

# STATES OF JERSEY

## OFFICIAL REPORT

THURSDAY, 4th NOVEMBER 2010

<b>PUBLIC BUSINESS - resumption</b> .....	<b>3</b>
<b>1. Minister for Planning and Environment: powers (P.132/2010) - continued</b> .....	<b>3</b>
1.1 Connétable P.F.M. Hanning of St. Saviour: .....	3
1.2 Deputy P.V.F. Le Claire of St. Helier: .....	3
1.3 Deputy S. Power: .....	4
1.4 Connétable J.L.S. Gallichan of Trinity: .....	4
1.5 Connétable J. Gallichan of St. Mary: .....	5
1.6 Connétable M.K. Jackson of St. Brelade: .....	5
1.7 Deputy I.J. Gorst of St. Clement: .....	6
1.8 Deputy R.G. Le Hérissier of St. Saviour: .....	6
1.9 Senator F.E. Cohen: .....	7
<b>2. Esplanade Quarter: Deferment of works and endorsement of Development Agreement (P.136/2010)</b> .....	<b>7</b>
2.1 Deputy P.J. Rondel of St. John: .....	8
<b>3. Children (Jersey) Law 2002: Appointment of children's guardians and advocates in certain court proceedings (P.137/2010)</b> .....	<b>8</b>
3.1 Deputy F.J. Hill of St. Martin: .....	9
3.1.1 Deputy A.E. Pryke of Trinity: .....	11
3.1.2 Senator S.C. Ferguson: .....	12
3.1.3 Deputy P.V.F. Le Claire: .....	13
3.1.4 Senator T.J. Le Main: .....	16
3.1.5 Mr. H. Sharp, H.M. Solicitor General: .....	16
3.1.6 Deputy J.A. Hilton of St. Helier: .....	20
3.1.7 Senator B.I. Le Marquand: .....	20
3.1.8 Deputy R.G. Le Hérissier: .....	23
3.1.9 Deputy A.E. Jeune of St. Brelade: .....	23
3.1.10 Deputy M. Tadier of St. Brelade: .....	24
3.1.11 The Deputy of St. Ouen: .....	25
3.1.12 Deputy T.M. Pitman of St. Helier: .....	25
3.1.13 The Connétable of St. Mary: .....	26
3.1.14 The Connétable of St. Lawrence: .....	26
3.1.15 Deputy G.P. Southern of St. Helier: .....	27
3.1.16 Deputy R.G. Le Hérissier: .....	27
<b>4. Jersey Post: petition (P.140/2010)</b> .....	<b>32</b>
4.1 Deputy J.A. Martin of St. Helier: .....	32
4.1.1 Senator A.J.H. Maclean: .....	36
4.1.2 Senator S.C. Ferguson: .....	38
<b>LUNCHEON ADJOURNMENT PROPOSED</b> .....	<b>38</b>

<b>LUNCHEON ADJOURNMENT.....</b>	<b>38</b>
4.1.3 Senator A. Breckon: .....	39
4.1.4 Deputy A.K.F. Green of St. Helier:.....	40
4.1.5 Deputy C.H. Egré of St. Peter:.....	41
4.1.6 Deputy K.C. Lewis of St. Saviour:.....	42
4.1.7 The Deputy of St. John: .....	42
4.1.8 Senator P.F.C. Ozouf:.....	43
4.1.9 Deputy J.M. Maçon of St. Saviour:.....	47
4.1.10 Deputy G.P. Southern: .....	47
4.1.11 Deputy T.M. Pitman:.....	49
1.1.12 Senator B.I. Le Marquand: .....	50
4.1.13 Deputy A.E. Jeune: .....	51
4.1.14 The Connétable of St. Brelade:.....	51
4.1.15 Deputy J.B. Fox of St. Helier: .....	51
4.1.16 Connétable K.P. Vibert of St. Ouen:.....	52
4.1.17 Deputy M.R. Higgins of St. Helier: .....	53
4.1.18 Connétable D.J. Murphy of Grouville:.....	54
4.1.19 Deputy J.A. Martin: .....	54
<b>5. Postal services: direction and guidance to the Jersey Competition Regulatory Authority (P.138/2010).....</b>	<b>59</b>
5.1 Deputy G.P. Southern:.....	59
5.1.1 Deputy P.V.F. Le Claire: .....	61
5.1.2 Senator A.J.H. Maclean: .....	62
5.1.3 Senator P.F.C. Ozouf:.....	64
5.1.4 Deputy R.G. Le Hérissier: .....	65
5.1.5 The Solicitor General:.....	65
5.1.6 The Connétable of St. Ouen:.....	66
5.1.7 Deputy R.G. Le Hérissier: .....	66
5.1.8 Deputy G.P. Southern:.....	66
<b>6. Draft Employment (Amendment No. 5) (Jersey) Law 2010 (Appointed Day) Act 201-(P.142/2010).....</b>	<b>68</b>
6.1 Deputy I.J. Gorst (The Minister for Social Security): .....	68
6.1.1 Deputy G.P. Southern:.....	68
6.1.2 Deputy T.M. Pitman: .....	69
6.1.3 Deputy I.J. Gorst: .....	69
<b>ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS .....</b>	<b>70</b>
7. The Connétable of St. Mary:.....	70
7.1 Deputy P.V.F. Le Claire: .....	70
7.1.1 Senator F.E. Cohen:.....	71
7.2 The Connétable of St. Brelade: .....	71
7.3 The Connétable of St. Clement: .....	71
7.4 The Deputy of St. John: .....	71
7.5 Senator P.F.C. Ozouf:.....	71
7.6 Senator A. Breckon: .....	71
7.7 Senator F.E. Cohen:.....	72
The Connétable of St. Mary:.....	72
<b>ADJOURNMENT.....</b>	<b>72</b>

[09:31]

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

**PUBLIC BUSINESS - resumption**

**The Greffier of the States (in the Chair):**

Very well, the debate resumes.

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

Sir, may I just clarify a matter arising from the Supplementary Order Paper on Tuesday where it says that we have been notified of an amendment to the North of Town Master Plan by the Constable of St. Helier? I do not know but I do not think I have seen this document and I just wonder whether I have missed it or whether nobody has had it, although it was lodged on Tuesday.

**Deputy S. Power of St. Brelade:**

Sir, it has been circulated.

**1. Minister for Planning and Environment: powers (P.132/2010) - continued**

**The Greffier of the States (in the Chair):**

Well, I am sure you will receive a copy, Deputy, but we will look into the matter and check that the copies have been circulated. Thank you. Very well, we now resume the debate on the proposition of Deputy Le Hérissier. Constable of St. Saviour, you were next on the Deputy Bailiff's list, if you wish to speak.

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

As a member of the Planning Applications Panel, I would like to speak on a couple of points, firstly, dealing with the Deputy of St. John's concerns about the panel members sitting with the public when they speak during an application. He may not be aware that the panel members frequently sit out during some of these applications, not only because they wish to speak on the subject but also if they are conflicted and also, more commonly, if the application deals with their parish or their constituency. The idea is to make it obvious that no favour is given and that it shows clearly that they take no part in the discussion or the decision-making of the panel dealing with that item. Now, if this is not adequate for the Deputy, the next step would be for the member to miss that hearing because he wishes to speak and given that, for example, next week, we have got 40 applications to hear, it would be pretty obvious that we would very quickly become inquorate and the whole system would be impossible to operate. I believe that, when we take no part, it is clear to the public that we are sitting out and no influence is given on the panel. Secondly, if I can go back to the Minister's Public Hearings, I have sat in on these public hearings when our Panel Chairman has been unavailable and I can confirm that the Minister always seeks our views and I never felt excluded from the Minister's decision-making process. His decisions always seem to take account of our views. I believe it was a fair system. This Assembly may decide to change the format but I do believe that this is one of those instances where we are worrying about theoretical problems and appearances. There is not a problem in practice. There is already a review taking place on the planning application process. I think it would be right for us to hear the results of that review before changing a system that most people appear to be happy with.

**1.2 Deputy P.V.F. Le Claire of St. Helier:**

I said yesterday I would be 60 seconds or less, so here goes. The Minister for Planning and Environment, hopefully, shortly to be changing his name to the Minister for Environment and Planning or the Minister for the Environment, was the first Minister to open up the planning applications process for the public and I attended the very first meeting when he did that and I think

that was a great step in the right direction. Unfortunately, it was for the incinerator building, but there we are. I think that we do have an opportunity to review his powers. He has welcomed the proposition, but I would just like to concur with the Constable of St. Saviour that an ongoing review is occurring at this time with the Planning Applications Panel and some suggestions have been made that more decisions are made perhaps by a sub-panel in the future with the right to appeal to the Minister if people are unhappy.

### **1.3 Deputy S. Power:**

I have read this report and proposition twice and I am not sure that I agree that it sits comfortably by asking the Privileges and Procedures Committee to review the work of the Minister for Planning for a number of reasons. I feel, at the moment, that there is a review going on into the workings of the Planning Department and I feel that this, to a certain extent, overlaps and, indeed, duplicates that work. When I first read this, I said to myself that it is strange that Deputy Le Hérissier wants P.P.C. (Privileges and Procedures Committee) to review it when the Chairman and the Vice Chairman of P.P.C. sit on the Planning Panel and also the Constable of St. Saviour but then, if that is a disadvantage, it is also an advantage. So from that point of view, I do not think that this report and proposition is necessary. I do want to take this opportunity to say that, in my opinion, having served 3 years on the Planning Panel and having very close contacts with the Planning Department, the Minister leads a very fine department and, of all States departments that one has to lead, the Planning and Environment Department is probably the one that the public takes the greatest amount of interest in. It is a case of many times in Planning Panel Meetings: “We are damned if we do or damned if we do not” and it is the same with the Minister. On this Island, the Minister is subject to an awful lot of what is euphemistically described as Nimbyism which is Not in My Back Yard. Now, the Minister has a very, very fine balancing act to do, as does the Planning Panel. There are huge frustrations sometimes in working within the Planning Department. It is a very difficult balancing act and it can be, at times, a poisoned chalice but somebody has to do it and Senator Cohen has done a very good job, in my opinion. But not only has Senator Cohen done a good job, the men and women of the Planning Department do a very fine job and sometimes they are very unfairly criticised. I think that they have a job to do and they do that job very, very well to the best of their ability. My position this morning is that it is not just the Minister who runs the Planning Department, it is the men and women who work up there and they do a very good job. I am not going to support this proposition because I do not think it is necessary and I would like Deputy Le Hérissier, when he is summing up, to deal with whether he does think that this sits comfortably with the Privileges and Procedures Committee. Thank you.

### **1.4 Connétable J.L.S. Gallichan of Trinity:**

I know the Minister has accepted this but I really wonder if it is needed with the review that is going on at the present time and I must say since he has co-opted myself and the Minister for Environment on to his panel to help him, I would say to anyone who wants to be Minister for Planning, it is a very, very lonely job and I can well understand that, if there are major decisions ... because the Minister makes most of the major decisions. The panel deals with far more than the Minister, but it is a variation; the larger developments are really in the charge of the Minister.

[09:45]

There must come a time that you start, yourself, saying: “I am always dealing with the same clients and the same vast developments. Surely, there should be someone alongside me giving me a bit of an idea of whether I need reassuring or whether I have gone the wrong way.” I think with the Assistant Minister and myself, we do give a bit of comfort and I can assure you that we do not always concur with the Minister. In many cases, we come to a completely different view and I

must say, in most cases, there sometimes is a compromise. I think this is what it is with Planning in a lot of cases, not everything is black and white. At certain times, there has to be a little bit of give and take and I must say, with dealing with the Minister, we get on extremely well and we have no problems with coming to a decision. However, whether this is needed at the present time, all I would have said maybe is, by all means, if the Minister wishes to accept this, just hold it back for now. I totally agree, I think it should not be for the P.P.C. to handle this, it should be someone else. But just wait and see how the report comes back from those who are examining the planning procedures now. If the Members are not happy, then go ahead and just put this into place but if the report comes back positive - which I am delighted to say most of the people in this House seem to think we do a reasonably good job - then start it up then but, at the moment, I would not waste anybody's time in reviewing something which is being reviewed now. Thank you.

### **1.5 Connétable J. Gallichan of St. Mary:**

I would just like to state, before I start, that of course I am Chairman of P.P.C. so would be affected by this proposition but I am also a member of the Planning Applications Panel, as has already been mentioned. There is no conflict, in my view, regarding the current proposition because it does not touch on the Planning Applications Panel at all, despite the wishes of the Deputy of St. John. I would just like to say that this is something that the panel does not seek to do actively. It does not fall, as I see it, directly within our terms of reference, although of course we are in the hands of the Assembly. If the Assembly were to charge P.P.C. to undertake a piece of work, the P.P.C. would, of course, respond. It does seem to me that there is a review being undertaken at present, as other Members have said. Perhaps the most efficient way of dealing with this matter, if it needs to be dealt with, is to simply expand the terms of reference of the current review to take on board things which are requested by this one. We have not had any communication from Deputy Le Hérissier about this proposition and I am not sure exactly at this stage how P.P.C. would go about undertaking this review, if we are tasked to do it. Obviously, I would like the proposer to give some details of exactly why he believes we are the right body to do it and as to exactly how he would envisage us undertaking it. I would be grateful to have that to go on. As I have said, I am a member of the Planning Applications Panel. The planning process to me, although it is very complex, seems to work remarkably well in a small Island where it is impossible to please everybody and where we are cheek by jowl with one project or another at any one time. I think it is very pertinent to have grasped the Minister's statistics that he gave yesterday on the comparatively low number of appeals and, in fact, the extremely low proportion where decisions are overturned. I think that is very important. We have a process that works and the other thing that I would like to draw on is a sentence in the Minister's comments because this does concern me. Despite attempts recently to modify things, we took a decision as an Assembly to move to ministerial government and, as the Minister says, ministerial government does vest decision-making authority in individual Ministers. That is the name of the game and I, like the Minister, wonder why this particular Ministry deserves this particular close-cut investigation at this particular moment in time rather than any other Ministry. I think we could look to all of them and say: "That Minister holds an awful lot of power." Wake up. That is what we decided they would do. I am just interested as to why this particular Ministry now is the subject of this request and not to any other. Thank you.

### **1.6 Connétable M.K. Jackson of St. Brelade:**

I would simply say, really more with a parochial hat than a ministerial one, that I support the Minister for Planning in the way he has operated the department here in his tenure of office. Clearly, the whole area is subjective and it is bound to lead to discontent at certain times and of course there is also finance at stake and this all very often breeds concerns and jealousies and I think, as has been alluded to before, the Minister performs this fine juggling act with great aplomb. Not all of the people will be satisfied all of the time but I think the stage we have got to is probably as good as we are going to get and long may it continue. I think it needs someone of a strong vision

and determination and the Minister has demonstrated this and this is apparent by buildings which have been constructed during the last period. I do not think the review is necessary but, were it to be deemed to be required, I would suggest that it ought to take place by an independent body. Thank you.

### **1.7 Deputy I.J. Gorst of St. Clement:**

I am probably not alone in not liking some of the decisions that the Planning Panel and Minister for Planning make. I think probably most people who make applications feel that, when a decision goes against them, it is not fair. When they are asked to do something that might cost them a little bit more with their application, they find it inappropriate and wish that another decision had been made that meant that they could do the job in a different way and perhaps at less cost to their own pocket. That is as may be, but the result of what we might consider nitpicking - sticking to good design principles - are that, on the whole, we now, I believe after this term and a half of the current Minister for Planning, have much-improved architecture, much-improved designed buildings coming forward and things that we can now start to be proud of. Whereas, in the past, I am afraid that the vast majority of opinion has been that the quality of design and quality of buildings that were brought forward in the previous 10 years were very poor indeed. There was nothing that we could be proud of, there was nothing that we felt was particularly Jersey and there was nothing that we felt was of quality. So I have got to say that while, as I started, I have not agreed with all the decisions that have been made certainly at a parochial level, if we take the effect of the decisions across the Island as a whole, then they have improved design, they have improved architecture and that is what we want. We do not have to think of the short-term, we have to think of the long-term effect that these buildings have upon our community, sometimes for hundreds of years into the future. Having said that, I am of the opinion that, when I first started in this role as Deputy and I attended what was the Planning Applications Panel, it sat in private. States Members perhaps had an advantage over any application that they were opposing, and the applicant; that now takes place in public. There is appropriate opportunity and time given for those wishing to speak in favour or against a particular application and they are expected to do their research appropriately and base it on the policies of the Island Plan. The same can be said for ministerial hearings and the Minister himself has, over the course of his tenure, improved those as well by bringing onboard the Chairman of the Applications Panel and his Assistant Minister and, as members of the panel have said, he consults with them as well when decisions might be considered to be controversial. I think that the Minister has made great strides forward, there have been great improvements in the, shall we say, control of the power that is vested in the Minister for Planning and the accountability. I am not saying that there cannot be more but I do think that we will never have a perfect system when we have got this subjectivity. Beauty is very much in the eye of the beholder when it comes to design and architecture. I believe that, while this is good-intentioned and that we should continue to review our power as exercised, I believe that we should let the Minister continue with his review. We heard about some systemic failings yesterday. That review around value for money and efficiency and effectiveness of the policies in place in the Planning Department, is taking place. I think that that will improve things more than a change that perhaps is being suggested by this proposition and, having said all that, I am not sure that P.P.C. is the body that should be undertaking a piece of work like this anyway, I think it should be Scrutiny. At this instance, I am not sure who I am supporting because I do not know if the Minister for Planning is supporting this proposition but I really do not think it is necessary at this time. I congratulate the Minister for Planning and the Planning Applications Panel for the work they are doing, as I have said, albeit that I do not always agree with it.

### **1.8 Deputy R.G. Le Hérissier of St. Saviour:**

If it assists the House, I have got arguments in relation to a lot of what has been said but I am impressed by the Constable of St. Mary's compromise. I would be prepared to accept that this be incorporated into the review if it was very clearly put down as a term of reference, if I was assured

that it was an independent person conducting, as I think is the case, but I would need a specific assurance, and that we could give evidence in that respect. I wonder if the Minister could speak to that. But if that were the case, I would be quite prepared that this stops and to put my belief in the review, but I need those assurances.

**The Deputy Bailiff:**

As I understand the proposal, Minister, is that Deputy Le Hérissier would seek the Assembly's approval to withdraw the proposition at this stage, if you confirm that the review, which is being carried out by an independent person, will encompass the issues raised by this proposition.

**1.9 Senator F.E. Cohen:**

I am grateful to the Deputy for this suggestion. There are a number of issues. The most important of which is that, while this is an external review carried out by external planning experts, it is quite a costly review. I would be a little concerned about fundamentally changing their remit while we are in a position where they would not be effectively competitively tendering for the extra work. I will certainly seek to do my best to include all the key elements that the Deputy is concerned about, many of them are already included in the review, but the caveat is, I do not want the Planning Department to be in a position where we can be held to ransom over the cost of any changes.

**The Deputy Bailiff:**

It sounds like a "maybe", Deputy.

**Senator F.E. Cohen:**

It is a "probable", Sir.

**The Deputy Bailiff:**

Do you wish to ask the Assembly to ...?

**Deputy R.G. Le Hérissier:**

I will discuss this further with the Minister. He seemed to be inclined to see whether it could be incorporated. It strikes me, if the review is looking at how planning powers are exercised on the Island, and I assume that is the remit, this would inevitably have to be part of the review. So if I can get that explicit with the Minister, but on the basis that he is an honourable man, which we all know to be the case, I will withdraw.

**The Deputy Bailiff:**

As I understand it, Deputy, you are now asking the Assembly to agree that you be permitted to withdraw this proposition? Does the Assembly agree this proposition be withdrawn?

**Senator F.E. Cohen:**

May I make one comment? The Constable of St. Mary kindly referred to the exceptional record of the department in relation to appeals, and I would like to place on record that that exceptional record is down to the extremely diligent, hard work of the Law Officers' Department and we should all be extremely grateful for their efforts on behalf of the Planning Department, and I wish to thank them. [Approbation]

**2. Esplanade Quarter: Deferment of works and endorsement of Development Agreement (P.136/2010)**

**The Deputy Bailiff:**

We now come on to P.136, Esplanade Quarter: deferment of works and endorsement of Development Agreement lodged by the Deputy of St. John. I ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether of opinion (a) to agree that any development ...

**The Connétable of St. Mary:**

Sir, I have just received a note that the Deputy of St. John would be happy to defer this proposition in order to assist with the workload at this time.

**2.1 Deputy P.J. Rondel of St. John:**

If it would help the House, as long as it is not delaying anything within the departments, I do not think it is, within Planning and/or the Treasury on this one, because I know we have a big workload still to get through for the rest of today. I am happy to defer it for a later date to be agreed with the Greffier, if that will help the Assembly today. I am not withdrawing it, I can assure you of that.

**Senator P.F.C. Ozouf:**

Would the Deputy agree to meet the Chief Minister and myself in relation to this proposition to try and find a way forward with meeting his aspirations rather than having to argue this stuff out in the floor of the Assembly?

**The Deputy of St. John:**

I do not have a problem at all with that. I am just trying to be constructive today, not wasting a lot of Members' time, although I know I am going to win it **[Laughter]** but it could take several hours out of today, which we have an awful lot of other things on the agenda.

[10:00]

**Senator F.E. Cohen:**

Could I make a comment? The Deputy is a thoroughly good chap **[Laughter]** and he has raised some very important issues, but I think that the issues can be dealt with quite easily outside this Assembly, as the Minister for Treasury and Resources has suggested, with a simple meeting with the Minister for Treasury and Resources and the Chief Minister, and I would be more than happy to attend the meeting as well.

**The Deputy Bailiff:**

It is proposed that this item P.136 be withdrawn from today's list and it is so ordered.

**3. Children (Jersey) Law 2002: Appointment of children's guardians and advocates in certain court proceedings (P.137/2010)**

**The Deputy Bailiff:**

We accordingly now come on to P.137, the Children (Jersey) Law 2002: appointment of children's guardians and advocates in certain court proceedings lodged by the Deputy of St. Martin, and I will ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether they are of opinion (a) to agree that the Children (Jersey) Law 2002 should be amended so that where children may be - (i) separated from their parents by virtue of a care order; or (ii) confined by virtue of a secure accommodation order, a children's guardian and an advocate for the child will be appointed by the Court in all cases; (b) to request the Minister for Health and Social Services to bring forward for approval amendments to the Children (Jersey) Law 2002 to give effect to the proposal.

**Deputy I.J. Gorst:**

I have a personal conflict and therefore will not be taking part in this debate. Thank you.



**The Greffier of the States (in the Chair):**

Thank you, Deputy. The Deputy of St. Martin.

**3.1 Deputy F.J. Hill of St. Martin:**

It is rather a surprise that I should be bringing this proposition to the House when I would have thought it might have been brought forward by the Minister for Health or, indeed, as a corporate parent, including the Ministers for Education and Home Affairs. I hope that I will be able to persuade Members that this proposition is very important for the children in the Island. The purpose of my proposition is to give the children of Jersey a voice in proceedings which can have a monumental and irreversible effect on their lives. It is also to ensure that the most vulnerable in our society have the kind of protections that we, as adults, who can fend for themselves, take for granted. When the Minister for Health and Social Services brings care proceedings the aim of the application can sometimes be to authorise the child being removed from his parents for a period of time or, in more serious cases, for the child to be removed from his family for ever. It is this type of case that my proposition is specifically aimed at, and for the child to have the automatic benefit of a Jersey lawyer, and a specialist in child care, being a guardian. In less serious cases, where separation is not on the cards, and is set out in my proposition, the Court will continue to have discretion but subject to certain safeguards. When the Minister brings a secure order accommodation application and a child is likely to be deprived of its liberty, in these cases too, my proposition seeks to ensure that the child has the benefit of a Jersey lawyer and a guardian. In part, our existing law has some provision in this respect, but does not go far enough. My proposition is about giving children the right to be represented in court when the significant life-changing applications are brought, just as adults have the benefit of the protection ...

**Senator S.C. Ferguson:**

I think we are inquorate.

**The Greffier of the States (in the Chair):**

I am afraid the Senator is correct. **[Laughter]** If there are any Members in the precinct, would they please return to the Assembly.

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

I think it is disgraceful that a proposition of this paramount importance has an inquorate House.

**The Greffier of the States (in the Chair):**

Deputy, you may continue.

**The Deputy of St. Martin:**

Can I endorse what the Connétable of St. Lawrence is saying. This is a very, very important proposition about giving the right to a child to having legal representation, and yet this House is inquorate. My proposition is about giving the children the right to be represented in court when these significant life-changing applications are brought, just as adults have that benefit when, for example, they are going to be imprisoned. The Children's (Jersey) Law 2002 deals in general with the protection of children. The legislation represented a great leap forward in the promotion of rights in the English Children's Act 1989, and was understood at the time to be affording children in Jersey a similar degree of protection as those in England and Wales. There is, however, one area that is rather vague in Jersey law when compared with the English position, and that is with regard to the representation of children. In England, a child's guardian shall - I shall repeat that word - shall be appointed in all care cases and secure accommodation order applications, unless the Court is satisfied that the child's interests are sufficiently protected without a guardian. There is, however, no recorded instance in England of this having happened in these particular circumstances, and the Courts in England have therefore made clear that children in all case, and in

all secure accommodation applications, have to be fully and properly represented by a guardian. If the usher is around maybe he could find me a little bit of water. Once the guardian is appointed, he or she then has to appoint a lawyer, and that lawyer has to represent the interests of the child in court. In Jersey, the detailed provisions and rules about the appointment of guardians and lawyers are not fleshed out in our law. There is, instead, a power under Article 75 whereby the Court may - again emphasis on that word "may" - may order that the child be represented separately. The essential distinction here is that the Court shall appoint under English law but may only appoint under Jersey law. I do not know why this part of the English law was missed out in the Jersey law. I was a member of the Health Committee at the time the law was debated, as indeed I know Senator Le Main was also a member, Deputy Le Claire, Deputy Le Hérissier, Deputy Martin, we were all members of the Health Committee when that particular law was discussed and approved by the States. I cannot remember us ever being told that Jersey was going to give our children lesser provisions than those in England. It has been suggested to me that this was done in an effort to save money. But I reject that, and I will return to this issue later. In England, the child must be represented in these serious cases, whereas in Jersey the onus on showing that representation is needed is on the child, not on the Court. This means that in Jersey an unrepresented child, possibly a newly born infant, somehow has to persuade the Court that he needs a lawyer, which obviously will not happen. If a guardian happened to be appointed but not a lawyer, the guardian then has the task of persuading the Court but that is a problem which could take months, and as happened in a recent case called *Re B*, and that is mentioned in my proposition. By the time a guardian has managed to get into the saddle, marshalled the facts and get a hearing before the Court, all things are likely to have happened in the case, including the removal of the child from his parents. The damage could already have been done and without the child ever having participated. In the case of *Re B* that should have been a complete change to the custom, which had evolved previously of children having the benefit both of a guardian and a lawyer. In this particular case, the Deputy Bailiff refused the Minister's own request for a lawyer to be appointed to fight for the interests of a newly born child. This was despite this particular case being one of those really serious cases where it was actively being considered that the child should be taken from the parents. The guardian in the case asked the Court for a lawyer to be appointed for the child, because she was not a lawyer and be able to perform the task. This resulted in delay and the child not having its own team to fight for it. Eventually the Deputy Bailiff granted the child a lawyer so there was no appeal. But in his judgment said, that in future children will not have the representation from lawyers or guardians appointed to them as a matter of course, even in very serious cases, as indeed *Re B's* case was. My proposition seeks to restore the rights of children which have essentially been taken away from them by the judgment of the Deputy Bailiff. The Children's Law is human rights compliant, make that absolutely clear, it is human rights compliant, but it is a change of practice following a decision of *Re B* resulting in children not being represented, which is contrary to human rights. That is not mentioned in either the A.G. (Attorney General) or the Council of Minister's reports. Children, as much as adults, should be afforded a fair hearing in the judicial proceedings. That fair hearing includes the right to have your case heard. Without representation how can a child have his case heard? How can there be equality of arms in court. All adults have lawyers and a team in support, but the child that is central to the case has no one acting specifically for him or her. This new practice also puts Jersey at odds with international law, in that the practice is not in keeping with the United Nations Convention on the Rights of the Child. Members will have seen the Attorney General's comments, however I hope also Members will have seen the article from the local advocates Hanson and Corbett published in the International Family Law, and was circulated by Deputy Le Claire. That disagrees with the Attorney General's analysis. I also hope that Members saw the independent English counsel advice that I circulated. Counsel again advises that the approach set out in *Re B* does fall foul of our human rights law, and is also contrary to decisions of the European Court in respecting children's ability to participate in these really serious cases. If the States does not act there will ultimately be embarrassing court cases and costly challenges through courts such as the Privy Council and the Court of European Human Rights. The Council of

Ministers has commented on my proposition saying it believes that any likelihood of a child not being properly represented will be further reduced by the establishment of a local guardian service called the Jersey Family Court Advisory Service. This is a complete red herring. The Council of Ministers states that this advisory service will appoint locally based guardians, but it is a fact that there is only one at present, and I think the Assistant Minister for Health will confirm that. There is only one guardian at the moment. No other J.F.C.A.S. (Jersey Family Court Advisory Service) member of staff can act as guardians because they have already worked for the Children's Service and therefore are excluded from being appointed as guardians to act for the child. J.F.C.A.S. will not be able to deal with the public law cases for the foreseeable future. In any event, the suggestion that it might not be necessary to appoint a lawyer, when there is a guardian familiar with Jersey's legislative and administrative process, is frankly frightening. You do not employ a plumber - he is not here - to do brain surgery.

[10:15]

So why on earth would a social worker with a professional background of guardianship be able to act as a lawyer? I ask Members to think about it. Why have all this gruelling technical examination to become a Jersey lawyer when, in fact, you can ask a guardian to do the job. I do not mean to be disrespectful to any social worker and guardians but you can only do the job that you are trained to do. If you try to do more than this I foresee not only children suffering in the process, and proceedings being delayed, but potential proceedings being brought against guardians for negligence in the conduct of this new pseudo legal role. One of the pillars of a Children's Act in England was the appointment of a guardian and a lawyer for children caught up in these really serious proceedings. No one ever seriously argued that social workers ought to be lawyers. The cost of lawyers acting for children in these cases should also but not be the consideration in all cases. Lawyers are now not being appointed to act for children ... they are being appointed to act for children under legal aid considerations rather than being paid at the high level. If Members want to protect the rights of innocent children in Jersey, and for those children to have a voice when the Minister intervenes in their lives, then Members must support my proposition. We do not want Jersey children to have fewer rights than children in England. We do not want our international reputation as a progressive caring place to live to be tarnished by the lack of the rights of our children. We do not want to face a consequence of children not being given the chance to have their interest put first. I urge Members to support my proposition.

**The Greffier of the States (in the Chair):**

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

**3.1.1 Deputy A.E. Pryke of Trinity:**

As a Minister and as an individual, I am absolutely committed to ensuring our children are provided with the best possible protection. That is particularly the case when they are caught in the most terrible and difficult circumstances, when they face the possibility of being separated from their parents or being placed in secure accommodation. At this stage, something already has gone very sadly wrong for these children, and it is our duty to do the best for them. On the face of it, a proposition that calls for the automatic appointment of guardians and lawyers might be deemed an appropriate additional measure. But if we explore the issue with more detail the reason for changing our law becomes less compelling. We know that our court does not automatically have to appoint guardians and lawyers, but it can and does where appropriate. We are not debating this proposition because our courts are failing children. They categorically are not. We are debating this proposition because it is possible that the Court might not appoint a lawyer and a guardian. Some say therefore it is possible that a child might not receive appropriate representation even though it is possible to appeal against the Court's decision. But, as we all know, there are many things that are possible that do not happen or even not likely to happen, particularly when the evidence points to the contrary. We routinely ask our court to exercise its discretion in all sorts of

complex and sometimes harrowing proceedings. Our confidence in the Court's ability is fundamental to our legal system. We trust the Court to make the right decision. We trust the Court to make the right decision about the appointment of lawyers and guardians, and we trust the Court to protect the rights of the child. Lord Justice Mummery was quoted in an email, and that was circulated by Deputy Hill. It says it is a terrible thing to tell any parent that he or she has to lose their child. We know that. Our court knows that. So when it exercises its discretion it considers, as a matter of paramount importance, the need to protect the rights and interests of the child, hence the regular appointment of lawyers and guardians. This is not unusual. It is common in other places. While there is presumption in England that a guardian and a lawyer will be appointed, this presumption can be rebutted. Scotland and the Republic of Ireland have a similar legal position to Jersey. In these places the courts exercise discretion, and do so bound by the European Convention of Human Rights and the United Nations Convention on the Rights of the Child. I know that advice from an English counsel has been circulated to Members that queries this compliance, but this opinion is not upheld by the Solicitor General or the Attorney General. I am no lawyer, but the Solicitor General and Attorney General are. They are experts in Jersey law and if they state there is no legal reason to change that law then it is the advice I and my fellow Ministers will take. That advice is free from any potential interest. The Children's Policy Group have always taken advice from professional staff, the people who operate at the coalface. They do not believe the law needs changing. They believe the most effective way to protect children in court proceedings is to invest resources, time, people, money and expertise, especially in the development of the Jersey Family Court Advisory Service. This service, to be formally launched later on this month, will appoint locally based guardians whose role is to protect the interests of the child in court proceedings. They will be professional social workers trained to act as guardians. They will be knowledgeable about Jersey's legal and administrative processes. Their intervention means that it might not be necessary to appoint lawyers. They can and will protect a child's interests while avoiding potentially more adversarial paths. This development of J.F.C.A.S. has been welcomed by the independent chair of the Jersey Child Protection Committee. The Jersey Family Court Advisory Service, which is to be managed by the Probation Service, to ensure independence from the Social Services, is currently resourced to provide service during public law cases. By resourcing it to provide guardians in public law cases we will build a body of local expertise and knowledge protecting our children in local proceedings. This does not prevent the guardian or the courts from appointing a lawyer, if necessary. A lawyer that represents the child, not the guardian. It has been said that this is a debate of principle, this is absolutely correct. This is a debate which hinders on a number of principles. Should we invest energy, time, in changing the law where there is no evidence that it has disadvantaged any child. Or should we invest energy and time in the Jersey Family Court Advisory Service, which will benefit our children. Should we question our confidence in our court's ability to exercise discretion, or should we slavishly follow English practice even though there is no evidence that it works more effectively? Should we create change potentially for change's sake? Or should we listen to the advice and trust the expertise and integrity of the professionals we employ to protect our children. I believe we should. I urge Members to oppose this proposition.

### **3.1.2 Senator S.C. Ferguson:**

Frankly, I do not think we should follow slavishly the procedures of the U.K. (United Kingdom), as the Deputy of St. Martin is recommending. Despite the safeguards that he alleges are in place in the U.K., it is not true. I hate to correct him but his evidence is faulty. There are recent and well-documented cases, and these are ongoing, where children have been seized by Social Services with the collusion of the police. What is worse, the lawyer acting for the children is appointed by the Social Security Department who have done the seizures. The people who have taken the children then appoint the lawyer for the children.

### **The Connétable of St. Mary:**

I wonder if the Senator will give way to clarify something. I would like clarification, I cannot make out from what the Senator has said whether she is referring to incidences in Jersey or the U.K.

**Senator S.C. Ferguson:**

I apologise. I was referring to the U.K. I was using this as an example of why we should not be following slavishly the procedures of the U.K. so that you have the lawyer acting for the children appointed by the Social Security Department in the U.K. ... Social Services Department, thank you, I stand corrected. The Social Services Department which seizes the children then appoints a lawyer for the children, who obviously acts to the instructions of the Social Services Department. Then to make things worse, the proceedings of the U.K. Family Court are secret and the parents find they cannot question the evidence of Social Security and are effectively gagged. From that point of view, I agree with the Deputy of St. Martin, that Social Services officials should not be acting for the children, and I agree that an independent lawyer should be appointed to act for the child by the Court, although I am cautious about the costs. But I think the main message is please we do not want to follow the U.K. processes because they do not protect the rights of the child, and I would ask the Minister to bear these caveats in mind should the Assembly approve the proposition. I am waiting for the concluding speech before I decide which way I will vote.

**3.1.3 Deputy P.V.F. Le Claire:**

I was a member of the Health Committee, as the Deputy of St. Martin quite rightly pointed out in his opening speech. I apologise, I was downstairs collecting papers for this debate and that is why I was not present when the States became inquorate in the beginning of this debate. I do think Members do need to get involved in this debate, I would encourage them, if they were listening, as I was, to get back inside here. The Minister has spoken about the advice she receives from the Attorney General and how that advice is very important, and that we should be taking that advice, and the advice that she receives at the moment is what is driving her and the Council of Ministers, no doubt, to say that we do not need this. It was very interesting that it was the actual Law Officers themselves, and the Minister herself, that requested a lawyer in the recent *Re B* case that was turned down by the Deputy Bailiff.

[10:30]

That was a case which involved the child being removed from the mother. So the Minister's request for a lawyer to be appointed on the advice of the Law Officers was turned down. What I am going to argue today in this debate, and I would hope all Members get involved in this, and speak about this, and express an opinion, is that we are here not to make a judgment or deliver an opinion, nor are we here to decide upon which opinion is right. We are not arbiters of the law. An opinion has been given by Her Majesty's Attorney General, and while we must have cognisance of his abilities and his opinions we must also get back to asking why were his desires, through his Law Officers and that of the Minister's, negated in that case? If you take the serious case review, and I will not refer to the actual particulars, where all Members were extremely concerned, a travesty of justice occurred in 1999. I was on the Health Committee that was assured by the civil servants and the collective corporate parents that the children were okay. We were told about the situation; running an open house. The words are for ever inscribed in my mind because at the time I thought: "What does that mean?" The police knew. The Social Services knew. The Health knew. The parents knew. The committee knew. But the ones that knew the most, apart from those others that we do not know who they were, were the children. When we introduced the Children's Law in 2002 to catch up with where other jurisdictions are going in this regard, we knew full well there were going to be costs, but we knew full well we were implementing a law that protected the welfare of children. Are we so naïve to believe that introducing laws years ago or today, that they will never need changing? Case law runs contrary to the opinion of Her Majesty's Attorney General, and although the law, as it is currently drafted, is not contrary to the European Convention

of Human Rights, the way that it is being administered by the courts is clearly being administered contrary to the rights of the child. The equality of arms, the right to a fair hearing. There is certainly grounds, in my view, for the child to have access to a lawyer where that child's rights are going to be so seriously affected ahead of ending up in court. Shortly that case review will come back and it will cost the States, and I certainly hope it does cost the States, millions of pounds. Because the States failed and we, as politicians, sitting around the table expressing our concerns as lay people: "We have got to get the kids off the parents." "No, no, no, the last thing you do is take ... do not take the kids ... Relax, the department is handling it. The police are aware. Do not worry. Do not be alarmed. Stay together." All of the committee was shocked, absolutely shocked, and we failed. This is the same sort of briefing we are getting from the Council of Ministers now. "Trust us, everything is going to be fine." It is being driven purely from a cost perspective. If they wanted to do something about cost they would have gone out to tender 8 years ago, instead of just now. If they wanted to do something about cost they would have a social worker representing the Minister for Health, instead of a lawyer that is paid twice as much as one of the ones that they can go out and find that will represent the children. But no, that would be ridiculous, would it not? To have a social worker representing the Minister for Health. Unthinkable. That is why. The Law Officers advise the Minister and, quite rightly, she makes applications to the courts when she thinks it is necessary, as she has done in the past, for lawyers to represent the children. The trouble is, the way it is being administered, as I have said already, means that in cases at the most crucial point of the case, when many of these things are happening to the child, the child is being removed, even for a short period of time, the impact that that has on a child is devastating. At that critical period of time when that child is in that situation they are denied equality of arms. They are denied the right to a fair trial, and this may be approved today, if Members get behind this. But it certainly will be approved in the future if they do not because it is going to go to the Court of Human Rights eventually. It is going to go there and it is going to come back and it is going to cost us a lot more. Senator Le Main is telling me that it meets human rights. I do not know if he has just come into the Chamber. I have just explained this quite clearly. [Aside] Senator Le Main is now saying he has not moved from the Chamber, I will have to go over this once again. The law meets the requirements of the European Convention of Human Rights. The way the law is being administered at the moment is not because there are occasions ...

**Senator T.J. Le Main:**

Could we have clarification from the Solicitor General on this point, please?

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

If Senator Le Main wants to make a speech and ask the Solicitor General to come in to aid him then he can, but I am not going to give way for him to ...

**Senator T.J. Le Main:**

On a point of clarification, we ought to know from the Solicitor General if what the Deputy is saying is correct.

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

I am not giving way, Sir.

**The Greffier of the States (in the Chair):**

We will ask the Solicitor General to advise at the end of the Deputy's speech. The Deputy is giving his views and we can hear the views of others.

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

We should not be adjudicating which view is right. It is a legal opinion. Her Majesty's Solicitor General no doubt can give us an opinion. He can give us the opinion of Her Majesty's Attorney General. It does not break the fact that there are contrary opinions, and those have been circulated

by Deputy Hill to say that what is happening is not going to be compliant and does deny the rights to the child. Members have to examine their consciences. They have to ask whether or not we want a real Children's Law that gives the rights ... which satisfies the European Convention of Human Rights. I was in France recently and I saw a very interesting sign in a small French town, which said: "The rights of man begin with the rights of the child." There have been a whole plethora and series of advice as to why we should do nothing. I am sick to death of do nothing. I experienced: "Trust in me, do nothing." The Council of Ministers says in its remarks, I think quite poorly, that the Deputy of St. Martin had not accounted for the fact that there would be administrative costs. That is pathetic. The Deputy of St. Martin identified that in his own report. That because we are moving and progressing towards adopting the United Nations Convention on the Rights of the Child, as agreed by the Assembly unanimously, in my amendment to the Strategic Plan, Deputy Hill points out in his proposition. They have obviously not read it. It is not important. Do not read it. Let us just get a briefing, go in there and block the vote. We do not even see half of them in here today. Deputy Hill quite clearly pointed out those costs and those administrative costs would have to be included in the work that was going to be included to bring forward the United Nations Convention on the Rights of the Child, and I stood in here and I have asked the Chief Minister why that has not happened. Where is it? When will it come? Every time I get told the same thing: "There are a whole range of laws that need changing before it can come forward. This is not going to be done overnight." Now we are being told: "It is okay, we do not need to do this, they do not do it in this country, and they do not do it in that country." They may not be doing things exactly the same in one country or the other, but I know for a fact, in Jersey, the way the system has been working, and the investment that we have not put into Health and Social Services, the rights of the child, at this time, in my view, are nearly protected under the law but, in practice, they are only borne out once a more costly process has been undertaken for that law to be enacted. Critically, as I said before, during those very important first few months, the lawyer for the child is not there. I think it is important to understand that a lawyer is not appointed to the guardian; the guardian is not the one who benefits from legal representation, although they benefit from legal advice. The lawyer is appointed to represent the child and work alongside the guardian in the situation where a child is, for whatever reason, unable to instruct themselves. I circulated to Members - and I know that we have all got a lot to read, and I know that it is very, very difficult - a couple of articles. One from the law firm, Hanson and Renouf, *The voice of the Jersey child: recent challenges to the separate representation of children*. If we go through lunchtime, before we get through the debate, I would ask all States Members to find time over lunch to read this article. If they are not going to support this I would like them to come and find me and explain to me why it is they are not going to support it. Because I would like to explain to those Members why I think they are building their house on sand. Senator Le Main has interrupted my flow and I have ... I really stand up with so much passion about such an issue. The main point now, as I said before, it is about money. How do we know it is about money? Take the briefing pack we received on the comprehensive spending review: "2.2.5 Other opportunities identified by the workshop. There were several other opportunities identified at the workshop which should be highlighted here. (1) There should be further investigation of potential savings under the Children's Law. According to stakeholders it is likely by affecting the change in the law the savings could be substantial. These have not yet been quantified and did not form part of this assignment." Yet in another part of that report, we look at savings of £500,000. We will bring a finance law in a heartbeat. It can be 300 pages long and it can have no relevance whatsoever to our children and their lives. It will bring in no tax. But it will make us a little bit more nifty footed on the international stage. I refer Members to the recent communication from David Cameron, the Prime Minister of the United Kingdom: "Jersey is being given an opportunity to show it can express itself in a more mature and independent manner on the international stage." I am not going on stage with this Council of Ministers. I refuse to go on stage. I refuse to go on the international stage with a Council of Ministers that will not recognise their own Minister for Health and their own Law Officers are

being frustrated. To save embarrassment and to save money they would rather fool us all into not supporting the Deputy of St. Martin.

[10:45]

I implore Members to give equality of arms to children, the most vulnerable children in the most vulnerable of circumstances, because you can bet your bottom dollar they will not be going out to tender for the lawyers for those that have been perpetrating the crimes against these children. The law firms in Jersey and the lawyers who will forward and expand their experience are not going to do so. They will all want to represent the Minister because there is twice as much money in it. In fact, the lawyers for the children are barely covering their costs. Members may know a lawyer or may have experience of a lawyer, but I have yet to meet one that does something for nothing.

**The Greffier of the States (in the Chair):**

Just before I call the next speaker I understand Deputy Shona Pitman fell foul of the mobile phone rule. I am sure the charity appeal will look forward to her contribution. Mr. Solicitor General, Senator Le Main did interrupt and sought your clarification. Do you want to clarify the question you were asking?

**3.1.4 Senator T.J. Le Main:**

I wonder if the Solicitor General could give us the view on the human rights aspect as raised by the Deputy in his speech please.

**The Greffier of the States (in the Chair):**

Solicitor, you are the legal adviser to the Assembly. The Assembly would be grateful for your assistance.

**3.1.5 Mr. H. Sharp, H.M. Solicitor General:**

The law provides the Royal Court with a discretion as to whether or not to appoint a guardian and/or a lawyer in respect of a particular set of proceedings. Article 75 of the law sets out the test in terms of what is desirable in the interests of the child? Because it is a discretion, that means that the Court in each case must consider how that discretion should be exercised. So it is not a question of the Court automatically appointing anybody. In each case the Court, the judge, must think how he or she wishes to exercise that discretion. There is no such thing as a settled practice or a deviation from it because each case is individual to its own facts. Against that background, is the law human rights compliant? The straight answer is yes it is. Article 75 is human rights compliant. There is no dispute about that, in fact, because you can refer to English counsel's opinion, and if you look at the very end of paragraph 38 of that opinion you will see that she accepts that the wording of the law is human rights compliant. So from the point of view of what does the law say, it is human rights compliant. The issue here, as I understand it, is that there is complaint about the way in which the Court in *Re B* provided some sort of guidance as to how 75 should be applied. Really one has to look at what was said in *Re B* because I have to say, in the English advice, and indeed in the proposition, you will not find anywhere the Court's central conclusions. I am not going to read every one out to you now, but can I just tell the House what was said about the Human Rights Law by the Royal Court in *Re B*: "As a convention compliant body the Court must act in such a way as respect the convention rights of all those who may be affected by the Court's decision, and if the Court considers that the procedure it adopts will provide inadequate protection and that the parties before the Court would not, between them, advance the interests of the child, including its convention rights, then it would be appropriate, in those cases, to join the child as a party and accordingly to appoint a guardian." In other words, what the Court said in *Re B* is that the Human Rights Law does not mean that you must automatically have a guardian and lawyer, but you must take the child's human rights into account when deciding if the child should have that assistance and each case, as I have said, depends on its own facts. So there is nothing for me in the law or in *Re B* that is contrary to human rights. If, as I say, you look at the



English counsel's opinion, in particular, she never deals with the main principle conclusions of the Court in *Re B*. Never deals with the main points that the Court offers in terms of providing guidance. What the Court said was that it was, in effect, conducting a balancing exercise in relation to the question as to whether or not the child should have representation. The first question would be whether the child needs representation, and the statute contemplates that there is a spectrum at one end of which one can say that the child definitely does need representation, and at the other end that the child definitely does not need representation. Between those 2 extremes the Court may consider that representation would be useful, might be useful, or was unlikely but could be useful. It is clear that the question as to whether it is desirable to appoint separate representations is one which is to be answered objectively, where the decision taker takes all relevant circumstances into account. Pausing there, that passage you will not find in the English counsel's opinion, but it is obviously right. The Court went on to conclude as follows: "(1) The paramount consideration is the interest of the child. (2) The Court must have regard to the views of the child. (3) In most cases a guardian will be appointed. (4) If the guardian satisfies the Court that it is in the best interests of the child a lawyer will also be appointed. (5) If the child is sufficiently mature enough to express a view, and that view is different to that of the guardian, then again a lawyer will be appointed for the child." None of those conclusions you will find anywhere in the English counsel's advice. If I had received that advice, speaking personally, I would have done one of 2 things. I would have gone back to that lawyer and said: "Well, thank you very much for that, but what do you say about all these points? All the central conclusions, the central planks of the Court's decision, what do you say about them?" and I would have got further advice. But if the reason that nothing has been said about them is because they are correct, and that is why nobody sought to contradict them, then I would have put the advice to one side. May I please, while I am on my feet, mention 2 other matters? Much has been said about the Minister. It is true in *Re B* the Minister invited the Court to appoint a lawyer for the child. One needs to see that in context. What had happened is that there has been a practice of simply appointing guardian and lawyer for the child without the Court really exercising its discretion. It had almost been done on a nod. All the Court is saying in *Re B* is where you have a discretion the Court should not do that. There has to be a thinking process by which the Court reaches a decision, which is justified with reasons. That may still mean that in almost all cases you still appoint the guardian and lawyer, but at least the Court has properly exercised the discretion. All the Court did in that case was not appoint a lawyer on a nod, but paused and had a think about it and then did appoint the lawyer. That is all that happened in *Re B* so for my part ...

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

May I ask the Solicitor General just to ...

**The Greffier of the States (in the Chair):**

Let him finish. You did not want to be interrupted.

**The Solicitor General:**

The other point I wanted to mention was the United Nations Convention on the Child. Again, you will not find this in ... you will find this in the English counsel's reply. You will see at paragraph 40, if you choose to read it, that she saw very little relevance in the U.N. (United Nations) Convention. I will tell you why, because 2 things really: firstly, it relates to children who are capable of expressing a view. It follows that there are children who are not capable of expressing a view. For example, children you may think between the ages of one day and one year are simply incapable of expressing a view. Therefore there is nothing wrong with having a discretionary power of appointment because sometimes the U.N. Convention might apply, if Jersey ever ratifies it, and on other occasions it simply will be irrelevant. That is why the U.N. Convention cannot be said to apply to all cases. Secondly, as you will see from the English counsel's opinion, never mind my opinion, the Convention stops a very long way short of suggesting automatic and immediate

appointment of both guardian and counsel. If one looks at the general comment provided by the United Nations in 2009, what it said about care proceedings is that one must solicit and consider the child's view. That is a very different thing from saying the child must have a right to have a lawyer who can cross-examine all the witnesses. It was also said that it is not necessary that the child has comprehensive knowledge of all aspects of the matter affecting her or him, but that she or he has sufficient understanding to be capable of forming her or his own views on the matter. That is why English counsel is not very enthusiastic about the U.N. Convention. What it is really saying is you have to take into account the views of a child if he or she can express those views. That is not the same thing, by any stretch of the imagination, of saying they must have a guardian, they must have lawyers, there must be full legal argument. One sort of detects a legal view that all child care proceedings, however serious, will always be contested, will always be litigious, which must mean you need a lawyer, so they can cross-examine people. That is not always so. That might be true most of the time but sometimes it will not be true, even in serious cases. Can I give you just one example? Supposing parents are convicted in a criminal court of terrible charges of neglect or abuse in respect of their child, so they are convicted. There are then care proceedings. Those care proceedings, the parents ... obviously the convictions are there before the Court, the parents say they want no part in the proceedings, they say to the Minister: "Put my child in care, I am not interested. I am off" and that is the end of their involvement in the care proceedings. The Minister produces a care plan to place the child with whoever. Perhaps the Court appoints a guardian and the guardian looks at the care plan, and the guardian thinks it is a brilliant care plan, and the child is old enough to express a view, and he or she thinks it is a brilliant care plan too. Why do you need a lawyer? The guardian's report is going before the Court. The child's views will be going before the Court. Everyone thinks it is a brilliant care plan. There is no dispute. There is no legal argument. There is no job for the lawyer to do. That is why you need a discretion ... let me rephrase that. That is why discretion or the power as Article 75 provides the Court, is not wrong from a human rights point of view or U.N. Convention point of view because there will always be cases, however small in number they are, whereby it is not necessary always to have both guardian and lawyer appointed in a particular case. Thank you. **[Approbation]**

**Senator T.J. Le Main:**

I thank the Solicitor General; that was a brilliant explanation. Thank you.

**The Greffier of the States (in the Chair):**

Deputy Le Claire, do you have a clarification?

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

I would like to ask further clarification. I also congratulate the Solicitor General. He is without doubt an excellent lawyer. I do not mean that derogatory - I am getting sniggers here - I mean that complimentary. May I ask, through the Chair, in your explanation to Members you did walk us through how the discretionary rights are applied and, under the law, who am I to say what those should be? But in the manner that you presented the facts it appeared to me that all that happened, if one goes back and reads the Hansard, in the *Re B* case was that they decided not to appoint a lawyer, then they did. That was the result of an appeal. I would like to ask if it is possible for Her Majesty's Solicitor General to let us know as to why that appeal was upheld and a lawyer subsequently appointed, and whether or not the judgment which Her Majesty's Solicitor General has read out from that case can be shared in full with Members so that we can assimilate that. I certainly can get it from the law site, but I think that in such an important case as this we need to have a full understanding of the issue.

[11:00]

**The Greffier of the States (in the Chair):**

Can you explain the sequence in *Re B*?

**The Solicitor General:**

There was no appeal. All the decisions were taken by the same judge, and what happened is when care proceedings start the Minister will make an application and at the time of the applications the Minister, as had been the practice at the time, immediately asked for appointment of guardian and lawyer for the child. The judge, looking at the papers on that first occasion, said: "Looking at what are likely to be the issues in the case I will appoint a guardian but not at this stage a lawyer." Then what happened was that when further representations were made, the same judge then considered whether or not to appoint a lawyer, with more information before him, and then appointed the lawyer. So there was no appeal. It was simply a question of the same judge managing the same proceedings. Often you will find with discretionary powers that a judge, if they have been properly exercised, might say on day one: "I do not have enough information to decide that. I will consider that and keep it under review." I do not think there is anything unusual about that, I must say. Sorry, I think there was a second question.

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

There was, I would like to ask if we could have a copy of the full thing. But in explaining, as Her Majesty's Solicitor General has just done, that there was not an appeal, more information was presented to the judge, the same judge, I would just like to ask who was the person that presented that information, was it not in fact a lawyer?

**The Solicitor General:**

What happened was the guardian was appointed and then expressed a view that a lawyer should be appointed. Because the guardian expressed a view that the lawyer should be appointed the judge then heard the matter again and, in fact, a lawyer was appointed to make representations on behalf of the guardian and, as a result, the lawyer was appointed. But the simple process, if you step back from the detail, is that on day one the Court did not appoint a lawyer. When the guardian said: "I need a lawyer" the same court reviewed that decision. But, yes, I will find the judgment and make it available.

**The Deputy of St. Martin:**

Could I just ask, maybe the Attorney General can confirm, about the case *Re B* that he is correct, that it was not an appeal, but it was part of an appeal process, if one wants to call, because eventually ... can the Attorney General confirm that it took several weeks, if not months, for the case to be resolved and additional cost because of the - we are not going to call it an appeal - but the case being put forward to that same judge to get that judge to change his mind? Would the Attorney General agree that considerable time was wasted or lost and additional cost was expended?

**The Solicitor General:**

I am not sure that is necessarily right because if one thinks about it, the guardian and the lawyer have very separate roles. What the guardian has to do is ascertain the views of which is the child's, speak to other professionals and parents, perhaps, in the case, and reach some sort of view as to how to best express the views of the child to the Court. I do not understand why there would have been any delay in doing that, whether or not a lawyer was appointed. Because the lawyer cannot act for the child until he knows what the guardian says. There is bound to be a period of delay whereby ... I am simply not sure about the delay. I agree there was another hearing whereby further submissions were made, but that sometimes happens.

**The Deputy of St. Martin:**

The question was quite simple. It is a yes or a no. Did it take a lot longer? The answer must be yes. Did it cost a lot more? The answer must be yes. Would the Solicitor General agree with me?

**The Solicitor General:**

For the reason I have just given, it does not necessarily follow that a later appointment of a lawyer causes any significant delay. As for the cost, I agree there was another hearing, so yes there was an additional cost in that respect.

### **3.1.6 Deputy J.A. Hilton of St. Helier:**

What the Deputy of St. Martin is asking the States Assembly to do today is to decide whether, in all cases, where children have either separated from their parents by virtue of a care order or confined by virtue of a secure accommodation order, a children's guardian and an advocate for the children will be appointed by the Court in all cases - will be. Not "shall be", as is what currently happens in the U.K. I have to say that I am going to support the Deputy of St. Martin in his proposition today because I am not convinced by the arguments that I have heard that the children's best interests have been or will be secure, safe-guarded, without an advocate being appointed on their behalf. Members will be aware that 2 of the most serious cases that have come before us in the past couple of years, certainly one of the cases that I was more directly involved in, the G family. If a lawyer had been appointed in that case, I believe the children would have been protected from their parents, which is what they needed in that case. Interestingly, I think today we are talking more about the rights of the parent or the child being separated from the parents, but certainly in the case of the G family that family needed protection from their parents, and they did not receive it at the end of the day. I am absolutely sure that if a lawyer had been appointed in that case that protection would have been there, the abuse would have stopped, and things would have turned out a whole lot better than they did. I have to say, the Minister for Health spoke in her speech about being committed to the best possible protection of children. I do not believe this way is. Talking about investment in services, I go along with that entirely, I always have, and that the Court will always take advice from those at the coalface. The Court did, in the case of the G family, take advice from those at the coalface and made a decision that put those children back into the care of a sex offender. I do believe wholeheartedly that there are cases ... the majority of cases where you are going to remove the children, remove an element of freedom, that they should be supported by a lawyer. I think really that is all I need to say, but I will be supporting the Deputy of St. Martin this morning.

### **The Deputy of St. Mary:**

May I ask a point of clarification of the previous speaker if I may? Was that case, because I am not familiar with these various cases, was the case G before or after 2002? So was it under the current law or was it before? Secondly, was any application made in that case for a guardian and/or lawyer for that situation? Was a guardian or lawyer active in that case?

### **Deputy J.A. Hilton:**

I am not aware a guardian ... I am certainly not aware a lawyer was involved in that case at the later stages. The detail of the case was that the Court had to make a decision whether to place the children into the care of their father, and a decision was made by the Court on information given by the Children's Service that later proved, when the father came before the Court on child abuse charges, certain things came out in that court case that obviously if the Court had been aware of certain things they would have never made the decision in the first place. It was after 2002.

### **3.1.7 Senator B.I. Le Marquand:**

I had intended to speak much later in the debate because the early part of the debate caused me to form the opinion that a complete fog was falling upon this Assembly. That fog was lifted by the excellent and accurate advice of the Solicitor General, but nevertheless there are some technical details, which I wish to make clear. I am going to make some references to the judgment of the Royal Court in so doing. Firstly, I want to make a general comment on the issue of discretion before I make the specific comments. The general comment is in relation to the desirability of retaining a discretion for judges whenever that is possible. It can be very tempting for the States to

set hard and fast rules to apply to all cases. The problem with this, and this is a problem that, of course, I have experienced as a judge, is that sometimes that leads to injustice, and sometimes that leads to unnecessary inflexibility in the way in which a case can be handled. Judges hate it when that happens, when the statute says you must act in a particular way, in all cases, and then they come across a case in which to act in that particular way is wrong, and not helpful at all, and they are bound by it. Therefore, as a general rule, my view is that it is almost always better to leave a discretion to the Court to decide on the facts of the particular case what is the best procedure or what is the best way forward, so that is my general comment. Dealing with the issues, I am afraid it is very easy for the Members of this Assembly to fail to grasp the intricacies of the situation that we are dealing with here. I fully understand the sentiments of Members like Deputy Le Claire and, indeed, Deputy Hilton who are deeply affronted by failures which have occurred in the past, failures which have been highlighted, for instance, in the Serious Case Review, I am equally affronted by those failures, they must not happen again. But it is easy for Members who are affronted in that way to take a very broad-brush approach to everything and to fail to understand the technical issues which arise. Because in reality a simplistic approach would be to say: "Well, the choice is between either the children's views and the children themselves being represented or them not being represented" but, in fact, there are many different shades within this. I begin with Article 75 of the law which begins: "Where it considers it desirable and in the interests of a child to do so, the court may order (a) that the child be separately represented in such proceedings under this law as the court may specify or (b) that the child be assisted and befriended by such person, being a person independent from the Minister, as the court may specify." What that means is at the start the court could go down 2 different roads at the beginning. It could either go straight to saying: "We are going to join the child as a party to these proceedings and we are going to appoint a lawyer to represent that child", that is a route, or it can go down the route of saying: "No, we are not going to make that decision yet but we are going to appoint somebody to assist and befriend the child and who will represent the interests of the child." These are 2 different routes. One may turn into the other, as in fact did happen, and indeed it is quite possible to have both in parallel: to have the person who is there to assist and befriend and to have the lawyer. In the particular case of *Re B*, what in fact happened was the court went down the route initially of appointing a person to assist and befriend and then, subsequently, on the advice of that person, decided to also appoint a lawyer to represent the child. The key words in relation to this in the proposition are the words ... if Members would turn to the proposition at paragraph (a) which says: "The appointment of a child's guardian and an advocate for the child." The words: "An advocate for the child" have a particular meaning. That means that the child is going to be joined as a party and there will be an advocate. If the other route is followed, if the route of appointing a person to assist and befriend is followed, then the court made it clear in this judgment that that person would automatically have a lawyer to advise them but that is a different role. There are 2 possibilities: there is the possibility of a person to assist and befriend with a lawyer to advise them and, separately, there is a possibility of a lawyer to represent.

[11:15]

These are 2 different things and it is very easy for Members to fail to understand the distinction between those. The judgment is very helpful in that it sets out in sections 51 and 52 what is the role of the person appointed to assist and befriend. The section I want to read out starts with these words: "The lawyer skills do not necessarily include the skills of a person to assist and befriend the child." In other words, the lawyer may be a good lawyer but they may be absolutely useless at coming alongside the child in order to determine what the child wants, et cetera. Then it goes on to set out what are the functions of the person appointed to befriend: "Firstly, to ascertain the wishes and feelings of the child so that these can be made known to the court so as to comply with Article 23 of the 2002 Law; to assess all the evidence, including the wishes and feelings of the child and to report thereon to the court so that the interests of the child are fully represented before the court; (3) in so doing, in effect, to audit from a perspective of the best interests of the child which

includes, but not exclusively, the views of the child, the proposals of the Minister and the other parties, and thus to form a view as to whether the child should be a party and, if so, as to how to conduct proceedings on behalf of the child.” In other words, here is a procedure, the assisting and befriending procedure, in which there is an independent person who will come alongside the child, who will seek to ascertain their views, who will seek to advise the court and, as part of that process of advising, who will seek to advise the court as to whether it is necessary to appoint a lawyer to act for the child. The effect of this proposition is to say in all cases that there must be both a person to befriend and also the child joins as a party and, as a result of that, a lawyer is appointed. That, in my view, is quite unnecessary and, indeed, the judgment very helpfully goes on to indicate the sort of cases in which a lawyer should be appointed to represent the child: “Those are such matters as where arguments on points of law is necessary, where evidence is to be adduced other than from that person on behalf of the child, where there is to be a cross-examination of other witnesses or an adequate examination of the truths of that person as opposed to the doctrine of his or her report”, in other words, where lawyer-type functions are required. But in other cases lawyer-type functions may not be required at all because the representation of the child, looking after the child’s interests, can adequately be performed by the person appointed to assist and befriend. This proposition is suggesting that, in fact for this proposition to be followed through by Members, they would have to find that there were never cases in which the child can adequately be represented by the person appointed to befriend and to come alongside them and that in all cases we would need the specialist skills of a lawyer to act. It is very helpful that the Solicitor General indicated the sort of cases in which there is no opposition, it is clearly in the interests of the child that something happen, there are not going to be lawyer-type activities of cross-examining witnesses, et cetera because all the parties agree that this is in the best interest of the child. If in such a case it is necessary to appoint a lawyer, not only is that going to unnecessarily delay the process but also it is going to lead to completely unnecessary costs being run up. What is clear also from the judgment of the Royal Court is a clear acceptance that, in order for matters to be Human Rights-compliant, that when the court might decide it was not necessary to appoint the lawyer for the child, that there would have to be access on behalf of the befriender and assistant to legal advice, and that will always happen. To sum up, this is far more technical and there are far more different options. The effect of this proposition is to say, quite unnecessarily, that in all cases that the court would have to make a particular decision and go down a particular route and appoint a specialist lawyer even if they were not things for that specialist lawyer to do. That, in my view, is entirely unnecessary and for those reasons I shall be opposing the proposition.

**The Deputy of St. Martin:**

Sir, could I just ask, I did not want to interrupt the Senator when he was in full flow, but he did not read all of the proposition, he was very selective. Could I ask the Minister to read out what the proposition is please, not the tail end about all cases?

**The Greffier of the States (in the Chair):**

The Greffier did read the proposition and I am sure Members can read the proposition. Perhaps I would draw Members’ attention to read it for themselves.

**Senator B.I. Le Marquand:**

I understand the point that the Deputy is making and I wish to be absolutely fair to him on this. His proposition only deals with cases of separation of the children by virtue of a care order or confinement by virtue of a secure accommodation order. That is the point but my arguments still apply that it is not necessary to have a lawyer in all of those categories of cases.

**The Deputy of St. Mary:**

Sir, may I ask for a point of clarification? I am struggling with a lot of documentation and I just need to know clearly, is the present position that a children’s guardian is appointed in all cases or is

that also at the discretion of the court? Because, from what the Minister said, both seemed very much on the advocate and implying that the guardian was appointed in all cases.

**Senator B.I. Le Marquand:**

I am in danger of giving legal advice to the Assembly here but my reading of the law now, and I will see if the Solicitor General nods, is yes, it is discretionary but he can help me further.

**The Solicitor General:**

Yes, the answer is it is discretionary and if you look at the judgment of *Re B* the conclusions of *Re B* are that a guardian will be appointed in most cases.

**3.1.8 Deputy R.G. Le Hérissier:**

I was cut off in my prime, I wish to ask a further question of the Solicitor General. It struck me, in the points which he so excellently put forward, he mentioned almost that there was a cause and effect relationship in that when lawyers became involved the process became litigious. What I was trying to tease out, I got the impression that the Deputy of St. Martin was putting forward a proposition where, at some point, he saw lawyers as holding a watching brief on the situation which might or might not move to a more active representational role and that is where I would again have some questions with Senator Le Marquand's intervention and I wonder if he could speak to that. I realise this is possibly a dangerous line for me to follow, is it possible to have lawyers involved to represent a person because it strikes me, by saying that the guardian will realise, perhaps, in the process the need for a lawyer, is imputing all sorts of legal knowledge to the guardian which may not exist?

**The Solicitor General:**

With respect I am not sure I would agree with that analysis. You have to remember who a guardian is: a guardian is a professional person who has got a wealth of history in dealing with these sorts of cases. The court in *Re B* is not suggesting that they should somehow become quasi lawyers or sort of do a part-time lawyer job on the side. I think, as Senator Le Marquand has already said, the court has already made it plain in *Re B* that, where a guardian is appointed, they will automatically receive legal advice should they want it. They can get legal advice as to whether or not they need a lawyer and, in addition to that, the guardian is perfectly capable of filing reports and professional documents with the court as to whether or not legal representation is needed. What *Re B* is really saying is: "Yes, of course you need a lawyer." You cannot expect a guardian to cross-examine a witness or make a submission as to what the law is as to whether or not threshold is met. Of course you cannot ask the guardian to do those things, those are jobs for a specialist lawyer. All the court, I think, is saying is that in some cases you do not need those specialist skills because there may be no witness to cross-examine or there may be no point of law. That is all *Re B* is saying. It is certainly not, as I read it anyway, saying that guardians must now take on additional legal duties. I do not see that at all.

**3.1.9 Deputy A.E. Jeune of St. Brelade:**

Sir, can I just ask another point of clarification on something that was just said then? If I may, you mentioned that a guardian would be a professional person and I am looking at the Council of Ministers' comments where, in 2, they talk about the Jersey Family Court Advisory Service to be launched in November: "And this service, which will be managed by the Probation and After-Care Service, to ensure independence from Social Services, will appoint locally-based guardians whose role is to protect the interest of the child." Would you, therefore, interpret the word "guardian" there to be professionally-based persons, whereas it goes on to say that: "They would be familiar and knowledgeable about Jersey's legislative and administrative processes"? Thank you.

**The Greffier of the States (in the Chair):**

That may a question for the Solicitor, it may be a question for the Minister to clarify the ... are you aware of the proposals, Solicitor General?

**The Solicitor General:**

I suppose I can only comment on the legal position rather than on the practicalities. There is nothing in *Re B* that says guardians must take on legal duties. They have an automatic right to get legal advice and they are entitled to invite the court to appoint a lawyer. What the background and qualifications are of these particular guardians is probably not for me to answer but, classically, they tend to be people who have a professional background who will of course be familiar with court proceedings because that is part of their job.

**The Greffier of the States (in the Chair):**

Very well. Deputy Tadier.

**3.1.10 Deputy M. Tadier of St. Brelade:**

In many ways, Deputy Le Hérisssier took one of the points I was going to make out of my mouth in asking for some further advice from the Solicitor General. I will reiterate that point is that I think, as has been said, there are 2 distinct roles between the guardian and the lawyer and I am sceptical, I would say, that there are these clear-cut cases which exist. I am sure there are some examples but it is not always the guardian or the child, even if they are of an age where they can be rational and assess the situation and say: "We are all in agreement here" because a lawyer, by very definition, can bring a completely different skill set and will have a way of looking at a situation when a party, and maybe varying parties, have not picked up on the nuances and subtleties of a law. I would say rather than in a situation where everything seems to be clear cut, that is probably especially where you do need a lawyer to pick up and go through with a fine toothcomb because a guardian, for all their experience in the same ... I would say there is a parallel to be made with States Members, we are dealing with law every day but none of us, apart from a few us, are lawyers - but not myself - in that but that does not mean that we cannot appreciate the help from somebody who is a trained lawyer, even in matters which seem to be open and shut cases. The more one deals with these cases one realises that it is very rare, in any sphere of life, that anything is such an open and shut case. The second reason I will be supportive of this proposition is the whole area of discretion of the courts. Judges and courts, like any of us, are fallible and that is not a disparaging remark to the courts or to any judge or to anyone involved in the court system, it is simply a statement of fact that they are human as we are human. In that respect, any area of discretion is also going to be subject to a possible wrong decision in the same way that we, as individuals, can make wrong decisions. The difficulty is when it comes to this very serious matter of vulnerable children. When a wrong decision is made it can have devastating consequences, not simply economically but certainly economically and financially - we have seen that - but also in the lives of families. Many Members here will know that they have had to intervene in those exact circumstances. I would say that is an argument for the automatic appointment of lawyers. I also do not agree with the inference that, just because you appoint a lawyer there is going to be lots of litigation; in fact, it can be contrary: that if you appoint a lawyer automatically every time and you avoid the wrong decisions that may come up now and again, you can avoid more costs, which is often of an order of magnitude many times more than if a lawyer had automatically been appointed in the first place, so it makes sense. I think it is really investing to save and it is a question of a stitch in time saves 9 in that particular example. Also just commenting very quickly on the Human Rights compatibility; we must not get bogged down in whether or not our current system is Human Rights-compatible. What I mean by that is just because, if the current set up is Human Rights-compliant, that that does not mean that we should not also look to another system.

[11:30]



What I am trying to say is that Human Rights compatibility is a necessary condition for any kind of legislation we pass and not a sufficient condition. If we can improve a situation then, as long as that is Human Rights-compliant, but if it is best practice that is what we should be moving towards. I will finish by simply saying failures in the past have been acknowledged. I think Jersey is hopefully moving away from a scenario where in the past we have failed children, and vulnerable children, with great social, personal and financial cost which is still haunting us today I believe, it is imperative that we get these things right and I would say that cases with vulnerable children are so important that we should not be cutting corners and, if any Member really is umming and ahing about whether to support this I would say that, for me and for my conscience, it is certainly better to err towards the side of caution when we are dealing with these very serious cases with vulnerable children and vulnerable families. For the sake of simply appointing a lawyer automatically to rule out any kind of human error in the system I think it is a worthwhile judgment.

### **3.1.11 The Deputy of St. Ouen:**

I am extremely disappointed that the Deputy of St. Martin, Deputy Le Claire and others suggest that the stance taken by the Minister for Health and Social Services, the Council of Ministers or indeed the Children's Policy Group is based solely on cost and saving money because this could not be further from the truth. The Children's Policy Group, of which I am proud to be part, upholds the aspirations of the United Nations Convention on the Rights of the Child which is to ensure that the best interests of the child shall be the primary consideration, and firmly believes that these interests will be better served by supporting the new Jersey Family Court Advisory Service which is proposed to be launched in November, and I will just touch on that. Members must recognise that with the introduction of guardians to date, those guardians have had to be imported from the U.K. because we did not have locally-qualified individuals on the Island. Perhaps now Members might realise why, for the most part, we needed local lawyers to provide support to those individuals who knew nothing about the services that we provide and the systems we operate. Now, with the development of the Jersey Family Court Advisory Service, this will be managed not by Social Services but indeed by the Probation and After-Care Service Board which will ensure independence. They will appoint the locally-based guardian whose role is to protect the interests of the child. I would also like to refer Members to page 2 of the comments made by Her Majesty's Attorney General and I point out that, again, claims have been made by Members that the proposals and the actions that are now being taken by the court are somewhat contrary to the Convention of the Rights of the Child and also the European Convention on Human Rights and 3.5 specifically goes: "The provisions relating to the appointment of guardians and advocates in children's proceedings in the 2002 Law, that is our law, are compatible with the European Convention on Human Rights and fundamental freedoms." It goes on to say: "The provisions relating to the appointment of guardians and advocates in children's proceedings in the 2000 Law are compatible with United Nations Convention on the Rights of the Child." I do not think it could be much plainer and clearer than that and we have already heard from the Solicitor General, an excellent explanation of it. Furthermore, both the Republic of Ireland and Scotland, which also have discretionary provisions on the appointment of guardians and lawyers, are both bound by those 2 conventions. I would just like to reiterate the fact that I do believe that the actions being taken by both the Minister for Health and Social Services and indeed the Children's Policy Group, to improve and protect the most vulnerable in our society, are the most appropriate way and, as such, I will not be supporting the Deputy's proposition.

### **3.1.12 Deputy T.M. Pitman of St. Helier:**

I have got about 2 pages of notes but I think, when I talk to most people in the Island, the biggest frustration they have with us in here is that time and time again, and we all do it, you hear Members stand up and try and decide a different way of saying the same thing so I am not going to do that. I was really appreciative of the Solicitor General's observations; however, instead of trying to find different justifications I think sometimes you have to be honest and say, rather like Deputy Hilton I

was talking to outside briefly: “I am going to support this because, at the end of the day, there is that fear at the back of my mind” and what we have seen in the past I would rather have the risk of too much, too many safeguards in place than too few, some things are more important than money. Senator Ferguson is quite right in saying the U.K. system certainly is not perfect. However, we do not have to follow everything parrot-fashion even if we adopt this. I just think the child’s life and their welfare, especially in light of all the media spotlight that has been on this Island over the past couple of years, is just too important to take a risk with. I am sorry if that reason does not satisfy some people but that doubt at the back of my mind, as a politician and as someone who has obviously worked a long time with young people, I would rather take that chance of putting too many safeguards in place than not enough. I will be supporting the Deputy of St. Martin. Thank you.

**The Greffier of the States (in the Chair):**

Does any other Member wish to speak? The Constable of St. Mary.

**3.1.13 The Connétable of St. Mary:**

Yes, just very briefly. Clearly I am not a lawyer, I have worked for a few but one thing I do know is I know how to listen to what someone says and not just to hear what is said. Personally, I would like to thank the Solicitor General for addressing the matters which this proposition has raised in such a clear and straightforward way, and straightforward is the issue here. Several speakers have linked this proposition to matters of cost and that simply is not, as I see it in a straightforward way, what we are talking about. We are talking here about taking something which exists now as a discretion of the court and embodying it in statute. I have understood, I have written it down, that, where there is a discretion there must be a thought process, and the decision must be justified with reasons. We have heard in the past that perhaps things were done almost automatically but in the *Re B* case a conscious decision was made to take that thought process through to put the discretionary process on the right footing. I think that is absolutely the way to go because I think, despite what has just been said about always putting in an extra safeguard, the best safeguard we can build in is the fact that that discretionary process will continually mean that the thought process of the court must be undertaken, that there must be reasons given and that the rights of the child and the views of the child, et cetera, will be borne into consideration during that process. I believe that the discretion of the court is something that is valuable and I think that it is something that a black and white legislation can perhaps, in many ways, not be as beneficial to any of the parties as the ability of the court to take a view and to consider and to give their justifications. For that reason, having heard the Human Rights implications, which are not of my concern at this moment, I believe that this is not the right path to take and I will not be supporting the proposition.

**3.1.14 The Connétable of St. Lawrence:**

I am pleased to follow my colleague because I disagree totally with her and that happens quite often. I believe that we should fetter the choice or the discretion of the Royal Court. As the Attorney General tells us in his comments it is ultimately a matter of policy for this Assembly as to whether the Royal Court should continue to have and exercise the discretion which they have at the moment or whether that discretion should be removed by statutory amendment and that is what the Deputy of St. Martin is seeking to do. Something that Deputy Trevor Pitman said, with which I agree, is that we should be strengthening the law in order to give our children certain representation; I think I am paraphrasing him. I do not believe that we should leave it entirely to the professionals appointed as guardians to decide whether or not to seek legal advice. The Solicitor General has told us that the guardian had an automatic right to get legal advice, whether they choose to take that right, to use it, is another matter. I have experience of social workers making the wrong decisions in Jersey, we all know of that. I have personal experience where one of my family members has suffered as a result of a wrong decision being made by our social workers. It is the social workers who are likely to be appointed as guardians; they make mistakes,

lawyers make mistakes, we must question why the Deputy Bailiff decided, in *Re B*, not to appoint a lawyer and yet changed his mind after further representation. Lawyers make mistakes, Popes are not infallible, although one of them thought that he was (I cannot remember who it was, the doctrine of Papal infallibility). We are not infallible. We should be here, the Chamber should be full and we should all be here speaking in favour of strengthening the rights of our children within our courts. I believe that we heard platitudes from the Minister for Health about being committed and concerned. I was very disappointed to hear her question whether we should invest energy and time in changing our law when there is no evidence of that law letting a child down. Why should we be waiting for the evidence of our law letting down our children? That is evidence I do not want to see. "Should we change for change's sake?" she asked us. We must all decide when we come to vote: will we be changing for change's sake or will we be changing to ensure that, in future, there is no evidence of our children being let down through our legal system. As I said, I have evidence of a child being let down, wrong decisions were made and I will not accept platitudes from the Minister for Health. I urge all Members to support the Deputy of St. Martin. It is up to us, the Attorney General has told us quite clearly it is ultimately a matter of policy for the Assembly. I am not happy that also in his comments the Attorney General says that the Deputy is really raising concerns about part of the court's decision in *Re B*. I do not believe that is the reason that this is being brought, I believe that the reason this proposition has been brought is to enhance the legislation which protects our children. The Attorney General tells us it cannot, in his opinion, be the court's settled practice to appoint a guardian and a lawyer for the child in all cases since, as outlined above, Article 75 of the 2002 Law requires those appointments to be discretionary based on the facts of each case. We have the chance today to fetter that discretion to ensure that the court does appoint a lawyer in every case and, where that lawyer is appointed, they will act on behalf of the child and then, if it is after found unnecessary for them to be utilised, it will be a decision that has been made not only by the court but with the lawyer as well. I just reiterate, please do support this and let us have no future evidence of the law letting down our children, as requested by the Minister for Health.

[11:45]

### **3.1.15 Deputy G.P. Southern of St. Helier:**

I have been listening to the debate carefully and I think I recognise in a number of speeches what has been going on. Certainly, the proposer of this motion set out very clearly and very simply the facts of the case and I believe he made his case well and that he suggested that this is absolutely and clearly in law and, in all conscience, the right way forward. What I have heard, I think, is certain Members, some Members, are wrestling, fighting with their conscience but they recognise: "Yes, this is the right way to do" but they, nevertheless, are looking at various reasons not to support this proposition. Whether that is cost, whether that is a feeling of complacency that things are well enough as they are or for other reasons, technical reasons, why we should not be going this way. Nonetheless, I think most of the Members in this House recognise that fundamental appeal of this proposal that says, not only is it legally right, the way forward but it is, in all conscience, the right way to go. I believe Members should stop that struggle in searching for reasons not to support this proposition and recognise that now is absolutely the appropriate time for us to act properly and to bring about this particular change. I urge Members to support this proposition.

### **3.1.16 Deputy R.G. Le Hérisier:**

Very quickly, building on what Deputy Southern has said, because I do think the elephant in the room is that, by allowing this through, we are going to pad out the profits of one or 2 law firms. I was hoping that the former Ministers for Health might have spoken, because I was well aware that when they were wrestling with one of these cases at least, they were wrestling with this issue of costs. As I understand it, there is some scaremongering because, as Deputy Southern has intimated, and other people have intimated, we are not looking at a large number of cases but we are looking at cases that have to be handled in the right way, absolutely in the right way. Secondly, as I

understand it (and I stand to be corrected) I understand there is an exercise going on as we speak about the whole issue of how this is costed, of how people apply for contracts to deal with this work, so the authorities are well ahead of this issue in any case, exactly as Deputy Le Claire is indicating. They are well aware of this issue and the idea if people are being influenced by this that we are somehow giving an open cheque to certain law firms is totally misleading and should not be the elephant in the room which I think it is for some people.

**The Greffier of the States (in the Chair):**

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

**3.1.17 The Deputy of St. Martin:**

I thank all those who have taken part. I can understand the difficulty when one has to consider these cases because it does get a bit technical and yet, at the end of the day, all I am asking for is on 2 words the: “Courts shall” as opposed to: “May”, it is that discretion which is so important and has been mentioned so many times this morning that it is possible for someone to make a mistake so why should be take a chance on the possibility of someone getting it wrong when, for the sake of getting it right, we can change the law this morning. That is really what the theme of my particular proposition is about. I just go through the people because it is quite interesting here that the only people who have spoken in favour of it have been the Minister for Health (which one would expect to be speaking in support of my proposition because she is a corporate parent) the Minister for Home Affairs (who happens to be a corporate parent again, who should be supporting my proposition) and the other one, of course, is the Minister for Education, another corporate parent who should be supporting it. So I would hope that we do not have to spend too long in coming to a decision. But what the Minister for Health was saying is: “Trust the courts, let them have discretion” but, really, the Minister should know already, and it has not been mentioned this morning, that since *Re B* the Minister has been rejected twice more. I do not know if the Minister is aware of it but it has been rejected twice more and the flow is going to cost more in trying to get the courts to make the right decision. Again, I do not know if the Minister is aware, but the court, after having to reconsider the matter, after causing delay in the child’s proceedings, the child’s care was put back and, of course, it cost more money because, guess what, the court realised that they had made a mistake and they had had to appoint lawyers, so why run the risk? I think that has been very important to be mentioned this morning and I am disappointed that that has not been mentioned by any of the corporate parents; in fact, I might have even hoped that maybe the Solicitor General would have reminded us, because it was very important. It is not working and what had happened was that, prior to the *Re B* case, every case that came before the court was dealt with under the English system, the courts did not take a chance, even though the Jersey Law said the word: “May”, the courts were acting with the word being: “Shall.” It was worked this way: the Minister for Health would make representation to the courts and the person representing the Minister, as Deputy Le Claire says, is a highly-paid qualified lawyer and that lawyer, beforehand, would have spoken to the Judicial Greffe and a decision would have been made that this is one of those occasions where a lawyer should be appointed, and that was the general rule. In other words (we will come to costs in a minute) but the cost should not be increased because the courts have, in every case prior to *Re B*, given that support from the beginning, it has not wasted time making applications, reapplications, spending time in court incurring extra expense and, more importantly, costing trouble to the child. That child needs immediate care and that has been put second. What we are doing here today is talking about the rights of the child and the people who should be championing the rights of the child are the Minister for Health, the Minister for Home Affairs and the Minister for Education. Home Affairs and Education are not here, I hope they will come back and vote and support what I am doing. Senator Ferguson, (I am grateful again, she is going to wait for the summing up) I hope that Senator Ferguson will have heard the arguments and costs are not a consideration because we are already incurring that cost by following the U.K. Law and we are not slavishly following it, what we are doing is doing what is right. So I would hope that maybe the

Senator will give some support to what I am doing. Deputy Le Claire was very passionate and I am grateful, again, for his support. He raised a number of issues and said, quite rightly, when the Minister makes an application before the court, she does not ask the social worker to do it. In actual fact, the Minister is represented by a highly-qualified and well-paid lawyer. The Deputy's speech followed through with a number of questions which were raised and answered by the Solicitor General and, indeed, I am grateful for the Solicitor General's answers but, again, I have got one air of caution: the Solicitor General was giving one side of the argument, I must not say "party line", but it was one side and, in all cases, there are always 2 sides to an argument and all we have heard is one side.

**The Greffier of the States (in the Chair):**

I think we need to take care. The Solicitor General is the independent legal adviser to the Assembly. I do not think that you should impute that he is giving one side of the argument [Approbation].

**The Deputy of St. Martin:**

I was not in any way, Sir, casting any aspersions on the Solicitor General, I accept that.

**The Greffier of the States (in the Chair):**

I think it came over like that, so I would be grateful ...

**The Deputy of St. Martin:**

At the same time, I was saying it is again one opinion, if you had another lawyer, maybe he would give another opinion and, when I did ask one or 2 questions, the answers had to be dragged from the Solicitor General but, as the same time, I am grateful for the support and for the information he has given us. Deputy Hilton, I am very grateful, Deputy Hilton again is speaking from experience, why take a chance with children's lives? I am grateful as an Assistant Minister for Home Affairs, in particular, the she finds support for my propositions. Senator Le Marquand, again, I did say what I wanted him to do was read the whole of the proposition and what we are asking for is, in the serious cases when a child's liberty is at stake, that we do not take a chance, we appoint a lawyer from the beginning; why take the risk? That is what I am asking for. In actual fact, it may be useful for me to read out how the U.K. Law is followed. It says: "For the purpose of any specified proceedings, the court shall appoint a guardian for the child concerned unless satisfied it is not necessary to do so." That is what I am asking for Jersey, that the court will, as a rule, appoint one unless decided not to. In actual fact, there will be very few occasions when a court will not grant it because the care proceedings and secure order units are so important that it would be unwise for any court to go on with any case without the child being represented; that is where the possible violation of the Human Rights Law may well come into effect, not that the Jersey Law is not compliant, it is the action or the lack of action that may well cause the violation in the Human Rights Law.

**Deputy A.E. Jeune:**

Could I just ask that the Deputy give way just a moment? Just based on what he said then, is he not, in fact, saying then that what the English courts can do is discretionary?

**The Greffier of the States (in the Chair):**

Just to clarify from the Chair, the meaning of the proposition, Deputy, is that a lawyer, a guardian and an advocate will be appointed in all cases. You implied there would be a discretion; following the U.K. court, I think.

**The Deputy of St. Martin:**

Yes, I agree the way you are putting the question, yes. But it places the emphasis on: "It will be appointed" unless it thinks not to.

**The Greffier of the States (in the Chair):**

Deputy, just to clarify, your proposition does not say that.

**The Deputy of St. Martin:**

But my proposition does not say that. My proposition is saying that, in all cases where we have a secure unit or care, we will appoint a lawyer. In actual fact, there has never been an occasion when a lawyer has not been appointed, simply because of the seriousness of the case. It is so important to bear that in mind; we cannot take a risk with children's lives, and that is a point that Deputy Tadier brought up, he said: "Should we allow for the discretion of the court when it is possible that a court could make a mistake and do we want to run that risk when there is no need to?" Because it is not going to cost any more money, simply because we are doing that already, prior to *Re B*, that is what we are doing. So again, we are saying early intervention will save money in the long run and also protect the child. The Deputy of St. Ouen, as I have mentioned before, is a corporate parent, he said he is quite happy: "Let us continue to take the chance" because he cares so much for the interests of the child, yet he is prepared to take a chance. He mentioned again, like the Minister for Health, and placed a lot of emphasis on the Jersey Family Court Advisory Service.

**The Greffier of the States (in the Chair):**

Could Members allow the Deputy to be heard, there is a tremendous amount of background noise and I am having a job to hear the Deputy [**Approbation**]. If Members could please let him be heard in silence. Deputy, please continue, I am sorry to interrupt you, but I was having a job hearing you because there was so much background noise inside the Chamber.

**The Deputy of St. Martin:**

Unfortunately, it is the executive, but I know they are busy talking about whether they can change the party line and support me, so [**Laughter**] if, in fact, that is what they are talking about; my hearing is not as good as it used to be, but I would be delighted that they are considering supporting my proposition and, no doubt, we will see it in the votes. But I would like to pick up on a point that the Deputy of St. Ouen did mention about things happen at their discretion in Scotland and Ireland but I think it is very important to bear this in mind that, although there is discretion, there are safeguards in place which do not exist in Jersey and that is why it is so important that our law falls into line with England, Wales and even Guernsey, so there we are. Deputy Trevor Pitman, again, I think him for support, as indeed the Constable of St. Lawrence (who, in contrast to her colleague in front of her, the Constable of St. Mary who I did expect maybe might have thought about the child rather than allowing for discretion to continue) but I have got to compliment the Constable of St. Lawrence, an excellent speech; someone speaking from experience; she has seen how things go wrong.

[12:00]

I can also speak from experience myself: for 17 years that was my area of expertise in Lambeth. I did mention one of the cases in my proposition, *Tyra Henry*, and when things go wrong, they can go wrong horrendously, and I for one would not allow that chance to be lost this morning. Again, the Constable of Lawrence did not mention about should we wait for a mistake to happen before we change the law? I would hope Members would not. Deputy Southern, again, quite right: people are looking round to find an excuse not to support it, there are no excuses this morning, this is a clear-cut vote in support for us. Deputy Le Hérissier did talk about court costs and I think it is important that Members are maybe reminded of the written answer to a question asked by Deputy Le Claire only on Tuesday. I know our Members read all the answers, but it is very important because what this case, *Re B*, has brought about and, in actual fact I did mention it in my proposition when I first lodged my proposition on 13th September, P.124, when I did change it following consultation with the Minister for Health and Assistant. I did change it to make it more specific where all cases should be. I did mention about that the need for consideration be given

about tendering. So in other words when a case comes before the courts, where a lawyer has to be appointed, that this goes out to tender and, at long last, that has got to happen in Jersey. If one looks at the rates at the moment, when a Crown Advocate makes the application on behalf of the Minister, that Crown Officer Advocate will receive £267 an hour. If a lawyer represents a child, the agreed fee will be £179 so the courts themselves recognise that a lawyer is needed, however, to keep the costs down, it will be £100 less an hour for the child to be represented as opposed to the Minister. At the same time, I am not going to argue about that, it is most important that the child is represented. I thank the Members for listening to me, I know that they were out there discussing which way they are going to vote. I have no difficulty, I would ask that they all support my proposition, if not, go outside of Chamber and think about their consciences. I ask for the appel.

**The Greffier of the States (in the Chair):**

Very well. The appel is called on the propositions, if the Members who wish to vote are in their designated seats, I would ask the Greffier to open the voting.

<b>POUR: 21</b>		<b>CONTRE: 25</b>		<b>ABSTAIN: 0</b>
Senator A. Breckon		Senator T.A. Le Sueur		
Senator S.C. Ferguson		Senator P.F. Routier		
Senator F. du H. Le Gresley		Senator P.F.C. Ozouf		
Connétable of St. Martin		Senator T.J. Le Main		
Connétable of St. Lawrence		Senator B.E. Shenton		
Deputy R.C. Duhamel (S)		Senator F.E. Cohen		
Deputy of St. Martin		Senator J.L. Perchard		
Deputy R.G. Le Hérisier (S)		Senator A.J.H. Maclean		
Deputy J.A. Martin (H)		Senator B.I. Le Marquand		
Deputy G.P. Southern (H)		Connétable of St. Ouen		
Deputy of Grouville		Connétable of Trinity		
Deputy J.A. Hilton (H)		Connétable of Grouville		
Deputy P.V.F. Le Claire (H)		Connétable of St. Brelade		
Deputy S. Pitman (H)		Connétable of St. Saviour		
Deputy K.C. Lewis (S)		Connétable of St. Clement		
Deputy M. Tadier (B)		Connétable of St. Peter		
Deputy of St. Mary		Connétable of St. Mary		
Deputy T.M. Pitman (H)		Deputy J.B. Fox (H)		
Deputy M.R. Higgins (H)		Deputy of St. Ouen		
Deputy A.K.F. Green (H)		Deputy of Trinity		

Deputy J.M. Maçon (S)		Deputy S.S.P.A. Power (B)		
		Deputy A.E. Jeune (B)		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		

#### **4. Jersey Post: petition (P.140/2010)**

##### **The Greffier of the States (in the Chair):**

Very well. Deputies Southern and Martin, it is my understanding that you would like to reverse the order of the debate of the 2 Jersey Post matters so that the petition would be taken first. Are Members happy to proceed in that manner? Very well, the proposition of Deputy Martin will therefore be taken first, P.140, Jersey Post petition. I will ask the Greffier to read that proposition.

##### **The Assistant Greffier of the States:**

The States are asked to decide whether they are of opinion to note that 2,646 petitioners have signed a petition for which the Jersey branch of the Communications Workers' Union is responsible and (a) to request the Minister for Treasury and Resources, as representative of the shareholder, to request Jersey Post not to take any steps to cut deliveries back to 3 days a week (b) to request the Minister for Economic Development to request the Jersey Competition Regulatory Authority, to the extent that this is possible under all relevant statutory provisions, not to allow any competition in the postal market until Jersey Post has completed the efficiencies and savings currently being introduced (c) to agree that the States should assist Jersey Post to maintain its universal service obligation by contributing to any shortfall in the funding in the event of competition being allowed in the postal market.

##### **Deputy J.A. Hilton:**

Excuse me, Sir, I believe I am conflicted in this debate so I will be leaving the Chamber.

##### **The Greffier of the States (in the Chair):**

Very well. Deputy Martin?

##### **4.1 Deputy J.A. Martin of St. Helier:**

I was approached a few months ago by the Communication Workers Union who were hearing rumours, basically, after the consultation document went out and they had lots of trouble and seemed to me to come up against lots of hurdles getting their petition up and running, because they wanted to do it to the letter of the law. Basically, they came to me with the petition and they said: "We could have got a lot more because all the people on our rounds wanted to sign but we were told that they could not." I said: "No, they could not sign while you were on the round but you could have gone back after and asked them to sign" and I have had a couple of weeks and I have had nobody do this. But they came to me because they realised that it was nearly 5 years ago (it was one of my first Scrutiny panels with Deputy Southern, I think it was Deputy Lewis and Deputy Breckon then, maybe Constable Jackson as well) we were looking into the impact of fulfilment on to the universal service obligation of Jersey Post being able to deliver. We made a lot of recommendations then and the main one, because the adviser to the then Economic Committee had



moved from the point that he thought it was a good idea to incorporate and to the point where it was not a good idea to incorporate. So anyway, obviously, we were early days of Scrutiny and all our recommendations were ignored, especially the one which asked to do a second cost-benefit analysis. Being of my cynical mind, I would say it was because the answer would not have been what the ministry would have liked, they were hell-bent on incorporating because that was going to make ...

**The Greffier of the States (in the Chair):**

I am not sure: "Hell-bent", is a parliamentary term: "Determined."

**Deputy J.A. Martin:**

I am sorry, Sir, yes. It was not, probably, a good word, not a very parliamentary term. They were very determined to go for incorporation to make Jersey Post a business, an efficient business to be run as an efficient business by a management board. It went ahead in early 2006 and most of the old board has gone but some are still there. At the same time, the States loaned Jersey Post a £4 million to cover back pensions and when we asked the J.C.R.A. (Jersey Competition Regulatory Authority) which would be the overriding obligation in the first few years, the loan repayment or opening up competition, there was a bit of humming and hawing and, reading between the lines, the loan came first. So since 2006, Jersey Post's management, if they had looked out of the windows at Jersey Post, looked across to Royal Mail, would have seen what is going on with ordinary postal services but they have had no plan. They knew they were safe until the loan was paid back, and that was paid back in about mid-2008 to the end of 2008. They still then had the whole of 2009 to get: "Rationalised" is the word they used at Jersey Mail, and I have spoken to someone who helped rationalise Royal Mail and, in his words (he now works over here and I will not say who he is) he even said to me: "Not even Margaret Thatcher touched Royal Mail" but here we are. Where was the plan? We still have more post boxes per square mile than anywhere in England. We still have 22 post offices and what was the management doing? They were demoralising staff, they were: "Let us have a good idea, this will bring in revenue, let us set up another mobile contractor" and they also set up Ship2me, without addressing the core functions of Jersey Post, not at all. Straight away, the only way we can do it, we have the Minister for Economic Development go out and ask people: "Do you want 3-day deliveries or 5 a fortnight?" "Do you want?" Just going back to Royal Mail and if you could look anywhere, it went from losing £1 million a day in 2003 to now, in the last 2 years (and I had to check this with accountants) it says in 2009 to 2010, the overall profit for the whole of Royal Mail (which is Post Office and other things) is up to £404 million. I have gone on their website, I have seen their plans. I have gone on our website, again, what do we do? We have 22 post offices, Royal Mail has gone out there, they have helped all the finances. They have made their post offices commercial, a lot of the sub-post offices are still there, but they are run commercially: they have a café, they have something. It is also social because people out in the country parishes do not want to come into town, they do not want to wait 3 days when they can go to a post office, but they do not necessarily want to come into town. What am I asking for? I will go to the comments of the Ministers because (a), I request: "Then Minister for Treasury and Resources" apparently it is the wrong Minister, but this is what was in the petition: "as representative shareholder to request Jersey Post not to take any steps to cut deliveries back to a 3-day week." Somehow, the Minister for Economic Development says to me in his comments in paragraph 3, and I will read it because this is your chance in here today to direct, because he is making it quite clear who is in charge of the U.S.O. (Universal Service Obligation) and I have to read this paragraph: "The setting of the U.S.O. is a matter for the Minister for Economic Development" underlined: "The Economic Development Department has recently concluded a public consultation above the provisions of postal services in which opinion about possible future reduction in the number of deliveries were sought, among other things. These responses will shortly be published as a States report and are for Members' consideration." You will not get to vote on it, it will be an M.D. (Ministerial Decision). We have no direction. Since it was floated

that there were 2 licensees (and I went to listen to both of them) to come into competition with Jersey Post, I have asked the Minister for Economic Development and the Minister for Treasury and Resources Minister to get down there and talk to this so-good, fantastic management who, up until a very few weeks ago, would not talk to any of these people who wanted to bring in competition. Guernsey Post did it nearly 2 years ago and Guernsey Post is working in competition. There seems to be a share of market for everybody; that may be, because Guernsey's Government did not fall over and flake when the English Government said: "You can have no more fulfilment, you cannot grow your industry" so everybody called Jersey-whatever decided to go to Guernsey, but they still use the name Jersey, so people think they will order it from Jersey, Guernsey is getting all the profit and Guernsey Post is still operating a 6-day week. It is mooted the idea of going to 5-day week, it may go to a 5-day week. If you read the back of my proposition, which comes from the Consumer Council, I do not necessarily have a problem with the 5-day week. I am also slightly suspicious about the comments of the Minister for Economic Development, underlined.

[12:15]

He says to me, further down: "Although no decision has yet been taken from preliminary consideration of the figures, the 3-delivery per week model does not seem like the most likely outcome of a future U.S.O. review." He has got information already, he told me a few weeks ago that I would have the information that had been gathered from the survey; I have not got it, but he knows it, so it is not looking like a 3-day week. Is it looking like a 5-delivery a fortnight? We do not know. This is why I am asking States Members today to really think about what has been going on with Jersey Post since it was incorporated. The staff were willing to work with the management, the management only told the staff in December 2009: "Houston, we have a problem" and straight away it was: "We are going to have redundancies." As I say, they had not rationalised post boxes, post offices, anything else. The highly-paid salaries of the board; their bonuses, well, if they were performance-related, they should have been taken away, absolutely taken away **[Approbation]** unbelievable, £49,000 in performance bonuses. As I say in my proposition, it is not rocket science. If they did not see what was going on with the rest of the world's normal post, they had their eyes and ears shut. I do not have the confidence (and we will discuss this hopefully afterwards with Deputy Southern) that everyone else has the Minister for Treasury and Resources intervening, or the Minister for Economic Development; as I say, these decisions are too important to be left to these Ministers. As I said, all I have done is asked them to have a cosy chat with management: "Could I come?" "No." It has not happened, nobody wants to do it. Apparently now the management, when it is far too late ... what happened a few weeks ago, they have made so many good people redundant and not only that, experienced postal workers who have been doing one job for the last 10 to 15 years have been moved to another job, and they have got in younger workers for, all right £2 or £3 less an hour, who do not know what they are doing. When you read in the paper that: "Everything is fine down at Jersey Post" and all the workers are telling me the post is piled as high as the ceiling, deliveries are 3 or 4 days late. My mum posted me a birthday card in London on Monday and I still have not got it, but I hope that is not Jersey Post's fault, but what I am saying is I would have normally got that and she is concerned why have I not got that by Wednesday, I really normally would have it. It has just been going on down there, the management have demoralised the staff, there have been shenanigans going on over the last few weeks that have even more demoralised the staff to the point where they would not do overtime, so what happened? The rounds were delayed by 3 days. That says they have gone back so far already on their staff that, unless they pay them at overtime rate, and I am talking overtime rates here, and this is your management board that your Minister for Treasury and Resources and Minister for Economic Development are still asking you to have faith in to decide the U.S.O. for all of Jersey. I have looked at small country sites in the U.K. and, like the elderly in a lot of the parishes, the only daily delivery they have is the postman. There is something they use in the U.K. called the Rainbow Card system, it is something you put in a window and if your postman or the person who comes daily, it would happen to be here, and you have not changed that colour, they know there is

something wrong, they just knock on the door. They may not have the post for you that day, but they are passing the house and, if Monday's colour is still up on Tuesday, they think there may be a problem. It has proven a great success. I mooted this to Jersey Post and it is still, well, over the rainbow somewhere, I would suggest, because not what I would call innovation, exactly what Royal Mail did for 5 years, Jersey Post workers know that workers had to go but Royal Mail rationalised first the post boxes, the collections. Not only do we have the most post boxes, we have 2 collections a day. The one outside our building, how many letters are in that (and it is in Royal Square) on the second collection, 20 sometimes. It really tells you something about the way Jersey Post has been managed for the last 4 years. It tells me that the first 2½ years, nearly 3 years, they had no worries, there was never going to be any competition, so what did they do, they did nothing. They did tell the staff: "We did think that the percentage of mail may go down a bit, but it is going down a lot quicker than we thought." What did they think? Did they think Jersey was any different? Then, as I say, I really want to make the point just once more that today is a chance to ... just for clarification, I do not ask what the U.S.O. will be, I ask it will not be 3 days a week and I ask that we direct that that is what does not happen. They make some assumptions in both of their comments that the 3-day week must be because of the consultation they put out. Well, yes, obviously that is where they may have been aiming, I am not saying it cannot be a 5-day week, but I am saying it is for this House to decide, it is for this House to go back to say to Jersey Post management: "Do your job, earn your bonus, rationalise, do not start fiddling with boats and telephones when you have not even decided, not even got your core business and keeping a decent delivery for local people that we are going to carry on supporting you." That, really, is all the workers are asking. I think the U.S.O. is something to be proud of [**Approbation**] we need as good a one as in Guernsey. I say in my proposition: "Is Guernsey Government better than us?" they saw it coming they, as I say, may go to 5 days a week, their staff are not all running around on overtime and, if they do not do overtime, the mail is a day or 2 late. Basically, we might as well have a 3-day delivery the mail is so late at the moment. You needed to get local businesses, the finance industry employ messengers, Jersey Post board has been approached: "Can you deliver?" if they want to do something by the mile. They should be out there, this is what we were told when we were incorporated: "It will be run as a streamlined business" no, it is not. There is business out there, there is innovation out there and, unfortunately, not one of Jersey Post's management board has come up with any, but voluntary redundancies, and this was told in December 2009, and then, again, they said: "That will be it, we will then rationalise and we will make Jersey Post profitable." Within 4 months, they were back with compulsory redundancies and: "Take it now or reapply for your job." They do not know what they are doing, they have let down the workers and we are going to let down every Islander if we do not give a clear direction to the Ministers over there where the U.S.O. should be. It should not be 3 days a week. It is a social thing that people out in the community may just see that one person a day, and that is their postman. It might be the one letter, they might be waiting for a card, a letter and they will not get it. But if you have the faith that I do not have in the Ministers who direct Jersey Post and the management, because they are going to have to back-track some very big steps to tell me why, in 4 years, there has been none of this rationalisation. I can only ask that you support me, support the people of Jersey and support a good postal service for Jersey; what the Ministers seem to be doing is not that. I know that the Constables know their parishioners and I know that they might not think the Rainbow scheme is something that they need but it is a fantastic scheme and it will not work on a 3-day week. But I want to know where that is, I want to know where Jersey Post is with that. Even if the Constables instigate it, it would be the postman, we do not have milkmen now, we do not have anybody knocking at the person's door on the last mile, and that last mile is the most expensive. Do not forget, J.C.R.A. has already given a lead-in time on (2), nobody is rushing for that last mile in St. Ouen, for that last mile in St. Mary, that last mile in Grouville or St. Brelade. I will not forget St. Lawrence, St. Peter, St. Saviour and Trinity. I think I have got all the Constables there, but it is the last mile, they are not interested in that; they are interested in bulk, bulk, bulk. Let me tell you exactly what they want to do: they want the packers to pack and stick the labels on, there is no

sorting in Jersey, this what they have given out. It is going to take a heck of a lot of local jobs already. People now pack, then sort, they go down to the harbour. Yes, there is negotiation that should be done because the fulfilment are doing a lot of this but what the 2 people who have come in for competition, all they want is the players to pack, put the label on, stick it in a bag, it will be shipped to some massive depot, do not know where, in the U.K., where it will be sorted. It will do away with a lot of jobs here as well. Talk about revenue, wipe out the fulfilment revenue to Jersey Post and you will not have a 3-day week, you will have the little old ladies from all the parishes asking their friends and relations to go to a central office somewhere and pick up their mail for them. It is up to the House, but do not be fooled by what you hear; under the law at the moment, it will not come back to the House, this is a direction today to the Ministers of where we want and what we want for our people. Read the Minister for Economic Development's words carefully, a report shall be presented for consideration, it will not come back. I maintain the proposition and I look forward to comment.

**The Deputy Bailiff:**

The proposition is proposed, is it seconded?

**Deputy T.M. Pitman:**

Sir, could I seek clarification from the proposer? It may sound a facetious question but it is not, for those who have only been in the House a couple of years, it might be because it is a legal or technical term, it might be because I do not watch EastEnders, but the term used: "Fall over and flake" what did that mean in relation to where we are today? I think you said: "flake" anyway.

**Deputy J.A. Martin:**

Are you taking about Jersey Post? Sorry, yes, well, there will not be enough, there is not enough to do. There is too much to do now, they have already sacked people, they have not rationalised in the right way so it did flake, when the postal workers decided that they would not do overtime and that is really where we are, and this is all down to poor decisions.

**Deputy S. Pitman of St. Helier:**

Sir, before the debate commences, may I just declare that Members will know that the Scrutiny Panel for Economic Affairs is currently undertaking a review on this subject so may we seek leave from this debate? We have not asked ... we were going along with the Deputy in not requesting for her to pull it, because we understand her views, we sympathise with her views with regard to the redundancies and the timing of the redundancies.

**The Deputy Bailiff:**

So what are you asking for now, Deputy?

**Deputy S. Pitman:**

We are declaring an interest in this debate, the Deputy of St. Mary and Deputy Tadier as well.

**The Deputy Bailiff:**

Thank you very much, I am sure Members will have noted that statement. The Minister for Economic Development.

[12:30]

**4.1.1 Senator A.J.H. Maclean:**

We have heard a typically passionate speech from Deputy Martin and I applaud her for that. She feels, as I know many Members do, very strongly about this particular subject. It is a subject that is highly emotive, not just for Members of this House but for Members of the community. I would like to make a few initial observations from the opening remarks from the proposer. She first of all suggested that the management of Jersey Post have not carried out their duties in a professional and

effective manner and I would say that I do disagree with that. This management structure at Jersey Post has had to carry out a very difficult job in extremely difficult conditions and they are challenged by an experienced board. I think it is unfair to make suggestions to the contrary and I just want to make that point. I also would like to correct the proposer about a point she made about the consultation, the R. Report, and she was saying that, of course, it is being delivered as a report and it is not, in fact, going to give Members of this Assembly an opportunity to debate. What is going to be presented are the results of the consultation. What I have said previously, and I will just repeat it for absolute clarity, is that the U.S.O., the Universal Service Obligation, should it need to be redefined, will come back. Whatever proposal is made to redefine the U.S.O, will be brought by me to the Assembly for a full debate. That is absolutely correct, if something as important as that needs to be considered, I think it is right that this Assembly has an opportunity to debate it. Hopefully those 2 points have been clearly clarified. In respect of this particular proposition, I would like to make some remarks on the 3 parts: first of all in respect of (a) the minimum level of service Jersey Post can provide is a function of the U.S.O. which, of course, as Members know, is imposed upon the company. The Minister for Treasury and Resources, as the shareholder, expects the board of Jersey Post to ensure the company meets the U.S.O. in an efficient and an effective manner. It is not appropriate for the shareholder to define the U.S.O. or place further U.S.O.-type restrictions on the company. As Minister for Economic Development, I have the responsibility of defining the U.S.O. and, as I have said, if at some point in the future it needs to be redefined, that will come before this Assembly. My department recently concluded a public consultation on the provision of postal services in which, I have to say, the opinions were extremely wide. We had a number of different views expressed, as you would expect, and the results have already been passed some weeks ago to the Scrutiny Panel and, as I have said, will be published to Members of this Assembly very shortly. Essentially, the consultation is one that I felt was important and it has been interesting at this early stage to have seen both the level of response, which I think reflects a point I made earlier of the fact that this is an extremely emotive subject to the community. But once Jersey Post has moved further, as it has already started a restructuring and efficiency and cost-saving programme, it will be at that stage that we can look again at the affordability of the current 6-day-a-week service that is in operation. Economic conditions and the steady transition from paper mail to email are affecting global services, as Members will be well aware; this is not an issue that is just relevant to Jersey, it is an issue that is affecting all postal services in countries around the world. While I hope that a 6-day service can be maintained without public subsidy, and I support the Minister for Treasury and Resources view on this particular matter, Jersey Post cannot provide a level of service that it is not able to afford. The possibility of mail being delivered 3 days a week was taken from the U.S.O. consultation. It must be noted that the consultation paper explored many options, ranging from 5 deliveries a fortnight to 6 per week, in keeping with the current system. My personal view is that any change to the U.S.O. will be gradual, as long as Jersey Post can deliver their restructuring and cost-cutting plans. They have done very well so far, which gives me confidence that the board, management, staff and all concerned will succeed in their endeavours. I do accept, as I am sure Members do, that any change, particularly of this nature, is difficult. In any event, if necessary, as I have already pointed out, the U.S.O. will be a matter for the States to consider in the future. In respect of (b), there is no legal process by which, as Minister, I can force the J.C.R.A. not to allow competition in the postal market. The J.C.R.A. is under an obligation to follow the process for licensing outlined in the law. A final notice was issued by the J.C.R.A. on 8th October and that was before P.140 has been lodged and competition in the postal market will take place on 18th November 2010 for packets, but only on 1st January 2012 for large letters. This is significant as it provides Jersey Post with over a year to deliver the efficiency savings that they need in order to be able to support the U.S.O. For this reason, it is not necessary to request the J.C.R.A. to delay competition as they will have already effectively done so. In respect of (c), in these challenging economic times, it is more important than ever that States expenditure is kept under control. The recent business plan, C.S.R. (Comprehensive Spending Review) and budget proposals show the difficult decisions that must be made to ensure sustainable

public finances for the Island. Jersey Post must operate in a financially sustainable manner and is working positively to improve the efficiency and effectiveness of its services. It must work to meet its customers' needs and provide affordability and effective postal services within the context of the U.S.O. Any subsidy provided to Jersey Post would, in effect, require taxpayer funds to be diverted from another public service. This is not a sustainable or an appropriate solution and it is certainly not a solution that I know would have any support from the Minister for Treasury and Resources. I urge Members to reject this well-meaning proposition.

**The Deputy Bailiff:**

Does any other Member wish to speak? Senator Ferguson.

**4.1.2 Senator S.C. Ferguson:**

Deputy Martin made considerable comments about the frequency of deliveries. In connection with this, I would refer Members to the New Zealand Post Office which went through these sorts of rationalisations in 1994, 1995 and this year turned in a solid profit. They have worked out a system, and I believe it works in rural areas in the U.S. (United States) too, where sorted mail is delivered to hubs, say the local village shop in the parishes or possibly the parish hall; it would keep the Connétables occupied [**Laughter**]. But, in actual fact, they subcontract the country deliveries to agents in the rural areas but, certainly, if you have got post offices that are making a profit, you do need to look and see how they are working it. We had the fiasco in the Central Market. The turnover in the Central Market, which I kind of worked out from various sets of figures, was substantial. It was a core office for the postal services, so they decided to shut it. You have heard mention of the recent problems that they have had; well, my understanding is it is not totally unconnected with a new highly-paid H.R. (Human Resources) executive from the U.K. What are we doing? Why are we bringing in people like this? Then, of course, we have got Ship2me and MeMo. My understanding, again, is these are unprofitable to the tune of some millions. Is the Minister happy with this? Then there is the 2 brand new Land Rover Discoveries with fantastic police-style light assemblies and trailers, just to collect the mail from the airport. These are extravagances, they are not rationalisation. The service to the fulfilment industry has not been good, as Deputy Martin has said. But this is not a failure of the workforce, this is a failure of management [**Approbation**]. I have said frequently that government should not get involved in running commercial businesses and, with the greatest respect to the Minister for Treasury and Resources and the board of Jersey Post, what have they been doing? These are commercial people, they should have been a little more involved. We have got to make sure we have people in place who think constructively in a business-like manner. However, we have got competition coming in and this is going to sharpen up the business considerably and so I regret that, while I am sympathetic to the proposition, I think it is really up to Jersey Post and the corporate shareholder and the board to get themselves organised and start running the business properly as a business and not as a States-subsidised organisation. I do not think I shall be supporting the proposition, although I have the greatest sympathy for the workforce.

**LUNCHEON ADJOURNMENT PROPOSED**

**The Deputy Bailiff:**

The adjournment is proposed. The States stand adjourned until 2.15 p.m.

**LUNCHEON ADJOURNMENT**

**The Deputy Bailiff:**

I will invite all Members who are in the anterooms to the States Assembly building to the Assembly room to rejoin us as we are not currently quorate. There has not been a flood of entries and so ...

**The Connétable of St. Brelade:**

Sir, if I may give, rightly or not, the apologies of the Connétable of Trinity who is attending a parish matter and said he would be delayed but back probably by 2.45 p.m.

**The Deputy Bailiff:**

Greffier, will you call the roll please?

[14:15]

**The Roll was called.**

**The Deputy Bailiff:**

Well, the States are now quorate.

**Senator P.F. Routier:**

Sir, may I just make an observation. I believe the clock above the Chamber is about 3 to 4 minutes fast. But I just make that as an observation, I am not saying it is an excuse for being late but it is running fast compared to ...

**The Deputy Bailiff:**

I have no doubt that the clock does need attention and Members will be pleased to hear that they will not have to make up the 3 or 4 minutes in the future because, obviously, we adjourned before lunch. **[Laughter]** But we are not clock-watchers in this Assembly as far as I am aware. I call on Senator Breckon.

**4.1.3 Senator A. Breckon:**

I would just like to say something before I start. I intended to give both the Minister for Economic Development and the Minister for Treasury a bit of stick but, just for the record, neither of them is here so I do not know if they are listening somewhere but, anyway. The other thing is, just as Deputy Martin mentioned, I was also a member of a scrutiny panel a few years ago that looked at the fulfilment industry and the post office. Coming back to the post office itself and what we are talking about at the moment is apparently some corporate identity but I would ask Members to let us get back to basics a bit here and we are talking about, you know, men and women who have been there - many of them have been there for years - have a dedication to duty and they have a care, or they did have a care in the community in which they worked. Familiar, cheerful and they had a sports and social thing, they were part of the community and I think that has been taken away by some commercial nonsense. In this brave new world what we have done is we have devastated part of our community; for what reason, I am not quite sure. If we look back, the Minister for Treasury and the Minister for Economic Development both have responsibilities and we are some sort of shareholder in this, it is 100 per cent, so what are the responsibilities of the Minister for Treasury as the representative of the shareholder, and where is that conflict between service and value for money? There is probably some tension there that has not been explored. For example, the Minister for Treasury has said before: "Well if policy stuff changes I get consulted on stuff on major policy." Well the question is, and he is not here to answer it, was he consulted about the post office setting up a mobile phone company when we have already got one? Where did that come from and whose policy was that? The reason I say that is money has gone literally down the plughole and these are some of the reasons why and then we are coming back and we are bearing down on the service - which is what Deputy Martin is talking about here - and the people within it. The other thing that we have done, and if we go back again, Senator Ozouf was involved with the Economic Development Committee, in this brave new world the post office were going to be incorporated and stand on their own, wash their own face in some commercial world. But when we look at the reality, what happened, we were told: "Well, this is the going rate, this is what we must do" and others have mentioned it. We had a senior hierarchy that, in my opinion, were helping themselves to terms and conditions, and what has happened? If you look at some of that, in my estimation, with that and setting up a board of directors, it has probably cost us about £7 million to

do that since 2005. Now, what is the benefit because, in effect, with adding the other things in like competition fulfilment, we do not have the post office that we knew. In the sad old days when we had a postal committee we had a good quality service, we made some money but now we have moved on. So the question is, what was all this for? What was the reason for that? The other thing that was mentioned is competition and fulfilment, but other areas what they have done is they have put a levy on the operator and that levy would ensure that the universal obligation was met, so that they would have to pay a percentage of their turnover so that we could have a delivery. We have not done that, we appear to have done lots of stupid things and we still continue to do them even more. The question is, who is accountable and, apparently, nobody. Because when questions have been asked of either Minister they have been literally dancing around handbags but not answering the questions and this is our - and it is the people's - post office, they want a level of service. I fully support what Deputy Martin is trying to do but I am afraid the 2 Ministers are going to continue dancing around handbags because we are not going to get a service level because it is somebody else, it is somebody else, it is the board of directors, it is the J.C.R.A., it is not us. But nobody is accountable for this service and it is our service and it is literally because now the competition has been given where the money is, the fulfilment. The other thing is, when you think about it, if I had employees in a vital position and they were leaving and they would get the severance package, I would put a clause in there that said they could not work for the competition for the next 10 years. Milkmen used to do it, hairdressers do it, window cleaners do it and we never did it here. Some of the people that have had high settlements are working now for the competitors. So this, where the accountability, where the shareholder value is, and all these things, I am not sure, because it is not obvious to me and I think the Ministers, instead of, as I say, dancing around they should answer some of the questions: "It is not us it somebody else, it is somebody else, it is incorporated." It is not. It is a farce, but it is not funny because it is our asset that has gone down the plughole while they have watched on and done literally nothing, blamed somebody else. So now, in this brave new world, they need to be answerable for things. They have been asked to do that, if they do not then I am afraid they are going to have to move over and be accountable or move over, because that is where we are. We have let down the very people who rely on us. These are ordinary working people who are devastated by all this and what is the benefit for the ordinary person out there in the street? Nothing. Does it cost tuppence to send a letter? No, it does not. Do you get it delivered any quicker? No, you do not. So what have we done? I would like both of the Ministers to stand up and tell us what the benefits are in service and cost and to the people who work there and the people of the Island, because that is what we want, we do not want them blaming somebody else. We want to say: "I will take responsibility. This is what I have done, this is what I have not done." For the benefit of the Minister for Treasury, something he missed, I did ask, if he is responsible for policy, why did he let the post office set up a mobile phone company? Why did that happen? Perhaps he can tell us, share that with us, because we have our own phone company, what do we want another one for that does not make any money? It has lost money. Now, the ordinary working people are suffering for this and this is who has petitioned us and that is where Deputy Martin is coming from. They feel betrayed and they are ordinary people, we know them, there is generations of families who worked at the post office. Not any more, it is this brave new world and I am a bit annoyed about this because I think, all in all, it is a lose, lose, lose situation: for the post office, for the people who work there and for the ordinary people. Deputy Martin has made some suggestions, yes, there can be economy, yes, there can be change, but the very people that have taken the high money, taken the settlement, did not put a plan in place, plan B or plan C, and the ordinary people are suffering for that now. So, in conclusion, I would just remind the Ministers that I would like them to say something that addresses some of the things that I have touched on.

#### **4.1.4 Deputy A.K.F. Green of St. Helier:**

Some of what I wanted to say has just been said by the previous speaker. But I have to ask the question, do we ever learn? Do we never learn? Are we to repeat the mistakes of the past? I sometimes wonder if our Ministers have several years of experience or one year repeated several



times. I say that because, if you just bear with me, if we just look at what we did to Jersey Telecoms, under the guise of competition ... oh, we did not do it, sorry, the J.C.R.A. did it. We stood by and watched a company that we own, a company that was contributing substantial sums to our revenues, a company worth in the region of £1 billion, reduce virtually to a worthless one. Oh, that was all in the interest of competition and to add insult to injury competition from companies, some of which pay no tax locally: "That is okay, we sold the licences." Well, what did we get when we sold the licence? Nothing, not a penny. So again I have to ask, what is the J.C.R.A. doing and have we delusions of grandeur? We are not some massive, big country like the U.K. that has to have a competition regulation authority. We are not much bigger than a local council, and in some cases we are smaller, and we should be able to make those sorts of decisions without a great big department costing us a fortune. We seem to have forgotten also the regulation part of J.C.R.A., we only seem to remember the competition part and we have another arm to that if we are going to use it. Yes, getting back to Jersey Post, Jersey Post needs to modernise but do you do that by removing the only profitable bit of the organisation, and I talk about the fulfilment part of it? You do not do it by doing that and just leaving the essential but non-profitable home delivery service, [Approbation] of course the company is going to have trouble if you do that. We could have used the regulation part and said to Jersey Post: "You need to modernise, this is the sort of price field you need to get into to fulfil the needs of the fulfilment industry, get on and do it. Give us your action plan." No, what we do, we bankrupt the company by removing its prime source of income. I have to ask, what is the Minister for Economic Development doing apart from presiding over the demise of yet another States company? I have to also ask, as Senator Breckon did, what is our representative on the board, the Minister for Treasury, doing about the demise of this company? I am going to support this proposition because if we do not all we are going to do is lose an excellent company and make more local people unemployed and I want no part of it.

#### **4.1.5 Deputy C.H. Egré of St. Peter:**

I just want to throw us into a reality check. Although I was not in the Chamber during the morning, I was listening on the radio. I listened to the Minister for Economic Development espousing the virtues of the management of Jersey Post and I would just like to paint a scenario to him, and this is real world scenario. In a road in St. Peter, I know that road quite well, a few months ago there were 3 vehicles on that road. One vehicle was dealing with issues on Ship2Me with a driver, the other vehicle was dealing with FedEx with a driver. In that same road there was a postal van delivering post. Now, anybody with any idea about running a business would know that if you run it in that particular way it is not going to last. We also know, anecdotally, that Ship2Me is not making the money that it thought it was going to make, not even close. Going back perhaps 2 or 3 years ago at the most I had a meeting with the M.D. (Managing Director) of Jersey Post, the then M.D., and we were talking about the virtues of the postman and what service they provide to the Island over and above the function of putting letters through the door. He was telling me how important it was, the role that they could take up if there was an emergency on the Island, and how they could communicate very quickly with a huge number of people, a function which we could not pay for, we could not get the policeman to go around and do that but the postal service could. We have been now left in a situation where we have a postal service where - and I can assure the Ministers involved in this - the workers' morale is at, not at an all time low; no, the lowest it could possibly be.

[14:30]

Moreover, Ministers, I will use this word very carefully, I was not told the truth. Over the current issues that developed when I think there was possibly a work to rule where overtime was certainly being offered but not being taken up, I failed to receive mail on 3 days. I had been made aware by postal workers as to the reason why. When I phoned up and spoke to the management I was told: "Do not worry, you have not got any mail." Now I can assure the Minister for Economic Development that when I received my mail eventually, some 3 days later, that I had an awful lot of

mail that had not been delivered and I had been told by somebody that it was because I did not have any mail that would require delivery. That was not true, that was there to try and cover up a failing that was happening at the time. We are in a crisis within that department and it needs sorting and I am sorry operating the King's New Clothes of: "It is all right, is it not all going well?" is just not acceptable and it needs sorting. I have to say I have a great deal of respect for this particular proposition going through and I have every mind to support it.

#### **4.1.6 Deputy K.C. Lewis of St. Saviour:**

I was on one of the original scrutiny panels that investigated the post office and it was a great insight as to the working of the industry. I am very worried about the universal service obligation and the consequential loss of the sub-post offices around the Island, because once it is gone it is gone. I have just 2 brief questions: under (a) to request the Minister for Treasury and Resources as representative of the shareholders to request Jersey Post not to take any steps to cut deliveries back to 3 days, I would like to know what powers the Minister for Treasury has to the request that. Under (b) to request the Minister for Economic Development to request the Jersey Competition Regulatory Authority, to the extent that this is possible under all relevant statutory provisions, not to allow any competition in the postal market until Jersey Post has completed the efficiencies and savings currently being introduced. I was under the impression, but I stand to be corrected, that the Minister has no powers whatsoever regarding the Jersey Competition Regulatory Authority. I wonder if he would clarify that.

#### **4.1.7 The Deputy of St. John:**

If I could refer to something that was said a few moments ago by the Deputy of St. Peter, when he referred to 3 vehicles making deliveries. What he omitted to say was that there was a fourth vehicle making deliveries, but that was not a vehicle that was all marked up with Jersey Post or one of the other suppliers, this was a vehicle, an old banger, making deliveries which I presume was working somewhere in the black economy because the driver did not have a uniform or suit on or whatever these boys and girls wear, and he was making a delivery and this was at my own home. I thought: "Who does he work for? He is not one of the regular outfits." Anyway, I just did not think more of it than that, but if only from the comments that are being made, are these people who are running possibly a car, getting paid £10 a hour and his petrol, or not even his petrol even, have we got a level playing field? We have got the post office who we know have to adhere to a lot of standards. Some of these new operators, I have to ask, are they all applying the same standards? I will leave that where it is because it is a concern that was raised in my mind after what the Deputy had said. But I will go back to the days when I was a member of the Postal Committee, and I think I have said it in this Chamber several times and I do not mind saying it yet again another dozen times if it is going to help put things in the right order. We had a successful Postal Committee with a shadow board. A member of that shadow board resigned when we found out that the President of the Finance Committee of the day and his Vice President, called us to a meeting at Cyril Le Marquand House and told us we had to stop fulfilment or they were going to pull the plug on it, that London was going to pull the plug on it. Our strings were being pulled from off-Island. Whether they like it or not, that is what happened. So we lost Tescos who moved to another Island, not very far away, 20 odd miles away, we lost other operators who went off to Switzerland. Yes, we had a very successful business. A lot of the damage has been done internally, by this House. How do Members think I felt as somebody who had worked hard with the shadow board and the remainder of the committee to have the rug pulled out from under your feet after several years' hard work where we had been very successful? Just so that they could go down the road of appeasing somebody in White Hall, because that is what was happening, appeasing somebody in White Hall. I listened to the proposer of this amendment, and I have a lot of respect of the Deputy and I have got a lot respect for other Members in this room who have spoken today, but they are feeling passionate about this now. I wish they would feel passionate about the way they vote in some of the other debates we have where the Ministers that they are part and parcel of as Assistant Ministers

are telling them how to vote. I am sorry but that is what happens and I think that if they were as passionate in all of their debates and as truthful with themselves in all their debates as they are being here today, I think we would have a far more better government and far better decisions. Because a lot of Members within this Chamber at the moment are yes-men and yes-woman to their Ministers. Sorry, Senator, I will not give way, I did see the sign. I have got serious concerns about this because I believe we have done the damage from within. The damage from within was done 7 years ago, 2004/2005 when we were stopped being able to trade in the fulfilment business. Yes we have people who can trade locally because they are local companies, but we had money that could have been really generated, especially at this time when we have got a shortage of that type of blue-collar jobs or semi-skilled jobs that could have been giving income to this Island, paying income tax and bringing revenue to this Island. I wish Members, when they debate things in this House, were all as passionate as I have heard the Assistant Minister for Education and the Assistant Minister for Health, how passionate they are - and other Members here - and I wish they could do that with every debate instead of having the 3-line whip brought in by the Chief Minister's department. Really, I do not think I will say much more but we know where the fault lies, it lies in this Chamber, and it went with the Chief Minister and the Minister for Treasury. They started the rot with this particular company.

**Deputy A.K.F. Green:**

Can I just correct the Deputy of St. John. I would just like to correct him because nobody tells me how to vote and make up my mind.

**Deputy A.E. Jeune:**

I will second that.

**4.1.8 Senator P.F.C. Ozouf:**

There have been a number of raised voices in the Assembly this afternoon. I am going to do my best not to raise my voice but to try and at least get the words that I think I need to get out, even though I am sorry that my voice is failing today. The first thing that I need to say is to respond to some of the more outlandish and, frankly, in my view quite ill-informed points that have been made. Deputy Green spoke and Deputy Green is no "yes" man. He is a good Assistant Minister, but by goodness me, he said J.T. (Jersey Telecom) was worthless. He said competition was a disaster, or words similar. He said that the telecoms companies did not pay tax. I am afraid Deputy Green is wrong. J.T. is far from being worthless. It is far from the situation that other telecoms companies do not pay tax. Other telecoms companies pay tax. They pay it at 20 per cent because they are utilities. J.T. has made extremely good strides in dealing with a competitive landscape, of which the combination of competition and innovation is working. J.T. is profitable, it is growing and it has a fantastic future, and it has a fantastic future because of that combination of oversight of being a standalone entity, no longer a States department, having a board, having a governance structure which makes sensible decisions, and having the regulatory approach which requires it to be delivering value for money and economy and efficiency with price caps and it has the threat of competition. While change is difficult and many Members criticised the evolution which is going on with Jersey Post today of Jersey Telecom, in 2 or 3 years' time we will see the benefits for other utility companies that are going through this change process. I am going to come back to some of those points in a minute. The Deputy of St. John again repeated this issue of fulfilment. He has used his position in the States on numerous occasions to attempt, if I may say, to revisit and to reinvent history. I was the Minister responsible for that policy in relation to fulfilment and I was right in what I did. If I would not have made those decisions to stop effectively U.K. companies that were seeking to get around their V.A.T. (value added tax) obligations by a brass-plate operation, we would have lost all of the fulfilment companies operating in Jersey. We would not have any of that resource in order to cross subsidise. The Deputy reinvents history and I have heard it on numerous occasions. He has never wanted to engage with me as to getting the facts out. I

hope that he will. Again, I am delighted to meet with him, as I have offered on numerous occasions, and I will give way.

**The Deputy of St. John:**

On a point of correction, we engaged that day in Cyril Le Marquand House when the rug was pulled away from us.

**Senator P.F.C. Ozouf:**

The rug was not pulled away from it. It was a requirement to retrench some of the activities that would have meant the end and the demise. If other jurisdictions take business which we do not think is in Jersey's reputation, then that is a matter for them. But Jersey Post and the Island have benefited, hundreds of jobs on the basis of the fulfilment industry and the arrangements of online retailers that we have. The Deputy should get his facts straight. Now, Deputy Lewis asked about the actual reality of the responsibilities that the 2 Ministers have, and I will give some concluding remarks on the actual parts of the proposition. But there is a segregation of duties where the Minister for Economic Development with the oversight of the J.C.R.A. deals with regulation and deals with U.S.O. provision, and I appoint a board and hold that board to account in a way to ensure that they operate the company efficiently and effectively within the regulatory framework. This proposition, as I think the Deputy was possibly alluding to, does straddle and it strays into those 2 areas in my view which is the wrong thing to do and would be the wrong way for this Assembly to express its views in relation to regulatory matters. So, Jersey Post is without doubt in a difficult position and it is in a very challenging position in terms of its sector. Volume of letters is declining. There is competition, not only competition from other local entities but it is operating in a fiercely competitive marketplace in that business of online retailing. Not for the reasons that the Deputy of St. John says but other jurisdictions are competing with Jersey in online retailing, whether that be Guernsey or whether it be Switzerland or other places. It is competition that is driving a lot of the issues that Jersey Post is having to deal with. I want to say that if I was an employee or if I was a manager in Jersey Post listening to some of the remarks that have been made about this company by Members ... It has been said that this Assembly is not a very good planning committee. Well, it is not a very good business committee either when Deputies from here, there and the other stand there and think that they know how to run Jersey Post because they might have seen 2 vans from 2 different brands going down the road. It is absolute nonsense. Is that the way that we make decisions or we conclude the efficiency of a company such as Jersey Post? It is, frankly, demeaning, I think, to this Assembly. Jersey Post is in a difficult marketplace and, yes, it has had to make some very difficult decisions over the last few months, perhaps difficult inherited decisions because of the former Postal Administration Committee.

[14:45]

Perhaps they could not have been as bold as Jersey Post needed to have been in the last couple of years in terms of cutting out cost inefficiency. Yes, it is difficult. I am not giving way.

**The Deputy of St. John:**

I did not think he would.

**Senator P.F.C. Ozouf:**

There is no doubt that the current management, of which I do meet regularly with and I do attempt to understand the difficulties that they are facing, they have dealt extremely well with removing of costs and making that business more efficient. Of course, some people will not like that and some people will complain and some people affected by necessary changes, just as we will see in the Comprehensive Spending Review, will be aggrieved. Some of those people are clearly ringing the Deputy of St. Peter. Well, I ask whether or not some Members have taken the time to go and speak to the management of Jersey Post.

**Deputy C.H. Egré of St. Peter:**

I have.

**Senator P.F.C. Ozouf:**

Well, that is good that he has. He needs to go again to understand some of the issues to do with this **[Laughter]** because clearly he was not listening the first time he went. Deputy Martin said that the first the workers knew about redundancies was in January, or even December. Jersey Post management has been working with the union for at least 2 years before redundancies were announced at the beginning of this year. Jersey Post has been characterised by very good relations with unions over the last few years, and it is not right to make the remarks that she has done about the information with workers. I am aware that workers have been very well informed and briefed of some of the necessary decisions. Deputy Martin also said that Royal Mail was profitable. She did not say to this Assembly that the U.K. Government provides a £330 million subsidy to Royal Mail. Deputy Martin said that there were too many post boxes. Well, that is part of the current U.S.O. review and is being looked at. Senator Ferguson, who is also an expert on postal matters and particularly the Central Market post office, **[Laughter]** said that there was a problem in relation to the Central Market post office. Well, the facts are that that closure, while sad and something that we have been debating in this Assembly, has saved Jersey Post £60,000 in terms of savings. Deputy Martin hinted that there were too many post offices, yet, of course, on the other hand many States Members do not want to shut post offices. The good news is that Jersey Post is making strides to expand the services that they are providing in supermarkets, pharmacies, garages, the harbours and airports, and they are having a proper arrangement with commercial entities to provide their postal services. We are going to end up with, of course, a different postal network but we are going to end up with more postal services being delivered at more places. That is the kind of innovative management that is being put in terms of Jersey Post. As to the directors, there are 4 directors of Jersey Post, 4. It has a very highly respected chairman, which I will not name but Members know who he is. A highly, possibly one of the most respected of utility chairmen, who is discharging those functions, who I engage with regularly and I understand and I support absolutely in his oversight and the other directors in what they are doing. Do they get everything right all of the time in such a difficult commercial environment? Of course not, none of us do, but they have my full confidence and my support and it must be terribly difficult to hear some of the wide range of suggestions and slurs and innuendos that are made. I think that is sad. The management of Jersey Post has been working on savings and efficiencies for 3 years and they have saved millions of pounds in terms of costs. There have been managers made redundant, and maybe it is some of those managers who were making representations to some Members - probably not the Deputy of St. Peter because I know he is particularly concerned about one issue, which I also do not agree with him on - and a director has been effectively made redundant. There is no intention of moving the delivery down to 3 days a week. The delivery days, which are subject to the review which the Minister for Economic Development is doing of the U.S.O., that is going to adjudicate in relation to the U.S.O. and ultimately decisions are going to be made by the J.C.R.A. There have been a number of other comments about Jersey Post's diversification strategy. I am not going to go on and talk about that in great detail. Suffice to say that it is not correct to say that Ship2me or the mobile phone company MeMo has lost millions of pounds. That is absolute nonsense and I am not going to start discussing in this Assembly commercial matters in relation to what they are doing in relation to some of their diversification. Some of it is working. I am advised that there are no losses of the magnitude, indeed no losses at all in some cases. Are there investments to get businesses up and running? Yes. Was Ship2me an innovative way of providing local consumers with doorstep deliveries for U.K. retailing? Absolutely, and something which the Chamber of Commerce in some ways has welcomed. It meant that local retailing has become more competitive and, as a result of Ship2me, an unintended consequence is that people are going into local shops, finding out what the U.K. price is and, because they can get good customer service from local shops, buying locally as well. It is a win/win situation and it is competition that is working. So, I

am afraid to say that it is not right, all of these things that are being said of Jersey Post. It is frankly outrageous. Now, turning to the proposition itself, there are 3 requests. The first is to request me to request that Jersey Post do not take any steps to move to a 3-day week. Well, there are no proposals to move to a 3-day week, but I have to say I would ask Members respectfully - it is not a die in the ditch - not to ask me as Minister for Treasury and Resources to instruct the company in that way. That is not the way that this Assembly has approved the mechanisms of the regulations surrounding Jersey Post. It is a matter for the Minister for Economic Development to deal with the U.S.O. and then the company to run it appropriately. So, again, there are no plans but I do not think that that is a particular proposition that should be supported. The second part of the proposition, as the Minister for Economic Development has already explained, this predated the decision of the J.C.R.A. Again, not in my area; that is the Minister's area. It predated I think some of the concern about the liberalisation. There was an awful lot of talk about liberalising of the postal market because of a consultation. Of course, that was in a period of consultation. I think the J.C.R.A. ... from a shareholder point of view, I wrote a very strong letter, a very stiff letter to the J.C.R.A. and, indeed, copied to the Minister about my concerns of opening up the market. I am happy and I am content that this is a sensible regulatory decision in relation to opening up the market and it is also a good example of a Jersey/Guernsey unilateral approach because it is the same approach in Jersey as in Guernsey of opening up the market. I congratulate the J.C.R.A. on making a sensible, fair and balanced decision. I think that part (b) of the proposition is, in fact, superfluous since that original ... I understand why it is being brought but I think it is superfluous. It certainly would cut across the arrangements that this Assembly has approved in relation to the way in which the Minister and the J.C.R.A. make regulatory decisions. The final part of the proposition is the proposition that causes me most concern. It basically writes a blank cheque or indicates that there is going to be a blank cheque, no definition of the universal service obligation, and that the States will agree to fund the shortfall of whatever that universal service obligation is. I am sorry, we have a deficit in excess of £100 million before we take the corrective action in relation to the difficult decisions on savings and on taxes. This Assembly is going to make a decision to say: "We have all the evidence that we need to say that Jersey Post needs a public subsidy." The first decision must be whether or not Jersey Post is operating efficiently and effectively, whether or not the universal service obligation is going to be reformed over what period of time, hold the company to account to make sure and to ask to request to ensure that it can deliver its services properly, and then *in extremis* potentially - I hope not and I do not think it is necessary - to make a decision along these lines to maintain. It is a gold-plated blank cheque, no motivation for Jersey Post to make efficiencies in economy, no motivations at all in relation to putting a realistic and affordable U.S.O. in this, and if the States approve this proposition then goodness knows where we are going to be in relation to the C.S.R. I see the Deputy of St. John wanting me to give way and I will.

**The Deputy of St. John:**

Does the Minister consider that the Deputy of St. John and others have touched a raw nerve given his robust replies?

**Senator P.F.C. Ozouf:**

Touched a raw nerve, yes, because there have been a number of erroneous and unfair statements put to Jersey Post which somebody in this Assembly has to defend. What Deputy Green said was wrong about J.T. and what some Members, with respect, have said about Jersey Post. They may have isolated examples of imperfection, but to cast aspersions across that organisation and its management, who are doing their best in a very difficult situation, in a declining market and doing the best on behalf of the shareholder, is why I will certainly attempt to raise my voice and put some passion into the argument and to urge States Members to refrain from criticism which I believe is unfounded and unfair. I urge Members to vote absolutely against part (c) of the proposition; (b) is

no longer required because a regulatory decision has been made, and (a) is an inappropriate use of the Treasury and Resources' powers over that company.

#### **4.1.9 Deputy J.M. Maçon of St. Saviour:**

Oh, dear. Members are letting themselves get distracted and so I will say from the beginning that I am not an expert. I have to commend Senator Ozouf on the fact that he brought Members' attention back to the proposition and what we are being asked to do. This proposition is not about support in Jersey Post. It is not about a vote to condemn the management of Jersey Post. While I agree with the sentiments of the Deputy of St. Peter in that it would appear that the Minister for Economic Development's view of the management of Jersey Post may not be grounded in reality, again this proposition is not about supporting Ministers' understanding of the world, whatever that may or may not be. **[Laughter]** So, I turn myself to part (a) and I ask Members to re-read the proposition. What it is asking us to do is to remove the option from Jersey Post. So, that does not stop them from choosing perhaps 2 days or one day. All it says is: "We are not going to give you this option." That is it. That is what we ask them to do. It is not about giving a commitment to keep the standard that we already have. It does not say that. Read part (a). Part (b), the key word is "until": "... in the postal market until Jersey Post has completed the efficiencies and savings currently being introduced." Next to that I have put "when?" Open ended. We have no timescale. We do not know when that is going to be. Is that really a commitment we want to make for ourselves? Is it something which we want to ...? Part (c), again, I agree with Senator Ozouf in that this to me sprang out as money. This is about money. This is about, as Senator Ozouf said, a blank cheque. I would like the proposer to explain how she thinks or feels that this commitment would be sensible. I am not convinced at the moment that it is. We can all rant and rave about the pros and cons of Jersey Post, J.T., the competition regulatory authority, but that is not what this proposition is about. Will Members please address their comments to (a), (b) and (c).

#### **4.1.10 Deputy G.P. Southern:**

I will endeavour to do my very best to address (a), (b) and (c). But first I must start with the contribution from Deputy Green, who went a little too far when he said that Jersey Telecom was worthless, which allowed the Minister for Treasury and Resources, like a ferret down a rabbit hole, to go after his prey and shake it by the neck until dead. No, J.T. is not worthless.

[15:00]

However, the decision to introduce competition - and that is the key word here, competition - into this small Island reduced its value substantially overnight, with the result that even the current Chief Minister, who was mad keen on selling off Jersey Telecom, was forced to back down ever so reluctantly from the possibility of selling it because he realised that by introducing competition before we sold it, we had reduced its value. The Minister for Treasury and Resources, whose initiative it was, all this competition, a long time ago ... competition is good for you. It does not matter what the circumstances are, it is always good for you. I believe it is not, but never mind ... made a quite robust defence of Jersey Telecom. As I sat here listening to him in his new dulcet tones, which are quite charming ... **[Laughter]**

#### **Senator P.F.C. Ozouf:**

Sir, could he withdraw that? **[Laughter]**

#### **The Deputy Bailiff:**

You have the Minister for Treasury and Resources choked with emotion, Deputy. **[Laughter]**

#### **Deputy G.P. Southern:**

That would be the day indeed, Sir, that would be the day. It was only a mild compliment. Defended Jersey Telecom quite robustly and I was sitting here thinking: "And that may all well be true but equally it is far from true about Jersey Post." We are doing exactly the same process we

did with Jersey Telecom, which is to introduce competition into a market that is too small to bear that. Of all the things that were said admirably well by the Minister for Treasury and Resources, he forgot to mention this, that the single most profitable area of the market is that which is fulfilment, where we have already introduced competition, thereby reducing the value of the post office and reducing what it can and cannot do because it is responsible for the universal service obligation down to something that it should not be. So the Jersey Post Office is, as the Minister for Treasury and Resources said, in a very difficult position. It is because - not despite, in spite of, because - of competition. Of that there can be no doubt. Let us have a look at the mechanism by which we are introducing competition now. We corporatised Jersey Post some time ago. Was it 2005, 2006? Some time ago. What did we have? What did we give to Jersey Post as a primary obligation? Why, it was the repayment of £4.5 million of loan to the States of Jersey, which has now just recently - I think it was last year - been paid off. Whoopee, here we go with the second half of the experiment. Here comes the competition. This will keep you on your toes. In terms of the twin roles that we are talking about in this proposition, (a) and (b), one really does have to ask what the role has been of our representative as shareholder. When we look at over £1 million in salaries and bonuses being paid to the board, what was the Minister for Treasury and Resources doing sitting on that board while those bonuses were paid as Jersey Post goes from a healthy state to a worse one, as it goes from one, as he suggested, with excellent employer/employee relations to one where employee morale is not just at rock bottom, it is as low as it can go? That is the reality and yet those bonuses were paid. Where was the Minister for Treasury and Resources while that happened? To address this part (a), to request the Minister for Treasury and Resources as representative of the shareholder - us - to request Jersey Post not to take any steps to cut deliveries back to 3 days a week, we are told: "Oh, well, that does not exclude 2 or 1 so, therefore, that is not valid." The Minister for Treasury and Resources I am sure will say, if he has not said already: "Not my role to interfere with the running of Jersey Post but my role certainly to protect the network and the U.S.O. and 3 days a week would be completely unacceptable." But he says: "Oh, but there is no chance of that, it is not going to happen." In that case, to pass part (a) we do no harm and we make sure belt and braces are there and we instruct the Minister to make sure that that does not happen. Before I move on to part (b), what I must say before I do is there are 2 things missing today from this debate, and it is a shame that they are both not here. One is the absence of the conclusions of the consultation process on Jersey Post, which we were promised some time ago would be ready for this debate and we could see where we were. We are told they are not here, and I think it is a crying shame because I am going to address that consultation process in a minute and in more depth later on when we cover the second part, or my own proposition. The other thing that is missing, and I simply cannot understand it, is the absence of a scrutiny sub-panel which is currently examining States of Jersey Post and I understand has received the results of that consultation process and could be most usefully contributing to this debate because of all the people in this room - barring presumably the Minister for Treasury and Resources and Deputy Egré - who might have information to inform this debate, they have it. Now, it seems to me without pre-empting any conclusions they come to as a result of their process, they have evidence. They could and should be bringing that evidence to this debate now and it is a crying shame that they are not here and they have exempted themselves. So, I would like to move on to the role of the Minister for Economic Development and here the key word is: "Competition, competition and competition." He said of the consultation process, all 16 sides of it for those who could plough through it, that this examined all the options. It certainly did not. He said it examined the options of a 6-day or a 5-day service, it did not just put forward this 3 days a week. I just want to read Members a small part of this consultation document. Section 8, where it talks of options, it says: "Ideally, in a public consultation one offers a series of options, but in this particular case there is no realistic alternative to a significant reduction in the U.S.O. Questions inevitably are confined to points of detail. Realistically, the reduced service would either have to be 3 days a week collection and delivery or 5 days a fortnight collection and delivery with 3 days on one week and 2 days on the next." So there is a consultation process that says: "We are not offering you any options. You can either say how



much you like or do not like this particular option.” It then went on: “Offering daily deliveries [possibility] in exchange for a fixed monthly charge” and they then go on: “This option would probably be attractive for a number of businesses but probably not for many householders.” So we have sunk that one, we are not really putting that one forward. Then, finally: “Offering daily deliveries to all addresses in exchange for a fixed monthly/quarterly charge. This will be similar to the standard charge levelled by other utility companies such as electricity, telephone, gas and water to access their networks. If such a charge were to be introduced, we recognise that it would be complex to implement.” So we have just given that the kiss of death as well. So if you want a daily charge, you cannot have it. It then goes on to say as question 6, and here I ask Members just to think about the nature of open-ended questions and closed questions and leading questions in surveys: “If you had a choice between deliveries 3 days a week or 5 days a fortnight, bearing in mind that the latter would be accompanied by marginally lower costs, do you have a preference?” I ask you: “Would you like the surgeon to cut off your left leg or your right leg? Do you have a preference?” This is not a properly, decently, honestly constituted consultation process. It is an appalling piece that asks you to read through some 8 sides of analysis and then say: “Do you agree or not with our analysis? If you do not, why?” Now, I happen to know of a group of politics students who are very keen on examining this and almost universally - and these are very mature and very intelligent people - took a look at this consultation document and ended up thinking: “I cannot possibly contribute to that. I would love to but this is nonsense” and put it to one side and did not respond. So I look forward when we do see the finality of what happens. So much for the consultation paper. But I can just turn briefly to the Minister for Economic Development’s response about efficiencies, which is contained in part (b), and he said in response to a question of mine on 11th May, much earlier this year: “Since the decision was announced by the J.C.R.A. that it was considering opening up the postal market, I have had a number of meetings with representatives of Jersey Post together with some of their clients and I am fully aware of their concerns. To that end, I noted in my letter to the J.C.R.A. that I was concerned that no decision should be made regarding the grants of proposed licences until the outcome of the efficiency review into Jersey Post had been concluded and that I was prepared to give them written guidance to that effect. Although the J.C.R.A. sees the efficiency review as separate from the possible award of new licences, they have given an assurance that the outcome of the efficiency review would be considered as part of the award if relevant to do so.” What does that mean? They have deemed it was not relevant. So they have gone ahead, they have granted some competition licences - although there may be more on the way, who knows, who indeed knows? - without the efficiencies in the service being completed and assessed. So, part (b) remains entirely relevant. I believe that part (c) equally is worthy of support. The fact is that Jersey Post is in a dire position. The reality is that we may well see the loss of post office in this parish or that parish. It is perfectly possible. It may well be that we end up with a 3-day service. That is how bad things have got already as a result of competition. I urge Members to support this proposition and protect our postal services, which I believe are vital elements in the Island, from the worst ravages of the introduction of yet further competition to the postal market.

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

My points have been covered. Thank you.

**The Deputy Bailiff:**

Does any other Member wish to speak? Deputy Trevor Pitman.

[15:15]

**4.1.11 Deputy T.M. Pitman:**

Not for too long as I think Deputy Southern did an excellent job. Listening to the debate, I cannot help thinking that when we get down to the real base level of all of this, it all comes down to political philosophy. We have all got those, but I do find it is very dangerous when someone,

anyone, allows all their decisions to be informed by that ideology. Because it is quite clear that in a small jurisdiction things that may work very, very well within a much larger geographic location are going to have a completely different impact. People can disagree and I know they will, but I believe that what we are seeing is a symptom now of competition for competition's sake. When I speak to members of the public, what they seem to think is that our postal service has a social value. I suppose there are quite a lot of elderly residents in the district that I represent, and it is not an exaggeration to say that for many of them, as the proposer said, that is the only individual they see. We used to say an apple a day keeps the doctor away; maybe a postie a day keeps the doctor away. Maybe. I think when we look back at how we got into this situation, we have to look ... and I was a bit confused earlier because when Deputy Martin talked about flaking I thought she was referring back to the absolute farce we made of the fulfilment situation. That has a lot to do with why we are here today. You speak to the postal workers, and I have spoken to many, I have had meetings with quite a few, and not only are they hugely concerned about their futures, the futures of their families, what really upsets them is that they are not there through any lack of efficiency of their own; they are not there in this position, in this horrible position, facing redundancies, through any fault of their own. It is largely down to decisions taken by people who are politicians and by a board who are, frankly, an embarrassment. When you look, the figures came out a few weeks ago. If we are paying someone the equivalent of doing a job in America, well, what does that say? No wonder these hard-working ordinary people ... and that is what they are. No wonder they are absolutely livid and frustrated and angry. Many people have said to me that really what this is all about is about ultimately an ideology that says: "Let us transfer public wealth into private hands." Now, I believe that there is a lot of truth in that. Postal service, especially in a small community, I think is almost one of those crown jewels. How can we get to a situation where the only profitable part of the operation is going to be lost down to our own foolishness, our own stubbornness? Certain people, and I name no names, but certain people cling, as I say, to that ideology. This is a decision much too big to be left just to the Ministers. I think every one of us, 53 or 43, however many are here today, it is down to us to take that stand. I think it is completely sensible what Deputy Martin is asking us to do. We are in difficult times and if we do not act now it is going to be a position that is totally irretrievable. There may be many who think that things are going to get a lot better suddenly next year. Well, they are not, are they? Do we want to try and do what we can to alleviate that problem or do we want to contribute to making it worse? I know which side I want to be on. I think we are all left, right, centre, whatever. Some of us are not even sure what we are, but let us all be on the side of the people, the ordinary people today. Let us put those ideologies aside and look at people who are really facing a very bleak future, not through their own fault, as I say. Efficiency, we are hearing it all the time; not through any lack of efficiency. They have worked very hard. If anyone is to blame it is their management and, as we have heard, some of the bonuses are obscene. Why should ordinary working people suffer for that? Why must we impose competition that is totally unnecessary? As I think Senator Ferguson said, why did we allow people to go down the ridiculous route of MeMo and Ship2me? I asked a question a few weeks ago about the profits they have made. I was not allowed an answer and I think we all know why. What profits? What profits did they bring? This is about something that is fundamental to Jersey's social fabric. It is not too much, it is not exaggerating to stress that. I think Deputy Martin deserves every support in this and I would implore Members to think about those people out there, because they are not just faceless people. They are our taxpayers and they are our constituents, and I would urge everyone to please support this.

#### **1.1.12 Senator B.I. Le Marquand:**

None of us are at all happy as to where we are today. This is a classic example as to how well intentioned changes combined with unexpected outside factors can combine together to have very unfortunate consequences. The corporatisation of postal services was in itself a reasonable idea. The bringing in of further competition in the local market through the J.C.R.A. was in itself a reasonable idea. The drop in the use of the postal service due to email and other factors is very,

very unfortunate. It is not unique to Jersey, it is a worldwide phenomena. But put these 3 together and we have a train crash. We have a collision at sea. I have run out of analogies for disasters. Should the States in bringing in the J.C.R.A. have excluded certain areas? Should the States have excluded postal services from the J.C.R.A.? Perhaps, but the States of the day did not do so. On the other hand, if we are looking at issues of competitiveness, we need to take into account the fact that although postal services have been subsidised in recent times to a degree by the monopoly in relation to parcel services, that in itself may not have been a situation that could be maintained indefinitely because if our postal services became uncompetitive with those other jurisdictions, that in itself could have been damaging and made uncompetitive our fulfilment industry. But this is not groundhog day. We cannot turn back the clock. We do not have a second chance to go back and do it again. What we do have is this proposition. Paragraph (b), it appears to me, simply does not work. The Minister for Economic Development says that he has no such power, effective power, and, in any event, it is too late. That leaves us with paragraphs (a) and (c). The combination of these, whatever the actual wording as referred to by Deputy Maçon, is undoubtedly intended to maintain the current level of service with the States picking up the bill, with the States subsidising it once that becomes necessary. What is that bill? Well, if we turn to page 4 of the proposition, we are not told. We have a magnificent statement that if part (b) works then it will be academic, so we do not know. I like Deputy Martin; she is a very likeable lady. But if a Minister had tried to get away with this piece of not disclosing figures, she would have chopped that Minister into small pieces. This is a blank cheque situation. We do not know what the bill is and we are being asked to commit ourselves to this. It is simply not satisfactory. We cannot commit ourselves to a blank cheque. It may be at the end of the day that for social reasons there may be grounds for public subsidy. I hope that situation will not arise but it may be. But if it is, then we need to deal with that as a complete proposition, a proposition which indicates exactly the reasons for private subsidy and exactly what the costs are and why that is more important than other matters which might happen otherwise. So, while I am unhappy, very unhappy, with the situation we find ourselves in with the train crash, with the collision at sea, I cannot support any part of this proposition.

#### **4.1.13 Deputy A.E. Jeune:**

I will not defend paying management bonuses when the States effectively are the shareholder and, therefore, are not getting the returns it might get. But I also do not believe the concept of jobs for life has a place in today's society, as many of the people in the Island working in the private sector know only too well. But I think the proposer has also underestimated our older people as a great many of them have embraced the new, more cost effective new technologies and many are very skilled at it. By the J.C.R.A. permitting the opening up of the postal market, it has also meant that local companies can continue to do business in the Island and employ local people.

#### **4.1.14 The Connétable of St. Brelade:**

I was yet another Member on Deputy Southern's Scrutiny Panel regarding the incorporation of the post office and had been interested in this proposition brought by Deputy Martin. There is no doubt that subsequent to incorporation it is my view that the management has been somewhat dilatory in its approach to modernisation and they have been naïve to the needs of the local fulfilment industry. This in turn has led them to letting down the resident clientele. Should we have fewer letter boxes? Should we have letter boxes down the road such as is often the case on the continent and lots of other countries? I contend that the fact of their inability to offer the service required by the fulfilment industry has led to that industry researching other avenues of dispatch and stimulating the entry of other players into the market. So, in truth, the present post office regime has only itself to blame. I would urge the Minister for Treasury and Resources to press the board and hold them to account, and I shall support (a) but, as has been explained by other Members, (b) and (c) are unsupportable. I congratulate the Minister for Treasury and Resources for giving the post office the stamp of approval, but I think they need to go a little bit further.

#### **4.1.15 Deputy J.B. Fox of St. Helier:**

The demise of the industry in its traditional sense has been on the cards for a very long time. I was involved obviously from the security aspects all over the years and I could see it happening in those times, and that was before everybody, including the Jersey library, having very successful computers to teach our older generation how to communicate with their relatives from Trinity to Australia at no cost. Now we have all sorts of other communication links that cost next to nothing. My wife every year used to send Jersey calendars to all our friends and relatives all over the world. It now costs more to send the calendar than it does to buy it and consequently alternative methods are being used. It is sad because it was brought up about the community. The community is very essential and keeps people alive, it keeps people healthy and it keeps the necessity of people being encouraged to stay at home as opposed to being a burden on society and losing their will to live, whether it is accommodation they do not want to go to or they are away some distance from their families or whatever. But the negative publicity that is happening at the moment with the bonuses and the way that redundancies are being done ... and it is a small Island and I like everybody else knows at least one or 2 postmen who will tell you how it is affecting them or their organisation, et cetera. That is what we have to get to grips with and get to grips with it now. I am sorry, Deputy Martin, I cannot see these 3 things today being the way forward to the solution to the problem.

[15:30]

Industry is far better at dealing with change than public states are. I can see where the Deputy is coming from because it is always painful when there is change. Nevertheless, we must be seen to be encouraging the way forward and to minimise the pain that inevitably will happen and to steer where we can into encouraging alternatives where possible. It will happen. I have seen it happen in the U.K. again through my previous profession where whole industries have changed dramatically and whole towns and cities have had to change, but it has been painful. We have over the years had various changes which we have seen from the tourism industry, the agricultural industry, et cetera. It does change and at this present moment in time we have to collectively, through the States and through the private sector, find ways of sustaining our Island's growth but we have to find it in a way that we can do it that is economic and cost effective. I am afraid that especially with part (c) we cannot just go down a way of writing cheques without having the business plan and the proper presentation to the States here to say how the long-term future can be or the existing can be turned around into a positive long-term future.

#### **The Deputy Bailiff:**

Does any other Member wish to speak? The Connétable of St. Ouen.

#### **4.1.16 Connétable K.P. Vibert of St. Ouen:**

I have quite a lot of sympathy with this proposition and for the way Deputy Martin has attempted to represent the views of the Communication Workers Union. But like Senator Le Marquand I think that I am not able to support all of this proposition. On the other hand, I think that we as a Government have failed the Island and the Islanders because we have not explained properly to the Island what the competition regulatory authority does and what it is trying to achieve in the work it is doing for the Island. I think that many people out there think that it is just a way of changing - changing the Island, changing the face of the Island - just for the sake of change. Certainly, when faced with the opportunity of using a franking machine at the parish hall to frank all the letters that come out of there, I made the decision that we would continue with stamps because it was one way of supporting the local post office and maybe helping it to remain sufficiently financially viable that it would remain in our community. Because I am aware that although Deputy Jeune has said that many old people have embraced modern technology, it is the fact that modern technology has moved on so far that has caused the situation we are in. There are still many old people out there and many young people out there who would like to remain and retain what they have been used to over so many years. So, as I said, I have great sympathy with this proposition but unfortunately I do not believe that I can support all of it.

## **The Deputy Bailiff:**

Does any other Member wish to speak? Deputy Higgins.

### **4.1.17 Deputy M.R. Higgins of St. Helier:**

Like many other Members, I am very, very concerned about the way that this whole matter has been handled. I think that the role of the Ministers and also of the management of Jersey Post is deplorable. The Ministers, if I go for them first - this is the Minister for Economic Development and also the Minister for Treasury and Resources - I believe are adopting an ideological stance on this thing. They happen to believe in competition. They happen to believe in small government and it is this sort of standpoint they come from: hands off, let them just get on with it. I just do not think ... I think there are some things that are not to be just pushed out of the way, let others deal with. There are things that we should deal with ourselves. Now, let me just go back to this. First of all, I believe that the workers at Jersey Post are hard working and I have nothing but admiration for them. I know that all the ones that I have met, I see them out in all weather and they are the most cheerful bunch you could ever imagine and also do a very, very good service. So, I have nothing but admiration for them. As far as the management is concerned, when I hear of the salaries they are getting, I think it is excessive considering the problems they have and the time delays in dealing with all this change that has been inevitable and that has been coming. We have all seen what is going on. We all know that change is inevitable; things have to go on and you cannot just stay the same. But the whole process could have been managed much better and, therefore, I do condemn them in that sense. Going back to the Ministers, well, we have the J.C.R.A. I wonder again, like other Members, about the role of the J.C.R.A. I really am not convinced that this body is doing the best for this Island, not only in this area but in other areas. I do believe that we need to review the role of the J.C.R.A. and perhaps bring changes to the law. One of the other things that was mentioned by some Members was the social role. Now, okay, I know it is harking back, but we have become a very impersonal society with more competition and everything else; people do not have time for people. Yet the postman going round to some of the rural communities, as Deputy Martin mentioned earlier, are one of the main lifelines. I can also say in my own constituency there is one lady whose husband was found on the floor having suffered a stroke by the postman and had it not been for the postman he could have lain there for hours. We are also aware that many other people have died in their own homes and do not see anybody, and the postman is one person who does get around to most homes and may notice changes and can notify the authorities. I might add, by the way, in the case of the constituent unfortunately they suffered a stroke, it was a severe one, and they died, but had it been something else, they could have received medical attention and been gotten to hospital and still be with us today. I believe that the postal service is not only just about letters, it is also about people and the role within the community. So far as the statement about the proposition itself, I would like to mention a few things. On part (a) I do question what the ... sorry, I do support part (a). There is no way that any of us want to see any cutback to 3 days. I know it has not been said by the Minister for Economic Development that it will happen, but the point is nobody wants an absolutely appalling postal service like that. So, we can make our statement here today and say how we feel about that one and it is not going to hurt anybody by saying it. As far as part (b) is concerned, I must confess I do believe that it is bolting the stable door after the horse has gone because the authority have already done their action, but I again blame the Ministers for not trying to be more robust with the J.C.R.A. and making it quite clear how strongly this House felt about this issue some time ago. As far as part (c) is concerned, I will support it because it is not saying totally underwrite, cover a complete subsidy and everything else, it says make a contribution to. We are not determining what the contribution is. That will come later, going back to I think it was the Constable of St. Ouen, when we know what the business plan is. So, once we have further information we can decide if we wish to subsidise the postal service and to what extent, and I do not see anything wrong in supporting part (c). So, to conclude, I would just say that personally I have been disgusted with the whole way that the postal matter has been dealt with both politically and also by the company, and I think it is

about time the States started making its views known on this. I will be supporting those parts of the proposition I have indicated.

**The Deputy Bailiff:**

Does any other Member wish to speak? The Connétable of Grouville.

**4.1.18 Connétable D.J. Murphy of Grouville:**

I will support part (a) of this proposition. I think we must show that we need the 5-day a week service at least; certainly 3 days a week is just not acceptable. On part (b), I am torn on that one. I was going to say we should not support it and then, quite frankly, we are only asking to request him to see. I can go along with that because the J.C.R.A. are completely out of control and I think it will be a shot across their bows to say: "Come on, let us have some common sense here." Part (c), I cannot, on principle, support that, I am afraid. So I support parts (a) and (b) but not part (c).

**The Deputy Bailiff:**

Does any other Member wish to speak? I will ask Deputy Martin to reply.

**4.1.19 Deputy J.A. Martin:**

I thank the Constable for those words. Just before I go into my summing up, I would like to note that there is a plan, and this is in the paper, for a new product development manager and the manager will be responsible for the development of the portfolio of new product initiatives, ensuring profitability and the fulfilment of customer needs, just 4 years too late. That is a Jersey Post advertisement 4 years too late. I was accused by the Minister for Economic Development of having one of my usual passionate speeches and again I listened to his speech very intently to find some answers. Where was the plan? Where has been the management plan, the strategic route where they were going to cut back from 2006? I heard nothing, absolutely nothing. When the Minister for Treasury spoke he said he could not possibly give away commercial secrets. It is all there. Go to Royal Mail, what they are doing, what they have done, it is not rocket science. So I really am quite disappointed in the Minister for Economic Development's speech. It had presentation 10 points, content *nil points*, absolutely no content. I was very enthused when I heard Senator Ferguson speak, because we do not often agree but she made some extremely good points to support my proposition. She knew more about some of the management and some of the people who had been taken on, she knew about the big new trucks that they had to have, obviously to see up to the airport, because it is a road they must need. Then she went on to talk about New Zealand is now profitable but went back to something I said in my opening speech about they have little hubs where people go and pick up their mail. This could be, as I think she said, the parish hall. I do not think that is what we want. Let me just, before I carry on, get one thing straight. For all those who have said I am supporting the Jersey Communications Workers Union, I am presenting a petition signed by a few thousand Islanders who I am sure, if there had not been so many rules put on, they would have signed. Let us just dismiss that it is jobs for life. As Senator Breckon said in his speech, I know the workers down there have been in talks, and the Minister for Treasury said it, for 18 months. The workers came up with having a 2-year pay freeze and redundancies and they wanted management to match. They wanted management to come up with some rationalisation. Yes, what are they going to do with the 22 post offices that are losing money? Make them a commercial outlet. They were not worried about that, and I am certainly not worried about that, but where was the backing of management? It has not been done. As I say, the Minister for Treasury tells us that there have been talks. Again I would agree there have been talks for longer than before December 2009, but the people in the know, the people that have been doing the jobs for years, the people who had some good ideas, were not listened to and they brought in a brand new human resources person. I will stand here today, and the Minister can shake his head, there are experienced workers in Jersey Post today doing jobs that they have been trained for years and they have moved them. They have moved them from their jobs. I do not get it, they do not get it, and

the efficiency of now training youngsters ... because they are paid as a postal worker or postal operative, if they are one or the other they cannot do the job they used to do because they are getting £2 or £3 more an hour. Absolutely nonsensical, absolutely. Deputy Green made the point he may have been a bit off beam with Jersey Telecom. He certainly was not off beam with other things. To me, the person Jersey Post employed and brought in Ship2me is no longer there. We do not know if he was paid off, it is very silent on that, but he is not there. It is not making the profit it wanted but, again, why was Jersey Post's core functions not sorted out before we had MeMo and Ship2me and some other ... well, we do not know. There apparently are propositions, because we are now going to employ a manager to implement them. It is absolutely mad.

[15:45]

**Senator P.F.C. Ozouf:**

Sir, would the Deputy give way?

**Deputy J.A. Martin:**

Yes, Sir.

**Senator P.F.C. Ozouf:**

If I can just explain. I did not cover that in my speech but there is a good reason why Jersey Post diversified. It is to attempt to find new things for the business to do, which is facing declining postal volumes. Ship2me is designed to ... that is the reason.

**The Deputy Bailiff:**

Senator, I am sorry, you are not allowed a second speech. You cannot clarify something you have not said already. [Laughter]

**Deputy J.A. Martin:**

I think the Minister was over-egging the pudding again about diversification. I totally agree that they should but they should have been doing it since 2006. If you step back, you read the scrutiny report, they have been protected from competition because they owed money back to the taxpayer, back to the States, over £4 million. Talk about no incentive if you support (c); what did the new board have except - and I still cannot get my head around it - they had performance bonuses paid to them when they have been losing money. So there we are. The Deputy of St. Peter gave his experience, and he has been working very closely with the morale of the workers and what has happened down there lately, and I know he supports, and I support him in that we think that morale and the way things have been happening down there is not correct. He also told us about vehicles and again this is for management to sort out. It was the same thing. We had the Minister for Treasury many years ago talking about T.T.S. (Transport and Technical Services) with the parish truck going up one way and the T.T.S. truck coming and passing in the middle but they sorted that out between the parish and T.T.S. They have sorted it, but where is Jersey Post management? I am sorry, what are the postal workers supposed to do when they meet their friends on the road, just because it is under a different thing, what you are doing here? It is obviously not sorted out properly. The Deputy of St. John said it was good that there was some passion with Assistant Ministers - oh, he is not here - and I would like to remind him I was on the scrutiny panel and every recommendation I would say still stands today on the corporatisation of Jersey Post. I voted against the corporatisation of Jersey Post. I was also on the 2 panels that looked into the selling off of Jersey Telecom, which was going to be driven through this House. Do you know what the difference is between Jersey Telecom and Jersey Post? Jersey Telecom was not sold and Jersey Telecom still own the landlines. Once we go out into competition, nobody owns those streets out there and nobody but the business-grabbing competition will want anything but fulfilment. They will not do that last mile; they will not do the last 5 miles; they are not interested in it, not interested in it at all. The Deputy of St. John said he would probably support me but I think Deputy Green

stood up and said it is a matter of opinion if you think all Assistant Ministers are nodding dogs. That is everyone's opinion. Senator Ozouf, I think I have covered mainly what he said but he did say it is not fair - he was having a go at the Deputy of St. John - that the Deputy of St. John always stands up and has a go about fulfilment. His words were if we had not have followed his policy we would have lost fulfilment altogether and we would not have a cross-subsidy. He did not carry on to say to support Jersey Post but that is exactly what he meant. Jersey Post relies on fulfilment and it already does cross-subsidise the U.S.O. and the other parts, your 22 sub-post offices, your other things that they do. So do not be mistaken, the Minister for Treasury may have been losing his voice but he clearly said fulfilment is cross-subsidising the rest of Jersey Post. Deputy Maçon, perhaps he should be looking to be a lawyer because he did pick me up on exactly what my proposition says and so did Senator Le Marquand. If I am coming here today - and please do not think I am anyone's fool and obviously not a lawyer - I am requesting the Minister for Treasury and Resources as a representative of the shareholders to request Jersey Post not to take any steps to cut deliveries back to 3 days a week. So, am I really asking him to abolish it all or maybe one or 2 days? No. They have gone out, this is where this is from, as Deputy Southern said: "Do you want 3 days a week? Do you want 5 days a fortnight and then some weeks you will get 3 lots of post and some weeks you will get 2 lots of post?" You do not get to the meat until you get to page 8 or 9 and, again, all the elderly people in the Island who do depend on it, Deputy Jeune thinks they are all now computer literate. I am sorry. The worst thing I ever did was buy my mum and dad a mobile phone. **[Laughter]** I can tell you some conversations I have had on that, or not. But anyway, they are getting there, they are trying, but they rely on their postman and they are lucky they still live in the U.K. where they get a 6-day delivery, which, as Senator Ozouf pointed out, is subsidised by the government. They have had cutbacks and they have rationalised it. I will take all 3 separately. I just want to look at (b) and say is it too late? We read out the written answer. The Minister for Economic Development did ask the J.C.R.A. if they would wait for the cost benefit analysis and they thought if it was relevant, and while we have been running around here trying to keep the post office open in the Central Market and other things, they have been allowed. The fulfilment stripping does not start until 2012. I am not sure if it is late 2012 but I am hoping it is, so if we do support this we have got 2 years. It is the message from this House, this is asking a message to say we are not happy with what has been happening in the last 4 years. I am sorry if any of you heard a different speech from the Minister for Economic Development or the Minister for Treasury only to say that all of us that said the management had been doing something, we never got what and where was the evidence. I am very sorry, and if I am offending anybody I am only offending somebody who is getting a great deal of money that I would have needed then to have some answers. Why was there not some briefing papers? What were some plans? It is not commercially sensitive. It is not rocket science. They cannot come up, they cannot pull rabbits out of the hat. So then, as Deputy Higgins said, I am asking in (c) to contribute to. When the J.C.R.A., in all their wisdom, with all their legal power, were thinking about giving out licences in this most tenuous, small Island where the post is not going to grow, did they think to ask the operators to pay something to us to give to Jersey Post to do the U.S.O.? No, they did not but I am standing here, I have got to come up. I am not in any bonuses; I am going to get no rise in my salary this year. I am not going to get a performance bonus, but where is the J.C.R.A.? Where are they? I am very sorry. I have left Deputy Lewis to the last because he made **[Laughter]** ... not to be disrespectful. I think he made a very good point but he made it, to me, the wrong way round. He was a bit concerned, even if we supported it, what powers did the Minister for Treasury have and what powers did the Minister for Economic Development have. They both stood up and said basically *nil points*, as I said before. What I am asking today is what power does this House have? What power do we have any more? Can we not send a message to Jersey Post? It is not to the workers, it is to the people of the Island and that is what it is about, not the power 2 Ministers have. I said in my report, it is too big a decision to leave. I will take it in 3 parts, but today you have all got a chance to support a good postal service, one at least as good as Guernsey. Thank you very much.



**The Deputy Bailiff:**

Do you call for the appel, Deputy Martin?

**Deputy J.A. Martin:**

I will take it in 3 parts.

**The Deputy Bailiff:**

The appel is called for. The first vote is on paragraph (a) of the proposition. I invite Members to return to their seats and I asked the Greffier to open the voting.

<b>POUR: 29</b>		<b>CONTRE: 14</b>		<b>ABSTAIN: 0</b>
Senator T.J. Le Main		Senator T.A. Le Sueur		
Senator A. Breckon		Senator P.F. Routier		
Senator F. du H. Le Gresley		Senator P.F.C. Ozouf		
Connétable of St. Ouen		Senator J.L. Perchard		
Connétable of Trinity		Senator S.C. Ferguson		
Connétable of Grouville		Senator A.J.H. Maclean		
Connétable of St. Brelade		Senator B.I. Le Marquand		
Connétable of St. Martin		Connétable of St. Saviour		
Connétable of St. Lawrence		Connétable of St. Clement		
Connétable of St. Mary		Connétable of St. Peter		
Deputy R.C. Duhamel (S)		Deputy S.S.P.A. Power (B)		
Deputy of St. Martin		Deputy I.J. Gorst (C)		
Deputy R.G. Le Hérisier (S)		Deputy A.E. Jeune (B)		
Deputy J.B. Fox (H)		Deputy E.J. Noel (L)		
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

**The Deputy Bailiff:**

I will ask the Greffier to reset the system. We now come onto a vote on paragraph (b) and I ask the Greffier to open the voting.

<b>POUR: 22</b>		<b>CONTRE: 20</b>		<b>ABSTAIN: 0</b>
Senator A. Breckon		Senator T.A. Le Sueur		
Senator F. du H. Le Gresley		Senator P.F. Routier		
Connétable of St. Ouen		Senator P.F.C. Ozouf		
Connétable of Grouville		Senator T.J. Le Main		
Connétable of St. Martin		Senator J.L. Perchard		

<b>Connétable of St. Lawrence</b>		<b>Senator S.C. Ferguson</b>		
<b>Deputy R.C. Duhamel (S)</b>		<b>Senator A.J.H. Maclean</b>		
<b>Deputy of St. Martin</b>		<b>Senator B.I. Le Marquand</b>		
<b>Deputy R.G. Le Hérisssier (S)</b>		<b>Connétable of Trinity</b>		
<b>Deputy J.B. Fox (H)</b>		<b>Connétable of St. Brelade</b>		
<b>Deputy J.A. Martin (H)</b>		<b>Connétable of St. Saviour</b>		
<b>Deputy G.P. Southern (H)</b>		<b>Connétable of St. Clement</b>		
<b>Deputy of St. Ouen</b>		<b>Connétable of St. Peter</b>		
<b>Deputy of Grouville</b>		<b>Connétable of St. Mary</b>		
<b>Deputy of St. Peter</b>		<b>Deputy of Trinity</b>		
<b>Deputy P.V.F. Le Claire (H)</b>		<b>Deputy S.S.P.A. Power (B)</b>		
<b>Deputy K.C. Lewis (S)</b>		<b>Deputy I.J. Gorst (C)</b>		
<b>Deputy T.M. Pitman (H)</b>		<b>Deputy A.E. Jeune (B)</b>		
<b>Deputy T.A. Vallois (S)</b>		<b>Deputy A.T. Dupré (C)</b>		
<b>Deputy M.R. Higgins (H)</b>		<b>Deputy E.J. Noel (L)</b>		
<b>Deputy A.K.F. Green (H)</b>				
<b>Deputy J.M. Maçon (S)</b>				

**The Deputy Bailiff:**

I ask the Greffier now to reset the system and we will proceed to a vote now on paragraph (c) of the proposition. I ask the Greffier to open the voting.

<b>POUR: 10</b>		<b>CONTRE: 33</b>		<b>ABSTAIN: 0</b>
<b>Senator A. Breckon</b>		<b>Senator T.A. Le Sueur</b>		
<b>Deputy of St. Martin</b>		<b>Senator P.F. Routier</b>		
<b>Deputy J.A. Martin (H)</b>		<b>Senator P.F.C. Ozouf</b>		
<b>Deputy G.P. Southern (H)</b>		<b>Senator T.J. Le Main</b>		
<b>Deputy of Grouville</b>		<b>Senator J.L. Perchard</b>		
<b>Deputy K.C. Lewis (S)</b>		<b>Senator S.C. Ferguson</b>		
<b>Deputy of St. John</b>		<b>Senator A.J.H. Maclean</b>		
<b>Deputy T.M. Pitman (H)</b>		<b>Senator B.I. Le Marquand</b>		
<b>Deputy M.R. Higgins (H)</b>		<b>Senator F. du H. Le Gresley</b>		
<b>Deputy A.K.F. Green (H)</b>		<b>Connétable of St. Ouen</b>		
		<b>Connétable of Trinity</b>		
		<b>Connétable of Grouville</b>		
		<b>Connétable of St. Brelade</b>		
		<b>Connétable of St. Martin</b>		
		<b>Connétable of St. Saviour</b>		
		<b>Connétable of St. Clement</b>		
		<b>Connétable of St. Peter</b>		
		<b>Connétable of St. Lawrence</b>		
		<b>Connétable of St. Mary</b>		
		<b>Deputy R.C. Duhamel (S)</b>		
		<b>Deputy R.G. Le Hérisssier (S)</b>		
		<b>Deputy J.B. Fox (H)</b>		
		<b>Deputy of St. Ouen</b>		
		<b>Deputy of St. Peter</b>		
		<b>Deputy P.V.F. Le Claire (H)</b>		

		<b>Deputy of Trinity</b>		
		<b>Deputy S.S.P.A. Power (B)</b>		
		<b>Deputy I.J. Gorst (C)</b>		
		<b>Deputy A.E. Jeune (B)</b>		
		<b>Deputy A.T. Dupré (C)</b>		
		<b>Deputy E.J. Noel (L)</b>		
		<b>Deputy T.A. Vallois (S)</b>		
		<b>Deputy J.M. Maçon (S)</b>		

**5. Postal services: direction and guidance to the Jersey Competition Regulatory Authority (P.138/2010)**

**The Deputy Bailiff:**

We now come to P.138/2010, the Postal Services direction and guidance to the Jersey Competition Regulatory Authority, lodged by Deputy Southern, and I ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether they are of the opinion: (a) to agree that Article 9(1) of the Postal Services (Jersey) Law 2004 should be amended to provide that the States and not the Minister for Economic Development should have the responsibility in the public interest to direct or guide the Jersey Competition Regulatory Authority in relation to the implementation of any social or environmental policies in respect to postal services, and (b) to request the Minister for Economic Development to take the necessary action to bring forward for approval the necessary legislation to give effect to the proposal.

**5.1 Deputy G.P. Southern:**

As somebody must have said at some stage somewhere, that was a good start. Let us see if we cannot administer the coup de grace. I suppose the starting point is to start with Deputy Lewis' question about what powers the current Minister for Economic Development does have. He has the power to direct or guide the Jersey Competition Regulatory Authority in relation to the implementation of any social or environmental policies in respect of postal services. For the sake of clarity, let us point out that when he directs, he issues a directive, then the J.C.R.A. have to comply with that directive and that can be on environmental but, most importantly, social grounds. If he offers guidance then the J.C.R.A. will take that into account but does not have to follow that guidance.

[16:00]

But a direction has to be obeyed. In my mind, the ability of the Post Office to deliver on 5 or 6 days a week, to do that last mile, to reach Mrs. Ecobichon out in St. Ouen, is absolutely a vital, I believe, social service. The ability of Mrs. Ecobichon out in St. Ouen to have a post office within reasonable walking or mobility scooter distance is a vital social service. The J.C.R.A., let us have no doubt about it, are fixated by the first part of their title, the Jersey Competition Authority, and promote competition in all cases, wherever possible. They are less concerned by the restrictions that must apply to competition in small tight-knit communities where often the best answer is to accept you have got limited competition, because of the small size of the market, and that the best way to control that market is to regulate. They pay very little attention to regulation and most attention in their drive to promote competition. Now, the control of that body lies currently with the Minister for Economic Development and in particular on social grounds his ability to direct the J.C.R.A. Deputy Martin said in the previous debate: "Where is the J.C.R.A.?" The J.C.R.A. is here to promote competition. That is what it does. The equal question could be asked: "Where is the Minister for Economic Development in terms of his control?" I believe he shares that vision of competition, competition and yet more competition to an extent which is coterminous with the

J.C.R.A. So, for example, when he was asked earlier in the year by me: "Will the Minister act to suspend any further action on the granting of additional post licences until the employment and universal service provision issues at Jersey Post have been resolved, and if not why will he not act?" he has this to say: "Postal services for 2004 has a preamble which says that the Minister should perform his functions in such a manner as he considers is best calculated to protect and further the interests of users of postal services and to perform them [and now his emphasis] by promoting competition." Further on he says: "And to impose a minimum of restriction [and again the Minister has emphasis] on persons engaged in commercial activities connected with postal services." Then it goes on further: "The law states that the Minister should impose a minimum of restrictions by promoting competition." The Minister appears as equally keen on competition as the J.C.R.A. So, in giving him the power to control the J.C.R.A. we have apparently given it away. We apparently have no control on the J.C.R.A. I would argue that the effect of that is the chaos, and I use the word advisedly, we now have in Jersey Post where we have put the entire Universal Service Obligation at risk to the extent that we are having a consultation process which even talks about a 3-day a week service or 5 days every fortnight, and I find that abhorrent. The Minister has done nothing, or at best, if I was being generous, very little about that. Why? Because he is just as keen on competition, even in this small society, as the J.C.R.A. is. This proposition says, as was debated some time ago and it was an option, that this House should realise, I think, the error of its ways in giving a competition-mad Minister the power to control the J.C.R.A. and they should roll him back in and take back that control. So I am urging this House to take back this control. For example, in consulting over the proposal to promote competition and to engage more competition in particularly the fulfilment market, the contribution from the C.W.U. (Communications Workers Union) was that the C.W.U. strongly believes that the introduction of competition should remain subordinate to maintaining a viable universal service which meets the needs of the public and businesses. They believe that the U.S.O. is both socially and economically beneficial to Jersey and provides a highly valued public service. Then later on we come to an issue that completely divides Jersey Post and the J.C.R.A. Jersey Post have stated that its estimate of the cost of the U.S.O. is of the order of £5 million. That seems extreme to me, but the estimate published by the J.C.R.A. is of £100,000 to £150,000, the cost of the U.S.O., the cost of getting the post out to St. Ouen on a daily basis, the cost of collecting from a large number of post boxes: £100,000 to £150,000. That seems remarkably little to me but one which says in the J.C.R.A.'s thinking: "Oh well, it is only that small amount, it is a relatively straightforward problem and our issuing of more licences will not make that much difference. They can recoup that surely by efficiencies elsewhere." That enormous gap seems to me a problem. Nonetheless, without control the J.C.R.A., on the basis of its own estimate, has said: "We can afford to plough ahead with competition in this area." As we have seen, that is creating chaos. It says: "While the J.C.R.A. stated in its initial notices that it has carried out significant work with its professional advisers on the cost of providing the U.S.O., this has not been published and the J.C.R.A. does not disclose any estimate of this in its decisions. The cost of the U.S.O. is clearly germane to any assessment of Jersey Post's ability to provide the U.S.O. and of the reasonableness of such an obligation and the likely impact of the introduction of competition." So there we have what is happening. Here, with some apologies to some Members, I turn to make reference to Guernsey. Guernsey is in a very similar position to us in that its postal volumes are going down of ordinary mail, its fulfilment industry is thriving to the extent that Tesco Jersey, which no longer operates from Jersey, operates out of Guernsey and, as Deputy Martin said earlier, people tend to think that it is still operating out of Jersey, it is not, it is contributing to the economy and to postal volumes in Guernsey. The problem that we have is, however, not replicated in Guernsey. Guernsey has recently put out a consultation saying: "What do you think if we go from 6-day delivery service to 5-day delivery service?" Not 3 times a week or 5 times every fortnight, but: "We reduce from 6 days a week to 5 days a week." That is what they are consulting on. Why can they afford to consult on 5 days a week when we cannot? I put it to Members that the issue there is that where does the control of the U.S.O. and the power to direct lie in Guernsey? It lies with Guernsey States and their U.S.O. and conditions of operation dictate that they have a legal

monopoly over certain classes of mail and that their O.U.R. (Office of Utility Regulation) is told by the States that one of the conditions is that that area of monopoly must be sufficient to maintain the U.S.O. and if there is a question over the U.S.O. that has to come back to the House because of all those economic but social and environmental considerations. Guernsey has kept control over directing its competition authority, which is called the Office of Utility Regulation and, almost by definition, appears to have a different set of values from ours. In its title is the word “regulation” as in ours but there is no “competition” there although it is there to promote competition; almost the name tells you the different emphasis. I would argue that the problem is that in Jersey we have gone totally all out for competition, especially in this sensitive area, and that what we should do is reel back from where we are now, part of which is to give the power to direct the J.C.R.A., control the J.C.R.A. in its efforts to the Minister for Economic Development and this is a relatively minor step to say: “Whoa, hang on, it does not seem to be working. Let us take back that power to direct J.C.R.A.” That simple move I believe would be appropriate on the back of the decisions that we have just made to give out the message that this House will protect its postal services and, in particular, the Universal Service Obligation and will not sacrifice it to the current god of competition.

**The Deputy Bailiff:**

The proposition is made. Seconded? **[Seconded]**

**Deputy M. Tadier:**

I missed the opportunity before. Similarly to the last proposition I and the other team members of the sub-panel who are looking at the whole area of J.C.R.A. and the postal service at the moment will be declaring an interest and excusing ourselves from the rest of the debate because we are looking at these issues and it would be wrong, I feel, for us to pre-empt our own conclusions.

**The Deputy Bailiff:**

That is a matter for you, Deputy. I myself do not see it as being an interest that is significant but nonetheless. Does any Member wish to speak?

**5.1.1 Deputy P.V.F. Le Claire:**

I think it is important that somebody speaks. The Minister for Economic Development certainly should be speaking in my view. I seconded the proposition because I believe fundamentally that I am afraid to say - and this is in no way a reflection of how I feel about the individual - the Minister for Economic Development has focused a lot of his attention on improving areas and delivered on those but I do not believe the way the States have set things up, personally, and I have not gone into this in great depth, but I just feel that there is not as much expression of the view of this Assembly to the J.C.R.A. that I think was there in the past and I feel that it is vital that we are elected by the community and we are able to put across these expressions.

[16:15]

There is no criticism of the individual or his functions as Minister but I just believe that we have saddled him with a sorry task and I may be mistaken but I do not believe that he is of the opinion that he should be putting this view across or, if he has been trying to put it across, that he has been putting it across sufficiently. It certainly did strike me in previous debates that he appeared to not realise that he could do this and that is why I have seconded the proposition because I believe that if you bring it back inboard to the States then, as a States Assembly, we can have a better control of things. I just do not think that the way things are set up at the moment it is adequate and I do not wish to be demeaning or insulting to the Minister because I do think he does a very good job in many other areas but I think this is a task that I would like to relieve him of.

**The Deputy Bailiff:**

Does any Member wish to speak? Senator Maclean, the Minister for Economic Development.

### **5.1.2 Senator A.J.H. Maclean:**

There seems to be a reluctance for Members to speak. It is obvious from the previous debate, and it is indeed already from the comments that have been made by Deputy Southern, that this is an emotive subject as one would expect. I made the comment this morning it is emotive and it is not so just for Members within this Assembly but for Islanders as well, and I appreciate that. Sadly there are no easy answers to solve the very real challenges that Jersey Post face. That is because despite what some may think the problems that Jersey Post has are not just local problems and the word "competition" has been mentioned on many, many occasions during the course of this debate and the last one. The competition issue that needs to be borne in mind is not just a local competition issue and not just a competition issue with regard to what the J.C.R.A. may or may not do with regard to licences. Of course we do know their stated position at the moment. The fact is that Jersey Post faces international competition and that international competition threatens the very basis of their major income source, the performance industry. So, it is not a threat just relating to the U.S.O. and it is not a threat just from the J.C.R.A., it is a result of external market forces outside, I might add, of our control. Jersey Post is operating in a highly-competitive global market. Although this represents threats of course at the same time it represents opportunities, the opportunities we can see with the significant revenues that have been driven, to the benefit of Jersey Post and to the Island, which has allowed and sustained the traditional postal service that has been provided to date. Jersey Post has had to deal with and are in the process of restructuring its business in recognition of the external challenges and external competition that it is facing: restructuring, delivering efficiencies, reducing their costs to operate. Turning directly to this proposition I am afraid that the proposition itself contains some notable factual inaccuracies and does not comprehend the process perhaps that the law requires the J.C.R.A., or indeed myself as Minister, to follow. The decision of the J.C.R.A. to consider additional postal licences for the operation in the local market is not, and I have already alluded to this, the main threat to the U.S.O. The U.S.O. is under the greatest threat due to the current conditions in the postal market itself and this is not a situation that is unique just to Jersey. Quite simply, the number of letters sent through the postal system is falling, not just in Jersey but in virtually every other country around the world. The reasons for this are fairly clear: falling mail volumes are due to an advance in technology, principally, it springs to mind, the Internet. In Jersey, and this is an important point, mail volumes have declined by 16 per cent in the last year. Declining mail volumes are now an established trend. As I have already said, the threat of competition is not just local. It is happening outside of Jersey and it is threatening the Jersey Post business model right now. That is because the big revenue generators are from the fulfilment industry, as I have mentioned, but our local fulfilment companies have and are being approached by international mail operators and that is an absolute fact. These international postal companies want our fulfilment businesses to relocate out of Jersey. They want to attract the very lucrative business that we currently have. They can offer them lower postal charges to move their businesses away from Jersey and that is the very real threat that Jersey Post is facing at the moment. Jersey Post, quite simply, cannot match the competitive prices available elsewhere to the fulfilment industry unless it restructures and unless it reduces its high operating costs, something it is actively trying to do at the moment. Regardless of what the J.C.R.A. do to allow local postal competition, it has to be recognised that Jersey Post is already competing in this international marketplace. Market decline and the impact on Jersey Post is exacerbated by the pace at which it is able to restructure and deliver efficiencies. In discussing the future of the U.S.O. and Jersey Post with the Economic Affairs sub-panel I said that changes to the U.S.O. should come as a last resort. I also said that efficiencies identified and agreed between Jersey Post and the J.C.R.A. should be achieved first. If Jersey Post can complete its restructuring plans then a more modest change to the U.S.O. would probably be sustainable. In such circumstances a change from a 6-day delivery to a 5-day delivery would be a realistic option, an option that I believe Guernsey and others intend to mirror and already the proposer, Deputy Southern, has mentioned that Guernsey is entering into a consultation on this very matter. On the subject of Guernsey the Deputy mentioned

Tesco and others, in fact there were 16 licences that were revoked from fulfilment organisations operating out of Jersey, operating as the Minister for Treasury and Resources mentioned earlier on, effectively as a brass plate. It was not particularly good business for Jersey, it certainly was not good reputational business for Jersey and what it did do, more than anything else, was threaten the very successful and lucrative fulfilment business that we currently have. We should never forget there are hundreds of local jobs in fulfilment in Jersey and millions of pounds paid by local companies in tax due to the success of the fulfilment industry we have.

**The Deputy Bailiff:**

Minister, forgive me for interrupting you, and I will appreciate your desire to answer many points that Deputy Southern made in proposing this proposition. Nonetheless, this proposition is not involving a debate about Jersey Post. It is only a question of whether or not the regulation of competition law should be changed so as to remove from the Minister for Economic Development the power to give direction and guidance and give that power to the States instead. If it would be possible to direct your comments to that, that would be more relevant.

**Senator A.J.H. Maclean:**

Thank you for your advice, Sir, I will certainly take it on board. I was trying to set the scene for Members, I am now moving on to Guernsey which is relevant, Sir, I believe, despite what you have just said, because the Deputy and proposer did raise the correlation between the way in which Jersey deal with this matter ...

**The Deputy Bailiff:**

I did let him go very widely, which is why I have let you go fairly widely so far, but we must remember what the proposition is about.

**Senator A.J.H. Maclean:**

Indeed, Sir, thank you for your guidance. **[Laughter]** In any event, I was just about to discuss in a little bit more detail about the Guernsey position at the moment and I think the relevant points there are that Deputy Southern was suggesting in his earlier remarks that Guernsey has got a far better model, if I summarise what he was saying, than we have here and he was suggesting that it was all down to the States of Guernsey which could make the decision with regard to the U.S.O. and, indeed, postal services. In fact he is not entirely correct with regard to that. The Guernsey States do not have the ability to develop postal policy in isolation, and this is an important point to bear in mind; they do it in consultation with Guernsey Post, with the Office of Utility Regulation the O.U.R., to which he referred, and to Guernsey's Treasury and Resources Department, all of whom feed into the process. It is relevant to consider the fact that Guernsey has a slightly different makeup in regard to their market when considering such matters as post. That is why I am going to elaborate a little bit more. In terms of directions, the O.U.R. are directed by the Guernsey States to ensure the U.S.O. is prescribed as provided. The O.U.R. then, separately, is directed to ensure that the licence condition was included in the Guernsey Post licence in an effective way. What this means is that Deputy Southern is not correct that the O.U.R. is directed to determine the U.S.O., that is a matter for the States after, as I have said, proper and complete consultation including with the Regulator. The other matter that I was going to touch on with regard to the specifics of this particular proposition was the impact that a change to Article 9 would have. It is particularly important to recognise that an amendment to Article 9, which is what the proposition seeks, as proposed, will not in itself deliver control of the U.S.O. to the States. The postal law would have to be reviewed in its entirety in order to allow that to happen and I think it is just worth mentioning that the Deputy quoted, selectively I thought, with regard to the law and, if I may, I would just like to remind Members of what it says with regard to the powers that I have as the Minister for Economic Development. It says: "The Minister for Economic Development may, if he or she considers that it is desirable and in the public interest to do so, give the Authority written guidance

in respect of the principles, procedures or policies to be followed by the Authority [the J.C.R.A.] in relation to any other matter relating to the performance of the Authority of its functions under this law.” This is specifically relating to the social and environment policies. It goes on to say: “It shall be the duty of the Authority [and this is important] in carrying out any of its functions to comply with any such direction and to consider, without necessarily complying with, any such guidance.” I am not sure that was clearly alluded to by the Deputy, although he seems to be nodding his head. Continuing on, the postal law as I have said would need to be, under this amendment, reviewed in its entirety. That is because the powers of direction and guidance refer only to matters of social or environmental policy. This does not cover the full scope of the U.S.O. and also includes some considerations of its financial impact and the ability of the current incumbent to sustain its activities under that particular function. To that extent the proposition is flawed because Members will not be able to determine the detail of the U.S.O. purely by changing Article 9. The proposition does not protect Jersey Post, rather it seeks to place it in an unsustainable position where it would be left with, in all probability, 2 options. One would be perhaps to simply hand the licence back; the other would be to seek direct public funding in a climate where we are struggling to cut costs and balance our public finances. The Minister for Treasury and Resources has already made it clear that no public funds would be available to support Jersey Post or the U.S.O. In summary, Jersey Post is continuing to restructure and drive efficiencies in order to be able to support the U.S.O. The J.C.R.A. has given them more time until January 2012 to become more efficient and more competitive by opening the market more slowly than was initially suggested. If the U.S.O. needs to be redefined, I have already stated earlier today, and I will reconfirm for Members, that it will be brought back to this Assembly to be debated and for this Assembly to make that decision. I believe that that is the right and proper way to deal with this matter. In such a way, I would urge Members to reject this particular proposition. Thank you.

[16:30]

### **5.1.3 Senator P.F.C. Ozouf:**

Goodness me, Sir, that was quick. I was just taking some advice and I will hand back to the Solicitor General the Postal Services Law, because I was reviewing it, having been partly responsible for the law. The law is a very well-crafted law, if I can say so myself, which has all sorts of checks and balances in place. What Deputy Southern is stating, after the 5 or 6 years that this law has been in place is, effectively, he does not like the policy of the Minister for Economic Development in terms of competition. All of the remarks he said in his opening address were because he does not like the views of the Minister for Economic Development in terms of competition. What he wants to do, and it is a clever tactic if you like, he wants to take away that power from the Minister and as a first step he wants the Minister to bring forward those directing capabilities, the Minister to bring forward a change to the law so effectively a majority of States Members could direct the J.C.R.A. in relation to those matters. I do not believe he has made the case for that. We have just had a proposition which has requested both the Minister for Economic Development and me to do something and of course we will do what the States has asked us in relation to that, I am quite sure. But there is a very important issue which, with respect to the Minister, he did not say in respect of what the States can already do. He said that he will bring forward the U.S.O. - which is, I think, at the heart of this whole issue - that Deputy Southern wants the States to make the decision on the U.S.O. and to have delivery, et cetera. He needs to cite, and I am going to pass back the Solicitor General’s consolidated edition of the law because he will tell me if have got it wrong, in my recollection of the law the States can already make regulations under Article 8(3)(e) of the law where the States can make regulations about the U.S.O. and the power exists already. The States can not only express a view to the Minister, they can pass regulations which will form part of the issues that the J.C.R.A. will have on decisions in terms of determining. That power of regulation to set the U.S.O. already exists in the law, it is there. So, I cannot see for one moment why there would be a requirement to now change Article 9(1) of the law. Those checks and balances, if the Deputy would have read the law, and if he would have understood its



construction, its complexity, its checks and balances, he would not be wasting the Assembly's time. If he wants to just remove the responsibilities from the Minister for Economic Development completely, and we could have a committee of economic development, because that is what we will be doing, we will be having a committee of economic development for the whole States and we will be making all these directions and guiding decisions, a nice step in the direction of a committee form of government, that is what the Deputy I think is wanting to do, then fine, let us make that decision. Let us have a committee for economic development. But the law is subtly well-crafted to deal with the issue of the U.S.O. The States can make regulations in relation to the U.S.O. This proposition is not required and I urge Members, while they have certainly views about U.S.O.s, the States can make decisions about U.S.O.s, that is what the law has said. This proposition goes too far and I urge Members to reject it.

**5.1.4 Deputy R.G. Le Hérisier:**

I wonder, given that revelation by the Minister, would the Solicitor General be kind enough to confirm and perhaps elaborate upon that because it has an enormous bearing upon this debate, obviously.

**The Deputy Bailiff:**

Solicitor General, would you like to advise the Assembly?

**5.1.5 The Solicitor General:**

Yes. The law requires the Authority to have regard to a number of factors when exercising its functions and (e) is: "Any objectives the States prescribe by regulations." They include, but are not limited to, the provision of a universal postal service. So in other words, if the States decided to pass regulations that define the objectives of a universal postal service the Authority must have regard to those regulations.

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

Sir, could I ask, because I would like to seek clarification please from the Solicitor General, because I did say when I supported this I had not gone into great depth in this, but this is news to me so I just wanted to ask therefore, is it not normally the Minister that brings the regulations before the Assembly or is this something that a single back-bench Member can now bring as a stand-alone proposition?

**The Solicitor General:**

It simply says that: "If the States prescribe regulations." There is no requirement that the Minister brings the proposition in the first place.

**The Deputy Bailiff:**

As a matter of order, Deputy, there would be the possibility of a debate on whether the Minister should be requested to bring regulations forward or, alternatively, if a Member were so advising, it may be that the Member could propose such regulations.

**Deputy G.P. Southern:**

May I seek your advice? I believe it is probably a point of order, in that the argument presented by the Minister for Treasury and Resources about the U.S.O., while it may be valid, is not relevant to this proposition, which merely seeks to acquire back to this House the power to direct the J.C.R.A. Is that the case, in your determination, Sir?

**The Deputy Bailiff:**

I understood your proposition to be based upon the argument that it was necessary for the States to take control over the Universal Service Obligation in part, therefore it seems to me that it will ...

**Deputy G.P. Southern:**

Is that what the proposition says? Because it is the proposition, not the report, Sir.

**The Deputy Bailiff:**

Deputy, I am not going to have a debate about it with you but, if you wish to say that the basis upon which you propose this proposition to the Assembly is not relevant, that is a matter for you. Does any other Member wish to speak? The Connétable of St. Ouen.

**5.1.6 The Connétable of St. Ouen:**

I cannot support this proposition because if I could refer to Senator Le Main maybe this is the opposite end of the wedge to what he had the other day. This is the thin end of the wedge [Laughter] because I believe that, if we adopt this today, then it leaves this House wide open to similar propositions with every little bit of decision that the J.C.R.A. are going to make in the future. I do not think that is the way we should be governing.

**Deputy A.E. Jeune:**

It is more of a clarification from yourself really because, if this proposition were to get through and it brought the decision-making back to this Assembly, why would we need a J.C.R.A.? Does that make sense, Sir?

**The Deputy Bailiff:**

It is definitely not a question for me but it may be a question you wish to put to Deputy Southern for him to deal with in his summing up. I am not sure.

**Deputy A.E. Jeune:**

That is fine. Because my understanding is that the J.C.R.A. is independent. If we are going to be instructing them, where is the independence? If the proposer would explain in his summing up.

**The Deputy Bailiff:**

Does any other Member wish to speak? Deputy Le Hérissier.

**5.1.7 Deputy R.G. Le Hérissier:**

Just very quickly, surely one way out of this imbroglio is to see whether the Economic Development Scrutiny Panel would be prepared to commission a survey on the role of the J.C.R.A., if it is at that level that people have concerns.

**The Deputy Bailiff:**

Does any other Member wish to speak? Then I call on Deputy Southern to reply.

**5.1.8 Deputy G.P. Southern:**

First of all, I will thank all Members who spoke in this debate and refer to the Minister for Economic Development's words when he described this, in his inimitable way, as an emotive matter. I believe it is more than that, it is not merely emotive - because that is to demean the argument - it is essential. It is essential because the competition issue needs to be borne in mind, exactly as he said. The fact is that we have gone ahead with issuing licences in a very sensitive area of the postal service which jeopardises the entire Jersey Post set-up. Not only have we done that, we have done that despite assurances that Jersey Post was to be allowed to restructure fully before it met this new advent of competition. The fact is that the Minister has failed, I think, in his duty to act as a check and balance on the activities of the J.C.R.A., of that I do not think there can be any doubt. The idea was that this particular part of the Jersey Postal Law should form part of the checks and balances, a mechanism of control, and that control has, I would argue, singularly failed to be engaged. I think, in a sense, it is regulator capture; the Minister has been captured by the J.C.R.A. and it has supported what he has done to the hilt. Plus the argument he made, backed up by the Minister for Treasury and Resources, was to set up a chimera, a straw man. This particular

proposition does not mention specifically the U.S.O, it is part of the issues around the U.S.O. and the risks that we are now seeing. It is about the control of the J.C.R.A. Does the J.C.R.A rule or does this House rule? Certainly, the Minister for Economic Development has allowed it full rein and to take what I believe to be a very dangerous track on what is happening. In effect, what I would argue is the J.C.R.A. is out of control and we need to rein it in. He further said that, in comparing it with Guernsey, of course, its Chamber does not have control of the U.S.O. but then my proposition does not suggest we should take control of the U.S.O. That may be for another argument on another day but this does not say so, it merely says the check and balance, the control that currently lies with the Minister for Economic Development to control the activity, to direct the activity of the J.C.R.A., has failed. I believe the appropriate action is for this body to take that power to direct back into its own hands in order to ensure that we have a fit postal service in the future. I call for the appel, Sir.

**The Deputy Bailiff:**

The appel is called for and I invite Members to return to their seats. The vote is on the proposition as set out in paragraphs (a) and (b) and I ask the Greffier to open the voting.

<b>POUR: 12</b>	<b>CONTRE: 30</b>	<b>ABSTAIN: 1</b>
<b>Senator A. Breckon</b>	<b>Senator T.A. Le Sueur</b>	<b>Connétable of Grouville</b>
<b>Connétable of St. Martin</b>	<b>Senator P.F. Routier</b>	
<b>Connétable of St. Lawrence</b>	<b>Senator P.F.C. Ozouf</b>	
<b>Deputy R.C. Duhamel (S)</b>	<b>Senator T.J. Le Main</b>	
<b>Deputy of St. Martin</b>	<b>Senator F.E. Cohen</b>	
<b>Deputy J.A. Martin (H)</b>	<b>Senator J.L. Perchard</b>	
<b>Deputy G.P. Southern (H)</b>	<b>Senator S.C. Ferguson</b>	
<b>Deputy of Grouville</b>	<b>Senator A.J.H. Maclean</b>	
<b>Deputy P.V.F. Le Claire (H)</b>	<b>Senator B.I. Le Marquand</b>	
<b>Deputy T.M. Pitman (H)</b>	<b>Senator F. du H. Le Gresley</b>	
<b>Deputy M.R. Higgins (H)</b>	<b>Connétable of St. Ouen</b>	
<b>Deputy A.K.F. Green (H)</b>	<b>Connétable of Trinity</b>	
	<b>Connétable of St. Brelade</b>	
	<b>Connétable of St. Saviour</b>	
	<b>Connétable of St. Clement</b>	
	<b>Connétable of St. Peter</b>	
	<b>Connétable of St. Mary</b>	
	<b>Deputy R.G. Le Hérisier (S)</b>	
	<b>Deputy J.B. Fox (H)</b>	
	<b>Deputy of St. Ouen</b>	
	<b>Deputy J.A. Hilton (H)</b>	
	<b>Deputy of Trinity</b>	
	<b>Deputy S.S.P.A. Power (B)</b>	
	<b>Deputy I.J. Gorst (C)</b>	
	<b>Deputy of St. John</b>	
	<b>Deputy A.E. Jeune (B)</b>	
	<b>Deputy A.T. Dupré (C)</b>	
	<b>Deputy E.J. Noel (L)</b>	
	<b>Deputy T.A. Vallois (S)</b>	
	<b>Deputy J.M. Maçon (S)</b>	

**The Deputy Bailiff:**

Can I give notice to Members that, although this should be circulated presently, 2 further amendments: one is an amendment to P.103, the fifth amendment to the North of Town Masterplan (Revised), lodged by the Deputy of St. Mary and the other, P.104: Sustainable Transport Policy, second amendment, lodged by the Connétable of St. Helier.

[16:45]

## **6. Draft Employment (Amendment No. 5) (Jersey) Law 2010 (Appointed Day) Act 201-(P.142/2010)**

### **The Deputy Bailiff:**

We now come to the Draft Employment (Amendment No. 5) (Jersey) Law 2010 (Appointed Day) Act, P.142, lodged by the Minister for Social Security and I ask the Greffier to read the citation.

### **The Greffier of the States:**

Draft Employment (Amendment No. 5) (Jersey) Law 2010 (Appointed Day) Act: The States, in pursuance of Article 7(2) of the Employment (Amendment No. 5) (Jersey) Law 2010 have made the following Act.

### **6.1 Deputy I.J. Gorst (The Minister for Social Security):**

I am pleased to propose this long-awaited new right for employees to come into force on 1st January next year. The right to a redundancy payment is an essential part of any modern employment relations framework to compensate an employee for the loss of their job and to prevent hardship. The law will give employees the right to receive a redundancy payment, subject to 2 years' continuous employment, take paid time off work to arrange training if they are proposed for redundancy and to complain to the Employment Tribunal if their employer does not comply. The law provides a straightforward method of calculating redundancy payments: one week's pay for every year of employment with an employer. The value of a week's pay is capped at a minimum sum, which is the most recent average weekly earnings figure in Jersey, which currently stands at £630 a week as of July 2010. An employee who is made redundant will be entitled to receive a redundancy payment in addition to any other amounts owed by the employer, including pay in lieu of notice where that is due also. The minimum period of notice that an employer must give to an employee on terminating employment will be reduced via this law as the current periods were generous to reflect the lack of the right to a redundancy payment. As with unfair dismissal, an employer making redundancies has a duty to follow a fair process including warning and consulting the employees about redundancies, establishing fair selection criteria and exploring alternatives to redundancy. I am temporarily withholding 2 aspects of the original draft amendment for enactment at a later date and they are the removal of the upper age limit and consultation with employee representatives. Members will have the opportunity to debate those proposals when I bring a further amendment to the States on 30th November and that is P.143. In order not to delay the enactment of the right to redundancy pay I urge Members to adopt this Act.

### **The Deputy of St. John:**

Sir, as an employer can I declare an interest and not partake?

### **The Deputy Bailiff:**

Is the proposition seconded? **[Seconded]** Does any Member wish to speak? Would all Members in favour of adopting this kindly show?

### **6.1.1 Deputy G.P. Southern:**

If I may just briefly mention that this has been the result of a long process which fundamentally restarted again last year with the redundancies at Woolworths and I congratulate the Minister for all the efforts that he has put in in order to bring this about. **[Approval]** It is an issue that, to be

honest, this House should be ashamed that it has not addressed earlier, as in 10 years ago. But, nonetheless, without wishing to rain on anybody's parade, it is welcome now.

**6.1.2 Deputy T.M. Pitman:**

Even more briefly, I want to congratulate the Minister, too. I would also like to congratulate Deputy Southern and all those of us who really got behind this when it was brought into the public focus with Woolworths. Deputy Southern really put a lot of work into that and he deserves a lot of credit, as does the Minister, so it is well overdue and it is good to see it here.

**The Deputy Bailiff:**

Does any other Member wish to speak? Minister, do you wish to reply?

**6.1.3 Deputy I.J. Gorst:**

Indeed, Sir, yes. I am quite bowled over. No doubt normal positions will be resumed on 30th November. I also, of course, welcome and thank the previous Minister that put in train the drafting of this particular law, and I thank him for that. **[Approbation]** It has taken a long time to get to where it is today but I think it is a fair and proportionate amendment to the employment law. I should just say the second part to this law is an insolvency fund which will allow redundancy payments to be made from an insolvency fund where the firm goes insolvent. That piece of legislation is also nearing the end of the pipeline and it is currently being drafted. So I maintain the Act and ask for the appel, Sir.

**The Deputy Bailiff:**

The appel is called for. I invite Members to return to their seats and I ask the Greffier to open the voting.

<b>POUR: 43</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
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 Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				

<b>Deputy J.A. Hilton (H)</b>				
<b>Deputy P.V.F. Le Claire (H)</b>				
<b>Deputy of Trinity</b>				
<b>Deputy S.S.P.A. Power (B)</b>				
<b>Deputy S. Pitman (H)</b>				
<b>Deputy K.C. Lewis (S)</b>				
<b>Deputy I.J. Gorst (C)</b>				
<b>Deputy M. Tadier (B)</b>				
<b>Deputy A.E. Jeune (B)</b>				
<b>Deputy of St. Mary</b>				

## ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

### The Deputy Bailiff:

Chairman, we now come on to the arrangement of public business for the next meeting.

### 7. The Connétable of St. Mary:

The arrangement will be as per the lavender sheet with the following changes. On 16th November we have amendment number 4 to P.103, North of Town Masterplan (Revised), lodged in the name of Deputy Le Claire and amendment number 5, lodged in the name of the Deputy of St. Mary. Then to the Sustainable Transport Policy, P.104, we have the amendment in the name of the Deputy of St. Mary and the second amendment in the name of the Connétable of St. Helier. On 18th January we have the addition of P.167, the Speed Limits: Revised Policy lodged in the name of the Minister for Transport and Technical Services and the item of business moved from today, P.136, Esplanade Quarter: Deferment of Works and Endorsement of Development Agreement, lodged in the name of the Deputy of St. John.

### The Deputy Bailiff:

Chairman, as I understand it, amendment number 4 to P.103 is a day out of time and amendment number 5, which has just been lodged today, is 2 days out of time. Have you had any discussions with the Minister as to whether or not there is a view that those amendments should be taken and will you be asking the States to agree to adopt the amendments, notwithstanding the fact that the full 2 weeks' lodging period has not been ...

### The Connétable of St. Mary:

Sir, I have had some initial discussions. I wonder if the Minister for T.T.S. could allude to whether he is willing to move the item down the agenda. It does look like we have a lot of business and it is likely that we are likely to be sitting, I think, for the full 3 days.

### The Deputy Bailiff:

Are you suggesting that the arrangement of public business for 16th November may not follow the precise order which is listed here on the pink sheet?

### The Connétable of St. Mary:

Yes, Sir, that is what I am suggesting; if it is possible, to allow it to go like that at this stage, subject to confirmation.

### 7.1 Deputy P.V.F. Le Claire:

It was remiss of me not to get it in one time and the Greffier kindly worked late that night to enable me to get it in one day late. I do apologise for this. However, I was myself delayed in as much as I was waiting for some other amendments from the Constable of St. Helier which did not satisfy areas that I had expressed in previous amendments. The Minister for Planning and Environment has agreed with me yesterday that he would be happy to move the North of Town Masterplan

sufficiently down the debate so that my amendment would not be time-barred and I would not necessarily need the permission of the House to debate it. That discussion took place when we reconvened with the Chairman of Privileges and Procedures Committee arriving just at the conclusion of that agreement. I look now to stage right, the Minister for Planning and Environment arrives, and hopefully he will confirm that he is happy to do that and I will be able to debate my amendments.

**7.1.1 Senator F.E. Cohen:**

I am more than happy to accommodate the Deputy and the other amendment.

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

I thank the Minister.

**7.2 The Connétable of St. Brelade:**

With regard to the amendments to P.104, Sir, I have to comment that I do find it rather exasperating, when the projet has been lodged on 19th July, for amendments to be thrown in at the very last minute. There has been considerable consultation obviously before this took place. I will discuss with officers the process but I suspect that I would be happy to slip P.104 to the end of the agenda, if that helps the situation.

**7.3 The Connétable of St. Clement:**

Could I ask that P.131, Samarès Nursery Site: Removal from the Draft Island Plan be deferred, Sir, to the same date that the Minister for Planning and Environment lodges the Island Plan?

**The Deputy Bailiff:**

It can be deferred but we cannot defer it to that particular date.

**7.4 The Deputy of St. John:**

P.136, could the Chairman of P.P.C. tell us what date she has put it down for, please?

**The Connétable of St. Mary:**

I said that was for 18th January. I did mention it to the Deputy.

**7.5 Senator P.F.C. Ozouf:**

Just for good order's sake in relation to 7th December, are we confirming that the States sitting will start on the afternoon of 6th December in order to continue the practice that we start major debates ... I am not sure whether there are going to be any budget amendments, I know there are none yet, but I imagine that there may well be a few. Are we going to confirm that we are starting on 6th December and then start the budget on 7th December?

**The Deputy Bailiff:**

Chairman, is that something that you have considered?

**The Connétable of St. Mary:**

I think that would probably be sensible to get the organisational business out of the way, bearing in mind that Santa is on his sleigh-run that day. I think we have time still to get all the organisational business done.

**The Deputy Bailiff:**

Is that a proposition, do the States agree to sit on 6th December, starting at 2.30 p.m.? That seems to be agreed. Senator Breckon.

**7.6 Senator A. Breckon:**

P.150, Jersey Financial Services Commission: Imposition of Fines, I have received some notice that some of this preliminary work has already been done. So with that mind, Sir, I would ask if the House would move this to 18th January until I get confirmation of that and, if there is any change to that, I would inform Members in due course. That is P.150, which is on the bottom.

**The Deputy Bailiff:**

On 16th November. You are seeking to move that to 18th January?

**Senator A. Breckon:**

Yes, Sir.

**The Deputy Bailiff:**

Those amendments are looking in more danger at the moment.

**7.7 Senator F.E. Cohen:**

Sir, if it would help the Assembly with business on 16th November, I would be prepared to defer the debate on the North of Town Masterplan until January. I would rather not but I would be prepared to if there was too much pressure on 16th November.

**The Deputy Bailiff:**

The pressure seems to be easing by the minute, Chairman. Are there any other questions which Members have for the Chairman of Privileges and Procedures? Do you want to respond to that?

**The Connétable of St. Mary:**

I am just unclear, Sir. We have an offer to move that. We do have a large agenda, I think, on 16th November but it is a matter for the Assembly if they wish to take the offer.

**The Deputy Bailiff:**

Well, Minister, I think it is a matter for you as to whether you wish to seek to defer the North of Town Masterplan debate, but it would certainly seem unlikely that debate on P.103 with its amendments and debate on P.104 with its amendments, can be done in a single day.

**Senator F.E. Cohen:**

Sir, it would seem that the Chairman of Privileges and Procedures would prefer a deferment so I would defer to 18th January.

**The Deputy Bailiff:**

So P.103 is deferred to 18th January.

**Deputy M. Tadier:**

It was lodged on 19th July. Is that just within the 6 months?

**The Deputy Bailiff:**

That is just in time. Are there any other questions for the Chairman? Then we seem to have the agenda settled. The States now stand adjourned until 16th November.

**ADJOURNMENT**

[16:59]