing with Income Support applications is one week with a maximum tolerance time of two weeks. In cases of hardship, particularly where accommodation is involved, claims are processed immediately providing all relevant documentation is available.

The current turnaround times for Income Support processing are set out below. Times are measured in working days and do not include the time it takes for the claimant to complete the application form and provide the necessary evidence.

	Performance as at 9/3/09	Comment
New applications	Less than 5 working days	Emergency cases are dealt with on the day of the application.
Change of circumstance	10 working days	Emergency cases are dealt with on the day of the application.
Special payments	Less than 5 working days	Emergency cases are dealt with on the day of the application.
Medical	Less than 5	These are special payments and performance statistics are not recorded separately. Invoices in respect of previous HIE

supplies	working days	recipients receiving supplies from FNHC are paid on receipt of monthly invoices submitted by FNHC.
Impairment component	20 working days	Impairment assessments require a written report from the claimant's doctor. The impairment assessment is kept separate from the main Income Support claim as it is necessarily a more lengthy process. Any impairment component awarded is always backdated to the original date of application.
Payments to GPs	3 to 4 working days	Payments to GPs for claimants with an HMA have been incorporated into the normal payment process for GPs. GPs submit details of every patient consultation in batches, according to the administration of their own surgery.

2.19 DEPUTY T. PITMAN OF ST. SAVIOUR OF THE ATTORNEY GENERAL REGARDING THE SCOPE OF ARTICLE 39A OF THE PUBLIC ELECTIONS (JERSEY) LAW 2002:

Question

Will the Attorney General assist members in defining the scope of Article 39A of the Public Elections (Jersey) Law 2002 by giving his opinion as to whether the following acts of assistance by a candidate or his/her representative are proscribed by the article –

- Informing the constituent of their electoral number so that it can be filled in on a request for a postal vote?
- Telephoning the parish hall on behalf of the constituent, and in his/her presence to request that a parish official come to the constituent's home to help the constituent to fill in the postal application or to collect it in the case of those who are housebound?
- Offering the constituent a stamped addressed envelope to return their postal application form?
- Offering a lift on polling day to a constituent so that they might vote
 - as an ordinary voter
 - as a person with a postal vote who now wishes to vote in person?

Does the Attorney General accept that the use of the word 'assistance' in Article 39 renders the Law open to the widest interpretation which might hinder the use of postal voting on the part of candidates and potential voters?

Answer

I have considered anxiously the extent to which it is proper for me to answer a question which has potential links to the prosecution of the Deputy's wife and another politician for offences under this Article. I think that, surprising as this series of questions is, it is possible to answer on this occasion without prejudicing those prosecutions and, therefore, remaining within Standing Order 10(10).

Article 39A is in these terms:

“(1) A candidate, or a representative of a candidate shall not –

- (a) complete, on behalf of a person entitled under Article 38, or assist such a person in completing, any form required to be completed for the purposes of an application under Article 39(4);
 - (b) deliver, or cause to be delivered, to the Judicial Greffier, on behalf of a such a person, any form or supporting documents required for the purposes of an application under Article 39(4); or
 - (c) provide transport for such a person so as to enable the person to make an application in person under Article 39(4).
- (2) Paragraph (1) shall not prohibit a candidate or representative of a candidate providing a person entitled under Article 38 with the form (if any) required to make an application under Article 39(4)(a). “

Whether a candidate is or is not assisting the completion of the form or causing it to be delivered to the Judicial Greffier is a question of fact for the court dealing with the matter. In determining that issue, the court is likely to have regard to all the material facts.

In its Report to P65/08, the Privileges and Procedures Committee gave this rationale for the proposed amendment:

“This article inserts a provision in the law that PPC believes is extremely significant and important. At present there is no restriction in the Law on candidates or their representatives assisting with the postal voting process. Candidates can, for example, assist electors to complete forms for postal voting, can take these to the Judicial Greffe and offer other assistance to enable people to obtain a postal vote. Although candidates may believe they are simply assisting electors in these circumstances, PPC is concerned that the current provision could be seen to interfere with the fairness of the election process. Any elector who has received significant assistance from a candidate or his or her representative to obtain a postal vote may feel, in some way, pressurised to vote for that candidate when the ballot paper is received from the Judicial Greffier.

This new Article would make it illegal for a candidate to assist an elector in completing the application form for a postal or pre poll vote. In addition it would make it illegal for candidates to deliver or cause to be delivered the forms to the Judicial Greffier. For the avoidance of doubt, paragraph (2) of the new Article makes it clear that a candidate or representative can still distribute blank forms to enable a person to apply for a postal or pre-poll vote but, with the new provisions, it would be illegal for the candidate to do anything further. It would, nevertheless, still be possible for staff, for example, in an old people’s home to assist residents to complete the necessary paperwork but this would distance the process from the candidate or his or her representative.”

I mention this for completeness only because a court would be entitled to consider the intended ambit of the criminal offence as disclosed by the report if there were ambiguity in the language of the statute or there were a judicial review, if that is possible, of a prosecution decision. However, in my view, the language of the statute is clear.

The core of the offence in Article 39A(1)(a) lies in completing the application form for a person entitled under Article 38 to a postal or pre poll vote, or assisting the person to do so.

The core of the offence in Article 39A(1)(b) lies in delivering or causing to be delivered the form or the supporting documents to the Judicial Greffier.

The first of the illustrations put to me - informing the constituent of their electoral number so that it can be filled in on a request for a postal vote - seems to me to lie within the terms of the offence. The prescribed form does contain space for the electoral number to be completed. It is then

followed by the words in parenthesis “(if known) “. One can see that informing the voter of the electoral number could fall within the ambit of assisting in the completion of the form, albeit the information provided was not essential to that application. It is clear from the comments of the Privileges and Procedures Committee in its Report, mentioned above, that the purpose of the amendment was to protect the integrity of the election process, and that it was intended that candidates should not get into a debate with prospective voters about the content of the form.

In my view, to telephone the parish hall on behalf of the constituent, and in his/her presence to request that a parish official come to the constituent’s home to help the constituent to fill in the postal application or to collect it in the case of those who are housebound, would lie outside the ambit of the these offences. Such an action does not amount to assisting in the completion of the form, nor does it amount to causing the form to be delivered to the Greffier. In the latter case, it would be the parish official, if the request were acted upon, who would be causing the form to be delivered.

Nor do I think that merely offering the constituent a stamped addressed envelope to return their postal application form is conduct which brings the candidate within the ambit of Article 39A, though I express no view as to whether any other offence might have been committed. Such action is clearly not assisting in the completion of the form, nor, of itself, does it amount to causing the form to be delivered to the Greffier. Taking the envelope from the voter and putting it in the post would, so it seems to me, amount to “causing it to be delivered” if it were correctly addressed.

Offering a lift on polling day to a constituent so that they might vote,

- as an ordinary voter
- as a person with a postal vote who now wishes to vote in person,

is not an offence under Article 39A. I express no view as to whether any other offence might have been committed.

As the word “assistance” does not appear in Article 39, I do not answer the last question. In any event, even if the correct Article had been identified, the question seems to me to invite a comment on a hypothetical political issue rather than anything else.

3. Oral Questions

3.1 Deputy A.K.F. Green of St. Helier of the Minister for Treasury and Resources regarding GST and the ‘Meals on Wheels’ service:

Could the Minister advise the Assembly what action, if any, is taken to address the situation regarding G.S.T. (Goods and Services Tax) and the ‘Meals on Wheels’ service?

Senator P.F.C. Ozouf (The Minister for Treasury and Resources):

I believe the Deputy is referring to a newspaper article that appeared in the *Jersey Evening Post* on Saturday, 28th February. Like many Members, I was surprised by the content. On reading the article, I immediately instigated an urgent inquiry and I am pleased to report to the Assembly that this matter has now been resolved. The invoices charging G.S.T. to ‘Meals on Wheels’ were issued incorrectly since October 2008 and they have been withdrawn. As a result of this error, I am this morning sending a letter of apology to the organisation. So I would like to record my own gratitude for the fantastic efforts of all those involved in ‘Meals on Wheels’, given that they are all on a voluntary basis. Long may they continue to provide such a wonderful service. **[Approbation]**

Deputy A.K.F. Green:

I am grateful to the Minister for his pragmatic approach.

3.2 The Deputy of St. John of the Minister for Education, Sport and Culture regarding energy wastage in the Island's schools:

The Deputy of St. John:

Would the Minister advise what action, if any, is being taken to alleviate energy wastage in the Island's non-fee paying schools, particularly at Trinity School; and given that he is also responsible for the States fee-paying schools, would he explain why Victoria College has floodlighting from dusk to dawn?

Deputy J.G. Reed of St. Ouen (The Minister for Education, Sport and Culture):

Following a States decision, Jersey Property Holdings has now assumed responsibility for all property including schools. This department employs a small number of maintenance officers, each of whom is allocated several schools to which they provide support and advice on maintenance and heating matters. In addition to this service, Property Holdings has recently recruited an Energy Manager whose role includes advising States departments on energy use. As far as all schools are concerned, energy costs represent a significant element of their budget and it is therefore in everyone's best interests to ensure that heating and all other energy costs are minimised, including Trinity School. Regardless of whether the schools are fee-paying or non fee-paying, the department actively encourages the schools to be mindful of their energy use. I am assured by the head teacher of Victoria College that the College does just that. The floodlighting is operated by the College because it has proven to be effective as a security measure and it is felt appropriate to illuminate this prominent and historic building. The lighting around the school, including the floodlights, uses low energy bulbs and I am informed that the school monitors its overall use very closely. In terms of the total energy bill, the cost of floodlighting is relatively minor.

3.2.1 The Deputy of St. John:

I hope the Minister can give us the cost of floodlighting Victoria College School if it is only minor. But, given its use for security, I would have thought down-lighting instead of up-lighting would have been far more effective. I believe that the Minister should be reviewing all his departments as to waste in energy and I hear what he has already said, but I hope he can give us an assurance this morning that he will be writing to all his heads of departments to make sure this is happening, given I have forwarded him certain correspondence several weeks ago to the effect that there was waste in Trinity School on which, hopefully, I can have a meeting with the head teacher and others in due course to try and see if we can alleviate some of these problems. So if I can have an assurance from the Minister that he will write to all heads, it would be appreciated.

The Deputy of St. Ouen:

I think I have already said that the department absolutely supports best use of energy and as such we are and will actively engage with the schools and other individuals to ensure that this is the case. With regards to the cost of floodlighting, I am unable to provide that cost to the Deputy, however, I am well aware and have had correspondence with the schools who are indeed willing to meet with the Deputy to discuss his specific concerns in more detail.

3.2.2 Deputy R.G. Le Hérissier:

Would the Minister confirm that he does not agree with the principle of floodlighting buildings, but with the principle of floodlighting relevant open spaces as a security measure? Secondly, has he tied-in his interest in lighting costs to heating costs? Is there monitoring going on and can he give us a percentage savings being made at present?

The Deputy of St. Ouen:

The general issue of floodlighting is one that is a concern of all and I do not have a view in particular of whether we should use it in one area or another. Could the Deputy remind me of the second part of his question?

The Deputy Bailiff:

The second part went on to heating, but I think that is rather off the point.

Deputy R.G. Le Hérissier:

Well, it is related to energy usage, energy usage is the common theme.

3.3 The Deputy of St. John of the Minister for Economic Development regarding skateboarders at the Lighthouse Memorial:

I hope you will allow me to rephrase the question slightly because of information I have been given this morning by Senator Cohen. Given that the Lighthouse Memorial to Jersey people who died in concentration camps between 1940 and 1945 attracts youths on skateboards who skate on the polished surface, can the Minister advise whether he intends to review safety in the area to avoid collisions between skateboarders and pedestrians and vehicles in the area? If so, when?

Senator A.J.H. Maclean (The Minister for Economic Development):

Sir, can I ask my Assistant Minister who has responsibility for the harbour to deal with this matter?

Senator P.F. Routier (Assistant Minister for Economic Development - rapporteur):

I and the department staff are really concerned about what is happening at the New North Quay at the present time, particularly about safety and also the reputational effects on the marina. The marina currently attracts a lot of tourists to the Island and only in the last week or so there has been some negative comments from some tourists who have left the Island saying, to a certain extent, that they are not going to come back. So I have to say we are very concerned about it. We do have a 24-hour C.C.T.V. (closed-circuit television) camera security and also the manning security will be increased at weekends. We do log all the complaints and all the problems that have arisen since the skateboard park has been in place and the skateboard park itself is the responsibility of the Education, Sport and Culture Department and it is their responsibility to man and to look after the skateboard park and the management of that site. But I do share the concerns of the Deputy.

3.3.1 The Deputy of St. John:

Given the comments from the Assistant Minister, I sincerely hope that the Minister will be having dialogue with the Minister for Education and also with the Minister for Home Affairs because both of those areas come under those 2 Ministers' responsibility. I am given to understand that police have been called on a number of occasions and they are not of the highest priority, so the time they take to get to the situation being caused down in that area, the youngsters have moved along. Can he confirm that he will be having a dialogue with these 2 Ministries, please?

Senator P.F. Routier:

Yes, I can confirm that the department, the Harbourmaster and the staff have had conversations with the police themselves and also with the other department. There is a major problem emerging currently. I have to say I was one of the people who supported the skate park being there in the first place and I am beginning to recognise now that perhaps it was a decision that may not have been the right decision because there are issues emerging. We need to ensure that we do move forward so that we do provide facilities for young people in the Island, but unfortunately there is a group of young people who are not respecting the provision they have been provided with and it is causing a problem for boat owners for safety, there have been glass bottles thrown into the marina,

chairs thrown into the marina, I am afraid there is a building problem which needs to be monitored and we have spoken with the police and they are going to put some effort into getting there a lot sooner than they have in the past. We recognise there is a problem.

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

I was against the siting of the skateboard park in this area for that very reason. The Assistant Minister has touched upon the security in the area. I understand there is closed circuit T.V. in the area. Can the Minister confirm whether this is all being recorded and will he consider manning physically the area with security guards?

Senator P.F. Routier:

There is a security team which comes on duty after the harbour staff themselves, there is a commercial team which does monitor the whole area. The C.C.T.V. is made up of various cameras, some are the Harbour's responsibility, some are police responsibility. Because you may have been aware of the incident at the weekend in the other marina which has caused a lot of distress to a lot of people and a lot of damage has been caused. So there is a lot of work going on to monitor all the recordings that have been carried out to try and catch the culprits of the damage that has been caused. I have here a list of documents of 40 incidents which have been caused since the skateboard park has been there and it is a mounting concern. We need to address it. It may be a time that we may have to think that we try to find, I am afraid to say, a different venue for the skateboard park. We need to provide a skateboard park but it obviously is not being used in the way it should have been used.

3.3.3 Deputy P.V.F. Le Claire:

It is remarkable because when these debates about siting these things happened down at the harbour we tried to wave the flag and indicate what was likely to happen. Can I ask the Assistant Minister, given that it was clearly spelt out that this would be an issue and would impact upon the marinas which bring a considerable amount of tourist income to Jersey, that instead of letting this go after this period of questions, the Assistant Minister gets together with the Health and Education and Culture Minister and sorts out between them enough money to patrol the marinas properly and staff the marinas adequately so that activity of this sort does not occur. It is no use, may I add and ask the Assistant Minister to comment, in funnelling the youngsters down in front of the marina for their safety and not expecting them to ride their skateboards on the way to the skate park.

Senator P.F. Routier:

Certainly we want to alleviate the problems which are getting greater as the weeks go by. We will be increasing the security around the area over the next few weeks but we have a limited budget. There is, I have to say, a responsibility on the Education, Sport and Culture Department for the skateboard park itself. Perhaps they should have someone there a bit more, but we need to work together; silo is a thing of the past, but the Education, Sport and Culture... it is their facility and they do need to ensure ...

Deputy P.V.F. Le Claire:

Could I ask the Assistant Minister give way, please? I did ask in my question if after this question period the Assistant Minister would get together with the Minister for the Education, Sport and Culture Department and request the funding is sourced out to give him the adequate manpower. I do not know if he caught that in my question.

Senator P.F. Routier:

Perhaps I did not. Perhaps I may have missed that but certainly we will be doing that. It is vitally important that we get this right to alleviate the problems which are mounting for this coming season of tourists coming to the Island and using the marina. You know, I give that undertaking we will be doing that. There was the question of funnelling the skateboarders through in front of the marina.

In front of the Maritime Museum was looked at; unfortunately going on the other side of the building was ruled out by the Health and Safety Department because of the very heavy loads which go through to the freight facilities further down the harbour. So that was not thought appropriate, it would have put people at risk going that way. So we need to get on with it, we need to find a resolution to it and I give an undertaking that we will try and find a suitable one.

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

Given that during the proposition for the skateboard park last year, Members were not given the full costings of the operation of it, would the Assistant Minister give to the House before the next sitting the projected costings of running the skateboard park, complete with security measures which we are now finding have to be put in place?

Senator P.F. Routier:

The Connétable puts forward a very valid point. I think unfortunately the States were not given the full information of how the skateboard park should work effectively. I am afraid to say, we should have had more information and it should have been more open about what the costs would be involved. I know that there was some discussion between the various departments before my time trying to make these issues very clear but they were, I have to say, ignored. The comments that were made by the Harbours Department, the comments were ignored.

3.3.5 Deputy C.F. Labey of Grouville:

I think Deputy Le Claire asked part of my question. The Assistant Minister said some of us anticipated problems before the facility was built. Would it not have been prudent to make an allowance in the budget to take measures to step up security beforehand?

Senator P.F. Routier:

As was just highlighted by the previous question, the proposition which was approved by the States did indicate that there was very little in the way of additional costs. So the States made the decision in the presumed knowledge that there were very little costs in regard to that. So the department at that time could not put money into the budget if the States was saying that there was no cost.

3.3.6 The Deputy of St. Mary:

In the answers the Assistant Minister has given there seems to be ... I have picked up a connection between the damage done to the boats in the marina and the skateboard park. Would the Assistant Minister care to confirm that there is no evidence of a connection?

Senator P.F. Routier:

Certainly with regard to what has happened at the weekend there is obviously no connection; well there is no evidence of that case and I am very happy to state that. In fact there are many skateboarders who do behave very, very well and use the facility exceptionally well. But unfortunately there is a group of people who perhaps do not behave as they should do and are causing problems. There is evidence that skateboarders who have been using the skateboard park have thrown and are seen to be throwing stuff into the marina. I have photographs of that happening. So I do know that there is a group of people who do not behave appropriately. But there are some who do use it properly.

3.3.7 The Deputy of St. John:

I was hoping that the Minister would have said a few words for the next of kin who have lost people in the concentration camps. He may wish to follow this, but on behalf of myself and fellow users of that area, to me it is a sacred area, a sacred spot and therefore it should not be abused. Maybe the Minister may wish to say a few words on that.

Senator P.F. Routier:

When I found out about it I was as distressed as the Deputy. We do recognise that 22 people were sent to the concentration camps and that memorial is a very important memorial. I would like to think that we may be able to inform the people who do pass it that it should be respected and we should perhaps get that message to the young people. Perhaps the Education Department whose responsibility it is for the skateboard park might inform the young people who use the skate park.

3.4 Deputy K.C. Lewis of the Minister for Health and Social Services regarding the banning of so-called legal-high drugs in the Island:

Will the Minister be seeking to ban the so-called legal-high drugs available in the Island?

Senator J.L. Perchard (The Minister for Health and Social Services):

The short answer is yes. "Legal-highs" is a term used to describe substances that mimic the effects of illegal drugs such as ecstasy, L.S.D. (lysergic acid diethylamide), cannabis and amphetamines such as speed which are not controlled by the Misuse of Drugs (Jersey) Law. Common so-called legal-high products are products such as Spice which is smoked, cannabis and party pills or herbal highs which look and act like ecstasy, containing a drug called benzyloperazine, B.Z.P. It is no surprise that these drugs have a similar range of side effects to those of illegal drugs that they are designed to copy. Dealers have been exploiting the fact that because they are technically legal, that means that they must be safe and this is just not the case. So far Jersey has become recognised as a frontrunner in tackling this new menace. Our first step was to ban the importation and marketing and sale of substances that can be defined as medical products which are contained in common legal highs. We have used our existing Medicines (Jersey) Law to achieve this. My department is also making progress towards classifying these substances under the Misuse of Drugs (Jersey) Law. This will make it illegal to possess or use these legal-highs. They will make them illegal-highs and we hope to be able to achieve this during 2009.

3.4.1 Deputy M. Tadier:

Will the Minister be considering banning alcohol on the same principle, that it does an equal amount of harm as legal highs?

Senator J.L. Perchard:

No, there is no plan to ban alcohol on the same principle.

3.4.2 Senator Syvret:

Well, to follow on from that question about alcohol, would the Minister agree with me that the obnoxious, foul, drunken and disgraceful social conduct that some people can engage in when they are intoxicated really is something that we ought to stamp out in our society? **[Approbation]**

Senator J.L. Perchard:

Absolutely.

3.4.3 Deputy M. Tadier:

Does the Minister suspect that he may be discriminating against the responsible users of current legal-highs by seeking to ban them?

Senator J.L. Perchard:

The point about legal-highs is we do not know what is in the substance. We do not know the make-up. They are being sold as legal therefore there is an innuendo, an assumption that they are safe. They are not because we do not know what is in them. The contents of alcohol is known. Okay, I am not suggesting for one minute that alcohol is not harmful, but unknown substances taken either orally or smoked can be very dangerous because we do not know what is in them.

3.4.4 Deputy M. Tadier:

Is the Minister therefore saying that he knows the total ingredients of everything that he consumes?

The Deputy Bailiff:

Well, that was a question, Minister. I think you should give some answer, whatever you want to say. Minister, you have been asked a question, please answer it in some way.

Senator J.L. Perchard:

No, I do not know the total ingredients of everything I consume.

3.4.5 Deputy T. Pitman of St. Helier:

I was just going to point out that we do not know some of the chemicals coming out of the incinerator chimney, so what have we done about that?

The Deputy Bailiff:

So what was your question then, Deputy?

Deputy T. Pitman:

Are we going to ban it? It is obviously a risk, could be a very serious risk.

Senator J.L. Perchard:

I have got no plans to ban the incinerator chimney.

3.4.6 Deputy K.C. Lewis:

Back to reality. The question I asked regarding ketamine ranks as a Class C drug and the sixth most dangerous illegal drug available. It was originally used in Vietnam to treat wounded soldiers but was found very dangerous and has hallucinogenic properties and obviously should be banned. Does the Minister not agree?

Senator J.L. Perchard:

Absolutely and I hope the questioner can take some assurance from my intentions to deal with this and set the model of good practice on how we can get to grips with this relatively new and disturbing drug that is starting to become commonplace in many communities, but fortunately not Jersey.

3.5 The Deputy of Grouville of the Minister for Planning and Environment regarding the laws, policies and guidelines on which planning applications were determined:

When planning officers are making recommendations to the Minister to approve or refuse a planning application, which laws, policies and guidelines are taken into account to assist or determine their recommendation?

The Deputy Bailiff:

Minister, you could write an essay, I am sure, but as you will recall... a reasonably concise answer.

Senator F.E. Cohen (The Minister for Planning and Environment):

I shall try. The department's recommendations are based on the requirements of the Planning (Jersey) Law and the current Island Plan. These considerations are the most important as decisions need to be legally correct. It is important to recognise that in general the Minister is expected to grant permission if a proposed development is in accordance with the Island Plan. Officers will consider any relevant approved supplementary planning guidance. They will also consider the replies to statutory and non-statutory consultations such as drainage and highways in the relevant Parish. The case officers will conduct a site visit to assess the potential impact of the application

proposals on the site and its surroundings. They will have particular regard to any objections submitted from neighbours. In addition, there may be other factors that are material to consideration of the application such as planning history.

Senator S. Syvret:

On a point of order. I am sorry to interrupt the Minister but the Minister to my right, Senator Perchard, is shouting ... well, not shouting but saying in my ear: "You are full of fucking shit. Why do you not go and top yourself, you bastard." I really do not think that this conduct is acceptable.

Senator J.L. Perchard:

I absolutely refute that. I am just fed up with this man making up allegations against people. I just wish he would not.

Senator S. Syvret:

The Senator did engage in a drunken foul obnoxious outburst at the Town Hall the other night ...

Senator J.L. Perchard:

Oh, rubbish.

Senator S. Syvret:

... in front of witnesses and he is now persisting in his foul aggression against me. If the Assembly is to maintain some semblance of good order, I really think somebody ought to have a word with Senator Perchard and perhaps help him get some therapy.

Senator J.L. Perchard:

This is out of order. I really object to the Senator hijacking question time to pursue his personal vendetta against me.

The Deputy Bailiff:

One moment. This was a private matter in any event. I cannot rule on what was said and what was not because it is denied so we will leave the matter there. But quite clearly Members should as a general principle be courteous to each other, should not insult each other or use abusive language to each other. That is in Standing Orders so far as public utterances are concerned. It is in the code of conduct as I understand it so far as ordinary private interaction between Members is concerned. I urge all Members to abide by that. **[Approbation]** Now, Minister, I am sorry you were interrupted but perhaps you could carry on.

Senator F.E. Cohen:

In addition, there may be other factors that are material to consideration of the application such as the planning history of the site, any preliminary advice that may have been given and decisions made on sites in similar circumstances to ensure consistency of decision making. Once the officer has informed a recommendation it will be reviewed by a senior officer who will decide whether the application should be determined by officers under delegated powers, by the Planning Applications Panel or by the Minister or Assistant Minister. The officers will also be directed by the Minister's wishes with regard to the route of determination. It is important to remember that while the process of determination is structured there will also be an element of subjectivity in planning decisions.

3.5.1 The Deputy of Grouville:

In a report accompanying a planning application, part of the planning officer's recommendation read as follows: "It is not unreasonable on balance to conclude that what impact there will be on nearby properties is outweighed by the need to encourage the enterprise." What qualifications do planning officers have to make economic judgments and which enterprises in the Island should be

encouraged and which should not? Surely this consideration greatly compromises the officer's ability to determine planning applications on planning grounds.

Senator F.E. Cohen:

I am not entirely sure which particular application the Deputy is referring to. However, the general principle is that Economic Development will provide advice in relation to economic enterprises. However, the Island Plan is quite robust in this area and does make very clear that planning is to be tuned towards certain industries, most notably of course the agriculture and, effectively, aquaculture industries as well.

3.5.2 Senator B.E. Shenton:

Is it not the case that the Planning Department have asked for business plans in the past to be put forward with planning applications?

Senator F.E. Cohen:

The Senator is absolutely correct. For example, in relation to 2 applications quite recently that could be classified in one way under the States-approved principle in 2005 of enabling development where very clear business plans had to be submitted and the consents are effectively linked to ensuring that investment is made in the agricultural enterprises specified.

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

Can the Minister explain in what circumstances he would agree to developments which do not reach his department's own minimum standards on room sizes?

Senator F.E. Cohen:

My preference is not to approve any application that is below the minimum standard. In fact I have increased the minimum standard by 10 per cent but there are always exceptions. There is one that I am presently considering involving a listed building where in order to come to an accommodation it may well be necessary to consider one or 2 units that are slightly below the minimum standard to ensure that we do not damage the listed building too much. So the general principle is that I will seek to maintain minimum standards plus 10 per cent.

3.5.4 Deputy J.A. Hilton:

I understand that the Minister does attempt to do that but really what I am trying to establish is why he agreed a development of the Rex Hotel on St. Saviour Road; agreed that development and some of those rooms are well below the minimum standard that he says that he supports.

Senator F.E. Cohen:

As far as I am aware in the case of this particular application there was an existing consent dating back some years. I think that the current plans are for significantly larger units than was previously the case. So I think the plans that I have recently been involved in approving are a significant improvement in respect of room sizes.

3.5.5 The Deputy of St. John:

Can Portacabin sites be given a permanent planning permission? If so, will he explain why as we are seeing more and more villages of Portacabins springing up around the Island? In the future will these turn out as building sites?

Senator F.E. Cohen:

The general principle is that Portacabins should be restricted to specific enterprises and they should be time-limited. However, I am aware of one situation recently where because Portacabins or workers accommodation was being relocated, a consent was given enabling the relocation to be on a permanent basis. When I was informed of this particular situation I instructed the department to

modify the consent to ensure that the consent was limited to a time period I think of 5 years. So the general principle is that Portacabins should be time-limited most definitely.

3.5.6 Deputy R.G. Le Hérissier:

How does the Minister cope with situations where a planning application is refused on the grounds of being in the Green Zone and then at a later stage such an application apparently the ground - if I may use the phrase - has shifted and the application is denied on the basis of a poor design, thereby leaving the application open to be progressed further? How do such changes of principle occur?

Senator F.E. Cohen:

With great respect to my friend the Deputy, I do not think I really should comment. This relates to a particular application which is still the matter of some considerable debate and there is likely to be a first party and a third party appeal. So I think it is probably better that I do not comment.

3.5.7 The Deputy of Grouville:

Is the Minister saying that the economic grounds for determining an application will supersede the planning grounds? If there is a good business case to approve an application will that take precedence if the application itself contravenes the Island Plan?

Senator F.E. Cohen:

No, it most certainly will not. However, as the Deputy and Members will know, the Island Plan wording is quite widely-drawn and it is designed to give considerable latitude in decision making. That is why I revert to my closing remarks in my answer which is that the process of determination is structured but there will always be an element of subjectivity and the decision maker in one case may weigh the economic argument more importantly than another decision maker in the same situation. That is the very nature of the subjectivity of planning decisions. But certainly the Island Plan should not be breached and it is very clear that the Minister does not have the authority to significantly breach the Island Plan.

3.6 Deputy F.J. Hill of St. Martin of the Minister for Health and Social Services regarding the suspension of the Chief Executive Officer of Family Nursing and Home Care:

Given the considerable funding to Family Nursing and Home Care, will the Minister advise Members what monitoring provision, if any, is in place, whether he has held meetings with his chairman and committee to discuss in particular the lengthy suspension of his Chief Executive Officer and what, if any, lessons have been learnt by his department following the way the matter has been handled?

Senator J.L. Perchard (The Minister for Health and Social Services):

While meetings have taken place between myself and the chairman of Family Nursing and Home Care and senior officers, I can confirm that the allegations and evidence which has led to what the Deputy describes as the lengthy suspension of the Chief Executive Officer have never been discussed in such meetings. This matter is entirely the preserve of the Family Nursing and Home Care Management Committee which is required to manage this matter within the appropriate laws of Jersey and the standards laid by the recently signed Service Level Agreement. Since the suspension and subsequent dismissal of the Chief Executive Officer, I have met on 3 occasions with the chairman of Family Nursing and Home Care together with my chief officer and acting chief officer of Family Nursing. The purpose of these meetings was for me to be assured that there was a continuity of service to both patients and clients. I have been given those assurances. I am satisfied that these assurances are valid as I regularly receive corroborating assurances from my director of Nursing and Governance and from other senior officers who meet with their representative colleagues in Family Nursing. While my department is entirely disposed to learn

lessons from acts and omissions resulting from either within the Health and Social Services Department or from within a partner organisation, I have yet to learn lessons about lengthy suspensions with regards to the Family Nursing and Home Care Executive Officer. If in due course, however, the Family Nursing and Home Care Management Committee has learned lessons and wishes to share them with me then of course I would be very interested in what they have to say.

3.6.1 Deputy G.P. Southern:

Is the Minister aware of what exact charges were levelled against the Chief Executive Officer because she appears to be unaware of them?

Senator J.L. Perchard:

I think it would be unfair for us to discuss the business of a third party in the States here. I have involved myself in the good governance of Family Nursing and Home Care. I hold them to account. We have signed a Service Level Agreement with them recently. I intend to ensure that the taxpayers' money is best protected in our business relationship with Family Nursing. How they govern their internal matters is entirely for them.

3.6.2 Deputy G.P. Southern:

I am not asking what the charges were. I am asking is the Minister aware of what the charges were, yes or no?

Senator J.L. Perchard:

I have had discussions with Family Nursing and Home Care since. I am not entirely certain as to why the committee have taken the decision to dismiss the Chief Executive Officer.

3.6.3 Deputy A.E. Pryke of Trinity:

Just for clarity I would like to mention that I am a member of Family Nursing Services. Could the Minister comment on his open letter that he released last week that could be seen as perhaps intimidation to the families who relied on this very important service? **[Approbation]**

Senator J.L. Perchard:

The Deputy has a question on the Order Paper on this very subject which I will be answering in full later.

3.6.4 Deputy M.R. Higgins:

As the Minister's department is paying a considerable amount of money to this particular organisation, is he satisfied that the process that they have adopted dealing with this disciplinary matter which from news this morning ... I have been out of the Island and just come back and heard she had been dismissed on one set of grounds but to date she does not know what the previous ones were. Is he convinced that the hearings and the process they have adopted to date are the correct proceedings?

Senator J.L. Perchard:

I am absolutely convinced that the processes adopted to date have been adopted after seeking proper advice from the Jersey Conciliation Service, from lawyers and that one side of this argument is being played out in the media.

3.6.5 The Deputy of St. John:

Given the Minister's answer previously that he was not aware of what the charges were, how can he give the answer he just given, please? **[Approbation]**

Senator J.L. Perchard:

I am perfectly happy to give the answer I have just given and I will repeat it. I have undertaken to make sure that the procedures adopted on this disciplinary have been verified legally and by the Jersey Advisory Conciliation Service. I have not bothered myself with the detail of the accusation; just the process.

3.6.6 Deputy G.P. Southern:

Just for the purpose of absolute clarity then, is the Minister perfectly content that the procedures adopted were in conformity with the Jersey Employment Law and, in particular, with respect to proper representation of the accused?

Senator J.L. Perchard:

The Deputy knows that there is a threat that this may go to tribunal. I think loose words will not help this. If there is to be a process, let it unfold and let it be handled independently. But from my position I am satisfied with the good governance of Family Nursing and Home Care. I hold them to account and I intend to continue to do that.

Deputy G.P. Southern:

Can I get the Minister to answer the question? Is he content that the procedures laid down in the disciplinary process were adhered to in accordance with Jersey Employment Law?

Senator J.L. Perchard:

Whether I am content or not is irrelevant. The threat has been made that this will go to tribunal and it is they that must be content.

Deputy G.P. Southern:

Will the Minister answer the question?

The Deputy Bailiff:

I am sorry, Deputy, you have asked several questions now.

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

Would the Minister agree that the tone of his letter and the timing were unfortunate in the circumstances?

Senator J.L. Perchard:

Absolutely not. I think it was necessary and I do wonder if the Deputy has even seen the letter.

Deputy D.J. De Sousa:

Yes, I have.

Senator J.L. Perchard:

Thank you for the interjection. Many people have commented on it without even seeing the text of the letter. It was necessary that when £6 million worth of taxpayers' money is being used to support an organisation such as Family Nursing and Home Care to hold them to account. Good governance is not optional.

Deputy D.J. De Sousa:

I completely agree that we must have all these people brought to account when we are giving them taxpayers' money but I am asking the question really, does the Minister not consider that the tone and the timing of his letter was unfortunate in the circumstances?

Senator J.L. Perchard:

Absolutely not. No, I do not.

3.6.8 The Deputy of Grouville:

Is there an up-to-date Service Level Agreement with Family Nursing and Health?

Senator J.L. Perchard:

I am delighted to advise the House that despite years and years of attempts to get a Service Level Agreement by previous Ministers, we have now an up-to-date Service Level Agreement signed with Family Nursing and Home Care and that was done quite recently.

3.6.9 The Deputy of St. Martin:

Just to make reference again to the letter that was sent. I am sure I am not alone but I think it would be helpful if the Minister could give assurance that maybe the letter could be circulated to all States Members. After all we do have an interest. There is £6 million of taxpayers' money so would that letter be made available to all States Members as well, please? I am talking about the letter to Family Nursing.

Senator J.L. Perchard:

I would have no problem with circulating the letter; none at all.

3.7 Deputy S. Pitman of St. Helier of the Minister for Economic Development regarding the development of an economic stimulus package:

Would the Minister inform Members what progress, if any, the Economic Development Department has made in developing the economic stimulus package and advise when it will be completed?

Senator A.J.H. Maclean (The Minister for Economic Development):

An interim report outlining options for the economic stimulus package was shared with the Council of Ministers on 5th March this year. A fuller version of the paper has subsequently been sent to the Fiscal Policy Panel who will provide the Minister for Treasury and Resources with their comments by the end of March. Subject to any amendments and passage through Scrutiny, the Minister for Treasury and Resources intends to bring a report and proposition for the stimulus package to this House for debate and approval by June.

3.7.1 Deputy S. Pitman:

Could he give a list of the priorities that will be in the stimulus package?

Senator A.J.H. Maclean:

Sorry, I did not quite catch that. Would the Deputy mind repeating?

Deputy S. Pitman:

What will be the department's priorities within the stimulus package?

Senator A.J.H. Maclean:

Despite comments from the Minister for Housing thinking that his department is going to have the priority, I am afraid that that is not entirely the case ... or the Minister for Planning and Environment. The stimulus package is designed to support the Jersey economy as conditions deteriorate. There will be support for individuals included as the onset of the downturn. The intention there is obviously to minimise job losses and look at opportunities for retraining and redeploying those who do lose their jobs as a result of the downturn and, of course, Jersey businesses of all sectors will be supported as well.

3.7.2 Deputy M.R. Higgins:

Would the Minister agree also to his papers being submitted to the Scrutiny Panel so that we can work in a co-operative way with him in developing a particular thing and as soon as possible?
[Approbation]

Senator A.J.H. Maclean:

Yes, of course. It should be pointed out that the stimulus package is not solely owned by the Economic Development Department. There are a number of departments that are involved in this process including Social Security, including Treasury, including the Chief Minister's Department and indeed others. At the moment the Fiscal Policy Panel who advise on such matters are about to review the progress made so far with the stimulus package and will be reporting on their views back to the Minister for Treasury and Resources. But of course Scrutiny ... and of course it is not entirely clear which Scrutiny Panel may wish to scrutinise. I know Economic Affairs are intending to do so but there may well be a need for a cross-Scrutiny Panel but that is a matter for them to decide.

3.7.3 Deputy M.R. Higgins:

Because of the importance of this matter I would ask that at least the part of it relating to Economic Development is referred to Scrutiny as soon as possible.

Senator A.J.H. Maclean:

I am more than happy to ensure that the details are passed on to the Scrutiny Panel as soon as they are collated and appropriate to do so.

3.7.4 Senator S. Syvret:

Will the Minister say whether he believes the application of Keynesian demand management techniques can really have a proper economic stimulus effect in a small micro economy such as Jersey where a huge amount of the resources - energy, materials, et cetera - of manufactured goods are imported into the Island? Will he make sure that the economic stimulus package does not in fact largely vanish through various methods of economic leakage?

Senator A.J.H. Maclean:

The Senator makes a valid point. With an Island economy there is always a risk of leakage and indeed as far as the considerations of the economic stimulus package are concerned, that is an area that we intend to look at very closely. We are of course guided by the Fiscal Policy Panel and their guideline on the 3 'T's - timely, targeted and temporary. We have to make certain that where indeed possible all stimulus entities that are entered into are indeed contained as much as possible within the Island economy.

3.7.5 Deputy G.P. Southern:

The Economic Development Minister mentioned individuals. Would protection of mortgage payments for people affected by redundancy in that situation be appropriate to keep people in their houses rather than have them on the streets as an economic stimulus?

Senator A.J.H. Maclean:

Not necessarily. The International Monetary Fund - the I.M.F. - made a comment on appropriate content for fiscal stimulus packages; not relating specifically to Jersey clearly but in general terms. In that they commented that spending increases were the most appropriate way of getting the highest level of multipliers into the economy. They went on to comment that general tax cuts or indeed subsidies for consumers - individuals or indeed businesses - were less likely to provide or would provide the lowest level of benefit overall.

3.7.6 Senator S.C. Ferguson:

Is the Minister aware that the Corporate Affairs Scrutiny Panel has already asked for details of a copy of the report that was presented at the Council of Ministers meeting last week, and I assume that the Economic Affairs Scrutiny Panel has as well? Will the Minister not look to releasing this report to both these Scrutiny Panels, both of whom have an interest?

Senator A.J.H. Maclean:

As I pointed out earlier it is a report that is not owned solely by the Economic Department and indeed it is a cross-department responsibility. I am more than happy to discuss with my fellow Ministers that the release of information to the Scrutiny Panels happens as early as is indeed possible.

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

Yes, the Minister mentioned working - or I thought he said working - with local firms. Could the Minister inform the House how far discussions have gone with local firms on apprenticeships? I am aware that we are going to have a few hundred school leavers in the next 2 months. I personally have spoken to quite a lot of big firms - electrical, plumbers - who do take builders and they are unaware at the moment ... and maybe I am speaking to the wrong firms but they are unaware of any package to help them take on extra apprenticeships in this economic downturn.

Senator A.J.H. Maclean:

Yes. The Economic Development Department through Jersey Enterprise is engaging with firms of all sizes. As part of that engagement to get the quality of information for the economic stimulus package they have been discussing issues relating to training and so on. There are a number of schemes that are in place but it is recognised that these will need to be improved. It is also through the Skills Board and the Skills Executive that we are looking at the possibility of additional funding and resource to ensure that appropriate schemes are brought on line to deal with those people, both coming out of education and not being able to find jobs and indeed those that lose their jobs at a later stage and need retraining.

3.7.8 Deputy R.G. Le Hérissier:

If there were to be a contraction of the finance industry what is the package saying about alternative employment for current employees of the industry who may well find themselves redundant?

Senator A.J.H. Maclean:

At this stage the package is not that specific. Of course, as I mentioned a moment ago, the Skills Executive are ensuring that that is properly funded and the training opportunities are available to people that need to be retrained and redeployed into other areas, whether it is within the different sectors of the existing finance industry to those that they are used to or whether it is into an entirely new industry, those are all issues that are being assessed and will be fed through the most appropriate area and that is the Skills Executive and Skills Board who are considering such matters.

3.7.9 Deputy S. Pitman:

What discussions, if any, will take place between the Minister and the Minister for Social Security in preparation for supporting workers made redundant through the economic downturn?

Senator A.J.H. Maclean:

As I mentioned at the beginning there are a number of departments involved in consideration of the economic stimulus package. Of course Social Security are an important part of that process. I have had a number of discussions already with my learned friend, the Minister for Social Security. I think it is fair to say that in the recent past, examples of companies that have unfortunately had to lay staff off... the Social Security Department has played their part in ensuring that staff are informed and provided with as much support as is possible. The level of that support indeed does

need to increase as the downturn bites. That is where the Skills Executive and Skills Board come into the equation.

3.8 Senator B.E. Shenton of the Minister for Planning and Environment regarding the existence of a presumption against the use of local architects in major developments:

Does the Planning and Environment Department have a presumption against the use of local architects in major developments and can the Minister explain the reason for the increased use of United Kingdom brand name architects for local development?

Senator F.E. Cohen (The Minister for Planning and Environment):

The department has no such policy. The facts speak for themselves. Since my appointment, Planning has determined 98 large applications. Of those only 6 were by non-Jersey architects and of the 6 the majority were in partnership with Jersey practices. Bear in mind that over the same 3 years we have dealt with over 6,000 planning applications. My aspiration has always been to promote good architecture in Jersey and this was one of my key manifesto pledges. Delivering improved architecture has been about raising the bar and putting in place processes to assist and empower local architects. Local architects have responded enthusiastically to the call for better design and are delivering some very accomplished schemes. Planning do not direct the appointment of architects. It is up to applicants to commission architects. They will base their choice on competence, track record and commercial competitiveness. However, when applicants choose to use a non-Island architect we now encourage them to partner a local practice. That said, I am proud that acclaimed architects from further afield are working on Jersey schemes and mostly in partnership with local practices. This continues a rich tradition. Trinity Manor, for example, was remodelled by the London architect, Sir Reginald Blomfield. T. Helliwell designed St. Helier market. John Haywood designed Victoria College. Thomas Calcutt, the Grand Hotel. Seafield was designed by Robert Luger. Steephill by Ernest Newton. Elizabeth Castle by the architect and engineer, Paul Ivy. Even the old States library and Greffe adjacent to this Chamber were designed by Ansell and Orange.

3.8.1 Senator B.E. Shenton:

It is a pity he did not mention anything that was designed by local architects under his Ministry. The Minister must surely realise that he is in a very powerful position and it is very difficult for local architects to criticise the hand that approves their plans. Is the Minister 100 per cent certain that the overseas architects have the relevant Regulation of Undertakings approval and consent to work in the Island?

Senator F.E. Cohen:

Regulation of Undertakings matters are not in my domain. All I can say is that from a perspective of practising as architects in Jersey, the U.K. architects are able to offer services in certain circumstances in Jersey.

3.8.2 The Deputy of St. John:

Will the Minister inform the House when he receives his planning applications from these U.K. architects - architects from off-Island - that they have been registered with the Royal Court?

Senator F.E. Cohen:

The U.K. architects are not required to register with the Royal Court.

3.8.3 Senator B.E. Shenton:

Could the Minister explain why he put the St. Helier Master Plan for the Gas Place site out to U.K. architects and did not ask any local architects to proceed with the tender process?

Senator F.E. Cohen:

With respect to the Senator, his information is inaccurate. Three local architects were invited to tender and 3 U.K. architects were invited to tender and the U.K. architects were clearly told that their tender had to include a partnership with a local practice.

3.9 Deputy M. Tadier of the Minister for Housing regarding the issue of ‘(j)’ category permits:

How does the Minister reconcile his decision to virtually suspend the issuing of (j) category permits with the Council of Ministers’ policy of increasing the population by 430 individuals per annum as detailed in the Strategic Plan?

Senator T.J. Le Main (The Minister for Housing):

I am not sure what Ministerial Decision the Deputy refers to.

Deputy M. Tadier:

I am referring to the Strategic Plan which has at its very core the policy of increasing the population by up to 430 people per annum which has been put forward by the Council of Ministers. Surely the Minister has read that.

Senator T.J. Le Main:

I have read it well but I cannot understand from the Deputy what decision that I have taken which refers to his question. I will say it for the second time.

Deputy M. Tadier:

Okay, perhaps it is a semantic issue then and it should not be the word “decision” but there was a statement released in the media roughly 3 weeks ago, so perhaps the Minister would like to take the opportunity to clarify his position.

Senator T.J. Le Main:

I would suggest that the Deputy does not believe everything he reads in the media because I have taken no decision that refers to his question.

Deputy M. Tadier:

But would the Minister be so bold as to just clarify the position on (j) categories and the issuing of them?

Senator T.J. Le Main:

Certainly, I would be very happy to do that. There is no question of my suspending the issue of (j) category permissions. I have simply outlined the established policy: (j) permissions are given to assist employers recruit and those that are training local people for jobs. They are not a means of rewarding promotions with existing employees in existing businesses.

3.9.1 Deputy G.P. Southern:

Can the Minister confirm that in line with current policy the majority - I believe it is 60 per cent - of (j) categories being awarded now are permanent rather than 3 or 5 years?

Senator T.J. Le Main:

Yes, because that is a States policy for people that are in-post and the “Know Your Client”... and people that come in and the difficulty in recruiting highly qualified staff. As I say, many of them now are given permanent contracts because we have to make sure that the people we employ understand the regulatory demands of the Jersey Financial Services Commission, the “Know Your

Client” all around the world and, as I say, the difficulty in being able to recruit highly skilled individuals because we are in the premier division of financial services. So that is the reason.

3.9.2 Deputy G.P. Southern:

Will the Minister also accept that the granting of permanent (j) cats. will tend to increase the population and will further have an effect on the housing market?

Senator T.J. Le Main:

No, not at all. The issue is quite clear that there has been for many years a policy of issuing only 3 and 5-year (j) cat. licences and these were rolled over on a regular basis. What it means now is those people are on a permanent basis and there is no roll over. So that is not the case at all.

3.9.3 Deputy R.G. Le Hérisier:

Notwithstanding the excellent work the Minister is doing which is an inspiration and an example to us all [**Laughter**], would he confirm that there has been a major problem with the public service in terms of (j) categories and is he taking a hard line in that area?

Senator T.J. Le Main:

Only last week I refused in conjunction with the Migration Advisory Group but finally it is the Housing Minister’s decision ... I turned down a request for a senior post in the public sector because I was dissatisfied with their training and their succession planning. I have turned that down and I will continue to do so. I hope the message goes out loud and clear, particularly to the public sector, to lead by example that they must have succession training. They must train local people. In many of the posts that have been granted over the years, the easy way out has been to get a (j) cat. and that is not the case any more.

3.9.4 The Deputy of St. Mary:

I would like to focus on the second half of the question. Would the Housing Minister care to inform the House where the extra 7,000 people that are envisaged in the Strategic Plan would go if that section of the plan is approved? Secondly, will there be a windfall tax in order to stop profiteering before any rezoning of the countryside?

Senator T.J. Le Main:

No, I cannot answer that question at the present time but if the Deputy would like to put it in writing I will respond and copy in all Members.

The Deputy of St. Mary:

A supplementary. I am very surprised that the Minister does not know where the 7,000 people are going to go. I do insist that he comment.

Senator T.J. Le Main:

I did not say I did not know. I said I prefer to have it in writing so I have the proper facts before me before I respond.

The Deputy of St. Mary:

The half of the question of the windfall tax on fields that might have to be rezoned?

Senator T.J. Le Main:

Any tax matters must be put forward to the Minister for Treasury and Resources, not the Minister for Housing.

3.9.5 Deputy T.A. Vallois of St. Saviour:

Could the Minister confirm whether due to the economic downturn whether there has been an increase or decrease in (j) cat. applications recently?

Senator T.J. Le Main:

Currently I am not concerned. There are less (j) cats. being granted in 2009 than 2008 but the Minister for Housing has a policy in conjunction with the Migration Advisory Group - which is Senator Routier and Connétable Norman - that we will support wholeheartedly any request for (j) cats. for highly professional people that are required by businesses right across the board; not only on finance but other businesses and including new businesses that may be beneficial to the Island who are going to be good employers, good taxpayers and other issues to enhance and maintain the very strong economy that we have.

3.9.6 Deputy D.J. De Sousa:

Can the Minister please inform the House how many (j) cats. in the last 12 months have been either refused or approved?

Senator T.J. Le Main:

Yes. For 2008, approvals with a time limit of one to 5 years, approvals of 192; approvals without a time limit, 331 which makes a total approval of 523 and 58 refusals. In 2009 up to now, 15 approvals one to 5 years until 16th February; 16 without time limit, a total of 31.

3.9.7 Deputy M. Tadier:

First of all I would just like to thank the Minister for his clarification. I am happy to know that he is equally frustrated as I am with the shortcomings of the local media. Could he confirm whether his department is behind the Council of Ministers to increase the population and what possible strains on resources he can see on his department?

Senator T.J. Le Main:

My role at Housing is to have an input in maintaining a good, strong economy and also to make sure that the local housing basically gives quite a lot of protection to the local people in the Island. So although I am in favour of enhancing the economy with good business, new business that may be essential to the Island and to its economy, I am not in favour of rampant growth.

3.10 Deputy S. Pitman of the Minister for Health and Social Services regarding the demise of the Reciprocal Health Agreement with the United Kingdom:

Would the Minister inform Members when he was first informed that the Reciprocal Health Agreement with the U.K. was ended and what discussions if any have taken place with the department, himself and U.K. authorities in trying to prevent this from happening?

Senator J.L. Perchard (The Minister for Health and Social Services):

Can I thank the Member for this question? It gives me an opportunity to provide some clarity to the situation. Formal notification of the U.K.'s intention to withdraw from the Reciprocal Health Agreement with Jersey was provided in a letter from the Right Honourable Dawn Primarolo M.P., Minister of State, to Senator Walker, Jersey's Chief Minister, on 28th May 2008. While the 3 months' notice period was mentioned in this letter, it was requested that officers from our respective governments would work together to agree appropriate arrangements. The Chief Minister, the previous Health Minister - Senator Shenton - and I have attempted on many occasions to meet personally with Ms. Primarolo but each time we were rebuffed; her justification being that the Agreement was going to end and officers need to arrange the details. Finally, after my repeated attempts to discuss directly with Ms. Primarolo and her senior officials, her letter to me on 27th February 2009 stated that Her Majesty's Government has not considered it necessary to have a Ministerial level meeting on this matter. The current and previous Chief Minister and the previous Minister for Health and Social Services and I, and officers, have written on numerous occasions to all levels in the Department of Health and U.K. Government, including Lord Bach, in an attempt to

protect the interests of Islanders travelling to the U.K. and to stop the U.K.'s termination of the Agreement. Regrettably, the U.K.'s policy decision to withdraw from the agreement was, as I have just said, formally notified to me in the letter of 27th February 2009 where Ms. Primarolo states: "With this in mind the U.K. is content for the Agreement to terminate on 31st March 2009."

3.10.1 Deputy S. Pitman:

Can I ask the Minister what does he believe as to the reasons why the U.K. authorities have come to this decision?

Senator J.L. Perchard:

It would be wrong of me to speculate publicly as to why the U.K. authorities have come to this decision. It is their right within the terms of agreement to terminate the Agreement with 3 months' notice. We do know the National Health Service is under extreme financial pressure.

3.10.2 Deputy D.J. De Sousa:

Can the Minister please inform the House what, if any, discussion his department has had with insurance providers to provide cover for Jersey residents when they go to the U.K. because no insurance providers of holiday insurance as far as I am aware do cover people in the U.K. on holiday?

Senator J.L. Perchard:

Officers from my department have been in communication with officers from Guernsey and the Isle of Man to discuss the matters of insurance providers and we have been for many months. Although neither the department nor I would endorse any particular insurance product, we have been keen to work with insurance providers to make sure that Jersey residents will be able to access appropriate medical cover should they fall ill while visiting the U.K. I am aware of insurance products likely to come on to the market this month that will provide cover for emergency medical treatment, repatriation back to the Island and repatriation of mortal remains.

Deputy D.J. De Sousa:

Will that be in action before this ceases?

Senator J.L. Perchard:

Yes. Obviously insurance providers could not advertise until the formal announcement from the Department of Health had been made. Communication with the insurance brokers is continuing. As I say I do not want to specifically suggest any one but a typical daily premium will be £2 per person per day to travel to the U.K. and possibly £60 per year if you wanted a whole year insurance cover if you are a frequent traveller. So these products will be advertised shortly and the insurance companies are fully aware as to what provision they need to provide to Jersey people.

3.10.3 Deputy K.C. Lewis:

While I appreciate the Minister's efforts with his negotiations with the U.K., does the Minister consider the door is firmly closed or are negotiations still ongoing? As I am aware the Jersey/U.K. accident and emergency facilities will still be available, is the Minister concerned with his colleagues that this could have an adverse effect on tourism?

Senator J.L. Perchard:

I would consider the decision had been made by the U.K. Department of Health and the Reciprocal Health Agreement as we know it will terminate on 31st March this year. With regards to our own Health and Social Services accident and emergency, we will be endeavouring to recover moneys from those that are not entitled to free healthcare. The consequences on tourism, I cannot predict but this is not untypical. For travelling to anywhere else other than the U.K., Jersey people of course do need health insurance.

3.10.4 The Deputy of Grouville:

I think Deputy De Sousa asked my question. I would just like the Minister to reiterate that the collective health insurance scheme will be in place before the end of the month.

Senator J.L. Perchard:

There is not a collective health insurance scheme. I am sorry I do not understand the Deputy's question. It will be the responsibility of the individual to ensure that they are insured if they travel to the U.K. Have I misunderstood the Deputy's question? I am sorry.

3.10.5 The Deputy of Grouville:

Okay, maybe I should ask another. Would it not be cheaper for Jersey residents if the Minister were to progress a collective health insurance scheme for all Islanders?

Senator J.L. Perchard:

I have no idea as to the cost of a collective health insurance scheme but that would be embarking away from a normal policy. We do not have a collective health insurance scheme for people travelling to other countries. Why would we do that to the U.K.? I am confused.

3.10.6 The Deputy of Trinity:

I am sure the Minister will agree that it can be very confusing for some Islanders with this news. Has the Minister or officers thought of issuing a leaflet of frequently asked questions which I am sure will go a long way to help Islanders?

Senator J.L. Perchard:

This is a very good question. Informing Islanders is what really we need to do and we have started that process. The Jersey Customer Services Centre on 445500 is available to assist Islanders with their queries. The Government website has a question and answer with regards to health insurance and I would recommend it to listeners and Members. Of course insurance brokers have been properly informed as to what cover Jersey people can expect. So they will get advice from insurance brokers. There is also a media campaign that will be embarked upon. But this is a difficult decision and it is no fault of my officers, my department or in fact the States of Jersey that the U.K. has chosen to withdraw from the Reciprocal Health Agreement. While it might be convenient to want to blame somebody as is the culture these days, it is the U.K. Department of Health who have decided to terminate the Reciprocal Health Agreement with Jersey.

3.10.7 Deputy M. Tadier:

The Minister said that there was no sense in speculating but does he agree that it is essential to know the reasoning behind the U.K.'s decision if his department is to react in the correct way? Also will he acknowledge the fact that it may be a political sanction ahead of the G-20 Summit and not simply an issue of funding?

Senator J.L. Perchard:

I will leave the Deputy to speculate as to why the U.K. have withdrawn from this Reciprocal Health Agreement but it does remind me of a similar experience some years ago when they withdrew the arrangements over further education and the support they gave to our Education, Sport and Culture Committee of the time. There are budgetary restrictions in the U.K. as well as Jersey. These departments are under extreme pressure. I suggest while the Deputy may wish to invent mysterious and suspicious circumstances that would surround this, it is simply a pressure of budget.

Deputy M. Tadier:

I am not ...

The Deputy Bailiff:

I am sorry, there are a large number of people who want ask questions.

Deputy M. Tadier:

I just want to defend myself. I think he is imputing false motives in my questioning, and I would just like to say that I am asking an open question. I do not have any suspicious motives at all. I think it is good for the democratic process that such questions are asked.

Senator J.L. Perchard:

I will apologise to the Deputy if I have offended him.

The Deputy Bailiff:

I know a number of Members still want to ask questions but I have to strike a balance between this and getting a reasonable number of questions asked so I am going to allow 2 more.

3.10.8 Deputy A.E. Jeune of St. Brelade:

Deputy De Sousa, yes, most definitely did ask my question for me and thank you. But the Minister has replied and said that he is aware. Well, he may be aware of what is going on with the insurance companies but the people out in the community are not. On 24th February the Minister did say that he would be having discussions with insurance companies. That was a couple of weeks ago. We only have a couple of weeks to go now before these people are going to be in this situation. What about our elderly most particularly? Most insurance companies cut off at 70. What are we going to do for them?

The Deputy Bailiff:

A concise question please, Deputy.

Deputy A.E. Jeune:

When will the Minister give us these answers? We do not want to speculate. It has certainly been on the cards for years so why has something not been done by he and his officers earlier?

Senator J.L. Perchard:

Just to take the very last point. It has not been on the cards for years. I remind the Deputy that May 2007 was the first formal notification we had of this. My department in the last 3 months has been talking and working with insurance companies across the 3 Islands that will be affected by this. It is now for the insurance companies to advertise their products. They are fully upstream of the situation. It is out of our hands. We will support as much as possible in providing information and I will repeat those phone numbers: 445500, Customer Service, and the Jersey Government, www.gov.je website provides much information. Insurance companies will provide information as well. I am not sure what I can do. I can correct the Deputy. We do know that insurance will be provided certainly up to the age of 80 and there will be policies developed, albeit there is no existing policy framework for those above 80 but I suspect the premiums will reflect that. I am as disappointed as the Deputy. This is not of my department's doing. It is not of the States of Jersey's doing. This is the British Government retracting part of the Reciprocal Health Agreement and is no fault of the States of Jersey.

3.10.9 Deputy J.B. Fox of St. Helier:

Would the Minister accept like the previous Minister for Education, Sport and Culture that when something is imposed at very short term, as within this particular case, it affects so many of the people of the Island that there is a great deal of anxiety when locals, many of which have rung me up to say that their current policies - annual ones as opposed to week holiday ones - will not cover them any more or have not yet had actuarial advice as to include the U.K. The common theme it seems to me that if you are travelling worldwide, that is fine you are covered. If you are in the U.K. you are not covered unless you have 2 days in-advance accommodation in the event of a

claim. That means if you are travelling through the U.K., shall we say to Gatwick/Heathrow to go out, you are not covered. This is the thing that is concerning. I appreciate the number that you have just given but could we have a named person that people could ring? I know it is difficult but this is very important. There are a lot of people at 75 who have been told that when they are 75 they will not be covered for the U.K. although they can have insurance elsewhere in the world is what I am being told.

Senator J.L. Perchard:

Can I reassure the questioner that the products have been developed and will be advertised? It would be extraordinary if a 75 year-old could travel anywhere in the world with health insurance but not the U.K. So it is simply a case of the products being remarketed. I did suggest in answer to my questions, we have been quoted a generic figure of £2 per day for this extra cover.

3.10.10 Deputy S. Pitman:

Going back to Deputy Lewis' question; can I ask again could the Minister state that this decision from the U.K. authorities is absolutely finite? Could he also state whether or not there is still room for discussion?

Senator J.L. Perchard:

The letter I received on 27th February - just over a week ago - was pretty finite as far as I can make out and I did quote from it that the U.K. Government is content that the Reciprocal Health Agreement with Jersey will terminate on 31st March despite my best endeavours.

3.11 Deputy R.G. Le Hérisier of the Minister for Health and Social Services regarding the suspension of medical practitioners attached to Health and Social Services:

Under what circumstances are medical practitioners attached to Health and Social Services suspended and what reviews if any are built-in to any such suspensions?

Senator J.L. Perchard (The Minister for Health and Social Services):

Decisions taken to suspend or exclude employees from work are never taken lightly. They are invoked when there are concerns about the performance or conduct of staff in an environment where the maintenance of patient safety is paramount. All suspensions or exclusions within the Health and Social Services Department are undertaken in compliance with the policies and procedures agreed by the States Employment Board. When appropriate, external expert advice is sought from the U.K.'s National Clinical Assessment Service to ensure that cases are handled fairly and with independent rigour. The process for handling concerns and disciplinary procedures relating to the conduct and performance of doctors and dentists identifies the procedure for keeping exclusions under regular review. This requires that I am informed at the earliest opportunity about any exclusion and that regular reports on progress in each of these cases are brought to my attention. I need to be satisfied that all reasonable efforts are being made to bring the suspension to an end as quickly as possible.

3.11.1 Deputy R.G. Le Hérisier:

I wonder if the Minister could tell us at what point - is it, for example, 3 months, every month, every 2 weeks - at what point is he informed of the progress of an inquiry? Secondly, could he confirm that when suspensions are put in place they are what is termed "neutral" and if so what does he mean by neutral?

Senator J.L. Perchard:

I can confirm that my department Chief Officer has to advise me of the current position with regards to a suspension on a monthly basis. Yes, with regards to suspensions - I know the Deputy's strong views on this - they are suspended without prejudice and it must be considered a neutral act.

3.11.2 The Deputy of St. Martin:

As the Members may have noticed on written question number 3, almost £700,000 has been paid to members of staff who have been suspended or to pay for overtime being paid. Can the Minister give us his assurance that he will look into this? Is he really happy that the suspension procedure, i.e. with reviews, is really working effectively?

Senator J.L. Perchard:

The Deputy knows exactly what my answer will be. I cannot bear to see this figure. It just riles me; £750,000 on suspended personnel and their replacements per annum at Health and Social Services. It is unacceptable. Members will know by my body language and my excitement over this, I have tried to understand every circumstance around every detail. Unfortunately, most of this money is spent as a result of a police investigation and judicial process where we are advised - and I question this advice - that we cannot take disciplinary action during this process. Now if we have somebody suspended in a process with a police investigation and judicial process, that takes months, years and we have to just pay the salary and replace the professional with a locum and we have to do this blindly. I am now questioning this advice and it is certainly something that I think we can take disciplinary action at the same time as a police investigation and judicial process is taking place, but it will be probably against the advice of our Law Officers.

3.11.3 Deputy R.G. Le Hérisier:

With reference to the Minister's comments, could he tell us in instances where the police are not involved and he gets monthly reports, does he get tangible evidence that during that month substantial progress has been made with every inquiry?

Senator J.L. Perchard:

Where there is not a police investigation and there is not a judicial process we are very proud of our figures in dealing with the suspension. In fact, I think the Chief Minister quoted from the States Employment Board, where there has not been police involvement it is inside 8 weeks, and we really have not a problem unless there is a third party involvement.

3.12 Deputy G.P. Southern of the Comité des Connétables regarding measures to increase postal voting and the investigation of on-line voting in the 2011 elections:

Will the Chairman outline whether any additional measures were put into place to assist the housebound or elderly to vote by post in the most recent elections for Deputies; whether any measures to increase postal voting are under consideration for the next elections and, if not, why not? Will he further undertake to engage with the Privileges and Procedures Committee to investigate using online voting in the 2011 elections?

Connétable K.P. Vibert of St. Ouen (Chairman, Comité des Connétables):

No changes were introduced to the established practices for assisting the household or elderly to vote by post in the last elections. As for increasing the postal voting; it must be realised that the Connétables neither administer nor have responsibility for any part of the process of postal voting. This is handled independently by the Judicial Greffier's office. Nevertheless, the Comité des Connétables is due to meet with the Jurats and the Judicial Greffier to review all the procedures employed in the recent elections. Following on from this meeting it is the intention of the Connétables to meet with the P.P.C. (Privileges and Procedures Committee) to review if any of the issues highlighted should be considered before the next elections.

3.12.1 Deputy G.P. Southern

I thank the Chairman for his answer. Is the Chairman aware of the practice in some Parishes of using sick votes as a routine instead of postal votes, certainly in the smaller Parishes, and if he is

not aware of it, will he investigate it and if he is aware of it will he examine whether such a possibility is useful in the larger areas like St. Helier?

The Connétable of St. Ouen:

No, I am not aware of this being used in this way but certainly I am happy that we will look at it in the round when we look at the whole issue.

3.12.2 Deputy S. Pitman:

In a previous debate the Constable of St. Mary stated that the Parish system accommodates vulnerable and elderly people; it may be true in St. Mary but it is not true in St. Helier. The people I have helped in filling postal application forms in 2005 and 2008 did not know that they could vote by post and if it was not for my intervention in telling them and assisting them in the completion of these forms they would have not voted, and I would like to add here that the 2 charges I have ...

The Deputy Bailiff:

No, Deputy, I do not think we can go on to deal with that now.

Deputy S. Pitman:

May I, Sir?

The Deputy Bailiff:

No, you may not deal with the matter which is before the Court.

Deputy S. Pitman:

These people were grateful for my intervention. But bearing that in mind, would the Chairman of the Constables Committee in his review include the current Parish and States systems in distributing information about how to vote to ensure that all electors are aware as to how they can vote?

The Connétable of St. Ouen:

I am not sure I understood the whole of the question but, as I have said, following our meeting with the Jurats and the Judicial Greffier's office it is our intention to talk with P.P.C. and discuss all the issues which were highlighted from the last election.

3.13 Deputy J.A. Martin of the Minister for Social Security regarding the provision of assistance towards mortgage payments for those in difficulty:

Given the proposals within the draft Strategic Plan to provide a safety net for the vulnerable and people in need, has the Minister given any consideration to helping towards mortgage payments for a length of time when people are in difficulty, and if so will he outline the proposals and advise how long they will take to implement?

Deputy I.J. Gorst of St. Clement (The Minister for Social Security):

The idea behind the safety net for the vulnerable and people in need, as set out in the draft Strategic Plan, is to ensure that community services are well co-ordinated. The safety net in question is not about financial support but about making sure that everyone in our community receives the support that they need from all relevant States departments. The separate issue of financial support for mortgage payments is under active consideration by my department at present. At the moment we have no firm evidence of a major problem in this area but we are certainly preparing for this possibility in the future. The timescales for firming-up these proposals will be of the order of a couple of months as Social Security cannot initiate this scheme from its own budget and will need to identify and secure funding. If any homeowner finds themselves in difficulty with their mortgage they should always speak to their mortgage provider as soon as possible.

3.13.1 Deputy G.P. Southern:

Will the Minister be seeking funding from the Stabilisation Fund or the Fiscal Stimulus Package to be developed by the Minister for Economic Development and the Minister for Treasury and Resources?

Deputy I.J. Gorst:

That is our idea as it stands. I think there is a legitimate case to consider this money would go into the economy and therefore could be considered as part of the economic stimulus package.

3.13.2 Deputy G.P. Southern:

Has the Minister, as a follow up, had the requisite conversations with the Minister for Economic Development and the Minister for Treasury and Resources because the Minister for Economic Development certainly seemed to answer otherwise earlier on?

Deputy I.J. Gorst:

I am not certain that the Minister for Economic Development did answer otherwise earlier on, however that is a matter for him. Yes, is the answer to his question.

3.13.3 The Deputy of St. Martin:

I fully understand or appreciate what the Minister is trying to say but I was a little bit concerned when he said that until there is a major problem we should not really concern ourselves too much. Would it be fair to say that anyone who has or suffers from a mortgage problem it is a major problem for them so you should not have to wait until there are dozens of other people having the same problem? Will he give consideration to individuals rather than waiting until we get a major problem because there are more than one applicant?

Deputy I.J. Gorst:

The Deputy makes a very fair point, however as I tried to intimate at the end of my answer, the first port of call for anyone who feels... even if they are not yet at the point where they might be in default with their mortgage payments but they think their household income is under pressure, and in the short term they might struggle to meet mortgage payments, I can only reiterate that the first port of call should be to visit their lending institution and make an arrangement with them. Most, I suspect, lending institutions will be happy to come to some agreement, be it for 6 months or 12 months, and that is why I made the comment that I did about a major problem. As I said, we are working on this issue. It will take for the order of a couple of months but that is also why I am reiterating that if people are encountering problems now please do visit their mortgage provider.

The Deputy Bailiff:

I am making a small allowance for the intervention of Senator Perchard and Senator Syvret, we have time for 2 more questions. Deputy De Sousa and then a final question from Deputy Martin.

3.13.4 Deputy D.J. Sousa:

Does the Minister not realise that he should move sooner rather than later on this matter so that we do not get caught out as we did in redundancy?

Deputy I.J. Gorst:

I believe that I am moving sooner rather than later. As the Deputy is aware the work to decide how the Stabilisation Fund is to be used... this House agreed that that would be considered in consultation with the F.P.P. (Fiscal Policy Panel), as the Minister for Economic Development said earlier, that is where we are with that process. They are expected to report back and we will expect that some proposition is before this House before the summer. If we bear that in mind with the fact that the first port of call for people encountering difficulties with their mortgages should be to go to

their bank, I believe that in all probability if this House were to approve such a scheme it would be seemingly aligned.

3.13.5 Deputy J.A. Martin:

The Minister made a couple of statements. He said that they have not acted yet; firstly could not see a major problem; secondly, would take a couple of months and that would be because he does not have any in his budget for this. Does the Minister not realise that the major problem will be when the people are out of their houses in any form of rental accommodation and, under the law of income support, his department will have to find the rent? **[Approbation]** Whose budget is that going to come out of?

Deputy I.J. Gorst:

I am not certain if I heard a question.

The Deputy Bailiff:

I think it was whose budget is it going to come out of?

Deputy I.J. Gorst:

If that is the case it will come out of my budget and this is part of what we might call the automatic stabilisers that the F.P.P. have talked about. I could perhaps give the Deputy some consolation, as she is probably aware, the Minister under income support does have a Ministerial discretion and within the policy guidelines as they currently stand perhaps ... I do not know if I have got time just to read that briefly. It says: "Mortgage interest can be paid for a period of up to 4 months following an [this is important] unexpected significant and sudden drop in income, for example, following the death of the main wage earner of major accident or illness or unexpected redundancy." So there is currently a safety net for what I believe the Deputy is possibly referring to but what I have been talking about earlier is a more thought through scheme to deal with perhaps a larger issue that we might be facing in this area.

Deputy S. Pitman:

I did flash my light before Deputy De Sousa and I believe you did look at the light. May I ask a question?

The Deputy Bailiff:

No, I am sorry, we have run out of time, Deputy, and I had not seen your light. I had only seen Deputy De Sousa's. I think there are a number of questions unanswered but I think it is traditional to invite all those who were going to give answers to give them in any event in writing and circulate them to Members.

The Deputy of St. John:

On a point of order, in the time I have now been in the House approximately 3 months under this new system, I have not received a single written response to the outstanding questions. I think the Ministers are failing us by not **[Approbation]** issuing the response to those unanswered questions.

The Deputy Bailiff:

I had certainly understood it was the generally received practice to do so.

Senator T.A. Le Sueur:

It is the understood practice, I believe. When I have had questions of that nature I have responded and I will ensure that other Ministers follow the same procedure.

The Deputy of St. Martin:

I would like to propose that we continue question time until all the questions are asked.

The Deputy Bailiff:

You are making a proposition to suspend Standing Orders to allow the questions to go on until they are ended? Is that seconded? **[Seconded]** The appeal is called for in relation to whether Standing Orders should be suspended so that all the remaining questions can be dealt with. I invite Members to return to their seats. I invite the Greffier to open the voting.

POUR: 20		CONTRE: 22		ABSTAIN: 0
Senator S. Syvret		Senator T.A. Le Sueur		
Senator S.C. Ferguson		Senator P.F.C. Ozouf		
Connétable of St. Lawrence		Senator T.J. Le Main		
Deputy R.C. Duhamel (S)		Senator J.L. Perchard		
Deputy of St. Martin		Senator A.J.D. Maclean		
Deputy J.A. Martin (H)		Senator B.I. Le Marquand		
Deputy G.P. Southern (H)		Connétable of Trinity		
Deputy of St. Ouen		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. John		Connétable of St. Peter		
Deputy of St. Mary		Connétable of St. Mary		
Deputy T.M. Pitman (H)		Deputy of St. Peter		
Deputy T.A. Vallois (S)		Deputy J.A. Hilton (H)		
Deputy M.R. Higgins (H)		Deputy of Trinity		
Deputy A.K.F. Green (H)		Deputy S.S.P.A. Power (B)		
Deputy D. De Sousa (H)		Deputy I.J. Gorst (C)		
Deputy J.M. Maçon (S)		Deputy A.E. Jeune (B)		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		

4. Questions to Ministers Without Notice - The Minister for Housing

4.1 Deputy P.V.F. Le Claire:

On a number of previous occasions the Minister for Housing has brought forward proposals to reduce the qualification period for residents in Jersey to be able to grant qualifications under the Housing Law and each time that those proposals have been brought to the Assembly it has been coupled with promises and assurances that this will help to reduce those in urgent need on the housing waiting list, and each time the Assembly has been requested and the Minister has succeeded in getting that approval for those sorts of reasons. Can the Minister please outline for us what the situation is at the moment for the housing waiting list, how many he has on it and what intentions he has in the near future, if any, to bring forward proposals to reduce the qualification period?

Senator T.J. Le Main (The Minister for Housing):

The Migration Advisory Group comprised of Connétable Norman and Senator Routier and myself met last week having had a recommendation from the officers on a further reduction or not of the reduction in housing qualification of years. This recommendation will be going to the Council of Ministers to seek their advice or clarification on the issue. Subject to that, it will come to the House for a decision very soon. In regard to waiting lists, the current waiting list is that currently we have on our waiting list 318 requirements for one-bed ground floor lift or lift-assisted accommodation and 125 of those are in urgent need; and currently on our waiting list for urgent need for 3-bedrooms, 38 3-bedroom homes required at the moment.

4.1.1 Deputy P.V.F. Le Claire:

Can the Minister please outline how many years he is talking about in recommending a reduction to the housing qualification to the Council of Ministers and would he also accept that despite the ever decreasing time that is put on this qualification period the housing need always seems to remain at around 450?

Senator T.J. Le Main:

The total waiting list is 300 but many of those within the list are people already in existing accommodation awaiting transfers to more suitable accommodation where they are over-occupied or under-occupied, so around 300 at the moment. In regard to the further reduction in qualifications, I have not made the decision yet although there are recommendations and I will seek advice first of all to the Council of Ministers before I make my final decision.

4.2 Deputy S. Pitman:

Could the Minister confirm that during the elections of 2008 that he supported 2 of the candidates, and could he admit that this was the real reason behind his calling for re-election in No. 2 district. Isn't it ironic, that he was calling for this given his fraudulent past?

The Deputy Bailiff:

Deputy, stand up please, stand up please. What do you mean fraudulent past? That is an imputation on another Member.

Deputy S. Pitman:

I believe in the past that the Senator has forged a States document while part of the I.D.C. Committee in 1985 for a land transaction.

The Deputy Bailiff:

He has what, sorry?

Deputy S. Pitman:

He forged a signature ...

The Deputy Bailiff:

Was he convicted of an offence?

Deputy S. Pitman:

No, but he did actually admit to it.

Senator T.J. Le Main:

No, no, no.

The Deputy Bailiff:

Was he convicted of any offence in relation to this?

Deputy S. Pitman:

No, Sir, he was not.

The Deputy Bailiff:

Was he, in fact, charged and acquitted?

Deputy S. Pitman:

Yes, I believe he was.

The Deputy Bailiff:

So on what basis are you alleging fraud by him? He has been found not guilty.

Deputy S. Pitman:

The Senator admitted it.

Deputy T.M. Pitman:

And resigned from I.D.C.

The Deputy Bailiff:

He cannot have admitted fraud if, in fact ...

Senator T.J. Le Main:

I did not admit to anything at all.

Deputy S. Pitman:

It is a fraudulent action in my view.

Senator T.J. Le Main:

That just shows the low-down acts that the J.D.A. (Jersey Democratic Alliance) are prepared to go down to. Just absolutely ridiculous. There was no question; yes, I did get involved with an incident and I pleaded not guilty and I was acquitted and it is public knowledge and has been public knowledge for years, and to bring this up now is just low-down dirty work.

The Deputy Bailiff:

Now has anyone got a more relevant question?

Senator T.J. Le Main:

I ask the Member to withdraw her allegations of fraud.

The Deputy Bailiff:

Deputy Shona Pitman, I do not think you can properly allege fraud. You can allege that he signed a document he should not have signed because that is what he admitted, but you cannot allege fraud when he was acquitted, so do you withdraw that?

Deputy S. Pitman:

By the law it is not forged but I can hold an opinion and believe that ...

The Deputy Bailiff:

Do you withdraw the allegation which you have just made in public?

Deputy S. Pitman:

No, Sir, I will not.

The Deputy Bailiff:

I am sorry, you cannot allege fraud when a person has been charged and acquitted.

Deputy S. Pitman:

I do believe that the Senator himself publicly said that both I and Deputy Southern committed fraud...

The Deputy Bailiff:

Yes, and I made him withdraw it and he did withdraw it. Now, I am saying to you, you cannot properly allege fraud where he has been charged and acquitted. He is not guilty of fraud. Do you withdraw it?

Deputy S. Pitman:

I do not, and I remember the Senator did withdraw it but he did not do it publicly.

The Deputy Bailiff:

Yes, he did. I am going to direct you to withdraw it.

Deputy S. Pitman:

I accept; I will withdraw it.

The Deputy Bailiff:

Very well. Deputy Vallois.

4.3 Deputy T.A. Vallois:

Would the Minister confirm whether there have been any significant problems or issues in the department's ability to conduct their services or business due to the move of housing properties to Property Holdings?

Senator T.J. Le Main:

I am not sure what the Deputy is alluding to but certainly the sale of homes to current tenants and property transactions could be improved upon.

4.3.1 Deputy T.A. Vallois:

I was not alluding to anything as such, I was just asking basically if there had been any problems with the housing properties, on the part of the Housing Department, by their being looked after by Property Holdings under the Treasury and Resources Ministerial department; whether there had been any issues; and if it was an ongoing problem?

Senator T.J. Le Main:

Yes, there have been some delays which, quite honestly, had the connections between the Housing Department, the Treasury and Property Services been better placed in the first place then some of these transactions would have gone through much quicker.

4.4 Deputy T.M. Pitman:

I will try to use the right words: does the Housing Minister concede there might be a conflict in his overseeing a multi-million pound budgeted department when he actually resigned from I.D.C. (Island Development Committee) and at least admitted forging a signature on a planning application? I will not accuse him of fraud because that is the niceties of the law I appreciate.

Senator T.J. Le Main:

I am not prepared to enter into a slagging match with the likes of the J.D.A. in this Assembly. As I say, it is just dirty underhand work by the Deputies Pitman in this Assembly this morning, and I am not prepared to go to their low level and attempt to even get involved with them.

4.5 Deputy D.J. De Sousa:

Does the Minister know the list of tenants that are waiting for assisted housing at the moment?

Senator T.J. Le Main:

Sorry, could the Deputy repeat that, I was trying to ...

Deputy D.J. De Sousa:

Is the Minister aware of the number of people currently waiting for assisted housing?

Senator T.J. Le Main:

Yes, I gave them out previously; 125.

4.6 Connétable G.F. Butcher of St. John:

Could the Minister confirm to the Assembly that the demand for over-55 housing is as great now if not greater than it was last year because I am receiving conflicting reports from senior officers at the Planning Department with developers stating the demand has dried up, and I can only assume that comes from developers that own the fields that are rezoned?

Senator T.J. Le Main:

We do not have any real figures on over-55s as to those who want to downsize. All I can say is that the requirements for elderly people in requiring a suitable one-bed/2-bed accommodation to meet their needs as their age with medical or physical problems has remained fairly stable in the last 12 months and, as I say, 318 on our waiting list, and 125 urgent need. But the over-55s, certainly I know that in places like St. Brelade there is a considerable demand for people that want to sell 3 or 4-bed homes with large gardens and want to downsize, but I am not sure what the whole requirements are generally in the Island on that.

4.7 Deputy J.A. Martin:

Earlier on in an answer to Deputy Le Claire the Minister said that he is going to be taking a proposition or some comments to the Council of Ministers re reducing the housing qualification period. Can the Minister, in his Housing role, assure the House there is enough housing at the moment, without having had a census for over 8 or 9 years, and that the population register is not set up yet; can he assure this House that until we have a set number on the population register he will fight his corner as the Minister for Minister and in maintaining the people in houses that are already here?

Senator T.J. Le Main:

We could never be sure on how many are going to apply for qualifications. Many people do not move, many people do not apply when their time is up for their qualifying time so I could never be sure. But on the evidence that we have had from reducing from 20 years down to 12 years, it has not had any impact whatsoever on the current housing situation.

4.8 Deputy G.P. Southern:

The Minister for Housing is awaiting a major report on housing in Jersey which was promised for the end of last year, I believe, and was more recently promised for the end of January. We are now into March; does the Minister have any idea when he will be receiving that report?

Senator T.J. Le Main:

The Professor Christine Whitehead investigation and report into social housing is in draft form at the moment but we have had to delay it a little while because of the economic situation and the downturn in the economy, so we have had to ask some extra questions. But we are pretty hopeful that within the next 4 or 5 weeks it will be fairly completed.

4.9 Deputy G.P. Southern:

Given the downsize that is occurring with associated redundancies, does he expect the demand for social housing to be going up rather than down?

Senator T.J. Le Main:

There is no evidence to show any demand for going up at this present time.

4.10 Deputy M. Tadier:

A 2-part question if I may. Can I ask the Minister if he is in favour of equal rights for all of Jersey residents?

Senator T.J. Le Main:

The Housing Department and the Population Office have that policy in place for equal rights on Jersey residents in as much on gender and religion and otherwise.

4.10.1 Deputy M. Tadier:

In response to that, can I ask how the Minister morally justifies allowing a rich, very wealthy individual to jump the housing queue and not have to wait the statutory 13-year period in order to buy a house in Jersey while other people do?

Senator T.J. Le Main:

I grant consent on the basis - for wealthy residents - of the benefits they are going to accrue to the Island. It is a States-approved policy. I have to say every country in the world applies that policy, whether it is the U.K. with their wealthy oligarchs from Russia and all over the world or every other country. Every civilised country in the Western world, including America, have a policy of welcoming people that have wealth into their country to assist in the community or what have you. We are no different from any other country and in fact the wealth creators that have come into the Island over a number of years, wealthy residents, have brought great credit to the Island and some are great contributors in not only in employment in the Island but very much so on charitable donations and are involved with charities. There are some giving huge sums of money.

Deputy M. Tadier:

Supplementary, Sir. A clarification.

The Deputy Bailiff:

You have asked your supplementary, Deputy, you have had your go, I will come back to you if there is time. I must be fair to all members. Deputy Jeune.

4.11 Deputy A.E. Jeune:

Where there are the plans for lifelong housing and these are deemed necessary for downsizing can the Minister confirm that he can require that those who then occupy or purchase to occupy these are by those who are downsizing.

Senator T.J. Le Main:

The policy plan is that it is a policy of this being applied by the Minister for Planning and Environment in conjunction with advice received from myself and my department. Only yesterday we had a meeting with the Connétables and the subject was raised, as a matter of one of the subjects to be discussed, and the policy will apply that where there are sites rezoned in individual Parishes, the Connétables will be the ones who will know the people that are going to be downsizing from 3 and 4 bedrooms with large gardens where there are one or 2 people living who want to downsize. It will be the Connétables who know their parishioners and it is the intention that under the policy approved by the Minister for Planning and Environment, supported by the Minister for Housing, that it is to allow people who are living in large family homes so they can be released back in the market and those people can move into smaller, better accommodation.

4.12 Deputy P.V.F. Le Claire:

The Minister has had a bit of a rough ride this morning but then again one is compared with the animosity that one receives from his opposite number. I would like to ask an informed question for helping to move the process forward with housing in Jersey and that is to ask the Minister if he can update us in relation to the first-time home buying scheme and how that is developing, if at all, and what is happening on the first-time home buyer front; what is happening in that area, please?

Senator T.J. Main:

The first-time home buyer scheme ...La Providence at Goose Green is the only place that has houses nearly finished but not quite finished and there is no movement at the moment because I

understand there is some dispute on main drains to be provided by the developer and Property Services. I understand that is close to being resolved, if it has not been resolved. But hopefully once that is resolved then the scheme of 46 houses then will be negotiated for affordable purchase and approved by the Housing Department and the Minister for Planning and Environment, and then distributed once that is done. But we are still a little way away from getting a result.

The Deputy Bailiff:

Very well. That completes the time available for the Minister. I did allow a small extension for the diversion in the middle. We come next to the question period for the Minister for Planning and Environment.

5. Questions to Ministers Without Notice - The Minister for Planning and Environment

5.1 The Deputy of St. Mary:

Given the Minister's insistence that there be no building in the countryside or no fresh building on any sort of scale in the countryside, and given his fellow Minister's commitment, which we just heard, to equal rights for all residents, can the Minister confirm to Members that he has a firm vision for the quality of life for residents in St. Helier and will he inform the House briefly what are his top priorities in this regard?

Senator F.E. Cohen (The Minister for Planning and Environment):

Firstly, the Island Plan is still to be consulted upon for a period of 2 months as a public consultation, then there will be an examination in public by an inspector. So it is not until then that I will know precisely what plan I am going to bring to the House.

The Deputy of St. Mary:

May I just ask what are his top priorities?

Senator F.E. Cohen:

I am getting on to that. The assumption that there will be no development in the Green Zone may be modified depending on the results of the public consultation. My priority in terms of regeneration of urban areas is that we provide the highest quality accommodation. The urban areas deserve regeneration, they deserve regeneration by the provision of the highest quality residential accommodation. We have made a start in that respect by ensuring that minimum standards have been increased by 10 per cent but there are issues like ensuring we have competent architecture, ensuring we have competent landscaping and ensuring that we have the provision of adequate amenity space. So those are my top priorities.

5.1.1 The Deputy of St. Mary:

May I have a supplementary? I am surprised that the Minister does not mention the very low supply of green spaces and outside spaces where people can sit out and where children can play and so. Does the Minister ...

Senator F.E. Cohen:

I just mentioned amenity space.

The Deputy of St. Mary:

Sorry, I missed that word "amenity space". Does the Minister agree that provision of space for people of all shapes and sizes is urgently required at St. Helier to become a truly desirable place to live and will the Minister agree to a comprehensive audit of the open space given over to motor vehicles?

Senator F.E. Cohen:

The Deputy has particular views on motor vehicles and I do tend towards some of his thinking. One has a choice with designing urban areas, you either design them around the motor vehicle or you design them around people. Any compromise is just that; it is a compromise. I would prefer to see urban regeneration designed around people with the provision for motor cars subordinate to that.

5.2 Deputy M.R. Higgins:

I would like to ask the Minister how he can justify the increases in the planning and bylaws fees announced on 23rd December 2008, which in one case amounted to 240 per cent. Does he not think that the States has an obligation not to add to inflation in the Island and not to make life difficult for the building industry and for private residents at a time when the Island is likely to enter into a recession over the next few months?

Senator F.E. Cohen:

The increases in building fees will not have any affect whatsoever on private residents. The way the Planning and Building Bylaw increases were structured was that they were entirely levied on large commercial development and there was some consultation before the new fees were implemented. Of course they were part of the business plan that was debated by the States. The costs have increased but they have increased because we have now placed commercial developments on a square metreage basis. That is, in my view, a highly equitable way of assessing planning fees and the only effect it will have will be on land values. It will not affect the sale prices of units to the consumer.

5.2.1 Deputy M.R. Higgins:

Again, does he not agree, though, that 240 per cent is quite a staggering increase in costs to the building industry at this time?

Senator F.E. Cohen:

It is a large percentage increase but it has taken commercial planning applications from effectively being *ad hoc* block assessment to a square metreage basis. It is perfectly equitable, it is far better than the old system and it will not, in any way, impair the development process in the Island. The fees are relatively insignificant when you compare them to the value of what is produced.

5.3 The Deputy of St. John:

Can the Minister explain why in 2009 some glasshouse growers have to have their glasshouses illuminated late into the night, thereby causing public nuisance in some cases to the neighbours and the like? Given that he has responsibility for the environment, what action will he be taking to stop this practice which is outdated and outmoded?

Senator F.E. Cohen:

Light pollution is not the exclusive domain of the Minister for Planning and Environment. However, this is an issue that I am well aware of, there is ongoing work as we speak - and I am happy to include the Deputy in that work - to reach an equitable solution because I do agree with the Deputy that it is unfair that people should be unreasonably disadvantaged through light pollution.

5.4 Deputy R.G. Le Hérissier:

Given the ageing population and given the enormous catch-up that may be required in providing disabled facilities in homes, is the Minister concerned that sometimes the need to provide disabled facilities or to extend homes to accommodate an elderly relative is often impeded by the rigid application of Island Plan principles?

Senator F.E. Cohen:

The answer is yes but as I alluded to in an answer earlier, the Minister's authority in relation to exceptions to the Island Plan are limited and the Minister can only make an exception to the Island Plan if it is clearly an insubstantial departure from the Island Plan. The alternatives are that the Minister calls a public inquiry or that formal rezoning takes place.

5.4.1 Deputy R.G. Le Hérisier:

Is the Minister saying that when somebody has a legitimate case which, for example, might lead to a modest extension of a house or to the installation of facilities for the disabled, at the moment he has no method of flexibly dealing with this?

Senator F.E. Cohen:

No, I am not saying that. When one is talking of a modest extension or perhaps a large extension to an existing unit, there are often possibilities for the Minister to approve such an application and I would seek to do so, subject of course to the particular circumstances of the case.

5.5 Deputy M. Tadier:

If we are to adequately house all people in Jersey on an equitable basis - that is without discrimination and therefore also extending to non-qualified residents - how many new units will be required and does the Minister have plans to provide them?

Senator F.E. Cohen:

No, I do not have the answer to the question because the key is the population debate. What I can say is that it looks as though, with the present analysis - and that of course could change through the Island Plan process - that we can accommodate up to 200 new families per year through redevelopment of the urban areas alone. But that may require modification as we progress the Island Plan consultation process. That is the indication at the moment.

5.6 Deputy D.J. De Sousa:

When consenting to new developments will the Minister listen to the people of the Island when only last night in the *J.E.P. (Jersey Evening Post)* there were printed results from the Green Paper on the Island Plan, and the consensus was that people largely say they would rather have any further development kept to currently developed areas and possibly building slightly higher than is currently the case.

Senator F.E. Cohen:

The answer to the Deputy's question is emphatically yes. Higher is a difficult issue. I have recently, as Members will know, made a decision to approve quite high buildings at the Westmount Quarry site. It is quite a test of policy. However that is an exceptional case because the buildings are protected by a higher escarpment. There are very few sites like that in Jersey. I think that the potential for higher is limited but, yes, we should go higher. Thank you.

5.7 Deputy P.V.F. Le Claire:

The Minister recently commented upon the decisions that were taken by the Minister for Transport and Technical Services in relation to blocking some suggestions in terms of traffic from the EDAW Plan and he found that those were taken as Ministerial Decisions reportedly without his knowledge. Could he express to the Assembly what progress has been made in this regard and what problems will occur if that continues?

Senator F.E. Cohen:

I think this is a complex matter and the best way to resolve it is for the Council of Ministers to consider what are effectively opposing positions. I, as Minister for Planning and Environment, clearly seem to have a different view to the solutions of regeneration in the town than my colleagues at Transport and Technical Services. That does not mean that there is a huge problem in

resolving the opposing positions but we need to sit down and clearly resolve issues that are to some extent quite opposed.

5.8 Deputy J.B. Fox:

Would the Minister agree that with the proposal to increase the density within St. Helier that the residents of St. Helier also have a right to at least be able to take out their children and their dependent parents, et cetera, by having the opportunity for the storage of a car in a car park, because many of the developments are having these facilities sold-off or not included within the developments? Could the Minister please comment?

Senator F.E. Cohen:

The issue of the provision of motor car spaces and linking the motor car spaces to a particular residential unit is quite complex because on the one hand if the motor car is going to be the driver, you want to do that, but on the other hand providing accommodation without motor car spaces makes the accommodation less expensive. There is plenty of empirical evidence to support that. We need to address the issue of how we are going to regenerate our urban areas and at the same time accommodate the motor car. It is going to be an accommodation because you cannot do both. You cannot design the urban regeneration around motor vehicles and ensure that it best serves the design for people. It is an accommodation and there will be some compromise.

5.8.1 Deputy J.B. Fox:

One way I would suggest for consideration is to control where the commuters manage to find a huge amount of parking within the residential areas, probably because their companies or their wealthy individuals can afford to buy them at the expense of the resident. Would the Minister like to comment?

Senator F.E. Cohen:

Yes, I think that is a very good point but, as in all development in the town, I am interested and want to seek the views of the representative Deputies and if, in a particular development, the Deputy has a particular view on car parking provisions I would very much like to hear from him as his view is valid and will be taken into account in the determination of any particular application. But at the moment it is on an application by application basis.

5.9 Deputy T.M. Pitman:

With the continued disappearance of hotels - a major concern if the Island is to have any future as a tourist destination - could the Minister clarify whether the new owners of the Water's Edge have been advised that permission will be granted to knock down and build apartments?

Senator F.E. Cohen:

I am not sure that the report that the Deputy and I read last night, which is the first I have heard of this, is entirely correct. I think before answering that question I would like to clarify the report of the change of ownership and respond to the Deputy and Members in writing with accurate facts. Thank you.

5.10 Deputy J.A. Hilton:

In a previous answer to Deputy Fox about listening to town representatives and taking on board our concerns, I am not absolutely sure that the Minister has done that. Certainly when the District Deputies met with the Minister to air our concerns on the Westmount development, I believe I am correct in saying that when I mentioned the fact that this House had agreed to a minimum standard of 650 square feet last October on one-bedroom apartments and I asked the question why could that not be applied to developments in St. Helier, I am sure I am correct in saying that the Minister said he would go away and he agreed with me on that. I am sure.

The Deputy Bailiff:

What is your question, Deputy?

Deputy J.A. Hilton:

My question is I do not believe that the Minister on that occasion listened to the District Deputies about our concerns on the Green Backdrop Zone at Westmount Quarry and the size of the rooms in that development.

The Deputy Bailiff:

That sounds remarkably like a statement rather than a question.

Senator F.E. Cohen:

I take exception to the comments of the Deputy. I went to some effort to consult with the Deputies, I produced with them a long list of the Deputies' requirements and I did everything I possibly could to modify the scheme to ensure that it met as many of those conditions as possible, including the inclusion in the consent of community rooms, of a gymnasium, increasing some of the requirements upon the developer, ensuring that we were not left with a scheme that was partially completed. I think I have done everything that I possibly could have been expected to have done to meet with the joint Deputies' concerns. As far as unit size is concerned the 650 square feet is not 650 square feet, it is larger. It is 66 square metres, which I think is about 710 square feet, and that applies to the retirement homes propositions. As the Deputy will see from the analysis I sent her, the unit sizes at the Westmount Quarry site are spacious indeed. Her problem is that what will result from the increase in apartment sizes, and room sizes particularly, is that you will end up with a one-person apartment potentially being occupied by 2 people because it becomes larger by the fact of constantly increasing the minimum size requirements. But I am afraid that is just a function of increasing the minimum requirements by 10 per cent.

The Deputy Bailiff:

Very well. I am afraid that brings questions to the Minister to an end. Before we move on I understand that the Minister for Treasury and Resources has presented some comments on the natural gas pipelines strategic study - Projet 16 - and that should be with Members. There are no matters under J. Under the K the Minister for Home Affairs will make a statement regarding the suspension of the Chief Officer of the States of Jersey Police.

STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

6. Statement by the Minister for Home Affairs regarding the suspension of the Chief Officer of the States of Jersey Police.

The Deputy Bailiff:

Minister, do I understand that the making of the statement will be very confined so it does not need to be made in camera, is that right?

Senator B.I. Le Marquand:

I think the statement does not need to be made in camera but any subsequent discussion or questions might need to be taken in camera.

The Deputy Bailiff:

Very well, I invite you to make your statement.

Senator B.I. Le Marquand:

I hope that Members have a copy of the statement.

The Deputy of St. Martin:

Could I just ask if the Minister could speak up so we could all hear rather than just talk to the Chairman. Thank you.

The Deputy Bailiff:

Imagine you are back in court, Minister.

The Deputy of St. John:

On a point of order we have not been distributed the statement.

The Deputy Bailiff:

Most Members seem to have the statement.

6.1 Senator B.I. Le Marquand (The Minister for Home Affairs):

I wish to inform the Assembly that following the in camera debate which took place on 21st January 2009, I met with the Chief Officer of Police and with his representative, Dr. Timothy Brain, on 13th February 2009 and 5th March 2009 for the purpose of reviewing the suspension of the Chief Officer of Police. During the review process I considered submissions from Dr. Brain in relation to the procedure which I should follow, the documents or other matters which I should consider, the criteria which I should apply in making my decision and whether or not the Chief Officer of Police should continue to be suspended. I then proceeded to make detailed decisions in relation to each of these issues with the outcome being that I decided that the suspension of the Chief Officer of Police should continue pending the current investigation. I also wish to inform the Assembly that my current information is that the current investigation will not be completed before the end of June 2009. It is my intention to continue from time to time to review the current suspension but any such review will be based upon any relevant change of circumstances and will not be a further general review.

The Deputy Bailiff:

Now, Members have the opportunity to ask questions and if they wish to do so then we will need to into camera. Very well, so the Assembly will go into camera so could I ask all those in the public gallery to please retire, and the media.

[Debate proceeded in camera]

PUBLIC BUSINESS

The Deputy Bailiff:

Very well, I think then we are now back in open session. No more matters under K, so we come to Public Business

7. Draft Amendment (No. 10) of the Standing Orders of the States of Jersey (P.179/2008)

The Deputy Bailiff:

The first matter of business is the Draft Amendment (No. 10) of the Standing Orders of the States of Jersey (P.179/2008) lodged by the Privileges and Procedures Committee. I will ask the Greffier to read the citation.

The Greffier of the States:

Draft Amendment (No. 10) of the Standing Orders of the States of Jersey: the States, in pursuance of Article 48 of the States of Jersey Law 2005, have made the following amendments to Standing Orders.

The Deputy Bailiff:

Before asking the Chairman of the Privileges and Procedures Committee to introduce this, could I just make a preliminary point. This matter arises out of the use of individual's names, contrary to Standing Orders. Can I just remind Members what Standing Order 104 says: "That a Member of the States must not refer to an individual who is not a member of the States by name unless use of the individual's name is unavoidable and of direct relevance to the business being discussed." I just want to make it clear from the Chair's point of view the discussion of the principle which is the subject of this amendment does not require reference to any individual's name and therefore I am placing Members on notice that if they do refer to individuals by name I shall regard this as a wilful disregard of the Standing Order and a wilful disregard of the Chair's authority.

Senator S. Syvret:

Just to be clear, can I ask for clarification on that. If the debate develops in such a way that the validity of remarks made against individuals is raised in the argument, would it then be appropriate for the Assembly to go into camera so that the issues could be in fact justified?

The Deputy Bailiff:

It will be a matter for the Assembly at all times, Senator, but I cannot see that the validity of remarks should ever be relevant to this debate. This is a debate on principle as to whether or not if a name is mentioned when it should not be it is to stay in *Hansard* or not. I cannot see that it would be relevant to that debate as to whether a particular remark made at some time was or was not valid.

7.1 Connétable J. Gallichan of St. Mary (Chairman, Privileges and Procedures Committee):

In brief, the application of Standing Orders as is presently in force means that everything said during the transaction of public business in this Assembly will be transcribed, permanently recorded in *Hansard* and ultimately published on the internet. Currently the transcription and publication will include any and all words spoken regardless of whether or not they breach Standing Orders. As the President has already reminded us, Standing Order 104 states that: "A Member of the States will not refer to an individual who is not a Member of the States by name unless the use of the individual's name is unavoidable and of direct relevance to the business being discussed." If a Member breaches this Standing Order the Presiding Officer may determine that a breach has taken place and may require the Member concerned to withdraw the words. As we all know once something is said it cannot be unsaid, even if it is withdrawn, but the recording of words in *Hansard* adds a further degree of permanence. The Privileges and Procedures Committee is concerned that there have been occasions in recent months when this Standing Order has been breached and yet, because of the requirement for a complete transaction, the full exchanges, including the individual's name, will be published on the website. Internet name searches are undertaken for many reasons, including, for example, employment references and of course the *Hansard* transcripts are fully searchable on the web. Privileges and Procedures considers that the recording of names of individuals who have been identified in this way in breach of the Standing Orders is unfair, especially when the appearance of a name in the official report of a parliamentary assembly could give the publication additional credence in the eyes of anyone finding it through an internet search. If this amendment is adopted it will result in a small but significant change and that presiding officer will be given a new power to direct that any name that he or she has determined is in breach of Standing Order 104(2)(i) be omitted from the transcript. The power is very narrowly drawn to cover names only and it does not permit the omission of any other unparliamentary or disorderly words. The Privileges and Procedures Committee consider that this is an appropriate balance between the need to protect individuals and the need to produce an accurate transcript of the proceedings. The proposed amendment does not affect the transmission on the radio of the

words spoken and neither does it interfere with the important privilege of Members to speak freely as they see fit in the Assembly. I would stress again at this point that Members themselves have agreed by the adoption of Standing Orders on a prohibition on the naming of individuals except in the specific circumstances described previously. I emphasise that it is only when the use of a name is in breach of Standing Order 104(2)(i), that is if its use was unnecessary and not of direct relevance to the business being discussed, that this new Standing Order would be brought into play. In the interests of transparency, the second part of these proposals, which makes an amendment to Standing Order 160 will require a note in the transcript showing where the Presiding Officer has directed that a name be omitted. In this way any person reading the transcript will be able to see exactly what happened during the exchanges in the Assembly. I move the proposition.

The Deputy Bailiff:

Is the proposition seconded? [**Seconded**] Does any Member wish to speak?

7.1.1 Deputy P.V.F. Le Claire:

While I am sympathetic for the Chairman in bringing this proposition, and I think most Members appreciate because of past circumstances why it has been tabled, she does mention that it would represent a small but significant change. I think that is what is going to be the problem. A significant change in keeping a written record of what was said in this Assembly so that it does not impinge upon the reputation or damage the reputation of that individual that was mentioned does not prohibit, with the agreement of this proposed amendment, the transmission on the radio of the words that were spoken. It seems to me that it is ludicrous that we would seek to alter documents that a not living entity and prohibit the actual capture of live oral commentary. Should the States Assembly wish, in my view, to change Standing Orders to allow for the prohibition of the wrongful use of names in relation to debate then it should bring forward a comprehensive proposition that outlaws that in written form and in oral form and introduce mechanisms that introduce a delay in the broadcast so that it can be removed. That is a technical possibility. It is done on many broadcasts around the world. It has been occurring for many, many years but there is a delayed broadcast, 5 or 10 seconds or so, and the name is blipped off, or the swear word is erased out. Whether or not such a proposition could be supported by myself is another matter, as is another matter in regards to whether or not changing Standing Orders in this way addresses the issue of the right for Members to introduce language and argument in position in a parliamentary privileged way that they believe suits their argument. I remember when I first came to the Assembly and I started to make comment about the Waterfront development - which we all have now acknowledged has been a disaster - I brought out documents and accounts of companies that were getting involved with the Waterfront leisure pool and highlighted issues in regard to what I foresaw as a complete failing, as did other Members. Although at the time I received a number of comments in terms of ridicule and barracking and wrecking, those did not bother me, but what did bother me were the allegations, or the intimidatory remarks from a Senator who is no longer with us, who would tend to lean upon every argument with the cautionary words: "And may I remind Members before they speak that the company's lawyers have been informed that we are debating this today." It was quite ironic, having said at that time - and I believe you were the Attorney General at that time - to the Bailiff if he would outline for me the procedures in terms of Standing Orders and matters of privilege, if I could seek clarification from yourself, Sir, as to whether or not we had Parliamentary privilege and could speak openly on subjects without fear of prosecution. The Bailiff disallowed my question to you and answered it himself by saying that that must be something that must continue to reside within Members' ability, but to be used with the understanding that it should not be abused. The ability to speak openly and honestly about a subject that one has a considered political belief about should be sacrosanct and if the States Assembly wishes to remove reference to individuals' names for certain reasons, and has a good enough argument for that, then it should be put forward in a comprehensive proposition. To put forward piecemeal the thin edge of the wedge, to reduce parliamentary privilege in this Assembly,

as has been proposed this morning, is not the right way to do things. If the arguments stand up for the names not to be used then they should not be broadcast, and if they should not be broadcast then they should not be spoken, and if they should not be spoken, under what penalty should they not be spoken? Under what penalty do we exit this Chamber and face prosecution in defamatory laws, defamation in the Royal Square, for example, where in here we can say what we wish. I think it is far more prudent that Members take on board their own responsibility and those of their office by not impugning people in the public service, or in public, who do not have the opportunity to defend themselves. If we are failing that as individuals then the individuals that are failing those tests should be brought to book with thorough, stringent, and persuasive penalty to stop them from continuing to do so, but to introduce a draconian measure as this, to curtail all of us in this way, curtails our privilege. Members may be swayed by the arguments that they are protecting one or 2 individuals from the past where a particular individual, or another in the States Assembly, has abused the Standing Orders but we are debating this morning - and now this afternoon - not only our ability to speak openly, but future Members' ability to speak openly as well and I have grave, grave concerns and will not be supporting this.

LUNCHEON ADJOURNMENT PROPOSED

The Deputy Bailiff:

The adjournment is proposed. The Assembly will reconvene at 2.15 p.m.

LUNCHTIME ADJOURNMENT

The Deputy Bailiff:

Before we continue, Madame Chairman of P.P.C. I was remiss this morning in not clarifying with you exactly what you were proposing. Given that all the amendments stand or fall together, were you proposing all 4 Standing Orders *en bloc*?

Connétable J. Gallichan of St. Mary:

Yes, Sir.

The Deputy Bailiff:

Very well. Just so we are clear what we are debating. It is all 4 proposed amendments. Very well. Does any other Member wish to speak? Does no other Member wish to speak?

7.1.2 Deputy T.M. Pitman:

Considering this amendment I was minded of the words of a gentleman I believe was Heinrich Heiner, who said: "Where books are burned, in the end human beings will be burned too." That might seem a very dramatic statement to make, but in this present circumstance I think that if we start accepting censorship before long we will happily rewrite the past and history. I have to say that I cannot support this. I view it as a total attack on parliamentary privilege. Censorship is not something that should be even considered lightly. I look back, as far as I have been able, to how often this Standing Order has been breached and I could only find 2 instances. Just 2. Is that really grounds to bring something in, which might seem a small change but it is actually a very dramatic change? We are all elected into this House and I think we are trusted, at least by those who voted for us, to use our judgment. Judgment is an individual thing. Sometimes we will get it right, sometimes we will get it wrong, but I think we have to be allowed to make that judgment. If not, we may as well move on to some sort of totalitarian state. I am sorry, but that is the natural conclusion if we go this way. It is deeply flawed in itself, this proposal, as Deputy Le Claire pointed out. Are we going to start banning the airwaves? Where do we end? Do we report to States as well? It is just going to be another opportunity for suppression of facts, I believe. I think

we have to consider censorship generally. How long would it be before perhaps myself could not stand up in this House and point out my colleague here, Deputy Southern, was within 3 days of being charged with someone else's offence. That would be suppressed, as it has been. I could not point out that our Attorney General is not prosecuting that person, who Deputy Southern was about to be charged with that offence, an independent candidate. Censorship is not a good thing. It is totally wrong when we come to government. This is about parliamentary privilege. It should not be swept away at the sweep of a pen and it really worries me because it seems to be a creeping move of this House towards legislation, whether it be actual laws or amendments. I am not going to go on about it even more. Well, I will. Article 3(9)(a) the anti-J.D.A. law, does not apply to anyone else. The Attorney General certainly does not pursue it. This really is the anti-Senator Syvret amendment, I think. I have known Senator Syvret, if I may say, for a good number of years; long before he was a politician. I do not agree with him on everything. He is not a member of the J.D.A. However, what I can say about the Senator is he is not a man who would make such a statement lightly. I would suggest to the House that as this amendment is really being based on a couple of examples of his, that he probably, if he had been minded, could have done so 20 times, and he has not, and I think that is what we need to consider here; another knee-jerk reaction as this Government slips towards, yes, totalitarianism. Suppression of facts, truth. Some people are worthy of prosecution, some: "No, it is okay." This is a bad move and I would really ask every Member to reflect on just what it will do. Parliamentary privilege, such as we have currently, is held by most democracies in the western world, in fact all that I know of. The U.K. do not adopt these appalling draconian moves. Really, I think we need to find a better way than this. If someone has spoken those words, they cannot be taken back. They are out there in the public domain. In Senator Syvret's case everything he has said is on his website, I believe, so what point would this law have? If someone feels strongly about it then pursue him. This is a move that I say just has to be resisted. I do not want to say that it is brought with any ulterior motive, but it has certainly not been well-considered and I really hope a lot of other Members will feel that they want to debate this because it is very, very important. If we adopt this it will be just another step to suppressing what States Members feel they need to do on behalf of their constituents. It is another step really to just getting to the stage where we have maybe 12 individuals running the Island, no right of appeals ... well, we do not have much of a right of appeal in Jersey anyway, but that is another issue. If we really value democracy, I just say to all Members please vote against this. It is ill-considered. It would be deeply, deeply destructive and it would achieve zilch because citizen media now exists. People do listen to their radio still. What is it going to achieve to have a nice big name removed? How is that going to make us look in the eyes of the world? The U.K. do not do it. I think it is time Jersey stood on its own 2 feet, grappled with the real issues of democracy, and stopped slipping towards a situation where the actual media can be threatened with contempt, if they dare tell the truth. That is the way this Government is going. It is shocking. There is going to be a lot more that comes out in the next month. This must not be another step on that slippery slope. Please vote against it.

7.1.3 Deputy M.R. Higgins:

I am a member of P.P.C. and I cannot support this proposition. I believe that parliamentary privilege is something that should not be given up lightly. It has taken many centuries for the privileges to be here and I do not think that we should just give it away, as I say, lightly. To the best of my knowledge, as has already been indicated, only one Member of this Assembly has in recent times mentioned a name in this context and I wonder, is this measure indirectly aimed at the Member, but is it being taken at the expense of all Members and the privileges of this House? The privileges to this House are following the U.K. Westminster model and I have been in discussions with the Speaker's office at Westminster and the House of Commons clerks to gather some information as to how they would deal with a similar situation. The only time they have ever expunged the name of someone from the *Hansard* record is where a case was *sub judicæ*, or in the case of where an intelligence agent's name was mentioned and the illegitimate daughter of a

Cabinet Minister was revealed. They are the only instances where they have ever expunged it from the record. Now, there are also instances where Members have raised matters which have led to criminal investigations, or other investigations, which have determined matters that would have gone unknown and unheard of, had it not been for Members speaking out. This is one measure that Members of the House of Commons value very, very highly; their ability to speak and the idea of taking it off the record does not mean to say that we are going to stop this thing being published, after all we have above us the *J.E.P.* reporting this now. It is going straight out on the air. We have the press in the other gallery who are also taking note of what we are saying and publishing it. The truth of the matter is, once it is said it is published. It will be out there. Big difference though is that if it is recorded in *Hansard*, no doubt the Deputy Bailiff, or the Bailiff, or whoever is presiding over this Chamber will admonish the Member for it. There will be no doubt a comment saying: "Should not have been said in the circumstances" and so on. It will be put in that context. It may not be so in the other media. So, I do believe that this is one of the essential safeguards of parliamentary democracy and we should not take it away lightly. Please reject this proposition.

7.1.4 The Deputy of St. John:

This particular law does concern me. Given that I have a report and proposition laid down on government reform for openness and transparency and accountability... and in fact this in a great part goes against what I was hoping that the Members would do. I have had a meeting myself with P.P.C. on my proposition at the request of the chairman and they have tried to get me to tighten the parameters on it and so forth and basically water it down. Yet I see in this proposition by obviously the majority of P.P.C. they are trying to tie the hands of Members. To me that is not openness and transparency and accountability that the people who elected me asked me to do something about. They want this transparency and therefore we should not deny the people who elect us the transparency that they want, and the openness. Therefore I could not support this proposition.

7.1.5 Deputy G.P. Southern:

I start by saying that it must be made clear that Parliamentary privilege is one of the essential building blocks of a fundamental democracy. Please, please Members, do not treat it lightly. It has a feel of a relatively insignificant move. It is limited and it seems as if it has almost no impact, however, it is, as previous speakers have said, the start of a very slippery path indeed, and one which I believe should be avoided at all costs. My reasoning is as follows: Members here are elected to represent their constituents and to exercise their judgment according to their conscience. If we vote for this amendment I believe we erode that exercise of judgment just a little bit, but just enough because it says, as had been pointed out by the Rapporteur, that if the name is essential and relevant to the debate then it is not a breach of Standing Orders. On to which I would add: "And in the judgment of the Member, if it is in the public interest to reveal that name, to name that person, I believe that is the right that those individual Members, each of us, has." We take that away and what we would be doing in taking that away is to restrict the use of our judgment. What effectively we will be doing is making a small but significant move to pass the powers vested in this body away from elected members to the non-elected President of this Chamber, who effectively will have to rule as to whether the revelation of the name is essential and relevant to the debate. I believe that would be a retrograde step. We should not be giving up our privilege and the exercise of our judgment to hand that judgment to a non-elected leader of the House. I think it is summed up by the fundamental problem with this proposition, as the Rapporteur said, words once said cannot be unsaid and yet what are we doing here? We appear to be attempting to unsay words. They may be said; they may be broadcast; they may be recorded. Once said, they cannot be unsaid, apart from in *Hansard*, where they may be eliminated and unsaid. That has to be a retrograde step. I believe it is one of those days where we are talking - and I am certainly - talking about precedents. We talked about precedents about a month ago where we set a moral precedent. Oh, what precedent we set here. We set a precedent that it is okay to interfere with the published record of

what goes on in this House and what is said. We are attempting to unsay the said. This is Orwell revisited. I believe this should not have been brought and I urge Members to vote this down.

7.1.6 Deputy C.H. Egré of St. Peter:

I had intended to speak later, but having heard what I have just heard over the last few speeches I feel I must speak now. I am amazed at the scaremongering that is going on from some of my colleagues here. The idea that this is stopping anybody in this House making statements that they wish to make is absurd. It does not do that. What it does, effectively, is allow the ruling of the Chair under current Standing Orders, where the naming of a person is ruled out of order where a Member of this House may regard themselves as prosecutor, judge and jury, which is not fair on individuals because they have no right to talk back. That is the only area that is being looked at. The fact that when that ruling is made that the name of that person is expunged from *Hansard*. It does not take away the fact of all the information that was passed prior to, all the build-up in the speeches of the individual prior to that naming and what comes after. It also notes in *Hansard* that that has been expunged and the reason why. I just find it amazing that people are saying this is stopping you, or any person in this Chamber, from access to free speech. It is right to say that it is being broadcast by our radio, it is being made note of by the *J.E.P.* and published. The difference between that and *Hansard* is *Hansard* is a long term record which can be accessed in decades to come. What goes on in the *J.E.P.* and what goes on in the news is lost within a matter of weeks. What we are saying is if unfair information has been passed about a naming of an individual, just that name should be allowed to be expunged and I hope that people will take that on board and vote in favour of this proposition because it is not curtailing free speech. It is stopping people being allowed to name people unfairly and unduly, as it stands in our current Standing Orders.

Deputy T.M. Pitman:

Could I just point out that the *J.E.P.* records are on file for about 20 or 30 years. If you go to the library you can access the *J.E.P.* for many, many years.

7.1.7 Deputy M. Tadier:

It is not going to be a particularly planned speech. Do excuse me if it is somewhat rambling. I am also a member of the Privileges and Procedures Committee and I am very uneasy with this proposition for many different reasons and I can see both sides of the argument. My initial reaction, and one which I still think is a very strong argument, is why should a member of the public who has been perhaps accused of something or named when they do not have any recourse to be able to defend themselves in the Chamber as we do, be subject to having something written down about them which may not be substantiated. I think that is something which probably concerns all of us, and quite rightly so. I would also point out the fact, picking up on Deputy Trevor Pitman's comment about the *Hansard*, I would take a slightly different view to the Deputy of St. Peter. It is not so much the fact that *Hansard* is on the record for a long period of time, it is quite true that the *J.E.P.* records, or even any other document, could be available for an equally long time. I would say that the distinction is that the document is an official publication which is from the States of Jersey, whereas other documents are not. So, that is the nuance there. Make of it what you will. That said, I was quite swayed by Deputy Le Claire's argument about consistency and I do think that we need to be wary of doing things piecemeal. There is an argument of course that when the *J.E.P.* or the radio broadcasts things if someone has been named wrongly it can still go on record, should we not therefore implement a delay of 5 or 10 seconds, and this is certainly something I would not be comfortable with. So, for the sake of consistency there are some interesting arguments there. I do take Deputy Southern's point into consideration as well, that it does not seem to be correct to let a non-elected Member have the final say about what might be ruled in or out of order. That said, I do not see this directly as an attack on Parliamentary privilege. We do need to make a distinction. No one has been able to stop naming Mr. X or Mrs. Y. What we are saying, the way I look at it, is that 2 wrongs do not make a right. So, if someone has been named wrongly, why should they also have to suffer by having their name printed on a document?

So, as it currently stands, I could not say which way I am going to vote. I am minded to abstain in some ways because I do see this also as being an attack partly on the privileges of the States, in so far as I suspect the motivation for doing this... and I would question in particular why it has come at this particular time and why we are breaking with the U.K. tradition. In the U.K. I do not believe that they currently do edit the *Hansard* at all, so why have we chosen to do this at the moment when we tend to take our lead from the U.K. in these matters? I would like to hear some compelling arguments on both sides. I will simply say that as it currently stands it would be my preference to refer this back to P.P.C. so that we can look at it very thoroughly. I would ask to move that proposition to test the mood of the House whether they would like to do that. I certainly think we do not have enough information at the moment to make such a far-reaching decision. I suspect that if I had to vote now I would vote against the proposition and I would do that with a heavy heart, but I would prefer to have more time to look into what is a very heavy, heavy proposition and a big decision to make. I would welcome further contribution from other speakers.

The Deputy Bailiff:

Deputy, just to be clear, are you formally proposing a reference back?

Deputy M. Tadier:

Indeed, Sir.

The Deputy Bailiff:

Is it seconded? [**Seconded**] I have to rule on that. Can I be clear, Deputy, what is the further information you are seeking?

Deputy M. Tadier:

The reason I would like it to be referred back is I do not feel we have weighed up the pros and cons fully. It is a big step to be taking.

The Deputy Bailiff:

Yes, but what is the further information you require? Standing Orders require that you can only refer back for further information and you must be specific so that I can judge ...

Deputy M. Tadier:

The further information I would be requiring is the logic behind why we are seeking to break with the current state of affairs. I do not believe we can do this in this sitting. That is the reason I would ask for it to be referred back.

Deputy J.A. Hilton:

Excuse me, is the Member not on the P.P.C. Committee?

The Deputy Bailiff:

Just one moment. I am sorry, but I must rule on this. In my judgment that is not a request for further information. It is to do with opinion, so I do not consider this as a request for further information. Deputy Tadier has not identified any further information, therefore I do not accept the proposition to refer it back.

The Deputy of St. John:

On a point of order before we move forward, could the Chairman tell us how many of her committee were in favour of bringing this forward? [**Approbation**]

The Deputy Bailiff:

Yes, she can deal with that, if she wishes.

The Connétable of St. Mary:

I would be very happy to. It might add some weight. If the Chair will remember I did have this tabled for debate several weeks ago and then I realised that it had been put forward by the previous P.P.C. Committee so I asked for it to be deferred so that I could give the members of the current committee the courtesy of a chance to discuss it, which happened at a P.P.C. meeting. Certainly I was not given the overt response that any members of my committee would be rejecting it. There were some who wished to discuss it further, which was done, and therefore the majority were definitely in favour.

Deputy G.P. Southern:

May I ask if that was the result of a vote, or not, at the meeting where it was discussed.

The Deputy Bailiff:

We have all sorts of questions here.

Deputy M.R. Higgins:

Just as a point of information, there was no vote on it. I certainly expressed my concerns about it.

7.1.8 Deputy S. Pitman:

I only have a question for the Chairman of P.P.C. I would like to know on what basis this proposition has been brought to the House. In other words, can the chairman confirm how many times this has been breached in the last 10, 20, 30 years or however long it has been in place and by whom.

7.1.9 The Deputy of Grouville:

Mine too is a quick question to the chair of P.P.C. I would like her to confirm if the U.K. have these kind of measures and if they do not, which I suspect they do not, could she give her reasons why she imagines they do not.

7.1.10 Senator S. Syvret:

I am very glad that the concept of a reference back was ruled out of order because this is to me quite clearly a yes or no question. One either supports it or one does not and I think we ought to vote accordingly. I believe that we should reject the proposition very, very strongly. We all know what this is about and indeed reference has already been made by several speakers to, I think, 2 particular incidents which concerned occasions when I named individuals in this Assembly. Now, I did so with thought. I did not take that action lightly and I did it because, in my judgment, it was in the public interest to do so and incidentally, just as an aside, the issues, names, and a good deal more besides are published by me openly on my blog site where it is not in any way protected by privilege, so if any individual concerned wished to take action against me they are perfectly at liberty to do so. So, nothing I had said has been hiding behind parliamentary privilege but we have to ask ourselves who among us could honestly and accurately judge the reasons as to why a particular Member may deem something in the public interest to disclose. Members may be party to information, facts, events, which they consider, on the evidence and after researching it, to be of such gravity that the public interest requires that they be discussed. Indeed parliamentary privilege exists for that very reason so that the public interest can be protected through the free speech of elected Members. Now, I take the point that has been made that this is not stopping Members saying things, but what it is doing is introducing what may be the thin end of the wedge and plainly an attempt to re-write history by expunging certain parts from *Hansard*. But as far as the namings that I engaged in, I believe that had other Members of this Assembly spoken to all of the individuals I had, read the evidence I had, listened to some harrowing testimony, they too would understand why I chose to name individuals in this Assembly. It was not something I did lightly but the vast majority of Members in this Assembly are in no position to judge me because they do not know what I know. They have not spoken to the victims, survivors to the extent that I have. If we were to pass this kind of thing today you are effectively emasculating Members' power to put

on record legitimate public interest concerns. It is also an assault on the basic principles of democracy because if I, or any other Member, say things in this Assembly, perform as a politician in a way that the general public don't like, and that they condemn, then the power rightly lies with the public at election time. They will vote to remove me, or whichever Member has fallen out of favour with them. So, that ultimate judgment, that method of controlling Members' conduct, what they do, what they say, does lie, and should lie, with the voting public at the ballot box at election times. That is how democracy fundamentally works. The moment we go down the path of starting to introduce a range of restrictions, strictures, and editing and who knows what else that limit and confine the action of elected representatives, just because we in this Assembly want to, then you are effectively restricting the free political expression of the voting public and I doubt very much in fact that this amendment as proposed today is compatible with Article 3 of Protocol 1 of the E.C.H.R (European Convention on Human Rights). We make our judgments according to what is in the public interest. If we adopt this proposition today we are usurping the public's power to decide upon the merits and quality of what is said and the Members who say it in this Assembly and we have to resist that and resist it strongly. It cannot be in the public good to go down this path on the basis of a couple of incidents. As has been alluded to by another speaker, it is in fact reasonably common practice within parliament, within the House of Commons, for M.P.s (Members of Parliament) to name individuals, members of the public. For example, it has been in the news in recent months that there are tremendous problems with witness intimidation in serious crimes up and down the country. It is a serious issue and there have been cases where because of things like that people who are obviously out-and-out drug dealing gangsters and so on, have escaped prosecution and conviction because of witness intimidation and under those circumstances, and it happens fairly regularly, M.P.s take it upon themselves to name the individuals in the House of Commons because it is in the public good that the identity of these individuals should be known and what it is they are doing. I can illustrate that with a perhaps less dramatic example. Just think at the moment - and I listened with interest to the speech of Deputy Egré - the public and Members of this Assembly, but it is the public who are most important, can return to the *Hansard* of some months ago and see revealed plainly in that the exposing of the fact that he and Senator Ferguson had a private, secret meeting with the Attorney General, William Bailhache ...

The Deputy of St. Peter:

A point of order, that was never secret.

Senator S. Syvret:

Well, I certainly do not recollect any publicity about it at the time. Perhaps the Deputy could show me where any media or any official communication knew about this meeting. The fact is these 2 Members had a private secret meeting with the Attorney General to directly interfere in a question of a prosecution. Now, that I think is a very grave matter. It is a matter of significant public importance. It seems to be the kind of thing that most Members of this Assembly would shrug-off, but you can take my word for it in the vast majority of legislatures, the House of Commons, for example, if M.P.s had behaved in such a manner with the Director of Public Prosecutions they would be in big, big trouble. Now, those exchanges are there recorded in the *Hansard*. Should we be able to expunge such references? Alter history? Deprive the public of that formal official record of what has gone on? I do not believe we should because ultimately it is the public and the public interest we are talking about here. The proposition itself is profoundly flawed in any event. For example, it comes to the Assembly and asks that we agree to exercise this power to rewrite history and to edit *Hansard* on the basis of an interpretation of the Chair that the naming of an individual does not comply with the Standing Order, if the Chair were to decide that it was not necessary or relevant or unavoidable to so name an individual. But where are the detailed definitions of those factors? Where is it described in detail what necessary is? What unavoidable is? If I want to name somebody in this Assembly, because I believe it is vitally important to be in the public interest to do so, then that naming is unavoidable and necessary and relevant to the

matter at hand. Now, where is the detailed explanation in the work of the Privileges and Procedures Committee, or anywhere else for that matter, that addresses that immensely complex issue; that defines these factors; that determines whether something is necessary and unavoidable and relevant or not to the issue? It just does not exist, any such detailed definition, and frankly I doubt that it ever could. I doubt that it ever could, which is why ultimately we have to leave it down to the judgment of the individual Members and more significantly down to the judgment of the voting public is the aim of the day. They will make their choice. If they feel the power of this Assembly that Members enjoy has been abused then no doubt they will express that displeasure through the ballot box. At the moment we have no definitions. I would like to turn to exchanges in the House of Commons just to illustrate the general importance of what is said in the House of Commons and how the right of Members to say it and the fact that it is not expunged or altered later in *Hansard*. I would like to quote a little bit from the United Kingdom House of Commons *Hansard* from a few years back. I think this is in the late 1980s and it concerned the famous old rabble-rouser M.P. Tam Dalyell. He did a tremendous amount of work on exposing such issues as the Belgrano sinking and in particular the Westlands helicopter affair and this passage relates to that and I would like to read it. He is referring to the then Prime Minister, Mrs. Thatcher, and I quote: "Mr. Dalyell: There was no full account. To say that the Prime Minister did not take part in the leak is a sustained brazen deception. It is straight forward dishonesty. The House of Commons cannot continue to operate on that basis. Truthfulness in the House is the fulcrum of our system. The Prime Minister is a sustained brazen deceiver, now hiding behind cynical performances. Mr. Deputy Speaker: Order, order. The Honourable Gentleman knows he cannot say that and he must withdraw that remark about the Prime Minister. Mr. Dalyell: I say that she is a bounder, a liar, a deceiver, a cheat, and a crook. Mr. Deputy Speaker: Order, order. The Honourable Gentleman knows perfectly well he cannot say that and must either withdraw his remarks or I must invoke the powers invested in me and my responsibilities to the House. I hope that the Honourable Gentleman, who is a very experienced parliamentarian, will withdraw those remarks. Mr. Dalyell: I do not wish to take up my colleagues' time. Let us carry the matter no further. I stick to my remarks and I know what you must do, Mr. Deputy Speaker. Mr. Deputy Speaker: In those circumstances, I have no alternative but to exercise the powers vested in me under Standing Order No. 24 and order the Honourable Gentleman to withdraw from the House for the remainder of this sitting." So, merely a few hours expulsion, temporary exclusion from the Chamber was the sanction placed on that M.P. for calling the Prime Minister a brazen crook. So, we see that such restrictions as do exist on what M.P.s may say in Commons are in fact largely symbolic and it has to be that way, for if it were not that way, if great sanction or the ability to re-write history were introduced, then the public interest would be greatly, greatly compromised. I want to turn to another more recent example of the House of Commons *Hansard* and this example is perhaps of even greater relevance to the matter before us today. I will quote also this passage. It was a recent ministerial question time and the Home Secretary, Jacqui Smith, M.P. was being questioned. This was a question from Keith Vaz and I quote: "I wonder whether the Home Secretary has seen the comments in the weekend press by Professor David Nutt, the Chairman of the Home Office Advisory Council on the Misuse of Drugs. He says that in his view ecstasy is less dangerous than horse riding. I will not ask the Home Secretary whether she has tried the drug, or whether she has ridden a horse, but I want to know when she plans to meet Professor Nutt to tell him whether she agrees with these comments. Jacqui Smith: I spoke to Professor Nutt about his comments this morning. I told him that I was surprised and profoundly disappointed by the article. I am sure that most people would simply not accept the link that he makes in his article between horse riding and illegal drug taking. That makes light of a serious problem, trivialises the dangers of drugs, shows the insensitivity to the families of victims of ecstasy and sends the wrong message to young people about the dangers of drugs. I have made it clear to Professor Nutt that I felt his comments went beyond the scientific advice that I expect from him as Chair of the A.C.M.D. (Advisory Council on the Misuse of Drugs). He apologised to me for his comments and I have asked him to apologise to the families of the victims of ecstasy too." The exchange then moves on to a question from Mr.

Lawrence Robinson: “I welcome the Home Secretary’s remarks on the comments made by Professor Nutt, but will she go a little further and suggest to him that the sport of horse riding provides discipline, whereas drug taking not only wrecks and indeed ends lives, but fuels crime. The 2 are completely incomparable. Will she go a little further than she did in her statement just now and perhaps suggest to Professor Nutt that although he might be appropriately named, he is in the wrong job. Jacqui Smith: I made completely clear my view that there is absolutely no equivalence between the legal activity of horse riding and the illegal activity of drug taking and that will always be the basis upon which I make these decisions.” Then at some point later during that question time Dr. Evan Harris of Oxford raised a point of order: “On a point of order, Mr. Speaker, during Home Office questions this afternoon the Home Secretary criticised Professor David Nutt, a distinguished scientist and an independent adviser to the Government as established in statute, who writes about his areas of expertise in academic journals. Is it in order for the Home Secretary to criticise him here where he cannot answer back for views that he has expressed in scientific publications? If so, what is the future of academic freedom, or independent scientific advice, if the Home Secretary can demand that scientists apologise for their published academic findings and views?” Mr. Speaker replies: “The Honourable Gentleman has asked me whether the Home Secretary is entitled to criticise an academic, or any other person for that matter, of course she can. It is a parliamentary privilege that we all have. The Home Secretary is a Member of Parliament and therefore she is entitled to do that.” End of. So, we can see quite clearly just how dramatic a departure from established British parliamentary practice would be the measure that is brought forward today by the Privileges and Procedures Committee. The ultimate question we must all have in our minds when deciding upon this, is the question of the public good. Ultimately, it is necessary for the public good for occasionally people to be named, things to be said, within this legislature, which some may dislike, some may disagree with, but that is just the way it is. That is Parliamentary privilege. I would just like to conclude by making an observation that I think Members would be well-advised to reflect upon. Far from routinely and regularly naming individuals in this Assembly I have exercised a great deal of restraint. Not because I felt particularly that the individuals and the circumstances and the issues should not be raised in this Assembly and should not be named, but because I know perfectly well I would be pulled up, halted, prevented from saying them, perhaps even sanctioned in some way if I persisted and subject to the customary intimidatory assaults on the free speech of the elected representatives of the public. So, I say to Members, were it not for that fear that I have, were it not for that sense of intimidation I have about such sanctions and actions, there are people I would have named in this Assembly and events and actions that those individuals have undertaken and it would absolutely be in the public interest for me to do so. It would be right and proper that such matters be dealt with here in the Parliament of the Island of Jersey. Unfortunately, I am not able to engage in those descriptions here but Members need to be alert that as a necessary and inescapable alternative to free speech in this Assembly the matters I have just alluded to are going to be raised in court in London. When Members see that evidence and consider the issues that they relate to Members will see that not only was the naming and exposing of these issues in the public interest but in fact - and I exaggerate not - by making these matters public I may well have put my own personal safety at risk. Members will be able to judge for themselves when that evidence is published, but it would be preferable if such events were not necessary and such issues could be discussed openly and in the public interest of Jersey here in this Assembly. If Members want this Assembly to be the ultimate voice and safeguard for the people of the community who put us here than the amendment today must be rejected and be thrown out.

Deputy M. Tadier:

I do have a point of order, if I may. I do have the information that I would require if I were to put the proposition forward. I did not have the presence of mind earlier.

The Deputy Bailiff:

I am sorry, it is too late now, Deputy.

Deputy M. Tadier:

Okay. Fair enough. I can tell Members after then perhaps.

7.1.11 Senator B.I. Le Marquand:

This is not an issue of protection of parliamentary privilege; it is an issue as to how this House deals with abuses of parliamentary privilege. **[Approbation]** We must recall that Members have liberty, have freedom, from the normal rule of law in relation to both libel and slander. We are protected from that. We cannot be sued for libel or slander if we libel or slander a person in this House. Now, that is a high privilege; it is an important privilege so that Members are free to speak as they believe is right and proper, but that privilege has to be subject to appropriate safeguards, and indeed it is within our own Standing Orders and of course I refer in particular to Standing Order 104(2)(i) which says: "A Member of the States must not refer to any individual who is not a Member of the States by name unless use of the individual's name is unavoidable and of direct relevance to the business being discussed." Now, of course, I accidentally breached that rule myself this morning, although I think everyone will have understood it was in a very technical way, but the purpose of that rule is clear. It is to avoid the unnecessary naming of people or the bringing in of the name of a person as an aside in a debate when you could do damage to them or in some other way to do mischief. That rule is there, in my view, for a very good purpose. The question before us is, what happens if a person breaks the rules? Of course there is a safeguard because there must be an adjudication upon this by the Chair. They may of course be admonished by the Chair. They may be required to withdraw what they have said, but as matters stand what they have said remains on the official record. That is not a satisfactory state of affairs. The official record of this House - *Hansard* as we call it - has a special and official status quite different to that of any report by the press. It cannot be right that the person who has breached an order of the court as adjudicated upon by the Chair nevertheless achieves the objective which they had of naming the person publicly and in breach of the rules. Can it be right that that remain on the official record? This is not an issue as Senator Syvret suggested which should be left the general public at an election which might take place in 3 years' time or 6 years' time. This is a matter of protection of the rights of individuals who might have been defamed, improperly referred to in this House from abuse of parliamentary privilege. The real question is as to whether this Chamber treats seriously its own rules as set out in the Standing Orders. In my view we should. They are there for a good reason and I therefore support this proposition.

7.1.12 Senator P.F.C. Ozouf:

I do not think that I am the only Member of this Assembly who believes that in recent months, in recent weeks, there has been a regrettable falling in standards of debate. I think that it is sad that we have to be debating this today. There has been reference to procedures in the U.K. Parliament. Now, there is a difference between Jersey politics and the U.K. Parliament. They are parties. Parties have rules. They have checks and balances where Members will be dealt with within the parliamentary disciplines. We do not have that here and we need, I think, to have alternative checks and balances to deal with issues such as we have heard. I heard and listened to Senator Syvret's speech with interest. He spoke about an M.P. naming the U.K. Prime Minister. I cannot see what that has to the relevance of this debate. I believe that we should uphold standards. I do not think it is right that one Member can name an individual and that that individual who is named can have their name reported in a public forum on the internet. There is under Senator Syvret's rules a single judge, a single juror, a single individual with no appeal and that has to be wrong, but we are not a court. I believe that people are innocent until proven guilty. I very much regret the fact that we have to put such safeguards. I do not think such safeguards should be necessary. I do not think that they should be necessary after we have taken our oath of office and we uphold standards of debate in this Assembly. But sadly it is clear that they are and for that reason I fully support the Chairman of the P.P.C. and those members of her committee in making as Senator Le

Marquand has eloquently said, I think the right decision in removing a name that should have never been uttered in this Assembly in the first place.

7.1.13 Deputy J.B. Fox:

Well, I am also a member of the P.P.C. I also have a past life and I also have a sense of natural justice and natural justices and I am not looking at any named individuals within this House - but Senator Le Marquand has covered much of what I wanted to say and very eloquently and much more eloquently than I would. But I would like to remind this House that we have privileges and a privilege is a very cherished and special thing and we must make sure that we look after our privileges and there will be times when individuals stray from the rules that are laid down. But what I think is intolerable is when the whole ethos here in the Island and the U.K., et cetera, is that you are innocent before you are proven guilty. You have a process that if someone wishes to make a complaint, whether it is for a civil or for a criminal action, there is a process that you can go through to have what appears to be something wrong, put right or punished depending on where it comes. What is not right is for somebody's name who is not a Member of the States to be accused or named by... something they do not have a right of appeal... and I think that that is what this is all about: that they do not have a right of appeal. No, you cannot obliterate something that is said in a public domain and a public arena with Members that are privileged, but is it right that an individual can be named immoral and which also could at some stage in the future jeopardise the due process of justice? Now, I am not saying that is necessarily the case, but it can happen and is that right: I do not think it is right. Therefore the proposition that is put here it is a tidying-up, if you like. It is a reminder that we have responsibility and that is why I supported it in the P.P.C. Committee when it was being discussed.

Senator S. Syvret:

Could I just ask the previous speaker a point of clarification? He spoke at some length about the importance of there to be an appeal mechanism and that what we are saying here is not subject to appeal. Does he recognise then there is equally a problem that needs to be rectified in that abuse of victims whose abusers are not going to be prosecuted have no right of appeal over that question?

The Deputy Bailiff:

I do not think that is a point of clarification, Senator. That is a second speech.

7.1.14 Connétable D.J. Murphy of Grouville:

During the deliberations of the committee there was obviously a split on a principle basis. I wonder if any of the Senators offered their resignation to the Committee Chairman on these principles?

7.1.15 The Deputy of St. Mary:

Just 3 points: the first was in reference to what Deputy Fox just said: "Innocent until proved guilty." It is a bit strange that, because we had 2 recent cases, the Chief Officer of Police and the Chief Officer of Family Nursing, to whom that did not quite apply in the same way. So, there is a kind of issue there that worries me a little bit. The second thing, I found it a little bit bizarre, *Hansard* is being referred to as if it is some kind of sacred document to which people will refer 10 years from now as if everything in there is utterly true. Well, we know for a fact that everything in there is not utterly true and it is my understanding that the minutes of this House can be taken in evidence. They are immediately a proof of what was decided, but *Hansard* is not a legal document in that sense. So, I would have thought that has some bearing on this debate so that if someone is named and there is a whole lot of la-la about that and people are abraded for doing so and so on, all that is also in the transcript, and I would have thought that covers a lot of the reservations that the people might have. The third point that I would like to make is that we are passing over, if we accept this proposition, the right to edit *Hansard*, it appears, to an unelected Member of the House and not to any other kind of Scrutiny or democratically elected process. It is subject to basically the decision of the chairperson and I think there is an issue there. I would like to ask in her reply

whether the proposer can tell us whether any other jurisdiction has this kind of arrangement in place whereby an unelected president can decide on whether something should be expunged from the record or not?

7.1.16 Deputy R.G. Le Hérisier:

As ever, one finds one's self on the fence. I find this a real struggle because, I have to say in many respects, I have disagreed with what has been going on particularly on blog sites although I do accept their total freedom. But of course it is a phenomena and of course it is global because it is a people's media or citizens' media. It is a phenomena which by its very nature allows all sorts of things to happen and that is probably right. But what does worry me - and I have worried it all the way through and this is where I have had to part company with the good Senator Syvret - what has worried me is finding people guilty. Now, I know some of this is done because allegedly the Island is in the grip of an oligarchy - not Russian ones - home-grown ones. The Island is in the grip of an oligarchy and that it is impossible for people to get justice. Now, the problem with that approach is, of course, what it does it continually personalises the system even more. So, the very issue you are trying to do deal with which is one of trying to introduce a more objective way to introduce more distance and so forth, the very principles to which you aspire are being, in a sense, undermined by naming people because you are going to another thing. The other thing that worries me about this stand - and I do not doubt for a moment as I said the Senator may believe he has evidence which is irrefutable and is absolutely overwhelming and so forth - but the other thing that worries me is selectivity because we all have cases of injustices that have been brought to us. We all have had people who have been to courts and feel that a person has been acquitted of a crime against them who should never have been acquitted because of some loophole, for example, and they feel very, very badly done by and they feel the system has seriously let them down and they basically exhausted all ways of dealing with it. So, the issue then remains well, what do you do and I have a great resistance - although I feel immensely torn when these cases are presented, the few that have been - I have a great resistance to saying well, I will take a political route because I think what you have to do then is to look at the system which has allowed that to happen and to see whether in our own modest way we can improve the system. I always feel that that is again another issue and I do feel we have to be very careful. If we are saying that the Assembly is the only place because basically we are faced with a system which cannot deliver justice and that the Assembly is the only place where almost in desperation we have to come to, if we are saying that, we have to remember that there are an awful lot of people who could come with similar cases. We could spend an awful lot of time doing that because we could argue we are dealing with a deficient system and this is the place of last resort. Having said that, and I also disagree with the Senator's position that the ultimate judge is the public at election time. Of course as Senator Le Marquand said that could be 6 years away and it is highly unlikely that all these things are being systematically added up in the electors minds and then they very logically come to a conclusion: "Well, I am very disappointed by what he or she did on 1st May 1973 and therefore I shall vote against them." I do not think people will vote like that. They vote more on general impressions, one kind or another. Having said that, we have to consider what is the damage that will be done if we remove this, and there is no doubt there is a slippery slope if we do remove the right of free expression, even if on occasional times that free expression is in the eyes of some of us abused. There is definitely a problem there and if people feel wrongly done by either they can use their own political pressure to try and correct the situation or we as Members - and I do remember remonstrating quite strongly with Senator Syvret on one case when he did do a naming and I have been accused of encouraging him to do the second naming so I have got a fairly balanced approach here - I do remember on one occasion when he did the naming I said, well, why did he not put his efforts into fighting for a system that worked a lot better so that we were not faced with having to do these things apparently on the floor of the House? Why did we not have proper systems of justice or proper systems of appeal so that we were not having to resort to what could under certain circumstances become quite frankly lynch justice, and that to me is the only way around it. But as I said on the other hand - if I dare say that -

there is this issue that if you start eroding and you start setting limits to what people can say even though you think they have been enormously unreasonable or wrong or unjust in what they have said, you have to be very, very careful. It also has to be remembered on a very practical basis that one can use official titles and in a small society you can use information that will eventually and quite frankly, quite easily and sadly identify people. That is part of the penalty of living in a small society and there is no way around it. So, if we were to remove names, I think what P.P.C. and the *Hansard* editors have to recognise is they are in a way making people more excited about the situation that they might have been at the time. In other words, there will be a reference to a removed name or it will be apparent that that is the case and the name will have gone out over the radio so it will be known to some in any event and we will have basically, unless we do... and this the problem which I know - and Senator Shenton is not here at the moment - Scrutiny is going to be struggling with in terms of things like video recording of meetings. This is the problem of consistency. If we allow some of the media to put it out and we allow our own media not to do it how can we argue that we are being consistent. So, really if we are going to be thorough in our approach and we are going to say this is bad, rather than try and deal with it through self restraint and by improving the systems of justice which have apparently allowed these things to build-up frustration and lead to this then we would probably have to do, in my view, a total blanket ban. I think that would be impossible to manage and would lead us up all sorts of *cul-de-sacs* we would not wish to be led up.

The Deputy of Grouville:

I know I have spoken, but could I ask for a point of clarification of you, Sir? If people are referred to, for example last year Senator Le Main referred to my mother as being responsible to key developments in the Parish which was a total and utter lie, as he well knows because she has never made a planning application in her entire life, what then would be taken out? Because by him saying something like that she is identifiable, so what would be taken out of *Hansard* in those cases?

The Deputy Bailiff:

Well, I do not know that the Chair can deal with all circumstances. The Standing Order refers to names so she was not named in that case, was she? Very well, does any other Member wish to speak? Then I call upon the Chairman of P.P.C. to reply.

7.1.17 The Connétable of St. Mary:

I am grateful for that, Sir, because I only have one sheet of paper left and I was getting a little desperate. Certainly I knew that this was going to be controversial in some respects and certainly there are a lot of points that need to be covered, but I am hopeful that I can deal with generalities. One theme that came through over and over again - and in fact Deputy Le Hérisier touched on this lastly, so I will deal with it in his context if I may - speakers were concerned that we were trying to set limits on what was acceptable, what could be said, what was permissible. That is patently not what the proposition is about. The limits on what is acceptable as regard naming individuals have long been set in Standing Orders and this proposition does nothing to change that; nothing whatsoever. All that this proposition does is perhaps give some kind of remedy to persons who are named in breach of Standing Orders should that occur. Several other Members have spoken about why we cannot deal with this through sanctions and why we cannot deal with this through Members' responsibility. Well, the answer is we have tried by setting a definition of what was acceptable and this is a fallback position to kick-in only when the Standing Order that governs that acceptability is broken. A number of Members also raised questions of what happened in other jurisdictions. Deputy Trevor Pitman was quite bold. He said there would be no such draconian measures of this in the United Kingdom. Well, I can inform the Member that the National Assembly for Wales, for example, certainly would give consideration to omitting a name from *Hansard* if direction was given. It is true that in the U.K. House of Commons *Hansard* would not be edited in this way, but in other jurisdictions - I will name one National Assembly in India, for

example - it would be edited. There is certainly not a blanket stance against this. I would say, however, that one of the things that should be borne in mind is that we are talking in the Jersey context of a very tight-knit close community where the impact of naming somebody permanently on an official record which is for ever and a day more searchable on the internet can be out of all proportion to the naming of an individual in perhaps another jurisdiction and we cannot get away from that fact. Furthermore - and I am carrying on with Deputy Trevor Pitman - some things that he said I think were probably conveniently inaccurate. He asserted that this was aimed firmly and squarely at Senator Syvret. Senator Syvret obviously thought that was largely true as well and he has by his own admission been guilty of infringing the Standing Order on at least 2 occasions, but I can assure the House ...

Deputy T.M. Pitman:

I want to say that that is imputing ulterior motives to me and I object to that, conveniently. Perhaps the chairman should really resign from her post if that is the level she sank to?

The Connétable of St. Mary:

I do not believe I have given way. Is there an intervention from the Chair, Sir?

Senator S. Syvret:

I do have a point of order. The Connétable attributed to me the view that I accepted that I had broken the Standing Order. On the contrary, that is not what I said. In my judgment it was necessary, unavoidable and relevant to name those people at those times under those circumstances and what she and her committee have failed to do is sort out those definitions.

The Greffier of the States (in the Chair):

Perhaps you should correct that, Chairman?

The Connétable of St. Mary:

Yes, I was just about to. I accept that what Senator Syvret has just said that he says that his judgment at the time was that he did not breach Standing Orders and I accept that that may have been his judgment at the time.

Deputy G.P. Southern:

If I may on another point of order, I believe the phrase “conveniently untrue” imputes the motivation of Deputy Trevor Pitman in that it suggests that he had motivations other than the truth in saying what he did.

The Connétable of St. Mary:

I am sorry if Deputy Pitman thinks I am impugning him. I simply said that some of it is inaccurate and that may have been convenient to this argument. So, I am not saying that he ...

Deputy G.P. Southern:

The words you used, I believe, were “conveniently untrue”.

The Connétable of St. Mary:

No, “inaccurate”. **[Laughter]** Deputy Rondel said that he believed this was tying the hands of Members and taking away the transparency of the Assembly. I repeat that nothing that this Article does changes the Standing Orders as to what is and what is not acceptable. That is not what this amendment is to do. It does not affect the right to free speech. The Standing Order amendment does not make any restriction on what can be said over and above the restrictions which are currently in place by Standing Orders. Deputy Shona Pitman asked me how many times in the last... I think the Deputy went as far as perhaps 30 years. *Hansard* has only been in place since 2005. I am not aware what went before.

Deputy S. Pitman:

Sorry, point of clarification. I did say when it was implemented.

The Connétable of St. Mary:

Well, as I understand it *Hansard* came into being with Ministerial government effectively in 2005. As I have already intimated this is not an amendment aimed at any particular Member although I could note that the Standing Order has been breached more frequently recently and not exclusively by Senator Syvret or any other Member who has been named, in fact. There was one occasion where Standing Order was breached repeatedly with different names by one Member, but unfortunately for the Deputy's information I do not have an actual tally of how many times. I think it was the Deputy of Grouville who asked why if the U.K. did not have such a mechanism in place my views on why they did not. My views on that really are not pertinent to the debate. I would go on to thank Senator Le Marquand for this explanation of precisely why this is not an attack on privilege, but is in fact the reverse and to bring some perspective to that side of the debate. Also then going on to Senator Ozouf correctly pointing out that the reference that Senator Syvret had earlier made to *Hansard* in the U.K. effectively refers to a case to a sitting Member of Parliament and is only individuals - not companies, nobody else - members of the public, members who are not Members of this Assembly that cannot be named in this way according to Standing Order 140. The question of course has to be raised - as I believe Deputy Le Hérissier came to say - who can say who is finally the arbiter of what is in the common good of the public interest? Who is the person who decides who is guilty? There is confusion in some cases between the floor of the Assembly perhaps and a court of law. This is a parliament and we deal here with matters of parliament. Senator Syvret did touch on the matter of perhaps a breach of the Human Rights Convention, I believe. Now, certainly I am not a lawyer, I am not well versed on that in any way, but it does seem to me that the convention on human rights as well as setting out the rights and the doctrine of free expression, it also sets out that with that freedom of expression come various duties and responsibilities. I am sure that one particular consideration that is always taken into note whenever the Human Rights Convention is looked at is the right of an individual also to protect their reputation. With rights always come responsibilities and I do believe that proportionality is a particularly important consideration to bear in mind. I would stress what I said earlier that in the Jersey context people are automatically more accessible. The concept of people being innocent until proven guilty was touched on by the Deputy of St. Mary. He noted 2 current examples so that is really not my domain to comment on. The fact that *Hansard* is not a legally binding document, the very point of this amendment is the fact that *Hansard* is an official publication and the fact that anybody searching this official publication or doing a general internet search on a named individual, no matter what they are doing it for, to find that person named in the official Parliamentary Journal gives a certain degree of weight that does not necessarily attach to perhaps finding that person's name on a blog site. Blogs are an incredibly useful tool for freedom of expression, but they are essentially a log on the web of an individual's thought processes and their particular angle on things, whether it is a parliamentary commentator or somebody who just happens to like vintage parts of sewing machines. Blogs are all sorts of things to all sorts of people. They are not official websites of parliamentary bodies. That is the real distinction here. I got quite excited during Deputy Le Hérissier's speech, the final speech. It got me quite worked up for a while because I thought he was going to leave the fence. I thought to myself I do hope he has remembered his parachute. **[Laughter]** But he then of course said, as I have mentioned, that he was concerned about setting the limits. This is not setting the limits. The limits are already set in Standing Orders. This is about what we can do to assist people whose names have been included in the record or have been brought up in the States Assembly in the debates because a breach of those limits which have been set. I do not accept his premise that the people doing a search would be more excited by a name that has been omitted because we are talking more or less of when people would be looking to search on a particular name. So, therefore searching on a particular name would not show that somebody's name had been omitted. I think I have said quite enough. I

believe that this is an important step. I do not believe that it is the huge leap that some Members have tried to make it. It is simply a remedy for the shortcomings that we may have from time to time on debate and I move the proposition, and I call for the appel.

The Connétable of Grouville:

A point of order, I did ask a question of the chairman asking her if any of the members of her committee had offered to resign on principle over this?

The Connétable of St. Mary:

Sorry, I did not realise the question had been put to me. I thought it had been put to the Members.. No, nobody has wanted to tender their resignation or has asked to tender their resignation as a result of these discussions.

The Greffier of the States (in the Chair):

Very well, the appel has been called for. The Standing Order is voted as one item. Members to get to their designated seats and once they are there the Greffier will open the voting for or against the amendment to the 2 Standing Orders.

POUR: 30		CONTRE: 18		ABSTAIN: 1
Senator P.F. Routier		Senator S. Syvret		Deputy M. Tadier (B)
Senator P.F.C. Ozouf		Senator B.E. Shenton		
Senator T.J. Le Main		Senator S.C. Ferguson		
Senator F.E. Cohen		Deputy R.C. Duhamel (S)		
Senator J.L. Perchard		Deputy of St. Martin		
Senator A.J.D. Maclean		Deputy R.G. Le Hérisier (S)		
Senator B.I. Le Marquand		Deputy J.A. Martin (H)		
Connétable of St. Ouen		Deputy G.P. Southern (H)		
Connétable of Trinity		Deputy of Grouville		
Connétable of Grouville		Deputy P.V.F. Le Claire (H)		
Connétable of St. Brelade		Deputy S. Pitman (H)		
Connétable of St. Martin		Deputy of St. John		
Connétable of St. John		Deputy of St. Mary		
Connétable of St. Saviour		Deputy T.M. Pitman (H)		
Connétable of St. Clement		Deputy T.A. Vallois (S)		
Connétable of St. Lawrence		Deputy M.R. Higgins (H)		
Connétable of St. Mary		Deputy D. De Sousa (H)		
Deputy J.B. Fox (H)		Deputy J.M. Maçon (S)		
Deputy of St. Ouen				
Deputy of St. Peter				
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 A.E. Jeune (B)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy A.K.F. Green (H)				

8. Voisinage and customary law: review (P.1/2009)

The Greffier of the States (in the Chair):

Very well, we come to the proposition of Senator Shenton relating to *voisinage* and I will ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion to request the Chief Minister to (a) bring forward for approval the necessary legislation to enable the abolition of the customary law of *voisinage* in Jersey; (b) review and investigate possible overlaps between customary law and statutory provisions in this area and to make recommendations as appropriate; (c) examine the cost of legal representation in Jersey in civil cases involving customary law and examine whether the cost of defending cases involving customary law is excessive and unjust.

8.1 Senator B.E. Shenton:

I will try and shorten my speech from the original length, given the mood of the House and the time of the day. First of all, I would like to thank the Council of Ministers for giving me just 3 days to consider their comments, even though the proposition was lodged on 5th January, and may I make an appeal to them that in respect of the other proposition that I have lodged towards the end of the month they do me the courtesy of giving me a little bit more time to consider their comments. I am assuming within this proposition that the Attorney General had input into the comments of the Council of Ministers and to be honest with you having read the comments I was not sure who the author was, whether it was the comments of the Council of Ministers or the comments of the Attorney General. Again, perhaps a Member of the Council of Ministers could clarify who wrote the comments that accompanied the proposition. I would like to start by asking the Solicitor General to demonstrate to the House how subjective this *voisinage* law is and how difficult it is for members of the public to understand both the law and its ramifications. If I may ask the Solicitor General the following question: in a published Crill Canavan article, Advocate Clare Nicolle states that: "Only the adjacent property owner would be able to bring a claim whereas the owner of a property down the road also seeking relief from the same noise would not be able to do so as *voisinage* applies only to neighbours whose properties are touching." Does the Solicitor General agree with Advocate Nicolle that *voisinage* only applies to neighbours whose properties are adjacent?

Mr. Timothy John Le Cocq Q.C., H.M. Solicitor General:

Yes, I just wonder if the proposer would like to list all the questions in one go or he would like me to take them piecemeal?

Senator B.E. Shenton:

Depending on the reply, this may be the only question.

The Solicitor General:

Could I just explain to the House before I say anything about this, that one of the plaintiff's in the case in question which I believe is a basis on which the proposer brings this proposition was a partner of mine until I left private practice. I did not have any involvement in the case at the time, but it is right that I alert the Assembly to the fact that I was in a professional relationship with that individual in my previous incarnation or in the former life for the sake of clarity in the law. The answer to the proposer's question is no, I do not agree with the statement made by the Advocate quoted. It seems to me from looking at the authorities, and in particular the French origin, the word used is *contigu* when talking between 2 different properties. It is also adjoining or adjacent to and on the ordinary dictionary definitions and indeed as the words and phrases are defined judicially that does not merely mean properties touching. It means properties in the neighbourhood or nearby and so I do not agree with the proposition made.

Senator B.E. Shenton:

I had 2 responses lined up depending on the reply of the Solicitor General and what the Solicitor General has so aptly pointed out there is that even this very basic premise of *voisinage* is not clear and if the lawyers cannot understand the law then what chance do members of the public have? In the Council of Ministers' comments indeed it does say that the properties have to be adjoining and it is perhaps worth noting that in the case of *Reg's Skips v Yates* the property rented by Reg's Skips was neither adjoining, adjacent, nor touching the other property. In fact there were 2 other tenants situated between the 2 properties. Furthermore, before that particular case, the responsibility under *voisinage* has always been with the landowner and yet here the tenant suddenly becomes liable and it is little wonder that the public do not know where they stand. But before we get into a detailed debate on *voisinage* - and I am going to try and keep my speech as short as possible and try and keep it as interesting as possible as well - it is perhaps interesting to look at some others of ancient law and why it is the role of the politician who represents the people to hold the judiciary to account where they believe that the judiciary avers. One particular case I would perhaps like to have a look at is the law of *dégrévement* which again was another ancient law and in particular the 1985 case of Barker. In this particular case Advocate Falle representing Ann Street Brewery had successfully argued in the Royal Court both in the original hearing and on appeal that Mr. Barker - who owned a wine bar in St. Aubin and had debts - that the correct course of action for Ann Street Brewery to recover money owed to them was through the ancient law of *dégrévement*. In simple terms under *dégrévement* if a chap has a debt to you of £1 million and owns a property worth £3 million the court can order the sale of the property to cover the debt but the person owed the money would not necessarily get back the difference between the value of the property and the value of the debt. Under *dégrévement* the person owed the money kept the property as settlement and the owner lost the difference. However, another ancient law at the same time - *remise de biens* - the property would be sold to pay the debt and the property owner would retain the difference. In the Barker case the Royal Court said that *dégrévement* was the right course of action and on appeal the Royal Court said that *dégrévement* was the right course of action. I think we would all agree that *remise de biens* where the property owner kept the difference would be a more fairer and ethical outcome. This decision, I believe, was against the principles of natural justice and yet the Royal Court thought it was okay. It finally went back to court and went before Commissioner Frossard, who was the Bailiff of Guernsey at the time, and Commissioner Frossard found in favour of Barker and against the original actions of the Royal Court. In the judgment it says that: "In directing that *dégrévement* should proceed, that it should be subject to the second creditors indicated, the court [this is the Royal Court of Jersey] had exceeded its powers by creating a novel procedure which was neither a *dégrévement* nor *remise de biens*. The decision to refuse *remise de biens* and order that *dégrévement* continue even subject to the second creditor's undertakings was unfairly weighted against the petitioner since the undertakings were inflexible in their valuation of the debtor's property and were unenforceable in law and it could not therefore be allowed to stand. It was wrong and against the principles of natural justice to refuse *remise de biens* and more particularly as the order for *dégrévement* of October 1985 contained conditions which were inappropriate to *dégrévement* and could be unenforceable." Mr. Barker had to pay all the costs for fighting this case and unfortunately he sadly died last year. Advocate Falle of course went on to have his finest hour with the Les Pas settlement and it is probably worth remembering that the whole Les Pas settlement was due again to the fact that we still had ancient laws on our statute books. Members will no doubt be aware of the £10 million cost to the taxpayer and pensioners of this Island in the Les Pas settlement, however, turning back to *dégrévement*, the States' minutes of 1985 make interesting reading: "The States having accepted an amendment of Deputy Edgar Becquet of Trinity adopted a proposition of Senator Richard Shenton and instructed the Finance and Economics Committee to consider amendments to the *dégrévement* procedure in the context of the proposed bankruptcy law so that in any case where the value of the debtor's removable property taken by the creditor exceeds the amount of the debt, the balance of the property will be returned to the debtor." So, it took political intervention to get the unfair *dégrévement* law changed. If we move forward to the early 1990s and the Jersey Law Commission

states: “For the reasons explained we believe that *dégrévement* though a bolder form when first introduced has now become outdated and inequitable. A neighbour’s creditors and debtors to contract out the provisions of the 1990 Law, we consider this to be undesirable. In our view there should be a single modern procedure for all Jersey bankruptcies and that there should be the *désastre* procedure as set out in the 1990 Law. The Commission therefore proposes that *dégrévement* be abolished.” Basically what they are saying is this *dégrévement* law is unfair and it has been overtaken by more modern laws. So, turning now to the law of *voisinage* and to be honest with you the law of *voisinage* has not been used a great deal in the last 100 years, but it has probably been used more recently than previously. The Council of Ministers comments quite rightly mention that *Gale and Clarke v Rockhampton Apartments and Antler Properties* which was handed down to the Royal Court in 2006 was an important case. But it is also argued in that case that the law of tort and English law is more relevant to modern Jersey law. It is a denial that times have changed. After all we looked to London for our Q.C.s and our legal advice and the public need and demand modern laws to fulfil modern circumstances. In some ways it is like trying to retain the use of a horse and cart and denying its replacement by the motor car despite the overwhelming evidence. Indeed in the *Yates v Reg’s Skips* case the Bailiff states: “We shall deliberately not use the word ‘nuisance’, not because it is not convenient shorthand to characterise the conduct which breaches the duty of *voisinage*, but because it is apt to mislead and being confused with the English technical concept of that name.” Well, we would not want a modern nuisance law, would we? The public might know where they stand. In the *Gale and Clarke* case referred to in the Council of Ministers’ comments the plaintiff brought proceedings in respect of damage allegedly caused to their properties by the defendants on the basis of the tort of negligence and also as a *voisinage*, however because the proceedings were not validly brought within 3 years, then consequently the tort claim was dropped. The defendants in that case argued that *voisinage* was not part of Jersey law that the previous decision to the contrary effect was wrongly decided and that the plaintiff’s remaining claims was covered by the tort of nuisance as applied to the Jersey authority. The defendants further argued that in any event an action involving *voisinage* should be prescribed by the period of 3 years in line with a tort action. In my opinion the Royal Court has a natural bias towards the horse and cart and away from anything modern and efficient and they held that there was insufficient evidence from previous authority that the Jersey law had assimilated the English tort of nuisance. The court further stated that the duty of a landowner not to use his land in such a manner as to cause harm or injury to his neighbour is not founded in tort, but in *voisinage*. You will notice that it does state *voisinage* covers the duty of a landowner to use his land. It does not refer to the tenant. In any case this particular judgment was contrary to the judgment of Tomes, Deputy Bailiff, in *Mitchell v Dido Investments* and to the apparent vindication of an action of trespass in *Parish of St. Helier v Manning*, in both these cases the torts of nuisance and trespass were stated to be in English terms and not part of Jersey law. This case will reinforce the view of those that see Jersey law as something of a battlefield between competing legal principles of different origins and where there appears to be wider issues at stake. It is beyond the scope of this short speech to provide a detailed comparison between the principles of *voisinage* and tort generally or just tort of nuisance alone, but insofar as both principles seek to protect the same interests and rights between neighbours there appears to be little, if any, difference between them. Indeed, a recent judgment confirms such a similarity when the Bailiff spoke of what touchstone tests for *voisinage* as a consideration of what is reasonable in the context of neighbourly relations which in broad terms seems equally applicable to the tort of nuisance. For example, in *Delaware Mansions v Westminster City Council* the House of Lords dealt with the recoverability of damage resulting from the encroachment of tree roots belonging to a neighbour. The leading speech of Lord Cooke to the answer to the issue being found: “By applying the concepts of reasonableness between neighbours and reasonable foreseeability which underlie much modern tort law and more particularly the law of nuisance it is therefore difficult to see any difference in substance between the touchstone test referred to by the Bailiff in *voisinage* to that of modern tort law.” In my opinion it is time that the English motor car replaces the French horse and cart and we might have much

more definitive laws on our statute books. Furthermore, where we bring in laws such as the Statutory Nuisance Law we should look at the ancient laws that it replaces and repeal them as necessary. I would like to address a couple of points made in the Council of Ministers' comments. The proposition is in 3 parts. Part (a) asks for *voisinage* to be abolished. This I accept would be rather nonsense and I do not expect Members to vote for part (a). Part (b) asks for a review and to abolish something and then to review it is a little bit like shooting someone and asking questions later. I believe the Council of Ministers and I believe the Jersey Law Society - I certainly heard Advocate Thacker on the radio saying that the law needed to be reviewed - would agree with part (b). I would ask Members to vote in favour of part (b) because this law does certainly need the review. I do not intend to dwell too long on part (c). This asks for an investigation into lawyers' fees, but again the comment of the Council of Ministers is interesting. Their comment is that legal fees are very high, but that is okay because all types of litigation are expensive, therefore there is no need to investigate. There is some brilliant logic here, is there not? If all the car dealers put up the prices of the cars we would not need to investigate because all car prices would be high. It also states that it is important to obtain good legal advice at an early stage to avoid racking up unnecessary costs and, to be honest with you, bearing in mind that this particular proposition is heavily weighted to one particular case I could not decide whether this was a dig at the advocates that represented Reg's Skips. Is the Council of Ministers saying that if Reg's Skips had got good legal advice they could have avoided much of the cost? Perhaps a Member of the Council of Ministers could enlighten me as to what exactly they meant by this comment? I would therefore ask Members to please support paragraph (b) because this law does need a review; to use their own thoughts and considerations with regard paragraph (c) which covers legal costs and I will not lose too much sleep if paragraph (a) does not receive the approval of the House. I put forward the proposition.

The Greffier of the States (in the Chair):

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

8.1.1 The Deputy of St. Martin:

I was hoping I could speak before, I assume it will be Senator Ozouf speaking on behalf of the Council of Ministers, because I am hoping we could save a bit of time this afternoon and I do have a certain amount of sympathy for Senator Shenton because I have been where he has been a number of times, particularly with the lateness of comments coming in, although that said, I did look at the comments over the weekend. One thing I do like about the particular process of the law is that does give the right of a neighbour to seek redress - that is good - but whether in actual fact this particular law is the right one, I think is the question we should be looking at. By pure coincidence, I think it was way back in 1999 as a member of the former Senator Shenton's Committee, I took through the Statutory Nuisance Law. It has been one of those I had a keen interest in, partly because I had been involved in the Licensing Law and I wanted to ensure there were safeguards for those people who wanted to run licensed establishments, but also those people who wanted to enjoy peacefulness in their own home. So, I pushed through to get this and by coincidence by the time it came to the States I was a member of the Public Health Committee and I was given the job of taking it through the House and we knew that that particular law was very much going to have a teething problem. One of the problems you had with the law - and no doubt the Solicitor General will correct me if I am wrong - was to get a Statutory Nuisance Law through or to succeed if you took a case to court was you would have to be looking for more than one person. That again is one of the strengths of this particular *voisinage* law in that you need one person so you have not got to have other people inconvenienced. But what I would like to hear from the Council of Ministers - and maybe Senator Ozouf will be replying or speaking on behalf of the Council of Ministers - is that I do not think Senator Shenton and the Council of Ministers are a million miles apart because if one looks at the comments under paragraph 3 of the Council of Ministers it says: "In any event whether this proposition is or is not adopted the Council of Ministers proposes to invite the Law Commission to

consider whether it should examine this area of the law and make any recommendations on it.” In actual fact it could have been said really... the Council of Ministers could have been a bit magnanimous and said: “Well, yes, we are going to accept it or come to some agreement with Senator Shenton and maybe save us spending several hours here” when really, as I said, they are not a million miles apart and maybe I could persuade the Minister to concede or come to some arrangement whereby to accept that possibly Senator Shenton might not push (a) and if it is possible withdraw that, but really we would agree on (b) and then I think (c) is neither here nor there because I think we could probably forget about that. But possibly if I could maybe get the Minister to accept (b) then possibly we may not have to spend the rest of the afternoon debating it? But I will leave that maybe to Senator Ozouf.

8.1.2 Senator P.F.C. Ozouf:

I would be grateful if Senator Shenton would clarify - I do not know whether or not it is possible - but whether or not he is withdrawing part (a) of the proposition?

Senator B.E. Shenton:

I am happy to withdraw part (a) if the Council of Ministers accept part (b).

Senator P.F.C. Ozouf:

I have not had the opportunity of conferring with the Council of Ministers, but I have to say that I would draw Members and Senator Shenton’s attention to the fact that the Chief Minister in the comments of the Council of Ministers has already written to the Law Commission in order to carry out a review and if it is appropriate, if that is in some way accepting part (b) of the proposition, then I do not see any particular issue because clearly the Chief Minister had the intention of asking and indeed the Council of Ministers’ intention of asking for this matter to be reviewed. So, I do not think there is a million miles in dealing with that. The Law Commission is the expert body which advises the sub-panel of the Council of Ministers or the Chief Minister on legal matters and it would be the appropriate way to review that, so I do not think we are a million miles away from that. In relation to (c), the Deputy of St. Martin says that we are not a million miles apart and while I have to say that the Council’s comments say that there is no evidence that legal fees are any higher in customary law cases than in any other case, we do not think that that is justification enough or there is no evidence in the report that justifies a review. I need to draw Members attention to the fact that this is a perennial problem that Ministers have, but we are asked by the Assembly to review matters. When the Assembly asks us to review matters we have to take things seriously and there is a resource requirement. I am dealing with the Chief Minister’s Department at the moment in relation to the huge amount of work that is emanating from the international matters concerning the financial services industry, the matters that the Chief Minister was talking about this morning. I am afraid to say one has to just be absolutely frank with Members that one does not have within the department the opportunity of the bandwidth in order to do this sort of thing. If there is a view among Members that the issue of legal representation does need to be reviewed, I would potentially respectfully suggest that that is a matter for either perhaps the Consumer Council, which does have resource or perhaps a matter that the J.C.R.A. (Jersey Competition Regulatory Authority) could look at if they think that there is a particular issue. There are other arrangements in place. I do not think that it is possible simply to take on such a responsibility out with better representation and out with using the other bodies that exist for that purpose. So with some degree of heavy heart I would respectfully suggest that the Chief Minister’s Department is not the right body to deal with part (c). I do not know whether or not we can short circuit this. I think there is a view that we need to review *voisinage*. I am pleased that Senator Shenton has withdrawn part (a). I think some of his remarks were in some ways perhaps not particularly focused towards the issue of *voisinage*, rather a sort of general swipe about ancient law and customary law and that is fine; he is entitled to his opinion. We have accepted the fact that there needs to be something reviewed here and it will be reviewed by the Law Commission. So if we can fast forward to a situation where there is an acceptance... or perhaps even the Senator on the undertaking that has already been given

wishes to withdraw the proposition perhaps he has achieved his objective and perhaps we can move on.

Senator B.E. Shenton:

Given that we voted extra funds to the Chief Minister's Department and given that the Chief Minister's Department could easily ask the Law Commission to carry out the review on their behalf and review it I do not think it would be excessive use of funds or time or resources of the Chief Minister's Department and I know that they are tied-up with international matters but maybe they should spend a bit more time on doing local matters as well.

The Greffier of the States (in the Chair):

Can we just clarify, Senator, whether you are willing to seek the leave of the Assembly to withdraw paragraph (a)?

Senator B.E. Shenton:

I am willing to seek the leave of the Assembly to withdraw paragraph (a).

The Greffier of the States (in the Chair):

This having been proposed it is a matter for the Assembly rather than the Senator alone. Are Members content for the Senator to withdraw paragraph (a)? Very well, paragraph (a) is withdrawn but the debate appears to need to continue for the time being on the other 2 paragraphs. Does any other Member wish to speak?

8.1.3 The Connétable of St. Martin:

I do not believe I am conflicted on this by looking at the proposition and had I been the esteemed Senator I would have hesitated about putting my toe into this pond because I think that 2 steps further into the deeper water I would have been out of my depth and floundering. I know probably as little about law as the next man in the street, and I have come across various parts of customary law and statutory law in my duties and also as a rates assessor. I understand that referring to part (b) which deals with the investigation and possible overlap between customary law and statutory provisions in this area and make recommendations... my understanding of *voisinage* is that it is a customary law and it imposes a duty on landowners not to do anything on their land that would cause a nuisance to their neighbour. By removing *voisinage* you presumably remove imposing the duty on the landowner or occupier and you then rely on statute law. I have a feeling that if you are relying on statute law you will tend to allow your nuisance to rise up to the limits of statute law, i.e. 50 decibels instead of 55, and you are not considering the duty of not causing a nuisance to your neighbour. So I believe perhaps there is a role for *voisinage* in that the Statutory Nuisances Law in fact vastly enhances the customary law of *voisinage* because by maintaining *voisinage* you still have the duty imposed upon you not to cause nuisance to your neighbour. So I would not wish to see *voisinage* deleted from customary law.

The Greffier of the States (in the Chair):

It is not a question of whether there should be a review, Connétable.

The Connétable of St. Martin:

I can agree with that, I would hope that the uses of the law of *voisinage* should be recognised, they are imposing a duty upon landowners and if you rely on statutory law then an appeal against a neighbour would necessarily go to the Minister for Planning and Environment, presumably, to issue an abatement order. If that abatement order is given the abatement order can also be lifted as well, so where are you in the case where an abatement order is made but then lifted at a later date? If the Minister does not wish to issue an abatement order then I think you are then going to appeal against a decision and you are landing in fact in the realms of a judicial review, and I think then we are back into the Royal Court anyway. So I think that is all I want to say. Thank you very much.

8.1.4 Senator J.L. Perchard:

Just briefly, the good Senator's previous officers of Health and Social Services and now my officers advised me that to remove this customary law without full report and consultation and understanding of the consequences would be unwise. The officer advice is that this customary *voisinage* law fills a gap in the legal framework in Jersey at the moment, a gap that in the U.K. is filled by a clause in the statutory nuisance provisions that allows a person suffering nuisance to go to court and get an order requiring the local authority to take an action if they have failed to act. There is also in the U.K. the private nuisance aspects of the law that gives an individual the right to take their own action. In Jersey that is the law of *voisinage*. So when the Statutory Nuisances Law, and Deputy Hill referred to it, and I do not know how long ago it was... [Aside] it was in 1999 and when it came to the States Deputy Hill may remember that it came with the bells and whistles of the U.K. package, and I am advised that this was removed at the time the legislation was debated, at the eleventh hour. I am not sure as to why; the fact is that it was removed at that time and left out, and I am interested to know why. It is probably because it may have conflicted with the *voisinage* law which is now dependent upon the Public Nuisances Law and *vice versa*, they together provide full protection for somebody who has been wronged, and so the officer advice is, as I say, there needs to be a proper consultation and consideration before this report is removed, so I am delighted that Senator Shenton and it seems like the House will support part(b) and Senator Shenton has removed part (a). With regards to part (c) of his proposition it reads very easily but it is extremely complex and probably extremely costly and if we embark on this it will probably, particularly if it is the Law Commission that does this, take many years. There are many, many old bits of statute, everything from the right of the taxi driver to relieve himself to the *voisinage* law and I suspect if we [Laughter] ... behind his left-hand wheel, I beg your pardon. Did I not say that? I just assumed everybody ... is it right-hand wheel, Constable? Right-hand rear wheel. I think that still exists on our statutes, the right of the coach driver or the public services vehicle driver. So there is much customary law that will need to be examined and while we could easily approve part (c) we do not know the financial consequences of approving this, and I agree with the sentiment, it is time we updated our legislation but we need to know. This needs to be a standalone proposition that needs to be costed, that is my point, and I would support Senator Shenton if he brings it back as a standalone proposition as part (c) properly costed so we all understand the financial implications of it.

8.1.5 Deputy P.V.F. Le Claire:

Extremely briefly - relatively anyway - I am glad to hear the speech of the Minister for Health and Social Services just now because I think like most Members when this was tabled I did not have a clue as to what it was all about. It certainly does give me food for thought because a number of times I have complained to the Assembly about the effects that certain processes are having upon members of my district, No. 1, from processes such as the compost site, *et cetera*, where there are individuals who feel very aggrieved that they are not being taken as seriously as they would like to be taken, and obviously this may be some avenue for them to proceed with. I would also just make the point that it is good news that this is going to be reviewed and, most interestingly as it interweaves so to speak with the Nuisance Law, Members may remember - and new Members can now be informed, if they do not already know - the Nuisance Law was recently agreed to be reviewed at the end of the last Assembly by the Minister for Health and Social Services and it would be good if these 2 laws are reviewed at the same time and brought for prompt approval because they do need to be reviewed together.

8.1.6 The Connétable of St. Brelade:

Just briefly, I think that tampering with ancient laws one does at one's peril and I think that Members need to be aware that these laws have evolved over many years as a result of circumstance and one thing that does concern me particularly is abolishing the law of *voisinage* would remove the important private civil remedy for owners of property in Jersey and I think to me

that would be a very perilous move. But, having said that, I think any review of any law would always be useful but I think Members must consider at this particular difficult time the costs involved.

8.1.7 Senator B.I. Le Marquand:

I am not able to support this proposition. It simply is not an appropriate way to proceed forward for this House on an *ad hoc* basis as it were to strike down some principle ... [Aside] sorry, okay, I was sorry I was trying to get back in and I was stuck outside. Can I just regroup for a moment and see what is left? [Laughter]

The Greffier of the States (in the Chair):

We are effectively debating whether there should be a review of the law.

Senator B.I. Le Marquand:

I am sorry, terribly sorry. I shall beat a retreat.

The Greffier of the States (in the Chair):

I call on the proposer to reply.

8.1.8 Senator B.E. Shenton:

The Deputy of St. Martin quite rightly spoke about the Statutory Nuisances Law and the Statutory Nuisances Law was a modern law brought in to account for modern circumstances. It was also brought in to make it accessible to every member of the public to have somewhere to go if the neighbour was causing a nuisance. It was very much drafted to take into account that industrial operations do occur. Under the Statutory Nuisances Law you would have to take into account what sort of reasonable noise would be made by an incinerator or by an airport or by other industrial facility and the law would therefore take account of that. In *voisinage* it is much more subjective. *Voisinage*, as I say, is an ancient law that incinerators and runways and most industrial plant had not been invented when the *voisinage* law came into being and also the remedy is far more draconian. In the Statutory Nuisances Law which we were trying to apply in the *Reg's Skips v Yates* case we were trying to work towards a compromise solution that was workable. Along came *voisinage* and Reg's Skips were kicked off the property. The Statutory Nuisances Law is, I believe, a modern law for modern times which is fit for purpose. I have great concerns with regard to *voisinage* and other ancient laws. Senator Ozouf stood and spoke of the Council of Ministers position and the fact that they can only really afford to review international things related to finance and anything to do with the local people of Jersey would have to take a second seat.

Senator P.F.C. Ozouf:

I did not say that.

Senator B.E. Shenton:

Sorry, that was my interpretation of what he said and I think Senator Ozouf could find the money if he so wished, bearing in mind that the review would have to be undertaken by experts in the legal profession. I was surprised that Constable Yates, the Constable of St. Martin, spoke because it is his son who is the Yates in the *Yates v Reg's Skips* case.

The Connétable of St. Martin:

I did declare that I did not think that I was conflicted because in fact there is nothing in the proposition that deals with family matters at all. It is a matter of rescinding a customary law and I do not see that there is any confliction.

Senator B.E. Shenton:

I make that point. You will note, though, that I did not stand up and object to the Constable speaking, it was his decision whether he spoke or not. Senator Perchard also mentioned the Statutory Nuisances Law and the way the department ... it is quite a new law, I think it was 1999 it came in, the department is still trying to find its feet, but it is based on 100 years of cases elsewhere in Europe and elsewhere in the U.K. It is a law that is under review following the proposition by Deputy Le Claire last year, again it is a law that may need altering slightly but it is a modern law and when you take someone to court under the Statutory Nuisances Law you approach the Minister and the Minister takes the action under the law, so it is open to all people from whatever walk of life. I think this is where we have a slight difference in opinion. We often stand in the States and say that no one should be denied the chance to go to university, there should be no one on the Island that needs to go to university that should not be able to go, whereas under laws like *voisinage* it is very much open to those that can afford to take an action and litigation is exceedingly expensive. You have to either be a lawyer or fairly rich, well, it is the same thing, is it not, or fairly well off to take action under the law of *voisinage*. So it is not a law that is open to the people of the Island, it is a law that is open to the select few. If you cover the issues with the Statutory Nuisances Law or criminal damage or nuisance or negligence the State will help you out. You go to the Minister and say: "X or Y is causing me problems" the Minister's Department will take action. Go under *voisinage* you better take your cheque book with you because it is going to cost you a small fortune and I think that is the main difference. What we need in this Chamber are laws that are open to all the people of the Island, not laws that are only open for the use of a select few and this is part of the review that we must get pushed forward. Deputy Le Claire also mentioned perhaps using *voisinage* for the residents around Havre des Pas. Again be very careful of the costs, obviously, you have an indication of the costs in the proposition but also it is a law that is very subjective and the Deputy was moaning about an instance where we were using the Statutory Nuisances Law to try and get a compromise at an old Jersey house that was doing weddings and entertainment. Under *voisinage*, if the neighbour took an action under *voisinage*, that place could just be closed down overnight and no action whatsoever..., so the Statutory Nuisances Law, I believe, is much more user friendly and much more right for Jersey. So to sum up, I think we do need a review because we do need laws that are accessible to everyone, we do need laws where people know where they stand and we do need to make sure that laws such as *voisinage* are reviewed and perhaps abolished in due course, and it is the job of this Assembly to make sure that we look at old laws and keep on top of old laws and make sure that old laws are removed when they need to be removed, because we tend to move very slowly, certainly the judiciary does tend to move very slowly on repealing laws and this is, at the end of the day, a legislature, this is our job, this is what we are meant to be doing. Where modern laws come in that apply to everyone we should get rid of the laws that only apply to a few. So I have withdrawn part (a) of the proposition. I would like individual votes please on parts (b) and parts (c). Thank you.

The Greffier of the States (in the Chair):

There is an appel on both parts. Very well, so the Members are in the Assembly in their designated seats. There are 2 votes, paragraph (a) having been withdrawn, the first vote is therefore relating to the review, paragraph (b) and the Greffier will open the voting on paragraph (b).

POUR: 43		CONTRE: 3		ABSTAIN: 1
Senator S. Syvret		Connétable of St. Brelade		Senator F.E. Cohen
Senator P.F. Routier		Deputy J.B. Fox (H)		
Senator P.F.C. Ozouf		Deputy of Trinity		
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator J.L. Perchard				
Senator S.C. Ferguson				
Senator A.J.D.				

Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
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 Hérisier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
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)				

The Greffier of the States (in the Chair):

Very well, I will ask the Greffier to reset the voting system so we can now proceed to the vote on paragraph (c) which relates to the cost of legal representation in Jersey in civil cases involving customary law and examine whether the cost of defending cases involving customary law is excessive and unjust.

Deputy A.E. Jeune:

Can I just ask for a point of clarification on this one? Do we have any idea of what the cost of (c) could be?

The Greffier of the States (in the Chair):

I think the answer is no, Deputy. Very well, the voting is open for or against paragraph (c).

POUR: 43		CONTRE: 3		ABSTAIN: 1
Senator S. Syvret		Connétable of St. Brelade		Senator F.E. Cohen
Senator P.F. Routier		Deputy J.B. Fox (H)		
Senator P.F.C. Ozouf		Deputy of Trinity		
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator J.L. Perchard				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
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.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
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)				

9. Property sold by the public: restriction on renting back (P/7/2009)

The Greffier of the States (in the Chair):

Very well. We come now to the proposition of Deputy Le Claire, Property Sold by the Public: Restriction on Renting Back - P.7/2009 - and I will ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of the opinion to agree that the States should not rent back any property that has been sold out of public ownership for a period of at least 10 years after the date of the sale.

9.1. Deputy P.V.F. Le Claire:

I do not intend to make a long speech so Members who are rushing out to get a coffee may want to make that a lemonade instead. I took the trouble after I had written the proposition to talk to the

Minister for Treasury and Resources. Had I perhaps spoken to him earlier the Members that have just left might not have been able to. I think we all want to ensure that the public's trust in us in terms of property is safeguarded and my original intention for this proposition was that we did not sell off huge office buildings, *et cetera*, that we own or sites that we would then eventually end up renting back from a property developer the very next month. This is something that I think States Members need to make a decision on today and I would rather they did this rather than me just going completely along with the advice of the Minister for Treasury and Resources and Property Services. So I have decided to continue with the debate even though there are some arguments that it creates inflexibility that may not enable the public to encapsulate upon the best value with their assets. So there are 3 areas of concern. Do the States want to send a signal that what is the States of Jersey - very much so - property assets and the property portfolio that the States represents; do they want to signal to the wider world that they are up to selling it all off; and do they want to at the same time indicate they are prepared to rent it back? That mechanism in the United States or Canada has been well recognised for a long period of time as a mechanism that property dealers get into to secure blue chip tenants, and what a blue chip tenant will do is it will allow a company to redevelop a building and get the money from the bank based upon the fact that the tenant is definitely going to pay the bills, so they call those blue chip tenants. A typical blue chip tenant would be somebody like I.C.I. (Imperial Chemical Industries), States of Jersey, and I do not know who else these days, but people like that, for example. My first concern about this activity was drawn when we decided to look into Shadow Scrutiny and I was quite lucky, I suggested the first topic for Shadow Scrutiny and it was accepted, and that was to look at the benefit or otherwise of selling and then leasing back the Tourism building and at the time I said that the Tourism building should not be moved and we should do a review of it because it did not seem to make sense at all. I made the argument that the footfall from the harbour, having worked there for a number of years, was definitely in the right place for the Tourism building where it used to be, and I did not think moving the Tourism building was the right thing to do. I made these arguments when I went to see Senator Ozouf and he reminded me that at the time he also was of that opinion and it caused some trouble at the time because he had gone against his colleagues on the Policy and Resources Committee of the day and got a bit of a rough ride for it, but I also admitted on reflection that if my proposition had been in place today or then we might perhaps not be in a position now to go back on that decision which was wrong, in my view, and has now been recognised more and more as having been wrong. The perfect place for the Tourism building was where the Tourism building was and the sooner that Tourism gets back there in one form or another the better, I think. Therefore I was quite pleased to talk at length with the Minister for Treasury and Resources about this. He also as a courtesy let me know the general feelings of Property Holdings and the general issues which I was very grateful for, and I am not going to get hung up about this. I just wanted to make sure that States Members had the opportunity to voice any concerns they have and maybe set a little steer towards the Minister for Treasury and Resources and the other Ministers who will in the future bring back properties for sale to the Assembly and for lease. That is when I looked over the lease arrangements that were drawn up from Property Services in respect to the Law Officers at the time for the Tourism building. One of the points that was made in there, which I think could be something that we could live with if Members feel satisfied, is that at the time they were negotiating a 9-year get-out clause in the interest of the public where no penalty would be paid, so it could be that we could enter into a practice that the get-out clause for the public in terms of leasing would be such that they would be able to move if in 9 years' time they felt that they had done the wrong thing. Obviously leases are extremely complex and we do not have the ability to understand much of what they concern, in fact much of what the States do in relation to decision making about property transactions occur in principle in the Assembly and then are negotiated by the Law Officers with the departments to the satisfaction of the Ministers. So there was at that time an agreement and a negotiation that was ongoing to have a get-out clause after 9 years. I do not know if that was included because it was a negotiation at the time but if it was agreed in the lease for the Tourism building and if that was something that was possible perhaps that would offer us

the option to safeguard us having made a mistake. If the States want the ability to sell-off property and lease back that property from an individual in the future to have the fluidity of managing a property portfolio then fine, I accept that. I accept that. But let us also accept that there is evidence that the States have done this before and have regretted it against concerns of States Members and finally with acknowledgement to States Members and the media that they were wrong. The 2 incidents were the Waterfront Leisure Pool and the Tourism Office, so not in that great distant ... not so long ago. **[Laughter]** I am not going to get hung up about it, I would ... not recently, thank you. I appreciate the time. I would like to hear what Members have to say about those thoughts, would like to hear what Members have to say about these views. The Minister for Treasury and Resources obviously will inform us as to why, although the Council of Ministers appreciates the ethos behind my original proposition, they feel that it is a bit too restrictive for them. I hope that Members will not see this as a waste of time. I thought it more prudent to debate this than withdraw it, because at the end of the day it may involve some substantial decisions about property in the Island and I make the proposition.

The Greffier of the States (in the Chair):

Is the proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition? Deputy De Sousa, do you wish to speak or are you seconding? Do you wish to speak?

Deputy De Sousa:

No, thank you.

9.1.1 The Connétable of Grouville:

If I can just follow on from Deputy Le Claire's initial opening remarks and that is he is talking blue chip. The whole difference between blue chip and non-blue chip is the quality of the tenant and let us assume for instance the States have a 10,000 square foot office block for which you would hope to get - hope to get - £10,000 per square foot. That would give you an income of £100,000 a year which may value the thing in these days I just do not know, but let us assume 10 times earnings, which is £1 million. That is hope value. The difference between hope value and blue chip value is the States being the tenant for that block and guaranteeing £100,000 a year. That probably makes it worth double, so the States must have the opportunity to be able to say: "Right, we are going to use that block because we will capitalise on the capital sum day one and then use another property which is probably worth less for other purposes which we may have had in mind." So I would say that the Property Services who seem to be doing extremely well at the moment in our very efficiently run department, I must say, they must have the freedom to act and to juggle, if you like, with the property in order to maximise the benefit to the people of Jersey. Thank you.

9.1.2 Deputy J.A.N. Le Fondré of St. Lawrence:

I have to say I am delighted to follow the last speaker, and thank him for his comments on the department. I am the Assistant Minister responsible for property and obviously it is appropriate for me to respond. I cannot comment precisely on the 2 examples that the Deputy quoted because they are obviously significantly before my time, and I would also point out that they are before the present department was created under its current format, but I do reiterate the point that certainly the Constable of Grouville has made that this proposition would severely limit the flexibility that we do at times require. I think the way to put it is we do have a number of challenges ahead, particularly in respect, for example, of funding for maintenance but we do occasionally negotiate on property transactions as they arise. The point the Members need to realise obviously is that property is governed by law to an extent, we had that debate a little bit today, but States property transactions themselves are also governed by Standing Order 168 which provides all Members with a 15-day period in which to query any Ministerial Decision relating to a property transaction. That provides all Members, I would say, with a good measure of control over any transaction originating from my department and I do hope that Members who have had occasion to deal with the department have found us generally open when information is required, as it is something that I

have been trying to push through in terms of transparency in dealing with Members. But we have to be very clear that due process is followed and including respect for the 15-day rule and therefore, in my view, the checks and balances are already in place for property. Sometimes it is true transactions get more complicated than we would like and our role then is really to ensure not only that the matter is resolved but that it is done in a structured and transparent way, and the reason I reiterate the point a bit is also for new Members who may not have had the dealings with property thus far, but it is to try and labour the point a little bit that it does require due process, it does need to be done correctly and that quick fixes themselves sometimes lead to long term problems. We do not do deals behind closed doors and, with the exception of very, very few, all of our decisions are public and available on the website and are communicated directly to States Members. We are also fully accountable to the P.A.C. (Public Accounts Committee) and the Corporate Services Scrutiny Panel. I would contend that this proposition would tie the hands of the department and this Assembly to an extent with a restriction that I feel would add no value. I therefore reiterate to Members that we think all necessary controls are in place, exist and that proper checks and balances are observed over property transactions particularly to ensure compliance with Jersey law. I do not advocate the regular sale and lease back of States property, which is what this proposition is directly about, but there are occasions, as has been alluded to by the Constable of Grouville, when a lease back of property might be the right thing to do. An example I will give, which is a live example to an extent, is in respect of an approach we have received in the recent past whereby we do own a site that could usefully be joined into a development incorporating a number of other properties. Now the existing office space could be easily accommodated elsewhere in the property portfolio with the right approach and timing, but it might be better to negotiate and conclude the agreement, take the sales proceeds early, but as part of that agreement negotiate that we can use the offices for another 6 months or another year, perhaps while building control provisions are sorted out and while, if it is a joint venture, tenders are achieved, and to allow controlled departure from those premises. But that would generally involve perhaps some form of a peppercorn rent being negotiated as part of the arrangement, but whatever happens, that transaction is subject to the Property Plan approved by the States, subsequent Ministerial Decision, Standing Order 168 and in particular the 15-day rule. But if we adopt this proposal we do not think that we would be able to consider such an arrangement. Now there are more detailed examples given in our comments, so I am going to stop there and hopefully have outlined what I think are the present controls over property, how we try and transact our things, in other words in a structured and transparent manner. I reiterate the point we believe it would significantly tie the hands or significantly tie the ability of the department to be flexible at a time when flexibility is required. We, as a department, and speaking for myself and the Minister, are committed to operating in as professional and transparent a manner as possible and therefore I would ask Members not to support this proposition.

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

The previous speaker has indicated to the House along with the comments put forward by the Minister for Treasury and Resources that we should have due weight towards Standing Order 168 on land transactions. Members, if they do not have their Standing Orders of States to hand, should be advised that under 168(2): “Prior agreement of the States shall not be needed for any of the actions”, and this is land transactions: “whether they be disposals, acquisitions, lettings or rentals for land on behalf of the public of Jersey if ...” so: “The prior agreement of the States shall not be needed for any of the actions if the action is recommended by a body established by the States to manage land and buildings owned by the public of Jersey, that is the Property Services Department [whatever they are called nowadays] or (b) that the recommendation is accepted by the Minister for Treasury and Resources.” Now subject to that clause 168(2), it does go on to say in 168(3) that: “The Minister for Treasury and Resources must at least 15 working days before any binding arrangement is made for the disposal, acquisition, letting or rental of land on behalf of the public of Jersey which does not by virtue of paragraph 2 require the prior agreement of the States only present to the States the document setting out the recommendation which he or she has accepted.”

Now if the Minister who is a corporation sole has accepted the particular commercial agreement to enter into a land transaction we are left with the unsatisfactory position of when the decision has been made and indeed who has made it. The clause for 15 days' notice to this House was there to afford those Members who were not the Minister for Treasury and Resources or associated with the Treasury body or indeed members or co-members or whatever of the Property Services Department to have the opportunity to veto, if you like, or to hold off the decision being made by those persons who were going to be afforded the opportunity from making that decision if indeed the majority of States Members in this House thought it was not the way to go forward. So there have been a number of instances where moves have been taken on behalf of the Treasury and the Council of Ministers to bring forward land deals which did not necessarily give this House an opportunity to consider whether or not we could apply a veto, if indeed the veto could be applied, and if we do read the Standing Order it does not really give an indication as to whether or not the binding authority for deciding on whether a land disposal or transaction goes ahead is in the sole hands of the Minister for Treasury and Resources or indeed if there is an overarching kind of veto on behalf of this House to assist ...

The Deputy of St. Mary:

Can I ask for a point of clarification?

Deputy R.C. Duhamel:

No, I am not giving way. If indeed there is an overarching veto on behalf of this House to stop the Minister from making the decision before he has made it, if indeed the Minister has made it up to 15 working days prior to informing this House of his decision to take the decision then we are in a bit of a cleft stick situation, particularly because I am told that in dealing with property arrangements the decision can only legally take force when it comes before court. We are told in the comments at the bottom that Standing Order 168 requires approval of the Minister for Treasury and Resources to any sale and lease back proposal and provides States Members with the opportunity to review and challenge any proposed property transaction. If indeed in these comments that paragraph means that this House still retains the overall right and responsibility to stop or to ask the Minister or even insist on the Minister from taking a decision on any property transaction then fair enough and I think we could all kind of rest easy and not necessarily support Deputy Le Claire in his proposition. However if we are in the position where the situation is unclear then we have a situation where the House is perhaps being coaxed into a false sense of security in order not to support Deputy Le Claire's proposition and to allow the Minister for Treasury and Resources to retain full decision-making powers over all of the property portfolio for disposals, acquisitions, lettings or rentals and I think that might well be taking things a little too far. It is something that I have felt for a long time and I have requested the Privileges and Procedures Committee when we were discussing the scrutiny review for the Girls' College disposal or deal, or whatever terms you wish to describe that one in, but I do not think that particular body of work has been undertaken. There is a legal lacuna I think in terms of the Standing Orders in the way they have been written, particularly in relation to the amount of authority that we have vested in the Ministers in terms of setting up as corporation soles, to have sole responsibility for taking decisions in property matters. With that in mind I think if Members are not in possession of an extremely clear cut definition of 168 and how those powers extend by way of veto to this House then I think following the failsafe option and going along with Deputy Le Claire's proposition is probably the safe and sensible way to proceed.

The Deputy of St. Mary:

On a point of order, sir. Could you perhaps rule on whether review and challenge means this House has the right of veto?

The Greffier of the States (in the Chair):

Well, I think all I can do is refer Members to Standing Order 168 which is I think quite clear, the Assembly clearly does not have any right of veto of transactions, the Minister nevertheless is required under 168(3) before entering into any binding agreement, so the Minister must not enter into a binding agreement that he or she cannot get out of, the Minister must notify the Assembly at least 15 working days before his or her proposal to make such a disposal or acquisition and it is then I think in the political domain, as happened with J.C.G. (Jersey College for Girls), for the Minister to respond to any proposition lodged and take the necessary steps. There is certainly no legal or statutory veto for the Assembly to ... the Minister could theoretically hold out and go ahead with the transaction notwithstanding any proposition lodged, *et cetera*, but he or she would probably be on quite tricky political ground if he had tried that.

9.1.4 Senator P.F.C. Ozouf:

I think we are seeing once again that property is a very emotive matter for Members and quite perhaps in some circumstances understandably so. If it would assist Deputy Duhamel and the Assembly I will give an undertaking on behalf of myself and the Assistant Minister, who largely makes decisions in this area, that we would not carry through a transaction if a Member were to draw my or my Assistant Minister's attention to the fact that there is an issue. So, as you rightly say, any Minister that would go ahead with forcing through a transaction is on dangerous political grounds. If we need to consult with P.P.C. in order to clarify that language in order to deal with any issues then I am happy to arrange for P.P.C. to consider that and propose any amendments to Standing Orders to deal with that. Certainly from my point of view the Assembly has an undertaking that we would not progress with a transaction if a Member had drawn it to our attention. I think there must be the ability for Members under Standing Order 168(3) to effectively have a debate on it and have a discussion on that. So with those remarks I wonder if Deputy Duhamel would accept that we can deal with simply the issue of the underlying proposition, because there is not a need for any, I would argue, further call-in or provision because the Assembly has my undertaking to do that.

The Deputy of St. Mary:

Does that undertaking extend to future Ministers for Treasury and Resources?

The Connétable of Grouville:

Could I make a point of clarification here, making one, not asking for one, and that is that the Jersey College for Girls situation arose because it was picked up by Scrutiny and the 15-days notice was given. Our Scrutiny Panel picked it up and we asked for Scrutiny on it.

Deputy R.C. Duhamel:

On a point of order it was picked up by myself and referred to Scrutiny. Now if we are going to be in a position of claiming credit I think I should ask ... **[Interruption]** On a further point of clarification, could you rule as to whether or not a Minister or any other person belonging to the Council of Ministers is able to give an undertaking to the House on an issue within Standing Orders in a way that possibly contradicts the way the Standing Order was set up?

The Greffier of the States (in the Chair):

I think the current Treasury and Resources Minister is quite entitled to inform the Assembly that he gives his personal and political undertaking that he would not proceed in the way in which he is entitled to, he has given that undertaking. It is purely a political and personal undertaking, it does not mean he would not theoretically be entitled to go back on his political undertaking but he has given that undertaking and I am sure he will abide by it. I do not think in response to the Deputy of St. Mary's question he can bind his future Ministers, but he has given the undertaking to discuss with P.P.C. whether the Standing Order itself could be amended to ...

Senator P.F.C. Ozouf:

I am not sure that my immediate political position is in doubt so therefore I am sure that the period of time, one never knows of course, I am sure that the Deputy would give us the latitude to discuss with P.P.C. and make any necessary changes to Standing Orders to clarify the matter. I certainly was in the Assembly when Standing Orders were originally debated and I think that I am acting in the same way as my predecessor in terms of dealing with an issue when it has been raised, whenever that is made, whether it be a Scrutiny Panel or an individual Member. I hope that is satisfactory to Members, that they do not need the nuclear option of agreeing for Deputy Le Claire's proposition. I cannot believe it is necessary to repeat the remarks of the Assistant Minister for Treasury and Resources when he says that this is basically a bit of a sledgehammer to crack a nut. There are circumstances in which sale and lease back arrangements are in the public interest, are in the States financial interest and simply to accept this as the Deputy envisages I think is a step too far and would unreasonably hold the Treasury and Resources Department to an impossible situation indeed in dealing with some potentially quite difficult property issues. The Assembly is well aware that there is a commitment by the Treasury and Resources Department to be focusing on efficiency and effectiveness of all assets within the States of Jersey. It has to be our top priority in the next 2 to 3 years to deal with efficiencies, to deal with savings and one of those areas is going to be property, but the States has the final say, as we have heard, on those issues and does not need - with respect to Deputy Le Claire - this sledgehammer to deal with this issue. So I hope, and I do not know whether Deputy Le Claire ... we did engage in some conversation before he lodged it, I know he has wanted to have a debate on it and he has had the opportunity of clarifying issues, he has had the general stance of the Treasury Department in relation to dealing with property, and with those comments I wonder whether or not he would wish to proceed with the debate and unfortunately go perhaps to a situation where the proposition is rejected rather than I think he has achieved his objective, he has had a debate, he has elucidated some answers from the Treasury and perhaps we can leave it at that.

Senator B.E. Shenton:

Just out of interest, is the Minister going to ask everyone to withdraw their propositions as we go around them?

The Greffier of the States (in the Chair):

Is there anything you wish to add, Deputy Le Claire? If you are not willing to withdraw it I do not think ...

9.1.5 Deputy P.V.F. Le Claire:

I think I am, but before I do so I would like to just make a couple of points. The first one is I am trying to give respect to Members and their time so I would expect them not to laugh at me when I am doing so and say that the reason one brings a proposition is one does it for the reasons, in my case anyway, that I am thinking I am doing the right thing and I know when I have heard an argument that convinces me otherwise when to move on, and I think it makes better use of this Assembly's time when we do that, rather than carrying on for another 2 hours or into tomorrow over something that is not going to be supported. However in withdrawing it I would just like to say 2 things. I would like to thank the Minister for Treasury and Resources for affording me the time he did to discuss things and to thank also Deputy Duhamel for the points that he has made because it has highlighted some of the issues that are going to be relevant for the Strategic Plan. The Scrutiny function now, as pointed out by the Constable of Grouville, in my opinion needs to pick this up and in particular it needs to pick up the comments that were made and forwarded as part of the first scrutiny review, the assignment of the Tourism building. The Tourism offices at the time that they were being leased, before the building was sold, through W.E.B. (Waterfront Enterprise Board) were valued because the States were paying the rent. That was an undervaluation at the time because the States do not necessarily charge their own employees the highest rent that they could charge, they normally give the rent book a reductive oversight. So if you are going to rent a property to a States department you may not necessarily be getting the

money that represents the value of the building. If we are going to move forward into an overall strategic position of selling off States assets, and that does make up a big part of the States of Jersey, then these issues that have been brought forward today need to be considered. It is also important to note 2 other points that were made, while the approval relating to the proposed lease of the newly built offices shall require States Assembly consent it is understood the nature and terms of the development agreement and its relationship to the offices themselves remain outside the normal States decision-making process, so we need to know whether or not that is satisfactory. One last thing, as a word of encouragement to the Minister for Treasury and Resources and the Deputy of St. Lawrence, who is the Assistant Minister, yes, when it makes sense you will have our support, or my support anyway. But where it does not make sense you cannot count on it, and I would just like to finish by saying this is an important clause I think we need to think of and we need to have the answer for in the future. It was not decided, it was not clear at the time. We need to ask the Law Officers whether or not this can be included in future deals and this was the paragraph, I will read it and then sit down: "The proposed leasing of the new offices would allow occupation by any States department" so the sale and lease back in this term as well and the future needs to be considered: "as well as the possibility of a signing or sub-letting on a floor-to-floor basis subject to landlords prior approvals." So as we lease back property that we have sold the ability to decamp floor-by-floor: "These provisions have been required due to the possible changes in staffing at Economic Development and also with the States generally as Ministerial government approaches. Office accommodation requirements may thus be subject to change in the short to medium term and a break option in the favour of the public has been insisted upon in order to protect its position" and I think that was very wise. A break position in favour of the public has been insisted upon: "This enables the public to break the lease after a period of 9 years without penalty." So if you are going to sell a property and you do not want to rent it back after 10 years or you do want to rent it back because it is too much of a sledgehammer to crack a nut then why was it in the interest of the public to enable it to break a lease after 9 years in this Tourism building? That has to be kept in the future. If we sell a property and we decide we need to rent it back for the short period we should, in my view - and it is just a suggestion, you can tell me to get lost it does not matter - as this points out we should in my view be affording ourselves the opportunity to have a break clause with the lease after 9 years. I do not wish to take up any more time in the Assembly, I trust maybe Scrutiny and some other Members of this Assembly may have taken up some of the points this afternoon. This proposition perhaps is unsupportable but the Standing Orders may not be sufficiently rigorous and may need review because we are about to do a lot of things with a lot of property. I withdraw the proposition with the Assembly's agreement.

The Greffier of the States (in the Chair):

Are Members content to allow the Deputy to withdraw the proposition? Very well, it is withdrawn.

10. Jersey Consumer Council: appointment of Chairman (P.10/2009) (reissue)

The Greffier of the States (in the Chair):

We come now to the proposition of the Minister for Economic Development relating to the Jersey Consumer Council: Appointment of Chairman and I will ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of the opinion to refer to the directive of 25th April 1995 regarding the establishment of the Jersey Consumer Council and to appoint Senator Alan Breckon as Chairman of the Jersey Consumer Council until 31st December 2011.

10.1 Senator A.J.H. Maclean (The Minister for Economic Development):

The Jersey Consumer Council has under the chairmanship of Senator Breckon played a valuable role in increasing the voice of the consumer in the Island. This voice is a vital component of

ongoing efforts to control inflation and allow Jersey consumers to benefit from the most competitive prices for goods and for services. The importance of strong consumer representation was highlighted in the anti-inflation strategy that was published in 2008. One of the key recommendations of the strategy was for the Economic Development Department to review the role and constitution of the Jersey Consumer Council and recommend changes to improve consumer representation. This we have now done. Members will note that attached to the proposition is a report entitled *Review of the Jersey Consumer Council* which was carried out during the summer of 2008. I think it is appropriate to give some further background as to why the review was instigated. In 2005 the Economic Development Committee of the day published the economic growth plan. A small section of that plan identified that the voice of consumers can have a key role to play in promoting competition and helping to prevent excessive price rises. It further stated that consideration should be given as to the best way to ensure that the consumer voice in Jersey had a stronger and more effective presence in policy and strategy formulation. An initial response to this recommendation was for Economic Development to provide additional funding to the Council to establish what is now called Price Watch. I am sure that you will have seen an example of the Price Watch project in the most recent Consumer Council newsletter. The importance of a strong consumer voice was again stressed in the States Strategic Plan 2006-2011 where under paragraph 173 it states: "Seek to enhance the role of the Jersey Consumer Council" and as I have already mentioned it was also identified in the 2008 anti-inflation strategy. To meet these objectives it was decided that a review should be undertaken by an independent expert in consumer affairs. Terms of reference were drafted and agreed by the Consumer Council. Following a tender process a U.K. consultancy company Pact Consulting was appointed whose principal, Mrs. Barbara Saunders, was awarded an O.B.E. (Order of the British Empire) in 2002 for services to consumers and has more than 30 years' experience of consumer protection issues. As Members can see the report was completed in September last year and makes a total of 22 recommendations to modernise the Consumer Council. I have reviewed the recommendations with officers and I intend to implement them in full. In case any Members have not read the conclusion I am going to read it now as it is key to the future of consumer representation in Jersey: "It is generally accepted that the Jersey Consumer Council needs to change if it is to respond to the challenges of an increasingly complex market and the diverse needs of the consuming population. Government is affecting the lives of individual consumers in a wide variety of ways and the Council is being asked to respond to an increasing range of formal consultations for which as currently constituted it does not have the resources or expertise. There is an opportunity at the present time to refresh the Council's membership and introduce new methods of working which are more inclusive and focused on key issues for the Island's consumers. This opportunity should be taken in any case. However, to achieve a consumer voice on the Island, which is authoritative and respected by key stakeholders in the Island's economy, would require the Council to be put on a statutory footing and provided with the resources to consult consumers and inform its policy recommendations. In line with the conclusion and, indeed, the first recommendation, I have instructed my officers to proceed with the process of reform, including a bid for law drafting time in the 2010 programme. This, of course, leaves an interim period during which the Consumer Council must continue to function and, in close partnership with Economic Development, deliver the changes and improvements recommended by Barbara Saunders and accepted by me. I am pleased that Senator Breckon has agreed to be re-appointed for a further term and, indeed, in discussions with Economic Development officers, he has expressed some ideas on how the functions of the Council may further be improved prior to it being placed on a statutory basis. I hope Members will support the proposition to enable Senator Breckon to fully participate in this necessary transformation of the Consumer Council. I make the proposition.

The Greffier of the States (in the Chair):

Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the proposition?

10.1.1 Deputy R.G. Le Hérissier:

First of all, I think everyone would wish to thank Deputy, now Senator, Breckon for the passionate manner in which he has approached the job but I thought a natural break was occurring where the job was going to be transferred to a non-politician. I am quite surprised that despite the recommendations, which have a clear drift, this is not being done and I have told the Senator this. I wonder if the Minister could address the issue.

10.1.2 The Connétable of St. Brelade:

Not wishing to put my fellow Minister on a spot but I note that in 6.1, reference is made to providing the proposed Council with resources to consult consumers and inform its policy recommendations, yet we have no indication of costs in this proposition. Do I assume, therefore, that this proposition has no relation to the eventual setting up or the funding of the Consumer Council?

10.1.3 Deputy J.A. Hilton:

Just to follow on with something Deputy Le Hérissier has just mentioned. It does say in the report under 5.2.1 that the term of office of the current chairman comes to an end on 31st December 2008 and the opportunity arises to introduce a new system of appointment which is compliant with the requirements of the Jersey Appointments Commission. I have spoken to the Minister about this previously and I too am a little bit concerned that he has not sought to seek a replacement or offer this position to States Members or taken it through the Appointments Commission. I was just wondering if he could tell us why he has chosen to bring the proposition to the House in the way that he has. Also, I follow on with something mentioned in 5.2.4 of the same report, namely that the present chairman considers that he spends approximately 3 days a week on Council business. I am not sure that this is appropriate for a States Senator to be spending so much time on Consumer Council business and, again, I am curious as to why he has not sought to open it up through the Appointments Commission.

10.1.4 The Deputy of St. John:

I am supportive of Senator Breckon in this role but I do have one or 2 concerns about the Council and its actual offices and this is probably as good a time as not to mention it. I know it is a States quango, for want of a better word, but given that considerable funding is given to the Consumer Council, the offices do not lend themselves to a States department because of the approach up a winding staircase, disabled people not able to get up there and the office itself being at the top of 2 flights of stairs. The building it is in is something of the past. I am sure that within our prospective portfolio, we can find better premises for this particular States quango or Consumer Council department to operate out of and thereby be more fitting, given, I think, the budget is something like £90,000-odd a year above that. Given that there is a huge budget, I think we should do what we can so that everybody can have access to those offices.

10.1.5 Senator P.F.C. Ozouf:

I really enjoyed my term as Minister for Economic Development. I believe that we boosted the economy and we did quite a bit to fortify consumer representation. One thing that I did not have during my term of office was a particularly good and strong relationship with the Consumer Council and I very much regret that. It has to be said that the relationship was characterised by opposition, by strained relations. I had a situation where Trading Standards officers were banned from attending Consumer Council meetings. Frankly, things descended into a little bit of a farce. I did commission the Barbara Saunders report. I think that every Member, including myself, believes that it is absolutely vital that there is a strong independent consumer voice. It is absolutely vital for consumers that that is the case. I am delighted that Mrs. Saunders reported that there should be a further improvement, a further fortification of the Consumer Council and it should be on a statutory basis, moreover, that it should be depoliticised. **[Approbation]** For that reason and because of the enthusiastic support by my successor, Senator Maclean, that he is going to implement the findings of the Saunders Report, I think that it is probably appropriate that Senator

Breckon continues in the position of chairman in order to take it through that transition. I do hope that it is not for the full period that we are appointing Senator Breckon. Members will recall that I previously proposed that Senator Breckon be appointed for a limited period of time. Perhaps the Minister would confirm that if he is able to fast track a reform of the Consumer Council, a depoliticised organisation with a non-political chairman, then he has the undertaking from Senator Breckon that he would step down and would not continue for the period of 3 years. I think it would be a matter of regret if we continued with the current state of affairs for a further period of 3 years. This Assembly will consider, I hope, legislation that will put it on to a statutory basis and that we will have the Consumer Council and the Consumer Affairs championing the Consumer Affairs advocacy that we require in a very short period of time. I know that I am probably going to get criticised for saying it but I do ask it if Members are going to support, and I am going to support the nomination of Senator Breckon for the remaining period of time. I do urge the Consumer Council Chairman not to use the Consumer Council in ways that perhaps could be described by some as political ways. He should be championing independent consumer voice only and not using it, as I think some Members believe, as a political vehicle. I know that there is some concern. It is perhaps unsayable and one does not want to say these things but I think there is some concern among Members about that issue. I will support the proposition, as I have said, but I will also be wanting to see and hear from the Minister that he is going to deal with the issue of the Consumer Council and depoliticise it, put it on a proper statutory footing as soon as possible. If that means curtailing the proposed chairman's term of office from 3 years, then that would be a good thing.

10.1.6 Senator S.C. Ferguson:

Just a small issue. Members will have noticed that I have spoken to Senator Breckon about this. He apologises for not being here this afternoon but unavoidably had to be out of the Island. One thing that I would ask the Minister to note is that the States gives a fair swage of money to the Consumer Council. Will the Minister undertake to bring the accounts of the Consumer Council to the States to complete the transparency and openness?

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

I am just a little concerned that the Minister for Economic Development has not put a timescale on these changes. I have had people come to me with concerns about the political use of the Council and I think it is wrong. We all, I think, support Senator Breckon in the work that he has done in the past but I think the time possibly has come for a change. Could the Minister give us some idea as to how quickly this change could take place?

10.1.8 Deputy G.P. Southern:

I am somewhat disappointed to hear all this talk about politicising the role when, in fact, Senator Breckon has, in my opinion, been a remarkable example of a truly independent voice which has stood up to the Minister for Economic Development and his department in many situations and provided that essential strong and independent voice, not political in any way whatsoever. I do not join in the previous Minister for Economic Development's wish to see the back of Senator Breckon as quickly as possible. I believe almost because of his position as a 14-year Member of this House that has given him the strength to stand up and not be a lapdog for the Minister or whatever. I think he has done a thoroughly good job and deserves to stay in the role, obviously negotiating a change which has been decided. I have not had time to read the report in its entirety but negotiating a way forward which will be an improvement in the same independent and robust manner with which he has conducted himself so far.

Deputy J.A. Hilton:

Excuse me, point of clarification. Does an independent and robust manner include wearing a T-shirt saying "No to G.S.T." in the rally that took place in the Royal Square?

The Greffier of the States (in the Chair):

That is a second speech, Deputy. It does not sound like a point of clarification. I call upon the Minister to reply.

10.1.9 Senator A.J.H. Maclean:

I would like to thank all Members who have spoken. I will try and address the queries raised as quickly as I can. Deputy Le Hérissier asked about the appointment of a non-politician. The Constitution of the Jersey Consumer Council is such that a politician - a Member of this Assembly - has to be the chair of the organisation as it currently stands and so that gave us very little latitude in terms of movement. Clearly, we could have put forward another name or sought other Members interested in taking this particular role. However, moving through a transition period, bearing in mind the amount of time that Senator Breckon has given to the Consumer Council and his knowledge thereof, I felt that the most prudent move was to move through in an orderly fashion, having achieved recognition from him that he agreed with the basis of the Saunders Report. The Constable of St. Brelade asked about the cost. Well, this particular debate is not about cost. The Consumer Council, as such, receives a grant from Economic Development. The current figure for Members interested is £120,000. That is reviewed. It is part of an agreement and a business plan has to support it. I might point out that if the terms of the Business Plan are not met, then the payment is not made in full. In fact, in 2008, we withheld a payment of £12,000, as one of the newsletters was not produced. So we do control the funding of this, as Members would imagine, fairly closely. Deputy Hilton raised a number of points about the Appointments Commission. I have made my point to the Deputy myself although I accept and understand her reservations and concerns about this, but I believe this is the most sensible way forward and that is why this particular route has been taken. The Deputy of St. John raised some good points about the offices of the Consumer Council. I have attended upon the offices myself and they are not the finest example of offices and not the easiest to find and, again, that is another point for the future to be improved. I think the one point I would raise is that they are relatively inexpensive and, of course, on a limited budget. [Laughter]

Deputy R.G. Le Hérissier:

Could the Minister explain (a) what rental is paid by the Council and (b) when will the offices be upgraded?

Senator A.J.H. Maclean:

The plans to upgrade the offices will come, I suspect, with the change to a statutory basis when more appropriate and no doubt salubrious offices will be required and procured hopefully at a time when the market is slightly softer and better value for money can be delivered. The current rental is £8,000 that is paid for the use of part of the building. Senator Ozouf asked the question ... well, first of all, he patted himself on the back as to how well he had done with the economy over the last 3 years and I can thank him for leaving it in very fine shape. [Laughter] [Aside] Moving swiftly on, he did ask the question about the speed in which we could move the Consumer Council to a statutory basis. I have asked officers to apply for law drafting time. The earliest time at the moment is 2010. That would mean that the Consumer Council or the new statutory body would come to this Assembly for debate hopefully in 2011 and the earlier the better as far as I am concerned. I will certainly give an undertaking to progress this matter as quickly as is feasible and I believe that Senator Breckon shares that view. Senator Ferguson asked about accounts. We do get a summary of accounts on the back of the Business Plan but I have no problem whatsoever in accounts being made available both to the Senator and to other Members of the Assembly. The Constable of St. Saviour asked about the timescale. I hope I have addressed that with my earlier comment. I would just add that Senator Breckon has given a considerable amount of time and effort to the Consumer Council since its inception in 1995. I believe that consumers in the Island have been the winners in this respect. He does recognise the need to move and modernise this particular organisation for the benefit of consumers in the Island. I support that. I hope Members

will support this, what I believe to be sensible transition through to a new statutory body supported by both Senator Breckon and Economic Development. I move the proposition.

Senator S.C. Ferguson:

Point of clarification. Will the Minister undertake to present the accounts to the States on a report in an orderly manner?

Senator A.J.H. Maclean:

I see no reason why that should not be done.

The Greffier of the States (in the Chair):

Very well. I put the proposition. Those Members in favour of adopting it, kindly show? Those against? The proposition is adopted. I would like to just notify Members before the next item of the lodging of the Draft Sea Fisheries (Licensing of Fishing Boats) (Amendment No. 4) (Jersey) Regulations 200- by the Minister for Economic Development, P.35/2009 which has been, I understand, circulated.

11. Public Employees Contributory Retirement Scheme: membership of the Committee of Management (P.14/2009)

The Greffier of the States (in the Chair):

We come now to the proposition by the Chief Minister in relation to Public Employees Contributory Retirement Scheme. I ask the Deputy Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion in accordance with Regulation 3(5) of the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989 to approve the appointment of Deputy John Alexandre Nicholas Le Fondré of St. Lawrence as an employer representative on the Committee of Management for the period ending 31st December 2009 in place of Deputy Ian Gorst of St. Clement.

The Greffier of the States (in the Chair):

I just mention to Members that I am a member of scheme but I do not think it precludes me from presiding over the debate.

11.1 Senator P.F.C. Ozouf (Deputy Chief Minister - rapporteur):

Members will be familiar with P.E.C.R.S. (Public Employees Contributory Retirement Scheme). The membership of the Committee of Management consists of 7 employer representatives, 3 nominated by Treasury and Resources, the remaining 4 from the Chief Minister. Since Deputy Gorst has been upgraded to the position of Minister, a vacancy arises. The Chief Minister wishes to propose his assistant Minister, Deputy Le Fondré, as his nominee for the vacancy of P.E.C.R.S. I move the proposition.

The Greffier of the States (in the Chair):

Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the proposition?

11.1.1 Deputy I.J. Gorst:

I thought it would be appropriate for me to say a few words. I think it is probably quite rare for a politician or anyone engaged in politics to find a job within the political realm that they enjoy. We are often asked if we enjoy politics. I am not sure that that is an appropriate word but for this particular job, I have certainly enjoyed being a member of the Committee of Management. I just wanted this opportunity to pay tribute to those individuals who serve on this board. It is a difficult

job, particularly in the current climate, and often their work is unrecognised and unreported and I think that we owe them our thanks and I want to place my thanks on record.

11.1.2 Senator B.E. Shenton:

I would just like to point out to Deputy Gorst, who is stepping down now he has attained the position of Minister, that I sit on the Committee of Management and I sat on the Committee of Management while I was Health and Social Services Minister as well.

Deputy I.J. Gorst:

Point of clarification. Although the Senator is absolutely right, he did sit on the Committee but if my memory serves me correctly, he was often indisposed and unable to attend **[Laughter]** **[Approbation]** those meetings. It is a very important job because these Members sit, in fact, as trustees and therefore it is important that they attend the meetings.

The Greffier of the States (in the Chair):

That sounds like a second speech to me, Deputy. **[Laughter]**. I call on the Deputy Chief Minister to reply.

11.1.3 Senator P.F.C. Ozouf:

I endorse the comments of Deputy Gorst in thanking all the members of P.E.C.R.S. and I am delighted that Deputy Gorst enjoyed his term of office. No doubt as a fellow accountant, Deputy Le Fondré will find the work equally as stimulating, so I move the proposition.

The Greffier of the States (in the Chair):

I put the proposition. Those in favour, kindly show? The appel is called for. I ask Members to be in their designated seats. The vote is for or against the proposition of the Chief Minister relating to the Committee of Management. I ask the Deputy Greffier to open the voting.

POUR: 44		CONTRE: 3		ABSTAIN: 1
Senator P.F. Routier		Deputy S. Pitman (H)		Deputy A.K.F. Green (H)
Senator P.F.C. Ozouf		Deputy T.M. Pitman (H)		
Senator T.J. Le Main		Deputy D. De Sousa (H)		
Senator B.E. Shenton				
Senator J.L. Perchard				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
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. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
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 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 T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				

The Deputy of St. John:

I hope the Member who has just been elected will remember that we voted for him in this onerous task. **[Laughter]**

Deputy A.K.F. Green:

If I may just clarify why I abstained, because eventually I will be receiving benefits from that pension.

The Greffier of the States (in the Chair):

Thank you, Deputy. Very well, we come now to the ...

Connétable J.M. Refault of St. Peter:

If I may, would the Members be happy if we deferred my item until tomorrow or, if not, the 24th. Through the Chair, could we ask the Chairman of P.P.C. whether she would agree to move it to another date rather than call Members back tomorrow?

The Greffier of the States (in the Chair):

Well, I was just going to come to the Manual Workers item next. Perhaps it will give Members a chance just to reflect on what you have raised, Connétable.

12. Manual Workers' Joint Council: Employers' Side membership (P.15/2009)

The Greffier of the States (in the Chair):

Deputy Chief Minister, it does seem to me that your proposition, albeit approved, does contain unnecessary names, references to individuals. I will ask the Deputy Greffier to read it without the names involved. Obviously for the Members of the Assembly it is fine but for the officers, I think they have a title.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion in accordance with their Act dated 9th November 1961, as amended, concerning the membership of the Manual Workers' Joint Council, to approve the nomination of the 4 representatives of the States to serve as members of the Employers' Side of the Council for 2009 as follows: Senator Paul Francis Routier; Deputy Andrew Kenneth Francis Green M.B.E.; Chief Executive Officer, Health and Social Services; Chief Executive Officer, Transport and Technical Services.

12.1 Senator P.F.C. Ozouf (Deputy Chief Minister - rapporteur):

Members will be familiar with the Manual Workers' Joint Council. The Chief Minister proposes 4 representatives. I think the proposition is clear. He is proposing his Assistant Minister, Senator Routier, Deputy Green and the 2 Chief Executives of Health and Transport and Technical Services. I move the proposition.

The Greffier of the States (in the Chair):

Is the proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition?

12.1.1 Senator J.L. Perchard:

Would the proposer like to thank the retiring members? **[Laughter]**

12.1.2 The Deputy of St. John:

I have to question why we cannot mention the Chief Executives' names, et cetera. Given that it is in the public domain and they are representing the Manual Workers' Joint Council on our side, I think it is wrong that the names should not appear over the airwaves, given that it is in the public domain. You can go and get it from the bookshop and it seems totally wrong not to mention it in here today, and I would ask that you withdraw that ruling and have it mentioned.

The Greffier of the States (in the Chair):

Well, I do not want to make a big issue of it, Deputy, but the Standing Order says that you do not use names unless it is strictly necessary to do so and it is not strictly necessary because we have reference to the Chief Executives of the 2 departments. I do not think it is strictly necessary. I maintain the ruling. Does any other Member wish to speak? I call on Senator Ozouf to reply.

12.1.3 Senator P.F.C. Ozouf:

I do think you are absolutely right about the ruling and apologise on behalf of the Chief Minister's Department for using those names. I will ensure it does not happen again. Senator Perchard is quite right. I do need to thank the Members that I am aware of that served on the Manual Workers' Joint Council. I am aware that it is Deputy Gorst and Senator Perchard, who was wanting to be patted on his head. **[Laughter]** I am afraid that I am going to have to apologise to the Assembly. I do not know who the other 2 members were. They were obviously Chief Executives of departments. I move the proposition.

The Greffier of the States (in the Chair):

I put the proposition. Those Members in favour of adopting it, kindly show? The appel is called for. The vote is for or against the proposition related to the Manual Workers' Joint Council. The Deputy Greffier will open the voting.

POUR: 44		CONTRE: 3		ABSTAIN: 1
Senator P.F. Routier		Deputy S. Pitman (H)		Deputy A.K.F. Green (H)
Senator P.F.C. Ozouf		Deputy T.M. Pitman (H)		
Senator T.J. Le Main		Deputy D. De Sousa (H)		
Senator B.E. Shenton				
Senator J.L. Perchard				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Ouen				
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. Clement				
Connétable of St. Peter				
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. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
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 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 T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				

13. Appointments Commission: re-appointment of member (P.23.2009)

The Greffier of the States (in the Chair):

We come now to the proposition related to the Jersey Appointments Commission: reappointment of member. I ask the Deputy Greffier to read the proposition.

The Deputy 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 reappoint Mr. Brian Curtis as Commissioner for a period of 4 years.

13.1 Senator P.F.C. Ozouf (Deputy Chief Minister - rapporteur):

Members will be also aware of the functions of the Appointments Commission. It was established by Act of the States in 2002 to ensure that senior appointments to the public sector and to autonomous and quasi-autonomous public bodies are properly made and to keep those appointments processes as a whole under review. The Chief Minister has responsibility for appointing and recommends the reappointment of Mr. Brian Curtis. Mr. Curtis has been principally involved in the finance industry and ended his career as managing director of a local bank. Since that time, he maintained links with that industry through a number of appointments where he is non-executive director of a couple of asset management businesses and a director of a bank. In addition, Mr. Curtis is currently the Chairman of Community Savings and Credit Limited and a Trustee of the Community Charitable Trust. He is an accredited interviewer and assessor for the Institute of Directors and has just recently been appointed as a member of the Jersey Police Authority. He has carried out his duties as a member of the Appointments Commission diligently and properly over the last few years and the Chief Minister recommends his reappointment for a further term.

The Greffier of the States (in the Chair):

Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the proposition?

13.1.1 Senator B.E. Shenton:

It is probably just worth mentioning that I did circulate an email about a month ago asking Members to comment on their opinion of the work of the Appointments Commission and the general response was very favourable to say that most Members were very pleased with the way the Appointments Commission was working at the moment and, in fact, greatly improved over the years.

The Greffier of the States (in the Chair):

I call on Senator Ozouf to reply.

13.1.2 Senator P.F.C. Ozouf:

I am grateful for Senator Shenton's remarks in relation to the Appointments Commission. I think that since its establishment, the way in which senior appointments have been made has improved. I myself have sat on a couple of boards in recent past and have been very impressed by the way in which the Appointments Commission oversees such appointments to ensure impartiality, *et cetera*. I move the proposition and thank Mr. Curtis for his continuing service.

The Greffier of the States (in the Chair):

Very well. I put the proposition. Those Members in favour of adopting it, kindly show? Those against? The proposition is adopted. Now, Connétables of St. Peter and St. Mary, have you liaised over the way forward?

The Connétable of St. Peter:

Yes, I have just had a very quick conversation with the Chairman of P.P.C. She has indicated she would happy if it were taken in the afternoon session of 24th if Members were so agreed to do that.

The Greffier of the States (in the Chair):

It is a matter for the Assembly. The Connétable is proposing this debate be deferred for 2 weeks. Are Members content to ... Very well, there is no dissent so that proposition will be deferred until the next meeting. Do you wish, Minister, to take the last item?

Deputy I.J. Gorst:

Yes, if I could do, thank you.

14. Social Security Tribunal: appointment of members (P.25/2009)

The Greffier of the States (in the Chair):

Very well. The Social Security Tribunal: appointment of members in the name of the Minister of Social Security and I ask the Deputy Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of opinion to appoint in accordance with Article 8 of the Social Security (Determination of Claims and Questions) (Jersey) Order 1974, further to a process overseen by the Jersey Appointments Commission, the following persons as Members of the Social Security Tribunal for a period of 5 years: Mr. Geoffrey Esnouf, panel member, Mr. Stewart Hill, panel member, Mrs. Marion Perchard, panel member, Mrs. Judith Quérée, panel member.

14.1 Deputy I.J. Gorst (The Minister for Social Security):

The Social Security Tribunal has been in place since 1974. It hears appeals on a range of benefits under the Social Security Law such as the pensions, short- and long-term incapacity allowance and maternity allowance and now, of course, income support. The constitution of the Social Security Tribunal comprises a chair, one or 2 deputy chairs, who must hold a qualification in law and it allows for up to 12 other members. Currently, there are 2 other members as one has recently resigned. This proposition will add to that pool 4 new members as just read out which will make 6 members of the panel. I maintain the proposition.

The Greffier of the States (in the Chair):

Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the proposition?

14.1.1 Deputy G.P. Southern:

Having had the misfortune to take what was the first appeal to the Tribunal early in its history, I am very aware that it is very difficult to get members together to hear a Tribunal Appeal. I do encourage the Minister to do his very utmost to ensure that the full 12 members do get appointed because that way, we can get Tribunal Appeals heard in a more timely manner. The more we have on board, the more likely it is we can constitute a Tribunal and get these hearings heard. In many cases, looking at resolution of problems which are about income support and other benefits is very critical to people surviving and keeping a roof over their head in some cases. So I would encourage him to carry on his search to find the full 12-member complement so that we can get on with timely Tribunal hearings.

The Greffier of the States (in the Chair):

I call on the Minister to reply.

14.1.2 Deputy I.J. Gorst:

I thank the speaker for his support. As I tried to explain, this will double the pool of members from what it was. Although we are currently 2, historically there has been 3. Perhaps I will offer one small correction to the Deputy. While he was not the only person appealing to this body because, as I explained, it sees lots of appeals, in fact, there were 10 appeals during the course of last year. He does have the dubious qualification of being the first person to bring an appeal under income support but I maintain the proposition and hope that this will support it.

The Greffier of the States (in the Chair):

I put the proposition. Those Members in favour of adopting it, kindly show? Those against? The proposition is adopted. The Assembly comes finally to the arrangement of Public Business.

Senator J.L. Perchard:

Before we go on to Public Business, I did try and catch your eye a moment earlier. I would like a ruling from yourself about the *vires* of P.24, the Constable of St. Peter's proposition. When one reads Standing Orders No. 106, can I just quote, it is very brief: "A Member of the States who has a direct financial interest must declare the interest and withdraw from the Chamber for the duration of the debate and any vote on the proposition." I will leave it at that but I do ask that you, the Chair, considers Standing Order 106.

The Greffier of the States (in the Chair):

I think there is an answer, Senator. There have clearly been no debates on Members' remuneration for a number of years because of the establishment of the body. When there were previous debates, it was always practice - and the Bailiff reminded me of that this morning - that Members must agree to suspend that particular Standing Order to enable everybody because everybody has a common interest in the matter. So the proposition is in order but if Members wish to debate it, they would have to agree collectively to lift that Standing Order to enable them to do that. We come finally to the arrangement of Public Business. I call the Chairman of P.P.C.

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

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

Hopefully, this will be quite straightforward. The arrangement will be as on the Consolidated Order Paper with the addition on 24th March as a last item of business P.24 - States Members' Remuneration for 2009, lodged by the Constable of St. Peter and the addition on 28th April of the Draft Sea Fisheries (Licensing of Fishing Boats) (Amendment No. 4) (Jersey) Regulations 200-, P.35.

The Greffier of the States (in the Chair):

Are there any observations on the arrangement of business?

15.1 Senator P.F.C. Ozouf:

This is really to give Members notice that on P.161 - that is the Draft Income Tax amendment - a report is going to shortly be received by myself from the Corporate Affairs Scrutiny Panel. I realise that this proposition is becoming almost out of time but I indicate to Members that it is possible that this will be withdrawn. For the moment, pending the panel's review, can I ask that it be shifted to the latest possible time and I will make appropriate statements after the Scrutiny Panel has opined on the issue.

The Greffier of the States (in the Chair):

The question is answered, Senator. By the latest possible time is 31st March as it was lodged on 21st October.

Senator P.F.C. Ozouf:

I think it would be discourteous to withdraw it ahead of the Scrutiny Panel's review. I inform Members that it is likely to be withdrawn and I am also told by the Constable of St. Helier that he is giving consideration to P.147 and P.187.

The Greffier of the States (in the Chair):

Thank you, Senator. Deputy Southern, do you wish to raise a matter?

Deputy G.P. Southern:

No, I could not find my paper. I was going to check with you that my proposition P.34/2009 was on 24th March and it is.

15.2 Deputy I.J. Gorst:

Yes, it was about Deputy Southern's P.34 that I wanted to rise. In actual fact, if Members have time just to look at the Deputy's proposition, I am already doing what he calls on me to do and I accept his proposition subject to finding appropriate funding which I believe that he also recognises and the date of 1st December and therefore I wonder if he would be prepared to withdraw it?

15.3 Deputy G.P. Southern:

Not, Sir. We saw 6 more redundancies today. I believe that there are lots of people out there seeking reassurance that they will have some sort of cover in place and that is not there yet. Let us get it in place as soon as we can and I maintain that date.

Deputy I.J. Gorst:

If that is the case, I will want to amend it. I just look to a lead from you whether that will be possible, bearing in mind the time scale that it is down for debate for.

The Greffier of the States (in the Chair):

An amendment to that proposition would have to be lodged by next Tuesday, Minister, so you have the rest of this week and up till next Tuesday.

Deputy I.J. Gorst:

Thank you very much, Sir.

The Greffier of the States (in the Chair):

If there are no further observations and Members are content with the arrangement of business as proposed? Very well, that is agreed. The meeting is closed and the Assembly will reconvene on 24th March.

ADJOURNMENT