

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 3rd NOVEMBER 2010

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

[09:30]

PUBLIC BUSINESS - resumption

**1. Draft Health Insurance Fund (Miscellaneous Provisions) (Jersey) Law 201- (P.125/2010)
- resumption**

The Deputy Bailiff:

The debate now resumes on P.125, the Draft Health Insurance Fund (Miscellaneous Provisions) (Jersey) Law 201- and I call upon Deputy Le Claire.

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

Thank you, Sir, I think.

The Deputy Bailiff:

You indicated yesterday you wanted to speak.

Deputy P.V.F. Le Claire:

I did, Sir, I had no idea I would be the first to go. So I will dispense with all the briefing papers I was about to collect and practice from my art of busking. **[Laughter]** Business as usual. It was interesting to listen to the debate yesterday and many of them seemed to dwell upon the fact that we were shirking away from touching ring-fenced funds. While I can appreciate that there can be concern in that regard, I cannot go along with supporting a notion that we are doing the best thing by shooting ourselves in the right foot rather than the left foot. We need, in my view, to support this today because it is an investment, and if we are to save money from the social security fund being squandered on people's ill health in the future we need to invest in primary care. I am afraid for too long now the States has managed itself and the affairs of Jersey as an accountant would, balancing the budget, without any desire to invest to save. While Deputy Southern who may pull this has an identified new method of funding social security and has reservations about how social security funding is spent and is cautioning us not to support this today, I would say it is absolutely the wrong thing to do back away from supporting this. Not only is a States decision that has already been taken but we have to reflect upon the fact that most recently Senator Ferguson and I asked questions of the Minister for Health and Social Services in relation to waiting periods in hospitals in Jersey. Although those in themselves are nothing new what was quite enlightening was the fact that Jersey's system of a 28-week waiting time did not mirror that of the U.K.'s (United Kingdom) 18-week pen to knife waiting time because of the lack of investment over the years that Jersey has made in comparison to that of the United Kingdom. Then one has to ask oneself, are we not lauding ourselves as a prime place to come and do business for the finance industry. Do the finance industry executives and their families not feel the need to have proper provision of healthcare in Jersey and are we giving them that, because at the moment the U.K. is what we are benchmarking upon and we are light years away from producing results that they are achieving now, especially with moves in the future and, most recently, with patient led care. We look at the World Health Organisation, the last time I looked ... and I was going to go down and collect my notes to give Members and updated version but in 2003 I believe the United Kingdom was 17th in the World Health Organisation league tables. Below that of Jamaica and below that Cuba. Cuba in itself may not be that surprising because Cuba does, as a measure of G.D.P. (Gross Domestic Product) invest significantly in doctors' education and its healthcare system is one to be admired. It is a decision that is made on social grounds in relation to what it provides its people as to what it gives in terms of dedication to the health service. I am sorry to say that we do not give as equal measure to the health service in Jersey as we do to the finance industry, and we should. For years now, 10 years, I have been involved with health and I have been on the back benches supporting health, and I have been in arguments with the Ministers for Treasury and Resources and the

Council of Ministers and the Presidents of Policy and Resources Committees - and Senator Le Main will back me up on this - we have had to come time and time again to the States for more money to make sure that health comes in on budget otherwise we will be breaking the Finance Law. Senator Le Main himself, a long-serving member of the Health Committee knows full well that more money is needed in health. I know he has made a very strong speech yesterday to say that we should not be doing this, and he called it the thick edge of wedge. I do not know how to take that. I would say it is not a very sensible approach to oppose this; thick is the comparison I would give. I would say if we do not get behind investing now in primary healthcare and supporting this proposition, we are just opening ourselves up for more money spent in chasing the problems that are going to develop in later years with a growing demographic elderly population. So I ask Members to really put aside their concerns about the social security fund. It is in the best position it has been in for years and that is congratulations to the Minister for Social Security. It has got a surplus now that can manage all pensions within the Island, in its latest report, for 5 years. We have got 5 years of secure pensions available. We are moving through a transitional period where we are trying to buffer the effects of a global downturn, we are trying realign ourselves through comprehensive spending reviews and fundamental spending reviews and the Council of Ministers, led by people such as Senator Maclean, are forming boards, as will the Minister for Housing through Deputy Power, to make sure best value for money is driven into these departments. I would say, and I am going to say it again, I have said it before, Health and Social Security in the future should be one. So these arguments about where the money is going within those 2 organisations should not even be coming to this floor in those terms because this is money that people have paid for their health. People have paid this money and I find it ironic and absolutely nonsensical that the Minister for Health and Social Services is sitting there with a begging bowl while the Minister for Social Security has his pockets overflowing with cash. £6 million he is willing to give to the cause and I would say to any Member in the States Assembly, if they go out to the public today and ask them if they would rather have the States of Jersey manage their money or deliver a healthcare system that they can rely upon, I know which answer they are going to get.

Deputy A.E. Pryke of Trinity:

Excuse me, Sir. Members would have received on their desks a letter from the primary care body of Jersey. This came to me last night and I have asked for it to be circulated.

1.1.1 Connétable A.S. Crowcroft of St. Helier:

It is quite hard to follow Deputy Le Claire. For an unprepared speech I thought he did extremely well. Perhaps he should not prepare them more in the future. **[Laughter]** I rise to both compliment Senator Le Main on a very spirited speech which closed yesterday's session and certainly gave a lot of food for thought, but to challenge him on his aspersions - more than aspersions, his criticism - of the family nursing professionals out there in the community. I am sure he did not mean to but I think the effect of his speech would be extremely demotivating for the morale of all of those people out in the community for family nursing. **[Approbation]**

Senator T.J. Le Main:

I would like a point of order, because I think it is important, what I did say was that I believe that Family Nursing are providing services that quite honestly go far beyond what should be done. That is all it was. I have never criticised the organisation or the staff. In fact I am a great supporter and a member of the association.

The Deputy Bailiff:

It is not a point of order but it is clarification.

The Connétable of St. Helier:

I thank the Senator for his clarification. I did say that I am sure he did not mean to say anything that would be demotivating but certainly I was not the only Member who was concerned about those remarks. As a parish that relies heavily on the work of Family Nursing and Home Care in St. Helier I wanted to make sure that there was no doubt about our support for the work they do. Indeed there is an argument that Family Nursing should be doing more of the kind of work that Health are doing. I noticed on the table in the appendix that childhood immunisations has nearly 5 full-time staff from Health but I know that Family Nursing have always, in my book, been at the front line of immunisation and that sort of service in the community. Also, of course, Deputy Fox's speech about the diabetic situation I thought was extremely compelling and I think that challenges those who are concerned about the principle here of transferring money from one pot to the other.

[09:45]

Of course things do need looking at. No one is going to stand up and say that there are not efficiency savings to be made. I cannot believe we have 5 full time staff actively involved in smoking cessation. I hope they are not all involved in putting up anti-smoking notices but are dealing with people who genuinely want to quit, and providing that kind of support. I am sure I will be told it is much better to catch people at this stage than after they have developed lung cancer. Having said all that, I think Deputy Le Claire made the key point that this is public money we are talking about and to see this used for primary healthcare services makes sense. It does not make sense to leave it in a different department. This is silo mentality which we are supposed to be getting away from. Having said that, if Scrutiny are going to call this in, Scrutiny has an important role to play and I will certainly be supporting that.

1.1.2 Senator P.F. Routier:

When I first looked at this proposition my immediate reaction was fairly similar to a number of members who have spoken and expressed their concern about using the Health Insurance Fund in the way that is being proposed. Then I reminded myself exactly what the fund was established to do. The Government Actuary, when he reviewed the fund, supported the original committee decision that a fund should have 12 months worth of funds to act as a buffer against any annual variations in the cost of providing the primary care support. Some Members have spoken about the fund in the terms as if it was a pension fund, it is supposed to pay out in years to come but it was never designed to do that. It was designed in a way as a pay as you go system to help to pay for primary care. But also it was recommended that there should be 12 months worth of funds as a buffer above the annual running costs. So over the years the income to the fund has outstripped the expenditure and has built up an amount of £80 million in the fund. So when you compare the £80 million to the actual annual expenditure we quite clearly see that the existing buffer fund works out at 2 and a half years of fund as opposed to what the fund was designed to do, that is to have one year's expenditure, which was endorsed by the Government Actuary. When I looked at the forecast for the income and expenditure for this year of the fund it continues to show a growing fund. So the forecast income for this year is £29.1 million of income and the expenditure is less than that at £25.2 million. So that leaves another £3.9 million to be added to the fund yet again this year. This money belongs to the public to be used for their health costs and I would respectfully suggest to Members that we do not have the moral right to be able to be withholding it from them, especially when the fund is mounting up and it is exceeding the designed financial buffer amount by one and a half years. I ask Members to recognise that this fund is not like a pension fund to save money for the future, it is a pay as you go fund but it has built up funds which do belong to the public. I understand that the Scrutiny Panel would like to progress a system which would bring in one of the other components which are permitted by the legislation, and that is dental care. When I was Minister I looked very carefully at introducing this at the time and it was proving to be very expensive to include this in the scheme and would have required an increase in contributions for it to have been funded effectively. Fortunately there are other schemes in place which helped with dental healthcare, some provided by the Health Department themselves and the dental clinic for

children and for those with disabilities. There is also the children's dental insurance scheme which is run by Social Security, and of course we introduced the over-65 scheme, which provides financial support for dental and optical needs for the elderly. So as we stand today there is support for dental care for the most vulnerable in our community with these schemes and, of course, income support also covers the cost of dental care for those in need. I mention this because there may be a view that the health funds could be diverted to dental care as opposed to supporting this proposition. There may be a case for introducing a new dental component within the Health Insurance Fund but I believe it would require an increase in contributions to the existing scheme. Supporting this proposition is the most appropriate way to make healthcare better for our Island. I will just pick up on a point that was raised by the Assistant Minister for Health and Social Services, Deputy Martin, regarding the increase in prescription numbers and her interpretation of the figures. I am afraid the conclusion that she reached that the number of prescriptions increased because they became free when I increased the average subsidy from approximately £9 for every prescription to the £11 average it is now, is a long way from being correct. The real reason for the increase in prescriptions being charged to the fund was because the Health Department negotiated that nearly 450 new drugs were put on to the list, which many were only previously available through the hospital. So that has increased the number of prescriptions, and quite rightly because those things need to be put into the public list. This increased the number of prescriptions and also the costs to the Health Insurance Fund considerably. This decision was made with our eyes wide open and it was absolutely no surprise that the number of prescriptions being charged to the fund increased in the way that they have. The decision was something that could be well afforded from within the fund and that is proving to be the case because the fund is still increasing. I was interested yesterday in Senator Le Main's comments about Family Nursing and Home Care and his view that the organisation had been growing and doing things that were generally outside of their remit. He obviously has great knowledge of the organisation because of his association over the years, however I would respectfully point out that even if there has been some creeping service over the years I would suggest that the core services that they do provide are very valuable and that with our ageing society the services of the Family Nursing and Home Care will be increasing even further. That is right and proper, and they will need our support not only verbally but financially as well. We are being asked today to agree that the health fund should be used to fund health matters. We need to ask ourselves what are we here for. I believe we are here to serve our constituents, whether they be in St. Brelade or any part of the Island. We are not here to block our constituents getting the health care that they desperately need. While I can see why Members are uncomfortable with the way Health are showing that they would use the funds, I can see that there are significant benefits to our community. Those health service benefits are in some jurisdictions ordinarily provided in the community by G.P.s (general practitioners). If Members want to see a modern primary care service which is safe and appropriate and is monitored correctly then we should support this proposition. If Members would like to have the opportunity to see a practice nurse for basic healthcare in the community then we should support this proposition. If we want to see continued support for diabetics then we should support this proposition. This is a great opportunity for Members to show their support for our health service which I think most recognise requires a significant uplift. At this time I do not believe that our constituents will thank us for sitting on the funds which are supposed to be used for healthcare. There are sufficient funds to pay for the 2 years that are being proposed and I urge Members to support the proposition.

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

Robbing Peter to pay Paul. Short-termism. That is probably about it. I am not really happy with this proposition. Why do we have a Treasury Department, why do we have a Minister for Treasury and Resources, why do we organise our finances? **[Interruption]** That is a popular note, why indeed? Perhaps somebody can bring a proposition to remove him. He has removed himself anyway, he is not here this morning. Why do we have a Treasury Department, why do we organise our finances centrally? It is to bring long-term, sensible financial planning to the whole of the

organisation. So what we have got here? We have embarked with an enormous amount of upset, goodwill and work undertaken by our Civil Service Department for a comprehensive spending review which attempted, because I do not think it has got there as yet, to curtail the finances or curtail the spending of the larger spending committees. So what are we doing? Have we delivered that? No. Health and Social Services Department are still going to be growing in terms of the monies that they are spending and it might well be right that we want a health service that continues to be properly funded and to expand. We have not had that debate. It is here hidden in this report on page 5. Page 5 says: "It is considered to be reasonable in the circumstances to allow funds to be released from existing H.S.S.D. (Health and Social Services Department) budgets to meet the cost of essential growth in H.S.S.D. funded areas as set out in the 2011 Business Plan." So the release of this £6.131 million to the Health and Social Services Department by the Social Security Department is to pay for growth. But we have not had the debate and that is wrong. I do not like organisations or procedures which ostensibly are set up to do one thing and then we find ways to circumvent it and get around and do something entirely different. We had brought to this Assembly on a previous occasion monies to be raised by putting extra monies on alcohol to pay for health benefits in terms of cessation of smoking. That is daft. All right, if we think it is worthwhile spending money in that particular area it should have been funded by the Treasury and by the Minister for Treasury and Resources. In this respect, exactly the same thing should happen. What have we heard from the Deputy of St. Clement, he is suggesting that he is not going to be providing a funding stream for ever and a day, which is what is being called for, he is only going to put up monies for 2 years. Then what? So we are going to have to come back to this Assembly in 2 years' time, hopefully with a new set of Members who can read between the lines and do the jobs that this Assembly sets for us properly, to sort out once and for all whether or not we want to increase the monies into the Health and Social Services Department or we want to keep them the same or we want to cut them back, like everybody else. I do not know what the outcome of those debates will be but certainly this is no way to proceed at the moment. It is short-termism at its worst and it is what this House appears to do best. We clutch at straws, we come up with monies, we do not do ourselves any justice in adding value, which is really what this Assembly is for, to the decision that are going to be made in order to get the best out of them. I am not saying that I would begrudge the monies or would not want to spend any more monies on primary healthcare, indeed we had the work that was undertaken to look at primary healthcare and we did not fund it. We did not fund it so we parked all the work that was undertaken to come up with a new direction for the health service on the shelf because people could not stomach the costs. Well, we are going to have to look at at some stage. It is going to have to come back to this House or otherwise we are going to have to continue to accept that the vast majority of monies that are raised through taxation in this Island are to be spent on health. Which is fine, but let us have the debate. This confuses the issue. This shirks our responsibilities and does not get to the core of the issue which is we need a proper debate on the long-term of the health services that are provided by this Island. We have to decide as the whole community which way we want to go. We have to then instruct the Minister for Treasury and Resources to find the monies to pay for it in a way that is acceptable to us all through increased taxation or anything else. But until we go there and have this debate this is short-termism at its worst. As such, I do not think anybody in their right minds should be voting for it, we should be insisting that the Minister for Treasury and Resources funds the things that he agrees with or otherwise changes his job.

[10:00]

1.1.4 Senator F. du H. Le Gresley:

I think I have got good news for the Minister for Social Security, by my reckoning, after the speeches we have heard so far, 33 Members will be supporting this proposition. I will explain later where I got the figure from. I will also pick up on the comment made by Deputy T. Pitman yesterday when he said some Members are suffering from schizophrenia. I would suggest that some Members are suffering from amnesia. The reason is that we had a big debate back in

September called the Draft Annual Business Plan 2011. I would remind Members that we were provided with the proposition 112 days ago. So we have had 112 days to make up our minds whether money should be moved from the Social Security Health Insurance Fund to Health; 112 days. So those Members who comment they have only just really discovered this I find rather amazing. Can I just point out to Members that I have brought along my Annual Business Plan and I will refer them firstly to page 20 which states - there is a table in here about expenditure: "Health and Social Services, additional funding £4.9 million" and it goes on to say: "The additional funding represents the proposed contribution from the surplus on the Health Insurance Fund to fund the growth in Health and Social Services." Page 20 of the Draft Annual Business Plan. Also I would remind Members about page 22: "Additional funding sources. Ministers are proposing that a contribution of £4.9 million from the surplus on the Health Insurance Fund is applied to fund the proposed growth of Health and Social Services in 2011." It then goes on to say: "Some minor law changes will be required to achieve this additional £4.9 million contribution from the Health Insurance Fund." Lastly, from the same paper, which I believe is page 30 under Growth Proposals: "A further proposal is to consider a one-off transfer of circa £5 million from the Health Insurance Fund in 2011 to provide funding for health growth and improve the financial position of the consolidated fund." Those are all documents we have had, as I said, for 112 days. Now, in addition, those of you who read through all the numerous amendments that we received for the Business Plan will recall that there was an amendment, which I hope I can find, from Senator Ferguson, who if she was here today would, I am sure, be telling you what I am about to tell you. But her tenth amendment, and I have it here, lodged on 27th August. So I have not worked out how many days you have had a chance to read this one but anyway she was querying the transfer of £5.83 million from the Health Insurance Fund to Health and Social Services, and also the movement of £301,000 representing reduction in the user pay charges, subsidy on certain health products and diabetic supplies. Now, Senator Ferguson, quite rightly, said - excuse me, Sir, if I read these things out but it is the easiest way: "The proposals in this Business Plan seek to shift payment for a number of activities which might or might not be attributable to private healthcare to health fund. Unsurprising this sum is £4.9 million." She also goes on to say: "It should be noted that the withdrawal is fund growth and to allow health to make its saving targets for 2011. The passing the Business Plan" now this is what I want to stress: "without at least debating the underlying principles means that when the proposition to amend the law comes to the Assembly we cannot object to it, it will be too late." So it is too late, folks, we have already agreed the Business Plan and could I tell you how many people voted for the Business Plan: 35 people pour, 8 contre. Now, a number of Members were absent, I am not going to into the reasons why they were not in Chamber, but of those absent on the day that we voted on paragraph (a) which was 17th September, which was the budget figures for all departments including Health and Social Services, absent on that day was Senator Le Main, who we have heard from already, who is obviously contre; Deputy Jeune, who represents the First District of St. Brelade, who is also the Assistant Minister for Social Security, she was absent; and the people who have so far spoken against this proposition as I see it also voted contre to part (a) of the Business Plan. So I feel that they are sticking to their principles, that is Senator Breckon, Deputy Southern and Deputy T. Pitman. I have failed to mention one person so far and that is the Deputy of St. John. The Deputy of St. John voted pour the Business Plan. So he was in favour of the movement of this money. Quite clearly he voted pour. I would also like to point out that Deputy Duhamel, who has spoken this morning, also voted pour. So he has changed his mind. The very strange thing is Deputy Le Claire speaks in favour this morning but he voted contre. **[Laughter]** I remain confused. Now, when I read the Business Plan back in July, 112 days ago, I also was concerned about this movement of money from the Health Insurance Fund because I understood it was a ring-fenced sum of money. So what did I do, I went to see the Minister and he gave me a very good explanation, I did not believe everything he told me but **[Laughter]** on reflection I felt that it was fair point that Health needed money for growth, Health were providing primary healthcare services, they were not going to get the money from the Treasurer because he was being very tight. So money had to come from somewhere. Surpluses in

Health Insurance Fund, obviously a good reason to move money across provided it was done openly with a proper debate about changing the law. Also when I went to see the Minister, and this takes me to - I hope I can find my papers - the part of the proposition that relates to the transfer of £301,000 from the Health Insurance Fund to fund diabetic supplies and dietary, oxygen and incontinence products. These 2 items were in the user pays savings for Health and Social Services in the Business Plan. They were there and the figures were £170,000 relating to diabetic supplies and £131,000 relating to the other products. I was very concerned when I saw these figures because I wanted to know what was behind them. So I did do some research with the help of the staff at the Health and Social Services Department. I would like to give you some background because we are going to be voting today on whether that money in particular should be moved across and I think it is very important we know a bit of the background there. The funding of the diabetic supplies is currently subsidised at approximately 85 per cent, which is equivalent to £170,000 per annum. Removal of the subsidy under user pays would have affected approximately 3,000 patients. Subsidised product scheme provides dietary products short burst oxygen and incontinence pads for patients in the community. This scheme is administered by the Family Nursing and Home Care. The scheme provides 70 per cent subsidy except for children under 5 years. Let me just stress that, except for children under 5 years who receive the product free of charge. The user pays proposal was to reduce the subsidy to 50 per cent thereby saving £131,000. Included in this figure was a new charge for the under-5s. Member should also note that responsibility for funding this particular scheme moved to Health and Social Services from Social Security in December 2007. So this scheme, the second scheme, was originally funded by Social Security. I believe that Members should have no objection for the movement of funds to cover these 2 particular schemes to avoid the introduction of user pay charges. As I see it in this proposition today, the only new expenditure that I was not aware of is the proposal to establish the new central repository of patient records and developing a primary care infrastructure which follows on from P.36/2010. Current surpluses: Senator Routier has explained about surpluses in the Health Insurance Fund and at the presentation that the Minister for Social Security did for Members earlier this week, he explained that the surpluses are currently accruing at about £3 million per annum. We also know that we can expect prescription charges to be reintroduced, probably in the New Year, so quite clearly the Health Insurance Fund is going to be topped up regularly. So what are we talking about? We are talking about moving about £6 million, just in excess of £6 million, from the Health Insurance Fund to help Health and Social Services deliver their services over the next 12 months and a possibility, quite likely I would suggest, that a similar figure will be required in 2012. Unfortunately the Deputy of St. John is not in the Chamber but I would like to comment on something he said. I may have misheard him, but he mentioned the proposed 2 per cent social security contribution from employees earning over the cap and from employers from January 2012. He seemed to indicate that some of that money would be going into the Health Insurance Fund, but my understanding is that money will only be used to reduce supplementation and none of that money will be going to the Health Insurance Fund. So I will finish by saying to Members what alternative is there to draw down from the Health Insurance Fund? I will give you 3. How about an extra half per cent on G.S.T. (Goods and Services Tax)? How about removing all subsidy for fee-paying schools? How about a £6 million cut in Health and Social Services expenditure for 2011? I say to Members the majority of you have already approved the Business Plan and that the Minister for Social Security is only carrying out the instructions of this Assembly and therefore can proceed accordingly.

1.1.5 Deputy A.T. Dupre of St. Clement:

I am very pleased to follow the Senator's very well researched discussion there. I am between a rock and a hard place, sitting as I am between an Assistant Minister on my right who has very passionate concerns regarding this proposition and the Minister on my left with his calm and confident proposals. I support this proposition as I believe part of the Health Insurance Fund is for primary care and therefore this is where the money should be spent. This money will be available

to Health for only 2 years so we will have to proceed with the governance, assessment and monitoring of the G.P. services in a timely manner. Without this the local G.P.s will not be certified by the G.M.C. (General Medical Council). I worked for a G.P. surgery - as Deputy Le Claire would say, in my previous life - for many years and I know that they provide excellent primary care. These proposals will help to further improve these services. I would advise everybody to agree with this proposal. Thank you.

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

I am pleased to follow the last couple of speakers. Like many, when I first heard of the proposal - and it was more than 100 days ago, I think, when it was first being talked about - I had the feeling that this was wrong, that the Social Security money should be ring-fenced. But at the invitation of the Minister I discussed my concerns with here and with the officers. Clearly the health service is undergoing, in common with all other health services a review of what needs to be done. We cannot keep up with modern technology, it is very expensive.

[10:15]

I go back to when my son was in hospital 20 years ago, the medication he was having daily was £5,000 a day. These things are ongoing. So we have some choices. We could take the short term choice, as mentioned before. Short term, to me, would be to do nothing about this, to continue to stumble through this mess that the Minister for Health and Social Services has to steer us through. That would be short term. But what are our choices? Well we could throw our teddies out of the pram and say: "Well C.S.R. (Comprehensive Spending Review) must apply to Health, they must make 10 per cent cuts." I voted against but we have already voted for the reduction in physiotherapy services, we have already voted for doing away with the hydrotherapy pool. If we force the Minister to make 10 per cent cuts on top of everything else that she has had to do then we will see further services deducted. So we could say to the Minister: "Go away and make your 10 per cent cuts." We could raid the rainy day fund, but I will come back to that in a minute. Or we could, as suggested, buy time using the Health Insurance Fund to keep and develop our primary services while the Minister and the officers have the way to look at the way ahead. If I can assist Members in deciding which of these options would be best. As I say, we could dig our heels in and make the Minister make 10 per cent reductions, but it will not be the acute appendicitis or the road traffic accident person that will suffer, it will be those that receive non emergency services, those in constant pain due to arthritic hips or knees. Those in the community who need support due to learning difficulties, brain injury, mental health, those are the ones, the less articulate, the less well off, the unheard that will suffer if we make the Minister go down that route. Be under no illusion, it will be the less well off that will suffer because those who can afford it, who can buy the services, will buy it. Furthermore, if we make the Minister go down this route of not having the funding that she requires then reductions will be made to charities, charities that get grants. The same charities that are providing many of the services to the vulnerable people that I was talking about, and I want no part of it. We could raid the rainy day fund, as I said, and find the money from there but, in my view, and I am not trying to be clever here, in my view it is not raining, it is just drizzling at the moment. We have seen nothing yet and we need to keep that money intact for when we do need it, when it really is raining and not just slightly drizzling. That brings me back to the only viable option, the option to use the Health Insurance Fund and the clue is in the words that Deputy Martin said: Health. Health Insurance Fund. We are not raiding the pension fund, we are not doing any harm there. What we are giving the Minister is a 2-year contract to sort out the primary care services and to look at the health service and to have a health service that is fit for purpose and fit for all Islanders, not just those that can afford to buy the service.

1.1.7 Connétable J.M. Refault of St. Peter:

I am delighted to follow Deputy Green and his very eloquent speech there. The point I would just like to add to his points, and some of the others have already been made, is that on Monday we all had the opportunity of a briefing from the Minister for Social Security and the Minister for Health

and Social Services and 2 or 3 of the Members were there to listen to that briefing. However, at that meeting I did set the hares running with my significant concerns about breaking into a hypothesised fund of very particular use, and those concerns still remain there. The Minister is going to need to speak very strongly in his summing up to ensure me that it is not going to become a sacrificial fund for somebody that wants to have a dip into it. Because if he cannot do that then he will not get my support and that will be very sad because I support the principle of what we are trying to achieve here at the moment, and the principle is to improve the delivery of primary care back out into the community. In a similar vein to Deputy Jeune and her feelings about the constituents of St. Brelade, I will say there is a similar thing for St. Peter but also extend that when I think about the constituents of St. Peter I am also thinking about the whole Island, that there is many of the people, the elderly people in my Parish, who I have to make the decisions about whether they can continue to drive, and that may affect them coming in to town to hospital to get their blood pressures checked or whatever ongoing medication they require. If we can get primary care back out to G.P. surgeries where they can just pop down the road then I am totally supportive of this proposition, and my intention is to support the proposition here this morning and I hope the Minister will confirm that it is not going to become a raiding pot of the Health Insurance Fund.

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

I will be really quite brief. Ever since yesterday afternoon I have had a series of flashbacks and the flashbacks were of my grandmother's accounting system which was a mantelpiece in her kitchen with a series of pots on top of it. There was one for the rent and one for the groceries, one for the Prudential, and I think there was probably another one but she also collected ship halfpennies. Now, ship halfpennies, why did she collect them - she liked them and they were a nice little coin with the head of King George VI on one side and a very handsome picture of I think it was the Golden Hind, Francis Drake's ship in full sail on the other. That pot was almost always full or three-quarters full. If she perchance had a headache and the doctor's tin was empty she would have to take the money for the Aspro from one of the other pots and reluctantly she would often take 3, 4 or 5 ship halfpennies out of the pot and say to me: "Please nip down to Donald Dodsley in Colomberie and get me a strip of Aspros because I cannot do anything else, you will not be having any supper, because I cannot do anything until I get my Aspros." Now, if Health and Social Services have got a headache let us try and make it better and I think the paracetamol should come from the ship halfpenny pot, which I think is the draft Health Insurance Fund. I will definitely be supporting this. [Approbation]

1.1.9 The Deputy of St. Mary:

I, like other Members, had doubts when I first looked at this because of the issue of hypothecation, this is a ring-fenced fund. But I think those doubts have been removed and what the Minister has to do in his summing up is persuade us exactly what the Health Insurance Law said that it covered and relate that to, and make it quite clear, that what we are doing with this money or what is proposed to do with this money now, lies within the intention of the original law. He uses the word "reasonable" in his report on his proposition. It is a reasonable extension of the original aims of the 1967 law and he does have to prove it to us. He may have done that in his opening speech, but I think it is worth saying that is the key issue. Is this a reasonable extension of the original aims into a slightly, in my view, acceptable extension of the word health. The first observation I want to make is that this does signal a willingness among the Council of Ministers to be flexible and joined up when they are looking for solutions to financial problems and I just want to make the point that I hope that we can see this flexibility and pragmatism applied in other areas. I can think of other applications, not for this fund, I must stress, but I can think of other areas where a bit of flexibility and intelligence about how we fund things, particularly in the field of capital, an extraordinary thing where we fund all capital out of current account is bizarre. We really must loosen up and be a bit more intelligent about how we invest to save. So that is an opening comment. I do have one reservation about the practicalities of where this £6 million is going and that is in the field of I.T.

(Information Technology) and it does worry me on pages 6 and 7 of the report I see that reference is made on page 6 to the ability to collect vital information relating to the health of the Island's population, and that will be enabled by the new patient record system and so on and the new I.T. systems. Well Amen to that. Amen to that, we do indeed, I mean how can we devise effective preventative measures, how can we target those measures, how can we indeed monitor our progress if we do not have that sort of information? So that is a good thing. Then I read on page 7, and I know that there is a large program to digitise patient care records in Health and Social Services, and I thought that already included the fact that G.P.s and primary care professionals would have access to those records, of course in secure conditions. Then I read it is anticipated that such a system, being the primary care system and the G.P. system, will be integrated with the new Health and Social Service computer system. Well I thought that was part of the original deal, so I am just concerned that the I.T. and the care record system, there is a potential black hole there, and I do hope it is going to be done correctly and efficiently and with everything taken into account. I just wanted to flag that issue up as a potential danger area. My concluding remarks are that I am absolutely delighted in the direction of travel. We heard from the Minister for Health and Social Services yesterday that she agreed that the goal of making access to G.P.s and other primary and preventative healthcare, making that affordable to all, she assented to that. We have heard both her Assistant Ministers saying the same thing, that we have to make progress towards making primary care affordable to all. Really this is an issue, I have to impress on Members how important this is. Not only the social survey has pointed out that many people in our community do not go to the doctor because they say they cannot afford it, they are afraid of the costs that they might or would incur and that was borne out by the survey, I did myself when campaigning for election. I found people in my constituency in St. Mary saying they could not afford to go to the doctor, they dreaded the health costs on this Island and the dentist of course as well. So I am delighted that we are finally going to get to grips with the primary care system, as Deputy Green pointed out, they have got a 2 year contract, in effect, to come up with the goods. My only rider is that system includes the most effective way of tackling health, the most cost effective way, which is preventative. We do have to have built into that, to our primary care, the notion that having a healthy population is the first port of call, not the last. It is not about patching people up except when they have to be, it is about creating a healthy society and that does have implications that go slightly outside the silo of health, and clear implications for the transport debate we will have at the next sitting, among other debates. So with that proviso that there is sufficient emphasis on prevention and helping us and enabling us all to live healthy lives, I think that provided the Minister convinces us all that this is a reasonable extension of the use of the fund, I think I am going to support this.

1.1.10 Senator B.I. Le Marquand:

I am going to begin with some bad French, but not of the type that need trouble you. It is well known to lawyers the principle in trust law, which is referred to as *cy-près* or something similar to that. Now, if you have set up a trust and you cannot legitimately pay out all the funds properly because the purposes of the trust do not allow for that, then you can go to the Royal Court and you can seek to have an amendment to the trust so that the terms of it are varied, so that they are widened, to that you could usefully use the money. That is a well understood principle. That kind of principle also applies when we are considering matters concerning the States farm, and Members of this Assembly will know that of course there was a covenant in favour of the donor, T.B. Davis, and that the benefit of that covenant is essentially in a trust which ensures that we do not move away from the original purposes too much. But, of course, they co-operate and recently we had a proposition to allow for a further amendment of the terms of that covenant to allow a continuing sensible use. So I am saying this in an attempt to retake the high ground, which is the moral ground, which is being claimed by some Members that we have a fund here which is only for very restricted purposes and should not be used for any other purpose.

[10:30]

The fact is that in any other area of law, trust law, covenants or whatever, it can be varied, particularly in trust law in order to apply the monies to a similar principle. There is absolutely nothing morally wrong, there is no lack of integrity in relation to doing that, it is only sensible common sense. In this particular case I would argue that undoubtedly the underlying central purpose of the Health Insurance Fund is primary care. Indeed, I would argue further that the purposes to which it is intended by this proposition to extend on a temporary basis it ought to use up the excess funds, which otherwise will not be used for the current purposes, is fully within the spirit of that and fully within this principle recognised by law in trust law of *cy-près*. So that is the high ground issue, it is not quite as high in terms of the morality. Secondly, there is the downright pragmatic approach and this has been covered already by a number of Members. The fact is that without this £6 million a year for 2 years the aim of a majority of the Members of this Assembly, which is to balance the budget by 2013 and to work within the Stabilisation Fund without raiding the Strategic Reserve, could not be fulfilled unless we went down other unpalatable routes, and these have been already outlined. The fact is that would then either have to raise yet further taxes to cover this amount or we would have to find further savings, and none of those are in the least palatable. I wonder if Members would be happy to go to their constituents, the whole Island in my case, and explain to them that we are going to propose an extra tax increase, although we have spare money in this Health Insurance Fund, because we were not willing to use that for technical reasons and they are going to have to pay more tax. I do not think they will be very delighted. So I will be supporting the proposition.

1.1.11 Senator T.A. Le Sueur:

Since I indicated my desire to speak I have heard 2 excellent speeches, one the last one from Senator Le Marquand, earlier from the Constable of St. Martin, who reminded of ship halfpennies, something that was a dim and distant memory. I really do not need to add very much more except I think to say that I take exception to some of the comments of Members that we have set up a ring-fenced fund for one thing, and somehow we are doing something totally different and nothing to do with that fund. I think one Member suggested we were dipping our hands in the till. I would say really one has to ask what is the purpose of the Health Insurance Fund? The basic purpose of the Health Insurance Fund is to enable access to primary healthcare. Now, what is primary healthcare? Many years ago I was the President of Social Security and I can well recall in those days discussions which we used to have on an annual basis with G.P.s about the level of services they provided and the cost of benefits, and there was a feeling in those days that doctors were doctors and the Health Department was the Health Department and never the 2 should meet. That, I have to say, is an attitude which has changed considerably over the years since then and there is far more understanding and working together between G.P. services and hospital and health services, and there is far more that still can be done. What this proposition does do, among other things, is to help facilitate that change. To help bring primary services provided by G.P.s and others, like practice nurses, more into the 21st century. By doing that we would reduce the demands on the hospital services, reduce the demands on the health budget and, more importantly, have a better primary healthcare service for the patient, and it is the patient that is to me the important situation. It was also suggested by one or 2 speakers that his proposition is a short termism, and I would say to that, yes, it is and the proposition makes it quite clear that this is short-term funding, funding to facilitate and support the change that is necessary. But really much of this has now already been said by others and I do not intend to repeat that. This is a good and appropriate use of the Health Insurance Fund. It is right that we should get Members endorsements of the change that is being proposed, but it is an endorsement within the general policy to the general principles of the law and, as Senator Le Marquand says, it is very much along the lines of *cy-près*. So I do urge Members to support this proposition.

1.1.12 Deputy M. Tadier of St. Brelade:

This is by no means a simple proposition, in the sense that there is a great division I think about what people feel is the right thing to do, and I quite like the Deputy of St. Martin's analogy of the coin, that was a nice analogy, and of the pots. But I think in some ways some of us almost feel like it is flipping a coin and that there are certainly 2 sides to this argument. The point has already been made that nobody really wants to be in this situation, we are not in an ideal situation and I think the Minister for Social Security himself knows that and has acknowledged that. I think my colleague, Deputy Duhamel, also has driven the point back home that, you know, this is not the way that a government should be doing business. How many propositions do we have to bring for ad hoc funding to the States and how many policies do we have to making up on the hoof which are reactive rather than proactive before we realise that there is something wrong? Because I think we are in danger of embarrassing ourselves and it looks as if we could not organise the proverbial knees up in a brewery. There are certainly questions which need to be asked here, and it is quite right that Members are concerned about due process, but on the other hand I think the point has already been made that we cannot simply make the wrong decision just because we want to be pedantic, and this is why many of us are feeling quite a difficult decision needs to be made here today. What I will say though, and the point has been made but it can be made again, is that there is a need for consistency. Now, as Senator Le Gresley has already made the point, I would perhaps suggest it is slightly simplistic to look at how one voted on the Business Plan overall and then infer particular facts from that. For example, I would say that if you voted against the Business Plan in its entirety, which I think I did because it is not my Business Plan it is the Business Plan of the Council of Ministers, it is not a policy direction I and others agreed with. That does not mean that you cannot support this of course. But you probably are in more of a difficult position if you did support the entirety of the Business Plan because it did have this provision included within it, although that is down to the conscience of each individual Member. But the point I would also make, and I think Senator Le Marquand commented on this, he said: "How can I go to my constituents [in his case it was the whole Island] to explain that they need to cough up extra money when there is money lying around in a pot already?" That is a perfectly valid argument. Now, I hope that Senator Le Marquand who is engrossed in his own dialogue at the moment will, when the amendment comes for G.S.T. to not increase it from 3 to 5 per cent, but rather to look for other funding streams, to look to take money out of the Strategic Reserve, to fund that in the short term, exactly the same argument. If he does not support that how is he going to go to his constituents to explain the need to cough up an extra 2 per cent when they already finding it tough, when they are already having to not be able to afford dental care, for example, and to pay an extra 2 per cent in G.S.T.? It will be interesting to see if those arguments are applied consistently. So what I would offer is a hand of compromise to the Ministers and say that if you are willing, through the Chair, to rescind the 2 per cent increase in G.S.T. and to use the money from the Strategic Reserve, then quite happily in the interest of consistency I will be supporting this proposition. So I look forward to the Ministers giving a categorical assurance that that will be done. This brings me to another point about good faith. We are being asked to accept a lot of this proposition in good faith. Now, fortunately I do trust the Minister for Social Security as far as I can, that cannot be said for certain other Ministers who seem to say one thing purely to get elected, it seems to me, then only to change a couple of years later when it is politically convenient to do so. But there is an issue of good faith because many questions about after the 2-year period what will be put in place remain, I think, unanswered. I can take a few examples. We are told on page 6 about this review and we are told that this is to be the subject of a detailed review that will form part of the Comprehensive Spending Review, but we are not really given an exact timescale, we are not given any real detail about what system will be put in place 2 years after when it does come to the States. Now I think any principle debate needs to happen as soon as possible. We cannot have a lacuna, and it is also worrying to have to rely on any future House, which we do not know what the composition of that House will be, they may have completely different opinions, more extreme one way or the other than the current House. There are also other areas that I underlined. We are told on page 7 that an exercise in respect of the scope of feasibility of such a project is currently underway, it is the second

paragraph from the bottom. However, the costs of the implementation are not expected to exceed £1 million. Well I certainly would hope that they would not exceed that, but it is still again very vague here and it is not satisfactory, I do not think, for Members to be dealing with such vagueness. Again, this is not a criticism of the Minister for Social Security, I think he has been put in an invidious position. He has been asked on the one hand to reduce his budget and we know that the Minister for Health and Social Services on the other hand has been promised extra monies for her department, even at a time when across the board we are making cuts. So this is, I think, the underlying problem that there is no overall vision. That is what we need and that is what any good government needs if we are to be leading people, otherwise we risk having a scenario where the blind are simply leading the blind. So all I would say is that I would simply ask the Minister for Social Security for as many undertakings as he can give and to back that up with an action plan, and I think that is what we need. To just comment again on what Deputy Le Claire said about the analogy of a begging bowl, we have the Minister for Health and Social Services here with a begging bowl. I am not sure if that is the best analogy to use but again I would ask whose fault is that in the first place? Because we do not have a proper joined up plan, about how we fund society, and how we fund things to do with health and other essential items. I can quite echo the comments of the Deputy of St. Mary and I think the Constable of St. Martin, when he talks about elderly people in particular, although it is not limited to the elderly, being scared to go to the doctor. It is not that they are scared of the scalpel or scared of the dentist's drill, they are scared that they cannot afford it, they may have to choose between, what is it, a £30-odd visit nowadays, or putting their heating on. Unfortunately I have known of people who have died of relatively minor conditions which if they were diagnosed on time they would still be here today. So this really is, in the round, about early diagnosis. There was a comment about this fund was meant to pay out in years to come but one sense, even if we used that money now, it is going to pay out now and in years to come because prevention is better than cure. If we can nip illnesses in the bud, if we can provide services for people now who would otherwise not be receiving those services, that can only be good, first of all for the individual but also economically. It makes sense socially and economically. So I am in a bit of quandary here. I do want to see the right thing done in this debate. I also want to see the right thing done in the G.S.T. debate because I think that there is a genuine parallel to be made there.

[10:45]

I would ask for consistency and I would ask any Ministers who have not spoken yet what their feelings are about freezing G.S.T., the same principle we are talking about today, and seeing where we are in a year or 2 years when we are coming out of recession or otherwise. Because I think the 2 are intrinsically linked, we are talking about people's ability to pay for everyday services and to pay for survival, so I will keep my powder dry for the moment and I look forward to hearing from those who have not spoken yet.

1.1.13 The Very Reverend R.F. Key, B.A., The Dean of Jersey:

I am responsible, among other things, for attracting and keeping, recruiting and retaining the best people to staff the churches of the Island. That is not as easy across the Crown Dependencies as a whole as you might think. That is especially the case with younger people with families. The Isle of Man finds it almost impossible across denominations to attract such people to the Island to staff the churches. We have just made 3 appointments, one upgrading from temporary to permanent, one new rector for St. Ouen, one new vicar for All Saints, all of whom are young priests with families. When they sit down with my wife and me asking about life in Jersey they need no persuading about the beautiful beaches, they need no persuading that they would be coming to work for an incomparably brilliant Dean, we take those things as read. **[Laughter]** What are the questions they ask? Well they ask about education - what are the schools like, what are the G.C.S.E. (General Certificate of Secondary Education) results like, what is the University? They ask about cost of living. Is it really true that it costs £250 more to buy a television in the shops here

than on the internet? Those are concerns. They ask about the reliability of on-off Island transport, will there be a boat in the harbour, will there be a plane at the airport? They ask about health. They ask about the affordability of healthcare certainly, but more than that they ask about the quality of healthcare. Certainly I think we do have big questions to address about the affordability particularly of dentistry which seems, from my research, to be out of kilter even with that in the United Kingdom. But it is the quality of the health provision. If there is something moderately seriously wrong that needs further investigation, can I be convinced that either we have a world class consultant in that speciality in the hospital, or we have sufficiently robust links, whether it is with Oxford or London or Southampton, where the procedures can be carried out, that very often either save lives or change the quality of life beyond measure. Have we got those in place? But even if we have got those in place any healthcare system stands or falls by the quality of the general practitioner. If they cannot tell the difference between (inaudible), you are never going to get as far as the cardiologist who in this Island happens to be superb. You need that G.P. Have they got sufficient time to deal with their patients, or is it like some parts of the U.K. where they have got 8 minutes per interview and anything after that is not going to meet the targets? Have they got the resources, the quality of the surgery, the support staff, that attitude of those on the front desk? But here is where we come to this particular proposition. How up-to-date and ongoing is their training? I have a number of extremely highly qualified medical friends, a couple of professors and so on, who tell me that in their spheres the medical world is changing at a faster rate than for many years. If I go to the G.P., I want to know that they have read the latest material. I want to know that they know the difference between the rate of cure of providing drug A that they have written scripts for, for the last 20 years, and the rate of cure of the newest thing on the block. What is the difference, and that that is not simply what costs more or less. We need, therefore, to provide a framework where our ongoing G.P. training is at least as good as the rest of Western Europe and the United Kingdom. I did love the Constable of St. Martin's homely illustration, may I end with one. When, in the recent storm that flooded bits of Beresford Street, the Deanery roof began to leak and I went up on the landing and there dripping down the electrical fitting was water from the loft. It was quite clear that there was a long term job that needed doing. Some lads from the Town Hall had to come and clear the valleys on the roof of seagull debris. It does seem to me that we could have stood there and said: "This needs a longer term project, let us set up a committee of investigation to see how we stop water coming through the roof." Or while we were waiting for that we could get a bucket and put it under the light fitting. In other words, to do the short term thing does not mean you do not need to do the long term thing, but knowing there is a long term job to be done does not mean it is not sensible to do the short term fix now. The assurance I, as other Members, will be looking for from the Minister, is that to have the short term thing now which will mean, among other things, that our G.P. training and primary care principles will get to the highest levels which our people deserve, it seems to me. The assurance I want is to know that when the short term is over the longer term work will have been done so that we then have something in place that lasts for a generation.

1.1.14 Deputy R.G. Le Hérisier of St. Saviour:

I am not sure I entirely agree with the Dean's analogy of setting up experts on roof repair, and the thought of having a strategy on roof repair is slightly worrying. It is often said, well it used to be said and as you will notice it is slightly out of date, that there are 3 groups in Britain you should not upset, the Brigade of Guards, the coalminers and the B.M.A. (British Medical Association). Obviously there have been some changes along the way but working with doctors is notoriously difficult, and in Jersey we have the ultimate expression of that because they are independent practitioners and a lot of them are self styled refugees from the National Health Service and what they see is the overbearing bureaucracy of that service. So it has been, in fact, a remarkable achievement to have brought them together this far, to have got a degree of agreement. The Deputy of St. Mary was quite right to refer to the computerisation issue because that was promised years ago, has allegedly been progressing over years, and it now makes a guest appearance in this

funding request. There are questions to be asked about that, we all know about government I.T. projects and their almost inevitable propensity to go over budget, to lose focus and to wander in all sorts of directions costing millions upon millions of pounds, and I hope that the Minister can give us an assurance that this particular project which, as I said, keeps making constant appearances along the way, that this particular project is under some real control. I am very pleased that Deputy Tadier joined the fence-sitting club and that he is still to be convinced on either side, and he is suffering as a result. There are 2 issues that have worried me continuously about Health, and I echo a lot of the sentiments that Senator Ferguson would express were she here. One is the way in which money has, in a never-ending series of ad hoc requests, of ad hoc emergency request, the way in which money has been thrown and we have never been able to analyse how this money is being spent and what the true costs are of each service. This has been one of the real worries, and it is certainly not confined to Jersey because I know one of the things that - it did not bring down the Labour Government but it certainly helped - was that billions were put into the National Health Service, often with no discernable improvements in productivity. Money was just ploughed in and I get this impression constantly of this melange of where money is thrown at the service, we cannot analyse the costs of one aspect of a service versus another, and we lurch - as Deputy Duhamel said, although I will not ultimately agree with him - from one funding crisis to another with no sense that somebody has got a handle on this, and that we can make meaningful comparisons and we can look at a meaningful analysis. When you looked at the C.S.R. review, which was headed by no less an eminent person than the former Chief Executive of the States, I got the impression they gave up because there is no analysis there of what was wrong and what were the issues. There is just: "Oh, we just cannot work it out, things seem to be totally overwhelmed" blah, blah, blah. That was, in a sense, quite disappointing because I thought if people like them cannot get to the root of what is happening and put their finger on it, what hope does that give for us? So there is that issue. I would like to see from Health much more rigorous information and I would ask questions, I asked again yesterday a similar question, what are the costs, and again I got replies couched in the usual very well meaning warm generalities, but essentially they meant nothing. Essentially they did not give us that hard information and I would hope somebody like the P.A.C. (Public Accounts Committee) would follow. That then brings me to the issue of a strategy and Deputy Duhamel did, as I said, make a good point. We had New Directions and we have all become sadly a little cynical about New Directions. It was a highly aspirational document, at one point figures were attached to it and that is of course when people got very, very scared. Again, it was all this issue that postponed your aspirations for the moment because down the road we will all be incredibly healthy people, and we will not need to use services to the extent we had predicted. That was theory and, you know, there is a lot of benefit to that but it was not stated in clear, practical steps as to how we would get there, what the costings were, what the savings were on services that would be underused as a result of us all becoming healthy, or a lot of people becoming healthy. Sadly it lost its impetus, and all the goodwill that was associated with that initiative sadly was squandered. I hope the Minister, I am sure she is working on this, I hope she can come up with a much stronger strategy, one that reads as if it is being written by people who have a practical grasp of the issues as they move along the reform path. Because it was enormously aspirational, enormously very worthy, but at the end of the day it led to a great lot of disillusion. So those are 2 things we need much stronger emphasis upon - what the costs are in Health - and we have not had it for years, and I know Senator Ferguson would go on about that were she here. Secondly, we need a strategy that is really worth the paper it is written on and one to which people can relate and to which people can say: "These are things really worth moving towards." But this is informed by people who have got their finger on the financial button and, you know, can progress it in a realistic sense. So I hope those things do happen. That said, I think it is an exciting reform. I think it is incredible that people and the G.P.s are working in this enthusiastic way. I have had complaints that why are we paying for people who when it apparently suits them want to be seen as totally independent and removed from government control, but yet when the bills arrive want the Government to underwrite those bills. I have had that complaint, but I think it overlooks the fact that the G.P.s are going to move into a system of a

partnership much more with the Government, as several people have said. We are going to get rid of this notion that you have to see the doctor for all sorts of issues, which practice nurses are dealing with in jurisdictions like the U.K. on a very regular basis. The only thing I would ask, I have noticed the phrase has been used that this use of the funds is a reasonable extension and I would ask, if I could, the Solicitor General whether he could comment on this.

[11:00]

Because it strikes me we have all read a lot of elasticity into the law, which may or may not be correct. But as far as I am concerned, I think this is a worthwhile reform, with a reassurance from the Solicitor General I would very much like to support it. I hope the Scrutiny Panel - I notice Deputy Southern said he was in a process of consultation - I hope that consultation has now been carried out and he has formed a clear view which he could maybe at some point inform us of. But, meanwhile, I would await the Solicitor General's kind words.

Deputy P.V.F. Le Claire:

Sir, may I raise a point of Standing Order? I would like to exercise my right under Standing Order 79 of the States and explain before proposing why I am doing it. I would like to request under the rights of Standing Orders that I be allowed to propose without notice that the debate on this proposition be suspended and the States request the relevant Scrutiny Panel to consider the proposition referred to. I do so because, while I am a strong supporter of Scrutiny, I have grave reservations - and I mean grave reservations - that if it is pulled through Scrutiny without due consideration about the impacts that this will have we will be possibly walking into a very significant problem. I do not wish and cannot negate the right of Scrutiny to pull a proposition for their scrutinising, but I believe under Standing Orders there would be no opportunity to debate the consequences and I note from a briefing paper that I have read this morning, which I did not have time to read last night, that I was going to read this morning prior to my speech, that I received from Health, that the Law Officer's advice has given us a very crucial warning that the legal time to implement the law to validate the G.P.s is extremely tight. I am concerned that without at least hearing from the Scrutiny Panel Chairman as to how long he might take to conduct this Scrutiny that we may be seeing G.P.s in the Island out of validation, and I have also had that view confirmed by the Health Officer that might not, in fact, be the case. So I would like to, at the very least - and I am sorry to say - extend this debate so that we can give due consideration to what would happen if this is referred to Scrutiny and, while I appreciate Scrutiny is important, I also think validated G.P.s are also important.

The Deputy Bailiff:

Deputy, I think that Standing Order 79 does give you the opportunity of proposing without notice that the debate on any proposition be suspended and the States request the relevant Scrutiny Panel to consider having the proposition referred to it. Of course, if you wish to make your proposition seconded and if you wish to take that forward it can be. But I am wondering whether you have considered Standing Order 72(1) which enables the completion of a debate on the principles of the legislation and then if the chairman of the relevant Scrutiny Panel wishes to scrutinise at that point, he is able to do so.

Deputy P.V.F. Le Claire:

I have and the reason why I am suggesting 79 is because in my interpretation of Standing Orders as they currently set out, which may be in need review, the Chairman for Scrutiny can pull this for scrutiny and no debate whatsoever can take place in my reading of things and we will not be able to hear from the Solicitor General as to the arguments around possibly - and I hate to say on this occasion - not supporting scrutinising this because it might de-validate G.P.s in the Island.

Deputy G.P. Southern of St. Helier:

If I may, in an attempt to be helpful, I draw the attention of the Member to Article 72 which says that the panel shall return at the subsequent sitting and state whether he wishes to continue scrutinising the topic on first reading, and to come back with a date by which the Scrutiny Chairman will report. So, in fact, the consideration of that issue, whether it is totally too risky to delay too long, would be the first issue discussed by the Scrutiny Panel and returned and if there was an urgent nature that precluded Scrutiny we would be saying: "No, we cannot scrutinise it, not enough time." So the safeguard is already built in to 72, I believe.

Deputy P.V.F. Le Claire:

Sir, I do not want to trespass upon your ruling but I would feel more comfortable, upon reflection upon this matter, for me to propose that it is referred at least in this instance. If time is of a grave concern which, from the reading of the Law Officer's advice to the Minister for Health and Social Services shared with me this morning, at least then we will be considering it today. It is about G.P.s being validated and although there is a right for Scrutiny to pull things I think there is also a right for Members to understand what kind of delay we are talking about and what effect that will have upon the actual process of having G.P.s in the Island de-validated.

The Deputy Bailiff:

Deputy, are you suggesting that the Solicitor General would give any advice to the Assembly before we debate the proposition?

Deputy P.V.F. Le Claire:

I believe that is certainly an option, but I thought that the way I could construct the debate to hear from the Minister for Health and Social Security would be in my proposal to request, as soon as he is possible, for the Solicitor General to comment upon the advice the Attorney General's office has given through him to the Minister for Health and Social Services. So I would still be more comfortable in giving the Solicitor General a little bit more time and affording other Members the opportunity - I know it is extending things - but giving everybody the realisation that in this one particular circumstance it may be in our better interest to debate this today in the round, rather than having an opinion or 2 that may not be prepared.

The Deputy Bailiff:

Deputy, one last question. The purpose of making this proposition is that the debate should be suspended. You have spoken in favour of the proposition. It seems to me that in the normal circumstances you could not propose the proposition without being prepared to vote for it yourself so, in effect, you will be saying to the States that you would propose that the debate be suspended.

Deputy P.V.F. Le Claire:

With the greatest of respect, I remember being nominated by a Member and supported by a second and not receiving their votes when I went for the Health job myself. I also remember on many occasions the Minister for Planning and Environment bringing propositions before the Assembly and abstaining so in this event I would be abstaining.

Deputy M. Tadier:

Sir, can we just proceed with the vote and I am sure this is going to get rejected anyway.

The Deputy Bailiff:

Deputy, there will be a full debate upon this proposition.

Deputy C.H. Egré of St. Peter:

Sir, in my role as the Vice Chairman of P.P.C. (Privileges and Procedures Committee) just as a point of order if I may, Deputy Le Hérisier did ask for advice from the Solicitor General prior to

Deputy Le Claire's standing. I just wonder whether we should receive that advice on the basis of that request.

Deputy I.J. Gorst of St. Clement:

Sorry, on the application of both of these 2 Standing Orders it is my understanding, and I do understand that Deputy Le Claire has got concerns and he is right to have those concerns, and I understand that he is trying to be helpful in getting those concerns into the open, but having said that, should the States vote against this being referred to Scrutiny, which I understand is where Deputy Le Claire would be going, the Chairman of the Scrutiny Panel still has the right to pull the proposition to consider it despite what the States vote says. So I am struggling to see what advantage, other than perhaps the pressure of the vote against, that the Chairman - and I know he does not bow to pressure - I believe will carry on in his course of action. I was going to address the detrimental nature of that course of action in my summing up.

Deputy P.V.F. Le Claire:

One last intervention from myself, Sir, before you decide. The Minister for Social Security hit the nail on the head. I am trying to flesh out the arguments before the States make a decision that it may come to regret.

Deputy J.A. Martin of St. Helier:

Just briefly, and I can see where the Deputy is coming from and I think we just need a bit of honesty in the States. We need to know now from the Scrutiny Panel because we can go all around the debate and the Chairman has the right to call it in even if he gets no votes and Deputy Le Claire is supported 100 per cent. Is he going to call this in or are we going to spend another 2 days debating this? We need to know.

The Deputy Bailiff:

The first ruling I make is that Deputy Le Hérisier has asked for the Solicitor General's advice and I would like to hear from him.

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

The 1967 law speaks of the funds being applied for a number of things, including a term called pharmaceutical benefit, and that is also defined in the law to include the context where a medical practitioner provides to a patient any medicine, any drug, any appliance and any material. Those are obviously phrases to be interpreted broadly. So, in so far as what is being proposed is consistent with those definitions, then there is clearly no problem at all in applying the funds for those purposes. Insofar as this proposition goes beyond the provision of medicines, drugs, appliances and materials to patients, then the States as a whole may change that purpose by voting for a change in the law. I hope that helps.

Deputy G.P. Southern:

Would the Chair find it useful if I did give an indication of what I intend to do?

The Deputy Bailiff:

I think, Deputy, that your time for saying so will come after we have heard from the Minister in his summing up. Deputy, my reading of Standing Orders is that if you wish to proceed with this proposition - and assuming it is seconded - I must allow you to do so. On the other hand, it does appear to me to be a proposition in which from what you have said you have no particular belief and, therefore, it would be to make use of Standing Orders as a device which does not, on the face of it, appear to me to be appropriate, but I do not think the Chair has the ability to prevent you putting this proposition if you wish to put it. I ask you the question, do you wish to put it?

1.2 Draft Health Insurance Fund (Miscellaneous Provisions) (Jersey) Law 201- proposed referral to Scrutiny under S.O. 79(1) by Deputy Le Claire

1.2.1 Deputy P.V.F. Le Claire:

I do and I wish to, in qualifying that request, say that I am not trying to use Standing Orders as a device and I will make my speech now. What I am trying to do ...

The Deputy Bailiff:

No, we will ...

Deputy P.V.F. Le Claire:

Could I just clarify, Sir?

The Deputy Bailiff:

Yes.

Deputy P.V.F. Le Claire:

What I am trying to do is I am trying to see whether or not I can wholeheartedly support Scrutiny or, having listened to the impact of a delay, whether or not in this instance I would be persuaded by other people's knowledge that I have no understanding of at this stage to not support scrutiny of this subject at this time because I believe, having just read - and I do not have privilege of the Law Officers' advice in full - the information I was shared with this morning, I have grave concerns about the validation of G.P.s. I wish to support Scrutiny and I wish to use this Standing Order to ...

The Deputy Bailiff:

Deputy, can I just ask, your proposition is under Standing Order 79(1) that the debate on the proposition be suspended and the States should request the relevant Scrutiny Panel to consider having the proposition referred to it. I allow that proposition to be made and you may now address it fully and I will then ask if it is seconded and then it will be open to Members to debate it.

Deputy M. Tadier:

Can I ask a point of order? Seeing as Deputy Le Claire is proposing this, is his speech going to be in favour of his proposition? So is he going to give a compelling argument as to why we should support his proposition?

The Deputy Bailiff:

Deputy, I am not sure that is a point of order but you are entirely right to say that the Assembly is entitled to expect a proposer of a proposition to speak in favour of it.

Deputy P.V.F. Le Claire:

Standing Order 79: "Any Member of the States suspension of debate for the purposes of scrutiny. (1) Any Member of the States may propose without notice that (a) the debate on any proposition be suspended" and so on part (1)(a) I am wholeheartedly in support that the debate be suspended, and: "(b) the States request the relevant Scrutiny Panel to consider having the proposition referred to it." This will be determined by the Assembly's interaction in this part of the debate. Now, I am not a Minister and I am not a doctor and I am not a chairman of a Scrutiny Panel. But what I read in information that is passed to me from the Minister for Health and Social Services, his advice from the Law Draftsman is that if work can begin immediately following the P.125 debate it is just - next 3 words underlined - but only just feasible for the necessary laws to be in place by May 2012. Bearing in mind the necessary consultation periods and the intervening elections. Now, I must confess, unless I am going to stand here and read this out, I have not read every word of this information the Minister for Health and Social Services has provided for me overnight, which I requested her to do.

[11:15]

The Minister for Health and Social Services knows what it is, she has circulated to us today a letter from the G.P.s talking about any consequent delays. I have spoken very, very briefly with the Health Officer in the antechamber who has expressed serious concerns about a significant delay for Scrutiny. What I would ask is, and I am not giving way at this juncture, I am not giving way but I will give way, but I am not giving way at this juncture because it is important.

Deputy G.P. Southern:

The Chamber has not received its briefing document.

Deputy P.V.F. Le Claire:

Right, well the briefing paper that I spoke of was a letter circulated to all States Members in one instance from the G.P.s, from Dr Philippa, which all Members should have on their desks. The second piece of information I can read out. All Members have the G.P.'s advice, Sir. The briefing paper that I was provided from the Minister for Health and Social Services last night, and I received in my emails this morning, was to help me come to an understanding given the differing views of opinion as to whether or not there would be any problem whatsoever with us referring this to Scrutiny. Now, I would like in this part of the debate to come to a comprehensive understanding, aided by my mind being made up from speeches from the Minister for Social Security, the Minister for Health and Social Services and the Solicitor General and Deputy Southern. Other Members may have their views but these are the Members that have the legal advice. Deputy Southern may have it in confidence. All I have is the fact that I am being informed that elements of this, as distributed to Members on their desks this morning, highlighted by the doctor that I have mentioned, whose name I shall not mention again, elements of this come down to validation of G.P.s in Jersey. A brief discussion I have had this morning with the Health Officer tells me that if there is a delay of 2 or 3 months to look at this proposition which is, in effect, a funding proposition rather than the actual validating proposition, the funding mechanism, that is what is going to be in my view. If there is going to be a 2 or 3 month delay then we may have a situation under the new U.K. principles, and I can stand to be corrected, that G.P.s will in effect next year become close to being discounted from having their licenses to perform their duties suspended. That is why unusually I have taken this step. I know it does not complement me to do this, but I have great concerns and I am also doing it because of the fact that if Deputy Southern was just to pull this for scrutiny nobody would have had any consideration of this, we would have no debate on this and probably would not have got, or might not necessarily have got, the advice from the Solicitor General. In making this proposition I have stated my case. I am uncertain as to how this needs to go but what I would like to ask, and I would like to ask in my speech and give way if I am allowed, Her Majesty's Solicitor General, I did not want to do it when he gave the advice, is that he said the 1967 law which, as I understand, is seriously outdated, provides for doctors to provide medicines, drugs, et cetera. I do not know how that has bearing on validation issues with G.P.s if this provision is suspended, and I would like to ask the Solicitor General if he is able to help me understand if a delay of 2 or 3 months may mean that some of our G.P.s in Jersey are going to become invalidated. That is my concern and I would like to give way, if I am allowed, to ask Her Majesty's Solicitor General to help me understand that.

The Deputy Bailiff:

That does not sound to me like a question of law.

The Solicitor General:

If I may say, I think 2 things are being conflated. The first issue is what can the fund be used for, and if it cannot be used for X can the States change the purpose and make it be usable for X. The second question is what happens if you do not change the funding as per the proposition, which I think is the Deputy's point. If you look in the proposition at Article 3, it is proposed that some of the funds will be used for 3(b), the assessment and monitoring of primary care standards. The background to that is that, as I understand it, the States have already voted for the introduction of a

registration system for G.P.s but the Health Department need funding for that, and that is the point of 3(b). So the issues are very different, if I may say so, they do not join but I think the simple point is that Health need money to introduce a registration system and the point of this law is to get it from the fund.

Deputy P.V.F. Le Claire:

I can understand why, and I realise now, why I am probably conflating the issues. I apologise if I am conflating the issue, but it was because I was concerned, and I have had concern that by not providing these measures now we would be at risk of de-validating. Now, strictly as a matter of law, this is a matter of how we use a fund and Her Majesty's Solicitor General is advising us accordingly. The issue probably is going to be how the Minister for Health and Social Services juggles her balance and gets on with the work regardless of this being pulled for scrutiny. Because if it is of such a cataclysmic event that planes will fall from the sky if we do not do it, then the Minister for Health and Social Services and the Council of Ministers and the Minister for Treasury and Resources - as highlighted by Deputy Duhamel - need to get their pencils out again. I do not need to continue. If the Ministers wish to say anything I will be willing to listen to what other people have to say and I appreciate the advice from Her Majesty's Solicitor General. I think that I have conflated it in the wrong direction, but I think I did have grave concerns that were justified.

The Deputy Bailiff:

The proposition is made under Standing Order 79 that the debate be suspended. Is that proposition seconded? [**Seconded**] The proposition has just been seconded. I call upon the Chairman of the Health and Social Services and Social Security Panel. I am sorry, Chairman, before you start I would also hope to call immediately thereafter on the Minister to speak, and of course it is entirely a matter for Members but this really is not a matter which should lead to a lengthy debate.

1.2.2 Deputy G.P. Southern:

I could not agree more. The fact is we are 4 hours into a debate on the principles of this proposition and that under Article 72 it was my intention, and I had consulted with my panel fully yesterday, in the light of reservations expressed by many Members and from many corners of this room, it was my intention to call this in for scrutiny. That requires that I am asked in this session whether I wish to call it in, debate gets suspended, we do not move to the Second Reading, and that I return in the next session to say, having considered this matter, I can announce that I will produce a report in a certain period of time. That period of time must not be more than 4 sessions after this session so is likely to be the beginning of February. If, in the process of that, between now and the next session I have discovered that if I were to delay the progress of this proposition until February it would seriously endanger the whole timing and the registration of G.P.s in the Island, obviously the first thing I would be saying next time would be: "This runs the risk of doing this." Therefore, it might well be that I would be saying: "I will not, therefore, fully scrutinise this, I will allow the debate to continue and it could continue next week." If that is not the case and that the issues that have been raised I consider are worthy of further investigation and reporting by the first session in February, that is what I will propose and that is what I would do. So we have got a system here set up under Article 72 which takes care of: "Yes, there have been issues raised, do we wish to look at them?" If we say we do, we will do. If that is a critical time-based decision then we have the position to return immediately to the House and say: "Please get on with it, despite our reservations." So that is the situation. There is absolutely no need, I do not believe, for it acting under S.O. 79.

1.2.3 Deputy I.J. Gorst:

Yes, this has been an interesting debate. I refer to the main debate rather than this, although this has as well, and I hope that it will not be interesting for too much longer. Merely, until I finish speaking. This Assembly made what was probably a bold and brave decision earlier this year to approve P.36. Article 3 of the law before us gives effect to that part of that decision. It was a relatively straightforward decision to increase the rebate to G.P.s and it said that was part of the

bargain, the G.P.s would then have that money, they would go away and undertake the work that they were required to undertake in order to meet G.M.C. revalidation. We, as a States Assembly, would go away and undertake the work which we committed to undertake, which was bringing forward a governance law and helping to provide a joined up I.T. system and central repository for data records to ensure that we can get to the point where we are delivering service in an appropriate manner, and in a manner that we all agreed to. Deputy Le Claire, I believe, has brought forward this mechanism today because he is concerned, and he is rightly concerned, that too much delay with regard to this Article will put in doubt the timescales of achieving our end - that is our end as States Members as an Assembly - of the bargain that we made with G.P.s. G.P.s are already getting on and achieving their end of the bargain but it will put us at doubt whether we, as an Assembly, can achieve our end, which is that this law has to be up and running, we have to ensure that the central depository of records is up and running, and G.P.s have to have gone through this revalidation process by, I think, it is July - I might have the wrong month there - of 2012. The briefing note that Deputy Le Claire refers to was a straightforward comment from the Law Draftsman's Office, not legal advice, we must be quite clear about that, that we are already pushing the barrier in regard to ensuring that the law in place to allow that to take place. Too much delay would mean that we might not be able to make that timetable. Deputy Le Claire is absolutely right and I was going to go on and say that I do not see the need for Scrutiny to scrutinise the proposition as a whole. I certainly do not believe there is a need to scrutinise Article 3 because the States unanimously approved P.36. I met with the then Chairman of the panel and the then Vice Chairman, who is now the Chairman of the panel, and they supported P.36 and all that it included, and it included this end of our bargain. So that is Article 3. Perhaps the panel does want to scrutinise Article 1 and 2. Having said that, Article 2 is nothing other than it allows a Minister to come forward with regulation in due course and when we get back to the main debate I will be giving some undertakings in regard to what conditions will have to be met before I bring forward those regulations anyway. So that then leaves, in effect, Article 1 for the Scrutiny Panel to scrutinise. I am really not sure what it is that they are going to scrutinise. Are they going to scrutinise the Health budget and the spend and what is proposed to be spending? Are they going to scrutinise the primary care services which are currently undertaken by Health? Are they going to scrutinise their growth proposals? Whatever it is that they are going to scrutinise around Article 1 they are not, in my opinion, going to achieve anything overly meaningful between now and January. We had the independent review look at the Health budget and, as somebody very eloquently pointed out earlier, they failed to get to grips with exactly what it was that was going on in Health's budget.

[11:30]

So, without wishing to be disparaging to the Scrutiny Panel, I do not believe that there is very much work that they can undertake that is going to be meaningful, that is going to help us as an Assembly make a more informed decision in January than we can make today. What I would be and was going to propose in my closing remarks was that unless certain criteria were met in the course of the next year then, as I have said, I would not come forward with the second year regulation and I believe, however, that it would be appropriate for the Scrutiny Panel to spend more time considering the direction of travel, what is happening with the strategic roadmap and where Health are going in the future. That is perfectly legitimate. Of course Scrutiny are entitled to scrutinise whatever they like but we do hope that they add value when they are scrutinising and they help inform decisions of the States Assembly. I am not certain that they have got time to do that because when we are looking at the magnitude of the task ahead, we are 18 years down the line, let us say, with Health and we are still in this difficult situation. We still make very few steps forward. I am not certain that, in the course of a couple of months during which is the Christmas period, there is going to be much that can be added. Deputy Le Claire is right. There are issues with regard to Article 3. We do need to move that forward but, as regard to the other issue, I am not sure that it is appropriate or that Scrutiny will be able to add very much in this instance. Therefore I

believe we should just go to the vote and we will make a straightforward decision; yes or no, if it will be referred to Scrutiny.

The Deputy Bailiff:

Unfortunately the Chair does not have the power to do that.

1.2.4 Connétable D.J. Murphy of Grouville:

I believe I am not alone in getting slightly confused with 2 words here which have dominated the discussion. The first one is “registration” from the Solicitor General, who very kindly provided us with that one, and “revalidation” which has been pushed over to us by Deputy Le Claire on his proposal. I do not understand where revalidation is dependent upon this going through. I, as a layman, would look at revalidation as somebody revalidating their initial expertise and examinations. **[Interruption]** Sorry, I am not sure who I am addressing this to, Sir, but it looks as if the ...

The Deputy Bailiff:

You are being asked by the Minister if you will give way.

The Connétable of Grouville:

Yes, I will.

Deputy I.J. Gorst:

Yes, it is a complicated area. There are various things that G.P.s have to do and we, as a government, have to do as well. The registration, in order to be revalidated the revalidation comes from the G.M.C., G.P.s will need to be registered under a new governance law which we need to put in place in Jersey.

The Deputy Bailiff:

Connétable of Grouville, you gave way ...

The Connétable of Grouville:

That is very clear, Sir, thank you.

1.2.5 The Deputy of Trinity:

I just rise to endorse what my fellow Minister said and I thank him for his comments. I understand Members’ concerns and they are with issues that have been raised, but they have been there for quite a few number of years, as has been mentioned, but I, along with this Assembly, want to tackle them. Sometimes it is one step forward and 3 back. The strategic roadmap, within the next few months and going into next year, is essential and all these issues that Members will have raised and are very valid concerns, hopefully will be addressed in that strategic roadmap. I cannot stress how vital it is because we need to go forward. We need to have a Health and Social Services that is fit. Regarding the revalidation and Article 3 about G.P.s, if you look, get a bit closer, 3.8 is primary care governance. When we passed P.38 back in May time it was for the G.P.s to be regulated, but it was also for the States to do its share of getting a governance body in stock, which will add as a link between here and the U.K. It is not a one-way ticket with G.P.s. It is a partnership with the States and G.P.s which does not exist now. That is the important bit of this and it is to allow the finances to be able to put that in place. We have worked very hard with the G.P.s and they really are in line and they are doing their bits, but we need to do our bit too and the money, which comes from the insurance fund, is for that bit because the assessment and monitoring of all primary care standards is vital too because now the G.M.C. say that we have to show that we can demonstrate all that. That is where it is all coming from and I will finish there.

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

If the Minister for Health and Social Services could clarify, if she has the strategic roadmap for Health why have not Members, to aid them in this, been provided with it and can she confirm, it is not £12 million that is required for the G.P. revalidation?

The Deputy Bailiff:

Do you wish to clarify that, Minister?

The Deputy of Trinity:

Yes, Sir. As I have said on numerous times, and I said it in question time yesterday, that work is just beginning. We are going out to tender to get some support into that. It is a huge piece of work. It is not £12 million. The whole thing is as stated within the proposition.

Deputy G.P. Southern:

Can I ask a further point of clarification? Could she clarify whether there is a time critical element to this revalidation system, if it is the case, as Deputy Le Claire suggests, that unless we proceed pronto with this revalidation our G.P.s will be invalid?

The Deputy Bailiff:

Minister, can you clarify that?

The Deputy of Trinity:

As much as I can, Sir. This is what is going to be a new piece of legislation which was discussed in P.36 back in May, and the advice from the Law Officers' Department is that if work can begin immediately following this debate it is only just feasible for necessary laws to be in place by May 2012, bearing in mind the necessary consultation period and the intervening elections. This work does not happen overnight. It takes time sometimes and it needs to go out to consultation.

Deputy G.P. Southern:

I still have not heard that this is time critical and that G.P.s will be invalidated. I have not heard that piece of vital information which is essential to the way in which we conduct our Scrutiny.

The Deputy Bailiff:

Are you able to clarify further, Minister? I think that is the point that the Chairman of the Scrutiny Panel was putting to you.

The Deputy of Trinity:

It was part of our commitment. In P.36 our G.P.s will be ... If this is playing our parts and our G.P.s will not eligible for revalidation and, in a short period, the only healthcare available would be from that hospital. That is why it is so important. I think from the primary care body, who sent that letter this morning, it makes that clear.

The Connétable of Grouville:

Sir, on a point of clarification may I ask does revalidation come before registration or is it the other way around because I cannot understand ... sorry, I am getting answers from all over the place. Perhaps the Minister would care to reply.

Deputy I.J. Gorst:

Sir, perhaps the Connétable would give way. As I have said some moments ago I think, and I also answered the Chairman's question, G.P.s need to be registered in order to get the revalidation. It is the revalidation that they require from the G.M.C. otherwise they are not in good standing with the G.M.C. Therefore that would mean that our G.P.s, (a) would either be below par or (b) would move off Island to a jurisdiction where they were able to be in good standing with the G.M.C.

The Deputy Bailiff:

Very well. The proposition which is before Members is the proposition under Standing Orders 79 that the present debate is suspended and the States request the relevant Scrutiny Panel to consider having the proposition voted. I cannot think that there will be much positive to be contributed to a debate on this matter. Does any Member wish to speak? The Deputy of St. John.

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

I was listening to the comments made by the Minister about Scrutiny. We do not know the terms of reference of the Scrutiny Panel and for him to be so disparaging about the work of Scrutiny yet again I have got real concerns as to the way the Ministers appreciate the amount of hard work that is done by Scrutiny members across the board. For him to be so disparaging I think is a total discourtesy to Members who work in Scrutiny. On the other thing, I have concerns that we are being told that revalidation is required. If it is not required until 2012, because that is when the work is due to be all up and running, then it gives Scrutiny time over the next few weeks, or if it runs into January or February, then so be it. The work needs to be done. I have said that in my speech yesterday, the work does need to be done by Scrutiny.

The Deputy Bailiff:

If I could just remind Members that the proposition is to refer the matter to Scrutiny. That involves really the reference of the principles to Scrutiny because it is not a question of referring the draft legislation or the draft regulations to Scrutiny. Whether or not Members think it is appropriate to have the matter of the principles referred to Scrutiny, when it has been debated for some 3 and a half or 4 hours so far, is entirely a matter for the Members. But it is worth adding from the Chair, that if it is to be referred to Scrutiny then having the Scrutiny report does not prevent the Chairman of the Scrutiny Panel calling in the draft regulations after the point of the principles being approved in accordance with Standing Order 72(1). In other words it could, theoretically, be scrutinised twice according to the Standing Orders.

1.2.8 Senator B.E. Shenton:

I just thought I should speak briefly as the President of the Chairmen's Committee. Scrutiny provides the checks and balances to ministerial government and I think what I am hearing from some Members, and certainly on the Executive, is that Scrutiny should not be allowed to do its job because they brought the proposition on a time-sensitive basis. May I just send a clear message out to Ministers; woe betide any Minister in the future that tries to go past the Scrutiny process by using this device. I hope the panel do call it in. I will be voting against this proposition. I hope the panel do call it in and I hope they act with professionalism, as I am sure they will, and will come back in a very timely manner. **[Approbation]**

1.2.9 Senator A. Breckon:

I would like to address the House as the former Chairman of the Health, Social Security and Housing Scrutiny Panel. The reason I say that is in the last 2 years I have probably met with the G.P.s and this has become a part of this. When we talk about primary healthcare it was not really this function, and already I think the panel will be aware of the fact that this was in a previous Business Plan; money was identified by Health and then maybe on ... I do not know if Senator Shenton is right, it was taken out. If somebody needs to find out some facts then my understanding and knowledge of it is they would be able to do that within a couple of weeks, and the chairman of the panel would be able to come back, address this House, I believe, and say: "This is the circumstances. This is what we have decided to do." I do not think it is time critical because the G.P.s, to my knowledge, have been working on this for a couple of years. They have brought people to the Island to advise on the situation and indeed they have been frustrated by the lack of co-operation originally from Health and the funding; who is going to fund it? They have already put some of their own money in. So regarding Scrutiny, and looking at it, I do not think it is a difficult exercise and if Deputy Southern was to exercise that right I think that he could come back to the House in 2 weeks' time and give the House a steer then, an informed opinion, and then it

would be up to the panel to decide whether to take it on or, I would think at that stage, they would be able to produce a report that may well satisfy the concerns that Members have.

1.2.10 Senator T.A. Le Sueur:

I would just like to clarify for the benefit of the Chairman of the Scrutiny Panel and the President of the Chairmen's Committee that, speaking as the Chief Minister, I have absolute faith in the concept that any Scrutiny Panel can call in any bit of legislation that they so choose and that Ministers have to adjust their timing to ensure that that meets the timetable. Having said that, it appears to me that this proposition from Senator Le Claire is all about trying to speed up that timetable and, as far as I can see it, it does nothing of the sort. If anything it might delay things slightly but it certainly does not speed things up.

[11:45]

On that basis I do not believe that this is the appropriate way to go forward. If the Scrutiny Panel choose to scrutinise us they will do so in their own time and recognise the importance that the House may give to the appropriate timing for this. But for us to try to use a device in an attempt to speed things up, which in fact it has no such effect, is a waste of this House's time and I regret having to spend my time having to explain that.

1.2.11 Deputy M. Tadier:

First of all I notice that when Deputy Le Claire was proposing this he said: "It is not a device" but I have to disagree with that and I suspect, inadvertently, he is misleading the House because the purpose of this particular Standing Order is that if a particular Member does want it to be referred to Scrutiny and does want to cease the debate then he or she will bring this proposition to the House. It is quite clear that, in this case, Deputy Le Claire does not want this to be referred to Scrutiny at all and, at this point, nor does he want the Chairman of the Scrutiny Panel to make a judgment call on what is his prerogative as to whether or not to call this in for Scrutiny. In my dictionary that is exactly being used as a device. First of all, a device which he has admitted to try and send a strong message out to the Deputy that he does not want this to be called in for Scrutiny, either now or after the principles have been agreed. Secondly, I think it has a secondary device aspect insofar as that it allows the second speeches of a general nature which, if the Chair was not so astute, Members might be able to get in. I think it is a device, so I would ask the Deputy to reconsider that and consider whether he has been misleading the House in that respect. It has also been highlighted that this proposition is meaningless anyway because there are 4 different options, as I can see it, as to what Members may want from this particular juncture. You may think that the debate should be ended now and that it should be referred to Scrutiny. You may think that the debate should be ended now but not referred to Scrutiny. You may also think that the debate should carry on. Does that make sense? I think there are 4 options but I think I lost my thread there, and it has been a long morning. But the point is, how do we send a clear message out to what our intention is? I, for example, want this to proceed to the vote. I want to maybe support it or not support it and I want ... it is either a boy or a girl, and I would like the chairman of the panel to make the judgment call, as is his right. I think essentially the meat here that Deputy Le Claire has is that if he does not like the fact that Scrutiny chairmen and Scrutiny chairs can pull in a proposition perhaps against the will of the House, then what he needs to do is to talk to P.P.C. about it and perhaps bring a proposition so that Scrutiny chairmen can no longer pull propositions in. But I think this is a misuse of this juncture. I think the sensible option would be to proceed with the debate to allow the Minister to sum up and address many of these concerns in his summing-up, as he said he would do. We can send a strong message out, I would have thought, but if we unanimously or overwhelmingly support the proposition or otherwise that will send a strong message out but, again, it is up to the chairman to decide what to do. We are wasting our time here. This proposition is simply served to extend an already long debate by an extra half an hour and I think it serves to bring the House into further disrepute.

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

I will just say I welcome the Chief Minister's support of Scrutiny and that devices should not be used to prevent Scrutiny doing its job. Unfortunately he forgets, however, the ministerial-induced attempts to prevent my own panel looking into the deposit protection proposals 2 years ago ...

The Deputy Bailiff:

That is not relevant, Deputy.

Deputy M.R. Higgins:

Certainly it is, Sir, because the point is that this is a device again to, I think, get around the Scrutiny process. I believe that the Chairman of the Scrutiny Panel should be entitled to decide whether he wants to look at it or not. I think we should reject this proposal.

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

Short if not sweet. I too welcome the Chief Minister's words. I really want to echo what Senator Shenton said because really I listen to this and it puts me in mind of when we visited colleagues in the Welsh Assembly, and we all came away with the impression that they are only allowed to scrutinise things which were irrelevant. Time and time again this House seems to be sending out the message that Scrutiny is all well and good as long as it does not upset the Council of Ministers or something. Scrutiny either works and it is valid or, frankly, we stop doing it. I do not know if the public are aware of this, there are only 17 of us left doing Scrutiny and if this nonsense is going to carry on, extending debates, which I know I am doing, but I am absolutely sick of it. If we cannot get on with the vote I think I am going to take a much needed comfort break and probably lock myself in.

The Deputy Bailiff:

If no other Member wishes to speak I call on Deputy Le Claire to reply.

1.2.14 Deputy P.V.F. Le Claire:

It really is quite disappointing when we have so many educated people in this Assembly that I have to turn around and question their intelligence because I am afraid I am going to have to. Despite what the media makes of this and despite what colleagues that are not listening are making of this, while they make political capital and gibe remarks, they are failing to get the point. Deputy Tadier, who seems to like putting words in my mouth, seems incapable of taking words from my mouth into his ears. **[Interruption]** I am not giving way, this is ...

The Deputy Bailiff:

Deputy, if I may say so, please sit down. It is unnecessary to have gratuitous insults in this Assembly. I would be grateful if you would apologise.

Deputy P.V.F. Le Claire:

Sir, the Deputy has accused me of misleading the Assembly, using a device and has put words in my mouth as to what my intentions were ...

Deputy M. Tadier:

If I have to, I have to.

Deputy P.V.F. Le Claire:

And has also, on a point of order, Sir, impugned my motives.

The Deputy Bailiff:

Deputy, what Deputy Tadier said was he wished you to consider whether you ... He has not accused you of anything, so you can certainly address the Assembly and say that you apologise.

Deputy P.V.F. Le Claire:

I withdraw the remarks about putting words in his ear, Sir. I received this advice from the Deputy Medical Officer of Health during this debate and I am going to get on, if I am allowed, without the groaning. If Jersey cannot provide a governance infrastructure that the General Medical Council will recognise, our G.P.s simply will not be able to apply to keep their licenses to practice through revalidation. Recruitment of new G.P.s will be impossible and current G.P.s will have no option but to pursue their careers elsewhere. Revalidation is a new requirement from the G.M.C. Doctors will need to have new evidence ready by 2012. If I could only point to one speech it would be that of the Minister for Social Security. Everybody else is failing to see the point and, I am sorry to say, even the Minister for Social Security failed to see the point. Unless I made this debate possible nobody would have been able to have cognisance of this while it goes forwards. Deputy Southern has told us he is pulling this for Scrutiny. He is going to be mindful and I support Scrutiny, and I welcome and support the words of the Chief Minister and that of Senator Shenton, that Scrutiny is going to add value into a job that is going to add value and bring it in a timely manner. The reason why I brought this proposition, on the floor of the House, ad hoc as I have done, is because I believe in this one instance, and no Member can tell me that there can never be a one instance, a first time, a one-off. In this one instance I believe Scrutiny may work against us and it may work against validating our G.P.s. While there is no need for a vote for it to go to Scrutiny, I would urge Members to consider the fact; at the least they are now aware of the need for Scrutiny to look long and hard and seriously about what it is they are going to scrutinise, how long they are going to take and what effects those are going to have and come forward with those as soon as possible, because if they are not going to be able to do it in a timely manner then the Minister for Treasury and Resources, as I have said, needs to bring some more money to the table. As I have said, unfortunately Deputy Tadier did not hear this, had the P.P.C. chairman been in the Chamber in my first speech, as it will bear out in Hansard, I did say maybe this needs reviewing in Hansard, not the need to go to Scrutiny, the opportunity for us to speak about the consequences of it going to Scrutiny. I support Scrutiny but there are consequences.

The Deputy of St. Peter:

Just a point of clarification; the chairman of P.P.C. is away at a funeral and I am standing in as the Vice-Chairman.

The Deputy Bailiff:

Thank you, Vice-Chairman. No doubt P.P.C. will want to give consideration to Standing Orders as a result of the purpose of this debate. The proposition is for the debate to be suspended under Standing Order 79. The States request the Health, Social Security and Housing Scrutiny Panel to consider the proposition. The appel is called for. I invite Members to return to their seats and I ask the Greffier to open the voting.

POUR: 2	CONTRE: 45	ABSTAIN: 0
Deputy R.C. Duhamel (S)	Senator T.A. Le Sueur	
Deputy P.V.F. Le Claire (H)	Senator P.F. Routier	
	Senator T.J. Le Main	
	Senator B.E. Shenton	
	Senator F.E. Cohen	
	Senator J.L. Perchard	
	Senator A. Breckon	
	Senator A.J.H. Maclean	
	Senator B.I. Le Marquand	
	Senator F. du H. Le Gresley	
	Connétable of St. Ouen	
	Connétable of St. Helier	

	Connétable of Trinity		
	Connétable of Grouville		
	Connétable of St. Brelade		
	Connétable of St. Martin		
	Connétable of St. John		
	Connétable of St. Saviour		
	Connétable of St. Clement		
	Connétable of St. Peter		
	Connétable of St. Lawrence		
	Deputy of St. Martin		
	Deputy R.G. Le Hérisier (S)		
	Deputy J.B. Fox (H)		
	Deputy J.A. Martin (H)		
	Deputy G.P. Southern (H)		
	Deputy of St. Ouen		
	Deputy of Grouville		
	Deputy of St. Peter		
	Deputy J.A. Hilton (H)		
	Deputy of Trinity		
	Deputy S.S.P.A. Power (B)		
	Deputy S. Pitman (H)		
	Deputy K.C. Lewis (S)		
	Deputy I.J. Gorst (C)		
	Deputy of St. John		
	Deputy M. Tadier (B)		
	Deputy A.E. Jeune (B)		
	Deputy of St. Mary		
	Deputy T.M. Pitman (H)		
	Deputy A.T. Dupré (C)		
	Deputy E.J. Noel (L)		
	Deputy M.R. Higgins (H)		
	Deputy A.K.F. Green (H)		
	Deputy J.M. Maçon (S)		

Senator B.E. Shenton:

Sir, can I notify the Chair that I wish, in half an hour, to propose the closure motion?

The Deputy Bailiff:

Indeed. We resume debate on P.125 and the Connétable of Grouville, I have you down as wishing to speak.

1.3 Draft Health Insurance Fund (Miscellaneous Provisions) (Jersey) Law 201- (P.125/2010) - resumption

1.3.1 The Connétable of Grouville:

Much clearer now. **[Laughter]** I am not going to say very much because coming in at the end of the debate everything really has been said. I just want to say that when, as a member of the Corporate Services Scrutiny Committee, in a previous life, we scrutinised the Business Plan and the C.S.R. and the consensus really was that Health do need a breathing space, they need time to sort themselves out, to regroup and consolidate. I shall be supporting this motion. I must say, as an outside word, really if you look outside this building and you talk to people; I spoke to a couple of

parishioners last night and they said to me: "What is this debate about?" I said: "Well, at the end of the day, it is really what pocket are we going to take the money out of?" Really that is what it has come down to at this stage. There is absolutely no reason whatsoever why this could not have been sorted out inter-committee and with the Minister for Treasury and Resources perhaps. But I just think that having brought this motion to the House, there are strong views; I notice there are a couple of Members who want to hold on to this fund and not to touch it but it is part of our assets. It is part of what we do. It is part of helping people. If we need to break into some of these funds then we must do it. I just cannot honestly see why we have to waste over a day now discussing this when it is perfectly obvious to me that we have no alternative. I am going to support the motion and I would ask Members to support it as well.

1.3.2 Deputy M.R. Higgins:

I am going to be brief because most of the arguments for and against the proposition have been made. Like many others, however, I have been concerned about raiding of a ring-fenced fund. But my biggest concern has been my almost total lack of confidence in the Health Department and its ability to manage its costs and budget, and perhaps more importantly its ability to prioritise its activities by putting the patient and their health first rather than feeding its bureaucracy. It has been said that by taking money away from the Health Insurance Fund shows joined-up thinking by the Health and Social Security Departments when they decided to fund primary care and the other elements of the proposition in this manner. But where is the joined-up thinking by the Health Department when it determines whether to fund the cost of an operation? Does it take into consideration future costs to Social Security or other States departments if it does not? I have a constituent who has a very serious medical condition which has been treated in Jersey and has failed to alleviate the problem. The patient has to take morphine every week to alleviate acute pain that they endure daily. The constituent has been advised locally that there is no more that can be done for them and that they will be totally invalided within 2 years.

[12:00]

Yet, after privately funding a consultation with a leading expert in the U.K., something which the family had to scrape together the money for because it was not supported by the Health Department, they have been told that there is an operation which can be carried out that stood a very good chance of alleviating the problem and preventing their invalidity. However, the operation would cost £20,000, that is with the U.K. hospital funding the rest of the cost of the operation, and I might add this offer was made before the swingeing cuts to public sector services in the U.K. The hospital here, although indicating initially they would fund the operation, appear to be now backtracking, with the consequence that the person concerned will be an invalid within 2 years, will be on morphine for the rest of their life to deal with the acute pain, will have to be supported, along with the rest of their family for the rest of their life, which as the person concerned is a relatively young person, and they will be supported, by the way, by the Social Security Department, and that person will be denied a full and productive life. This is the department that wants us to help them and take the whole into account. I want them to take the whole into the account on this matter. I want a hospital service that puts people first and is properly managed. I will support them this time but my patience with them is running out rapidly, and I place on record that I am highly unlikely to support any future funding for them until they get their house in order and their priorities right.

The Deputy Bailiff:

If no other Member wishes to speak then I call on the Minister to reply, please.

1.3.3 Deputy I.J. Gorst:

I must confess to having been slightly confused at points throughout this debate with some of the comments that were made and some of the suggestions about what I was proposing. I think I, therefore, must start by reiterating what this is not. This has nothing to do with the Social Security

Fund. This has nothing to do with pensions. This has nothing to do with sick pay. Nor does it have anything to do with poor investment decisions which appear to have been made by the Deputy of St. John, that he was telling us about yesterday. This is about the Health Insurance Fund. Part of the contribution that all earners and self-employed people make and employers, that they see as one line of Social Security contributions, is split. A small proportion goes into the Health Insurance Fund and the remainder goes into the fund that we call Social Security, which pays for future pensions and for current sick pay. We must be absolutely clear and I would not want any member of the public to be confused about what it is that is being proposed. It has nothing whatsoever to do with pensions, the pension contribution or the pension pot. I recognise that perhaps it is my profession, perhaps it is 2 years having been in this department, but I can become a little narrow-minded and a little bit pedantic about what happens in my department and I like to see it referred to correctly and not in a confused manner. Having said that, I did undertake a small survey last evening asking individuals what they believed the money that they have paid in Social Security, what did it go towards? You might not be surprised to know that not one of the responses was quite as pedantic or correct as I would have liked to have heard. But it was generally this; that it goes towards pensions, it goes towards other peoples' benefits - and I will come back to that - and it goes towards helping to contribute for when they are unwell. As you and I know, it does not go towards other peoples' benefits. It goes towards benefits that those who have contributed towards are entitled to should they need it or should they then be entitled to it, i.e. pensions and sick pay. It has got nothing to do with income support or benefits that are means-tested, and therefore I must also clarify that. I then move on to the third point, which was it goes towards helping to mitigate costs when I am unwell. There we encounter the first problem because the Health Insurance Law is an old law, was written in a time when, in actual fact, there were 2 options mostly before people and that was (a) to go and see their doctor and a lot of procedures were carried out by G.P.s or (b) go to the hospital. The rest of the world has changed. We now have a concept that we frequently refer to as primary care and community provision. We in Jersey, unfortunately, have not moved in that direction in a way that we really ought to have done and we are now starting to play catcher. The Health Insurance Law, to be fair to it, did allow for 4 categories of interaction; not just G.P.s but also pharmaceutical benefit, dental care and for ophthalmic care and, as we have already discussed today, 2 of those were never brought into force. Why do I mention that? I mention it because I was asked and challenged about why I felt the proposition before us today was a reasonable extension of the purposes of that law. I think if we understand the historical setting of the law, that it was G.P.s and hospitals that we really encountered when we were having healthcare delivered to us, but now there are many more avenues of healthcare delivery. We can see quite clearly that it is legitimate and it is appropriate and it is reasonable to use the monies that we have collected, in line with the law, for primary care purposes, in this instance, for giving some breathing space to Health to ensure that we do have a modern primary care provision and we do have a totally joined-up provision between hospital and G.P., and I will come back to that. It is not far removed. It is not, as some Members have tried to suggest, a raid on the fund. It is a natural progression of the use for which that money was collected in the first instance. How can I say that with confidence? I can say it because there are many services which the Health Department are currently providing, which are primary care services. We can argue about whether they should have started undertaking those services and whether they had the appropriate budgets for them and whether it has been appropriately controlled, and whether we do not particularly like one line of the service they are providing or we do not like an individual or the way that they are delivering it. We can have all those arguments but they started and they undertook these services in the best interests of the health of Islanders at large. They did that and it was right of them to do that. With hindsight, perhaps we should have amended the law first, many, many years ago but for many reasons, and we all know that in actual fact we, as an Assembly, in the past had not ... I do not want to use the word "control" but certainly had not overseen health provision in this Island in a way that gives us credit, and in a way that we really ought to have done, and that is why we are where we are today. It is my intention and it is my belief that probably most of those services, primary care services which are

delivered by the hospital, should be delivered at the community level: be that via G.P.s or be that via pharmacists but we seem to have arrived at a block. I do not think it is unreasonable to say that this money is being used in a way which is a natural extension to that for which it was collected. Before we got into the Standing Order 79 debate about referring to Scrutiny, I said then I would talk about Scrutiny. The Scrutiny Chairman issued me a challenge during his debate and he said that if the services currently provided by the hospital were to be provided free in the community then he would not call this proposition to Scrutiny. Perhaps he has now moved on from that having consulted with his panel, but I hope he has not because I can give him the assurance that it is certainly my intention, and I believe it is the intention of the Health Department, that those services will continue to be provided free at the point of delivery, but that it is more appropriate that they are provided in a community setting. It is more appropriate that they are funded from the Health Insurance Fund on a contract basis with G.P.s rather than via the taxpayer, as it currently happens, on an ad hoc basis. That is my intention and that, I hope, is what might be delivered and suggested in the strategic roadmap as we go forward. That is the undertaking that I give to the chairman. As I have said earlier, I hope, therefore, he might recognise that his one concern, which I believe was costs of effective delivery to individuals and costs of accessing healthcare, is not going to be increased by these propositions. In actual fact, all things being equal, it is going to be reduced. People are going to be able to access more preventative medicine. Those with chronic conditions are going to find that access is cheaper than it currently is, having to go to the G.P. This is the future. This is the position that we need to move towards. It would only be right for me to touch briefly upon Article 3 and Deputy Le Claire's earlier proposition. He is absolutely right and he was absolutely right. The law-drafting advice is that it will be tough to make the 2012 deadline. I do not say that lightly but it is part of the decision that Members will have to make. I hope that the Scrutiny Chairman will consider, in making his final decision once we have gone to this vote, hopefully that principles will be accepted but, that being the case, I hope he will consider that that is important, that G.P.s could be called by the G.M.C. to be revalidated as soon as 2012 and therefore there is a time pressure there. I do recognise that this extension of the use of the Health Insurance Fund is a difficult and emotive issue. I, like other Members, want to be ensured that we are not just on another round of assurances from departments that things are going to change in the future. I do understand the frustration that Members feel for the delay and the time that has elapsed in us getting to where we are today. I give an undertaking to the Assembly today that I also will review the Health and Social Services spend on primary care during 2011 to ensure that it has been spent on just that. I also give an undertaking to say that I will ask the Minister for Health and Social Services to provide an updated report on the progress which has been made throughout the year, prior to me bringing forward the Regulations under Article 2. I do not believe that I can do any more. By giving that commitment what I am saying to the Assembly is, that in actual fact, although others have said it is for 2 years, I will not bring the second year's worth of spending forward unless I am satisfied, unless the Health and Social Services Department, obviously in conjunction with my department, can provide an update on the progress that they have made throughout the course of the year. Having said that, of course if Scrutiny take too long then that progress will be slowed down and that, I hope, will be another consideration for the chairman, but I know that he will address those issues if he does decide to take it into Scrutiny in due course. I do not propose to go over everyone's speech, I think that would be counter-productive. Progressing the Island health agenda has taken too long. I do not think there is anyone that would doubt that statement or question that statement. Many Members have shared their particular frustrations with the length of time that this progress has taken.

[12:15]

Of course not everyone in my department has been convinced but I, for one, am convinced that Health need this 2-year window in order to provide the roadmap, the strategy for primary care and the future of the hospital. These are not easy areas. They require us to look at issues in the round, to balance inter-departmental concerns. I believe that today we must show leadership. These

issues have been hanging in the air for many, many years but today, again, is an opportunity for us to finally move forward. This is one-year's worth of funding to allow Health to move forward. I therefore ask Members to consider carefully because today we have a chance; a one perhaps 2-year window, to break the deadlock, to move beyond the frustration and to see a healthcare provision in this Island, which is fit for the needs of the community where care is delivered at the appropriate level by the appropriate professional in a cost effective and appropriate way. Without this piece of work being undertaken, without this one or 2-year window, we will not move on. We will not be able to answer those questions. We will not be able to deal with those frustrations. I do ask Members to consider very carefully, if they are thinking of voting against it, before they do so. This is an opportunity that we have before us today. I ask Members to consider and to vote in favour of the principles of this law. Thank you. **[Approbation]**

Deputy E.J. Noel of St. Lawrence:

Can I raise the défaut on Senator Ozouf, please?

The Deputy Bailiff:

I propose the défaut be raised on Senator Ozouf. The appel has been called for on the question as to whether or not the défaut on Senator Ozouf should be raised. I ask the Greffier to open the voting.

POUR: 43	CONTRE: 3	ABSTAIN: 0
Senator T.A. Le Sueur	Senator T.J. Le Main	
Senator P.F. Routier	Deputy G.P. Southern (H)	
Senator B.E. Shenton	Deputy of St. John	
Senator F.E. Cohen		
Senator J.L. Perchard		
Senator A. Breckon		
Senator A.J.H. Maclean		
Senator B.I. Le Marquand		
Senator F. du H. Le Gresley		
Connétable of St. Helier		
Connétable of Trinity		
Connétable of Grouville		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. John		
Connétable of St. Saviour		
Connétable of St. Clement		
Connétable of St. Peter		
Connétable of St. Lawrence		
Deputy R.C. Duhamel (S)		
Deputy of St. Martin		
Deputy R.G. Le Hérissier (S)		
Deputy J.B. Fox (H)		
Deputy J.A. Martin (H)		
Deputy of St. Ouen		
Deputy of Grouville		
Deputy of St. Peter		
Deputy J.A. Hilton (H)		
Deputy P.V.F. Le Claire (H)		
Deputy of Trinity		
Deputy S.S.P.A. Power (B)		

Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

The Greffier will now reset the voting system. The vote is on the principles of the Draft Health Insurance Fund (Miscellaneous Provisions) (Jersey) Law 201-. I would like Members to return to their seats and I ask the Greffier to open the voting.

POUR: 36	CONTRE: 10	ABSTAIN: 1
Senator T.A. Le Sueur	Senator T.J. Le Main	Connétable of St. Lawrence
Senator P.F. Routier	Senator A. Breckon	
Senator P.F.C. Ozouf	Connétable of St. John	
Senator B.E. Shenton	Connétable of St. Clement	
Senator F.E. Cohen	Deputy R.C. Duhamel (S)	
Senator J.L. Perchard	Deputy G.P. Southern (H)	
Senator A.J.H. Maclean	Deputy of St. John	
Senator B.I. Le Marquand	Deputy A.E. Jeune (B)	
Senator F. du H. Le Gresley	Deputy T.M. Pitman (H)	
Connétable of St. Helier	Deputy J.M. Maçon (S)	
Connétable of Trinity		
Connétable of Grouville		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. Saviour		
Connétable of St. Peter		
Deputy of St. Martin		
Deputy R.G. Le Hérissier (S)		
Deputy J.B. Fox (H)		
Deputy J.A. Martin (H)		
Deputy of St. Ouen		
Deputy of Grouville		
Deputy of St. Peter		
Deputy J.A. Hilton (H)		
Deputy P.V.F. Le Claire (H)		
Deputy of Trinity		
Deputy S.S.P.A. Power (B)		
Deputy S. Pitman (H)		
Deputy K.C. Lewis (S)		
Deputy I.J. Gorst (C)		
Deputy M. Tadier (B)		

Deputy of St. Mary			
Deputy A.T. Dupré (C)			
Deputy E.J. Noel (L)			
Deputy M.R. Higgins (H)			
Deputy A.K.F. Green (H)			

The Deputy Bailiff:

Very well. The Chairman of the Health, Social Security and Housing Scrutiny Panel, in accordance with Standing Order 72, I will ask you whether you wish to have the draft Law referred to Scrutiny?

Deputy G.P. Southern (Chairman, Health, Social Security and Housing Scrutiny Panel):

Yes, Sir. As I indicated earlier, I believe that serious reservations around this particular piece of work have been expressed and I think it is worthwhile to have another look at what is going on. Obviously, as I have said before, I will report back next week as to what timescale I intend and what my terms of reference might be. Certainly that will be within the scope of the 4 sessions from this session that I report back, if that is what it needs. Yes, Sir, I will be requesting that it is referred to Scrutiny.

Deputy I.J. Gorst:

Sir, could I just ask, is the Chairman saying then he will report back on what his process is going to be at the next sitting?

Deputy G.P. Southern:

Yes, I believe that is what is contained in Article 72.

The Deputy Bailiff:

I was going to help the Minister and you, Chairman, by referring you to what the Standing Orders say, which is that where the draft is referred to the relevant Scrutiny Panel, which is what has just taken place, but the panel has not reported on it, the States must decide at which meeting the Second Reading of the draft shall be listed to continue. The meeting must be not later than the fourth meeting so it could be earlier: "It must be not later than the fourth meeting following the debate upon the principles." Of course that will be a matter for the States to decide, at which meeting the Second Reading of the draft will continue.

2. Reg's Skips Limited - Planning Applications (R.118/2010): compensation and further action (P.130/2010)

The Deputy Bailiff:

We now come on to the next item on the agenda which is P.130; Reg's Skips Limited - Planning Applications: compensation and further action, and I ask the Greffier to read the proposition.

The Assistant Greffier of the States:

The States are asked to decide whether they are of opinion (a) to approve the making of an *ex gratia* payment of £157,000 to Mr. and Mrs. R. Pinel, (the proprietors of R.S.L.), as compensation for costs incurred as set out in R.118/2010; (b) to approve the making of an *ex gratia* payment of £3,347 to Mr. C. Taylor (owner of Heatherbrae Farm, St. John), as compensation for costs incurred as set out in R.118/2010; (c) to request the Chief Minister, in consultation with the Minister for Treasury and Resources, to identify funds to meet the cost of the payments in (a) and (b) above; (d) to request the Minister for Planning and Environment to make provision in the new Island Plan to enable and encourage the sorting and recycling of inert waste on private land, in respect of both existing businesses and new entrants to the market; (e) to request the Chief Minister to request the

States Employment Board to investigate the poor actions of employees in the Planning Department as highlighted in R.118/2010 and take the necessary action, as appropriate.

2.1 Senator B.E. Shenton:

I would like to begin this speech by paying tribute to Reg and Rita Pinel, whose tenacity and belief in eventual justice has led to this proposition today. I do not intend to dwell too long on the events that brought us to this position because much has been said in previous debates which has concerned their treatment. I do not think it would be an understatement to say that this Jersey family has been put through hell by a government that appears to refuse to admit to its mistakes until it is pushed right into the corner. To be honest, in this particular case, and I have made representations to them, I think the legal system showed themselves at times to be somewhat wanting. I think too often the public have to deal with complaints or appeal systems that are too expensive, that fail in basic human rights principles or act as a type of cul-de-sac where complaints are taken and then quietly strangled. I look forward to part 2 of the Committee of Inquiry report that deals with the aspect of planning, that deals with the appeal processes and what their findings may well be. I think there is no doubt that the Pinels or Reg's Skips Limited do deserve compensation and this was the findings of the Committee of Inquiry. Those of you who have read the Committee of Inquiry report will realise why. Through no fault of their own they were nearly forced out of business and could, at one point, have lost their family home to pay the legal fees. At the end of the day these are just hard-working Jersey people, working hard to raise a family and grow a family business. Yet, even at this late stage, government appears to be working against them. The Minister for Planning and Environment quite rightly sought early settlement of the compensation amount recommended by the Committee of Inquiry and the funds are needed by Reg's Skips as they under a mountain of debt. It was even reported in the local paper that they were being paid, resulting in a number of creditors banging on their door. However, legal advice received by the Minister for Planning and Environment dictated that an *ex gratia* payment needs the agreement of the States Assembly and I do not disagree with this. I believe that *ex gratia* payments, such as this, should come to the States Assembly. But I would like to ask the S. G. (Solicitor General), and I have given notice of this question, how an *ex gratia* payment was made by the Council of Ministers to a group of investors which was sanctioned in 2009? I will just find the proposition which is mixed up with the paper: "In 2009 the Minister for Treasury and Resources agreed to a request, in accordance with Article 15 of the Public Finances (Jersey) Law 2005, to allocate funds from the 2008 underspend. The total carried forward request was for £597,000, although compensation could in fact be less and will be made available as an *ex gratia* payment to 28 local investors." What this case highlighted, since I took it on, was that government and government departments have a "can do" attitude when they want to and a "cannot do" when they do not; in other words one law for one and one law for another. I was quite pleased when the Minister for Planning and Environment admitted that they would make the payment to Reg's Skips even though I thought a higher amount was deserved. But the S.G. ruled that an *ex gratia* payment cannot be made. I was a politician that was very upset in 2009 that the Council of Ministers decided, without coming to the States Assembly, to make an *ex gratia* payment to 28 local investors. It appears that this was legally okay. I would like to ask the S.G. why *ex gratia* payments by the Council of Ministers are okay but *ex gratia* payments by the Minister for Planning and Environment are not?

The Deputy Bailiff:

Senator Shenton, I do not think that forms part of the present debate. There are other ways in which you can raise that particular issue if you choose to. You can put it in a written question or an oral question for the Attorney General, you can put in a written or an oral question for the Chief Minister and that can lead, in due course, if you get answers which upset you, to a debate upon a proposition which is specially brought for that purpose and that would all be relevant but it is not, in my judgment, relevant for the present debate today.

Senator B.E. Shenton:

Sir, with all due respect, article (a) of the debate is to approve the making of an *ex gratia* payment of £150,000 to Mr. and Mrs. R. Pinel.

The Deputy Bailiff:

Yes, indeed.

Senator B.E. Shenton:

If the Minister had been allowed to make that payment then that would not have been relevant to this debate.

The Deputy Bailiff:

The legal advice which has been produced, as I understand it from you, indicates that the Assembly's permission is necessary to make this payment. That is the advice that the Solicitor General can be asked to repeat if necessary, but not to compare it with any other legal advice that may be given on any other subject.

Senator B.E. Shenton:

Sir, perhaps I am of a cynical nature but I will follow this up because the ...

The Deputy Bailiff:

That is entirely your right.

Senator B.E. Shenton:

The ruling from the Chair would imply that there are question marks over the 2009 payment.

The Deputy Bailiff:

My ruling implies no such questions. It is a matter for you to raise what questions you wish to raise.

Senator B.E. Shenton:

Thank you, Sir, I will take up your thoughts. The proposition is largely to deal with the recommendation of the Committee of Inquiry. One of the reasons I felt that it should come to the States is because when I first joined the States back in 2005 there had been a Committee of Inquiry into Connex, and the members of the Committee of Inquiry felt that they had largely wasted their time and energy because hardly anything was done on the back of it. It was never brought to the States as a formal proposition.

[12:30]

It was never debated and indeed some of the recommendations were never carried out. If you go through the recommendations of the Committee of Inquiry because these are not my recommendations. They state: "Although our main terms of reference do not specifically invite us to make recommendations, it seems to us desirable that we do in order that the States, in considering our report, are in no doubt about our view on what should be done to bring the case to closure. What follows relates only to the first 2 of our terms of reference; recommendations about the planning process itself in the light of this first report which are invited by our third terms of reference will follow in our second report. We make full recommendations which we invite the States to accept. The department should apologise publicly to Mr. and Mrs. Pinel, Mr. Taylor and Mr. and Mrs. Yates for the various mistakes, misguided actions and inactions that we have set out in this report. That the States should compensate Mr. and Mrs. Pinel as owners of Reg's Skips Limited in the sum of £157,000 pursuant to paragraph 17.5 above. The department should reimburse Mr. Taylor his fees for his 2 planning applications in the sum of £2,022 and his costs for hiring professional acoustic advice in the sum of £1,325. This makes £3,347 in total. Pursuant to

paragraph 15.46 above, the States should beyond doubt ensure that there are specific robust policies in the new Island Plan to enable and encourage the sorting and recycling of inert waste on private land. In respect of both existing businesses and new entrants to the market and that the Planning and Environment Department is held to account on delivering this.” In addition to these recommendations, I have added one further recommendation of my own: to request the Chief Minister to request the States Employment Board to investigate the poor actions of employees in the Planning Department as highlighted in R.118 and take the necessary action as appropriate. I am not saying as a politician what that action should be or make any recommendations as to what should be done, but I think when you do have a Committee of Inquiry Report produced by respected independents and as taxpayers, we are in a position where we are paying out compensation, the States Employment Board has a duty to at least look at the report, look at the problems that have arisen and make sure any necessary action is taken. I think it was a little disingenuous of the Minister, albeit I have been told subsequently by him that it was not reported fully, to say that he was not going to take any action. When I originally got involved, I was struck by how difficult it is for the man in the street to get justice on this Island when things are working against them. It has taken some quite extreme measures to get to the point we are today. The figure quoted by the Committee of Inquiry just covers legal costs and I think there is a little bit of benefit of hindsight there with regard to costs to appeals which they do not include. The mental and emotional strain of fighting “Big Brother” or trying to keep your business going, trying to not lose your house, trying to look after your children and trying to make a decent living for yourself and your family was immense. The reason I took up the case so vigorously was because I was struck by the hardworking and honesty of the people involved. Personally, I hope that they are given much more than the amount recommended by the Committee of Inquiry. That is part of the amendment so I will not go into that at this stage. I will keep this speech fairly short because we have covered all the matters before. This is not a personal vendetta against the Minister for Planning and Environment or against government or against lawyers or anything else. It is just, at the end of the day, a pursuit for justice and it is up to this Assembly to make sure that that justice is given out. I put forward the proposition.

The Deputy Bailiff:

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

2.2 Reg’s Skips Limited – Planning Applications (R.118/2010): compensation and further action (P.130/2010) – third amendment (P.130/2010 Amd.(3))

The Deputy Bailiff:

Very well, there are 3 amendments. The one which we take first is the third amendment lodged by the Minister for Planning and Environment and I ask the Greffier to read the amendment.

The Assistant Greffier of the States:

Page 2 paragraph (a) after the words “to approve” insert the words “, and therefore provide the legal authority for,”. Page 2 paragraph (b) after the words “to approve” insert the words “, and therefore provide the legal authority for,”.

The Deputy Bailiff:

Minister, I am assuming that you will be able to speak to both amendments because they appear to raise the same issue.

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

While the error at the source of the spiral of problems at the core of the Reg’s Skips case occurred prior to my appointment, I am nevertheless responsible for the performance of my department, both during my term and before. I wish at the outset to again apologise to Mr. and Mrs. Pinel for the distress this long saga has caused them. While money can never make up for the personal distress,

nonetheless it is important that the recommendations of the Committee of Inquiry are implemented. I therefore wish to make an *ex gratia* payment of £157,000 to Reg's Skips Limited and I stress that the proposed payment is to the company rather than to the individuals. I also wish to make an *ex gratia* payment to Mr. Taylor of £3,347 in accordance with the recommendations of the Committee of Inquiry. I must make it clear that while I wish to follow the recommendation of the Committee of Inquiry, I am advised that there is no legal liability to pay any compensation and therefore the proposed payments are on a strictly *ex gratia* basis. I made the decision to make these *ex gratia* payments promptly after the release of the Committee of Inquiry Report and sought advice on the best way of making the payment. On investigating the best mechanism to effect the *ex gratia* payments, I was advised that the Planning and Building Law does not include specific authority to allow the Minister for Planning and Environment to make an *ex gratia* payment without the authority of the States Assembly. Therefore I have lodged this amendment seeking the approval of the States to allow these *ex gratia* payments to be made immediately. I must advise Members that I became aware very recently that Mr. Taylor is claiming significant additional compensation. Based on the advice I have received, I will be resisting this and any further claims, as I am advised there is no legal liability. I sincerely hope that Members will support this amendment and agree to the making of the *ex gratia* payments as recommended by the Committee of Inquiry.

The Deputy Bailiff:

Is the amendment seconded? **[Seconded]** Senator Shenton, do you accept the amendment?

Senator B.E. Shenton:

Yes, I do, Sir.

The Deputy Bailiff:

Does any Member wish to speak?

2.2.2 Senator F. du H. Le Gresley:

I am delighted to hear the Minister confirm that the figure of £157,000 *ex gratia* is to go to the company because although we are not able to debate my amendment, that was the thrust of my amendment, and I do believe that there are strong legal reasons why this money should go to the company. If I may be permitted just to mention a couple of those because obviously the proposer has recommended that the money go to Mr. and Mrs. Pinel. The reasons why it should go to the company ...

The Deputy Bailiff:

Senator Le Gresley, can I indicate that that amendment will come to be discussed at a later stage. We are only dealing with "and therefore provide the legal authority for" at this stage.

2.2.3 The Deputy of St. Mary:

It is just a simple point which may or may not lead to complications. If the Assembly decides to adopt some of the other amendments, which increase the amount, does this amendment still provide the necessary legal authority because it only applies, as I understand it, to the amount that the Minister has had immediately agreed to make as a payment to the Pinels' company, so if we decide to up the amounts in any way will this still be enough to cover the new situation?

The Deputy Bailiff:

Does any other Member wish to speak? Minister, would you like the Solicitor General to deal with that question?

Senator F.E. Cohen:

I think that would be best, Sir.

The Solicitor General:

If the States agree that a payment of X should be made, then that payment of X is covered.

The Deputy Bailiff:

Very well, the appel is called for. I invite Members to return to their seats. The vote is on the third amendment to include the words “, and therefore provide the legal authority for,” in paragraphs (a) and (b) of the proposition. I invite the Greffier to open the voting. If all Members have had the opportunity of voting, I will ask the Greffier to close the voting. I can announce the amendment has been adopted 32 votes in favour, no votes against.

POUR: 32	CONTRE: 0	ABSTAIN: 0
Senator T.A. Le Sueur		
Senator P.F.C. Ozouf		
Senator B.E. Shenton		
Senator F.E. Cohen		
Senator J.L. Perchard		
Senator A. Breckon		
Senator F. du H. Le Gresley		
Connétable of St. Helier		
Connétable of Trinity		
Connétable of Grouville		
Connétable of St. Brelade		
Connétable of St. John		
Connétable of St. Saviour		
Connétable of St. Clement		
Connétable of St. Lawrence		
Deputy R.C. Duhamel (S)		
Deputy of St. Martin		
Deputy J.B. Fox (H)		
Deputy of St. Ouen		
Deputy of Grouville		
Deputy P.V.F. Le Claire (H)		
Deputy S.S.P.A. Power (B)		
Deputy S. Pitman (H)		
Deputy K.C. Lewis (S)		
Deputy of St. John		
Deputy M. Tadier (B)		
Deputy A.E. Jeune (B)		
Deputy of St. Mary		
Deputy A.T. Dupré (C)		
Deputy M.R. Higgins (H)		
Deputy A.K.F. Green (H)		
Deputy J.M. Maçon (S)		

LUNCHEON ADJOURNMENT PROPOSED

The Deputy Bailiff:

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

LUNCHEON ADJOURNMENT

[14:15]

2.3 Reg's Skips Limited – Planning Applications (R.118/2010): compensation and further action (P.130/2010) – fifth amendment (P.130/2010 Amd.(5))

The Deputy Bailiff:

The Assembly now resumes its debate on P.130/2010. The third amendment was adopted just before lunch and we take next the fifth amendment lodged by the Deputy of St. John and I ask the Greffier to read the amendment.

The Greffier of the States:

Page 2 paragraph (a) for the sum “£157,000” substitute the sum “£249,000”.

2.3.1 The Deputy of St. John:

In bringing this amendment, I do not want to go over old ground if I can help it. We have heard an awful lot over the last few months, years now, about Reg's Skips. Given that the Minister for Planning and Environment has accepted he had a duty of care, not only to his staff in his department but to the public we serve, so much so that Senator Cohen, an honourable man, has apologised to Mr. and Mrs. Pinel and agreed that his officers had not been on top of their work and had made errors. Given a Committee of Inquiry found that Planning Officers have been found wanting, they suggested a part of the bill should be paid. But in fact, I would challenge the amount that they believe should have been paid because within the actual employing of lawyers, whether you have a lawyer and he is dismissed and you replace him by another lawyer, there is still cost. Whether the cost is at the same rate or a bit more or a bit less, there is cost and therefore I believe that the full costs are in the region of £249,000, and therefore we are duty-bound to pick up all of the costs. Whether they dismissed one of their lawyers and replaced him with somebody else, the costs still exist. Remember, this family has not claimed for loss of interest on the money paid out or on the pressures caused to the family, to their health, and the anxiety that has been with them for the last 4 years. Mrs. Rita Pinel has been holding her family together with her own health problems and she has been looking after her own family plus her elderly mum and dad. All this while this pressure is going on, and you will note that on this occasion she is not in the balcony watching what we are doing. I am sure she will be listening on the radio but she, in fact, has her own health problems at the moment. All these pressures have been brought about in a great part by the actions of this Chamber and the people that we administer. I ask each and every one of you, of the Members here present, to put themselves in the place of Mr. and Mrs. Pinel of Reg's Skips Limited. You are trying to run a small business. Somebody from a States department comes along and tells you that what you are doing should be done elsewhere. You are doing everything legally and by the book. An officer comes along and says: “No, we will find you somewhere else.” Whatever the reasons were, whether they thought it was too much in the public domain, i.e., with the site of St. Peter or wherever, so the officers went off and found a site in St. John for them to operate from. This was all done for them by the officers and, in fact, even the planning application. Things were done and they, in fact, were a pawn in a bigger game, I presume. That is the only way I can describe it. So just think, it could have been your children, your brothers, your sisters, your mum and your dad. Really, what I should be putting in for today is not £249,000. In fact, really, it should be probably £300,000 or £400,000 because of the anxiety caused and probably health problems to the family. But no, all I am asking for is the amount that they are out of pocket which is £249,000. Whether the actual cheque goes to Reg's Skips Limited or to Reg and Rita, that is to be decided, but I am concerned that if we do not do what is right by the people that we are supposed to protect as elected Members, it will be a poor show if this House gives anything less than the actual cost so that they can go to their creditors and say: “Here is what we owe you” and they can walk away and put all this behind them. It is hard for Members, I am sure in many cases, to even think of what pressure this family has been under. We are all aware of the other amendments which are in the pipeline but this one I believe, and I sincerely hope, Members can accept. There are going to be no winners out of this whether it is the officers involved, whether it is the Minister for the department, whether it is we States Members. There are no winners and the

biggest losers are the Pinel family and Reg's Skips because they are not asking for any more than what they are out of pocket and I believe they are out of pocket considerably more than this but that is what they are asking for. I do not want to get involved in an "argy-bargy" about the rights and wrongs and who did what and who did not. I am making this proposition and I am asking you to search your hearts and your minds and do what is right for a local family who have lost basically ... at the end of their working life, they have lost probably everything they have ever made in business because they are in a business which is very competitive and they have had a lot of knocks on their way through in life, an awful lot. They lost a child earlier on and so forth and, at the moment, I am aware that Rita's parents are poorly and they are under an awful lot of pressure. Please come to a decision today that can be just and fair for everybody. The people out there who do not know Mr. and Mrs. Pinel but the people of Jersey want to see a just and upright settlement so that they know that the people in this Chamber do have their hearts and minds in the right place. They do not want us to ride roughshod over this and make them an offer or tell them we are agreeing on £120,000, £140,000, whatever the figure is, a lower figure. We should be all man and woman enough to accept that there has been a mistake and let us pick up the bills of this family so they can move on, the Planning Department can move on and their officers and the Minister can put this behind him because as long as this is in the public domain, as I have already said, there are absolutely no winners. In making my amendment, I sincerely hope that Members will see where I am coming from trying to do what is best for the family so they can move forward. As I say, I would have liked to have gone for a much higher figure where we could have given something extra, that little bit of a buffer, but that is not what I have been instructed. All they want to do is get a finite finish to this case. I make the amendment.

The Deputy Bailiff:

The amendment is proposed. Is it seconded? [**Seconded**] Does any Member wish to speak?

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

I have not spoken to the Deputy of St. John about this but I not only seconded it, I am supporting it as well because I think here we have a family which has fought the State to right a wrong and I think it is to Senator Shenton's ... to compliment him on the work he has done in getting the case seen to be dealt with fairly and it has had a review by an independent panel. Although the panel were not asked to make recommendations, they did. It was unfortunate in a way that they did because they are recommending, I think, a sum which is not really the right sum. I believe if this family has had their lives disrupted for any number of years and we are not looking to compensate them. We are looking to reimburse them for costs that they have incurred. It is unfortunate that we have a system here whereby lawyers are so expensive and if indeed this figure was even one of the noughts missing and it was £25,000, we would have no hesitation in making that figure or making that payment. All I am asking here really is to support the Deputy of St. John because what we are doing, we are not compensating them, we are reimbursing them the costs they incurred. The rights or wrongs of the amount are really not a matter for us here. That should really be dealt with by the authorities maybe that looks at the fees that lawyers are allowed to charge, but certainly I would ask Members to support the Deputy of St. John and, indeed, later on when discussing the compensation point, but this is really reimbursement and I would ask that we give the reimbursement in full.

2.3.3 Deputy P.V.F. Le Claire:

I will be supporting this amendment as with the others. I think an element of this that has not been considered is the lost opportunity one has when one winds up a business, sells it on or operates a business without the duress that one is faced with as they have had to go through. So just short and sweet really; there is an element of this amendment that may have a bearing on the operation and the ability of the Planning and Environment Department to function as a business where the shoe will be on the other foot.

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

I just would ask that the Deputy in his summing up indicate where the balance of the monies might come from.

2.3.5 Senator T.A. Le Sueur:

I am sure that we all have a tremendous sympathy for the way in which the family have been treated and the protracted nature of the discussions. When it comes to the amount of a payment to make to them, I am perhaps slightly cynically surprised we do not have more than 2 figures because, in fact, there could be any range of figures. What we have to do, as a States Assembly, is to decide which, in our view, is the correct figure. It is very difficult for us as laymen sitting around whatever degree of sympathy we may have to come up and say it should be £150,000 or £200,000 or £250,000 or any figure in between. That is why I am reassured that an independent panel, having spent 6 months or more looking at it, came up with a specific figure, a figure which they did not pluck out of the air, a figure which they took from various known and validated expenses. They accepted that those were suitable to repay and they also accepted or inferred that other costs incurred by the company were not necessarily so justified in repayment.

[14:30]

Now, what this proposition asks us to do is to second guess that Committee of Inquiry and that is our entitlement, of course. We can do that; it is an *ex gratia* payment. But if we are going to do that, then we need to have some greater degree of validation of what is a correct figure. At the moment, I have no certainty that £249,000 is any better than £157,000, but I do have the knowledge that the review panel recommended a figure of £157,000. If it was good enough for the review panel, I think in this situation it is good enough for me and should be the basis on which we, as a States Assembly, make that sort of decision.

2.3.6 Deputy T.M. Pitman:

I am going to support the Deputy of St. John in this because I think in the House we hear about sympathy all too often, and it is normally followed by a “but” or “however” and sympathy does not pay the bills and sympathy does not pay the price of justice. There is a huge perception in the Island, I am afraid, that justice is only for those with a deep wallet and that has got to be wrong and certainly if the States or a department are seen to be in the wrong, then I think we have an onus to put things right. All too often it is, and this may be going slightly off track, but you see people and really they are wasting their time when they go for legal aid. That is not too strong a statement. Regularly with people I have taken there you are told: “No, no, we cannot help you.” They do not want to be bothered. Justice in an affluent Island like Jersey cannot be just for the rich and people who are proven to be pretty blameless for some actions should not be penalised, so I think the Deputy of St. John deserves support on this. If nothing else it puts down a marker to take more care in future.

2.3.7 The Deputy of St. Mary:

Just briefly I want to refer to the comments on page 4 of the original proposition that Senator Shenton put in his report, and it is a quote from his own opening speech in the original debate of P.29/2009. He says: “In researching this case the legal profession have, in my opinion, acted in a manner that would not be deemed acceptable behaviour in any other walk of life.” Now, I have not read how he followed that statement up in Hansard, but that does cause me to pause really because in the Deputy’s amendment here, the fifth amendment to up the compensation to the Pinels, the reason is that there were additional legal costs which came about as a result of advice from the Sinels practice and so on, so the very large additional bill came from what turned out to be a failed appeal route and that is why we have this additional £90,000. I just put those 2 together and wonder whether this is right to go ahead with it and how it fits in with the additional compensation, and I am minded to support this but I just have this niggling worry that the Planning and Environment Department end up with the bill, and yet Senator Shenton’s own speech back last year and also the comments of the review board seem to suggest that this was not down to Planning; it

was down to faulty legal advice and then, as I say, carrying on to the appeal court and losing, and that is where the money went. So, I just sort of have a withhold about this. I just do not quite feel happy with what we are doing because we seem to be sending the bill to one place and not another.

2.3.8 Senator B.E. Shenton:

If I could just clarify for the Deputy of St. Mary. The terms used with regard to the behaviour was the letters that I received personally, which were of a very aggressive nature from certain legal firms which I will not name in the Assembly, which I found to be quite unprofessional, given that I am of quite a strong disposition, but I can imagine that some people when they get letters of that nature would be absolutely petrified by them. With regard to the amount, the reason we did undertake the appeal, there was the now infamous telephone conversation between myself and the Minister for Planning and Environment. An indication was given that a slurry pit would be allowed to be roofed over which would have allowed them to continue to operate at Heatherbrae, as it may well have reduced the noise levels. The appeal was done on the basis that indications had been that the Planning and Department would pass this application. It was turned down by the Planning Department. There were additional costs incurred because the Planning Department told them that they could not use a mechanical digger so they had to employ staff to sort by hand when, in fact, the Planning Department had no power to tell them to cease using a mechanical digger to sort. So, hindsight is a wonderful thing. It would be lovely when everyone goes into litigation if they knew the result before they appointed their lawyers but unfortunately life is not like that, and when you look back on something it is easy to say: "Well, maybe you should not have done that." There is a term that lawyers use which would be: "I cannot question the value of the advice given at the time" or something along those lines. At the end of the day they did incur these costs. These are genuine costs and I certainly believe that they should be given the maximum amount, and certainly if this amendment does not go through I will be supporting the next amendment in a similar manner. These people have almost been destroyed by Government and I think Government owes them something back.

2.3.9 Senator B.I. Le Marquand:

I sometimes speak in this Assembly with a view to changing people's minds and sometimes I speak in this Assembly simply with a view to people having more information upon the basis of which they can make their own minds up, and this speech is one of the second category, although I will vote in a particular way, which I am not revealing at this stage. I simply want to inform Members by virtue of analysing the different factors. Now, I have looked at the different propositions, I have looked at the reports, and it may help Members of this Assembly if I explain the breakdown, the way in which the figure produced by the Deputy of St. John has been arrived at in round terms. There are 6 different elements; the first element is Le Gallais & Luce, which is legal fees of the lawyers who acted for the company in relation to the original proceedings, and there is no difference across the board in relation to those. That seems to be accepted as being an appropriate figure. It is in the sum of £40,873.73. The second element is Southdowns Environmental Consultants Limited, who appear to me to have been specialists in relation to noise or matters of that nature. I am not sure exactly what their technical specialism is, but they were experts employed in relation to the case. The figure is £16,677.67 and again that seems to be completely acceptable. The third element is the fees of Sinels. Sinels were the second set of lawyers employed by the company and they took over before the appeal stage, did some work other than the appeal, but then conducted the appeal. Now, that is where the big difference appears between the sums in the proposition and the sums in the amendment of the Deputy of St. John, and the difference arises simply from this; the Committee of Inquiry looking at the matter decided that £11,000 of that sum did not relate to the appeal and therefore should be allowed in. That is in the proposition figures essentially, but the view that they took, rightly or wrongly, was that the balance of those related to an appeal which really had no reasonable chance of a success; very low chances of success and they knew that and went ahead despite that so, rightly or wrongly, that is the basis upon which the figure

of £87,497.72 was reduced to £11,000. The next set of fees are the fees in relation to Appleby. Appleby were the lawyers acting for the other side and this in round terms was the figure of the order for costs against them, as I understand it. It is in the sum of £80,000. This does not appear to be in dispute. This appears to be in all the figures and seems to be acceptable. The next item is an item associated with a Mr. Le Neveu or his company who, as I understand it, was doing extra sorting which was required for them to comply. That is in the sum of £9,132, and that also seems to be okay. The final element which makes a difference in the calculations is the element attributed to a company or an individual who dealt with taxation matters. Can I use the name, Sir?

The Deputy Bailiff:

Unless it is strictly necessary you should not do so.

Senator B.I. Le Marquand:

All right. I will not use the name then. It is the company or individual who was advising in relation to the taxation of costs, and that bill is in the sum of £14,825. Now, the view taken by the Committee of Inquiry was that there was an offer made of £50,000 in settlement of the taxation costs which was unreasonably refused by the company, who then went on to taxation and the results of the taxation were higher and therefore these costs were thrown away. Therefore, the real differences are in the area of Sinels. The question is whether or not costs in relation to the appeal should be allowed or not, and secondly, the issue in relation to the advice of the taxation expert, whether that should be allowed or not. If Members of the Assembly take the view of the Deputy of St. John, which is that they should be reimbursed for everything even if they did make mistakes along the way which led to costs being increased unnecessarily, then they should vote for this amendment. If they take the view that they should only be compensated where they were acting fully reasonably, which was the view taken by the inquiry, then they should vote against the amendment but support the initial figure of the proposition. I hope that assists the Members of the Assembly.

The Deputy of St. Mary:

May I ask for a point of clarification in the same spirit in which the previous speaker has just been clarifying matters for us. He said in relation to the additional costs incurred by the appeal, and I quote him: "They knew it had little chance of success." It is a very important matter; the whole thing hangs on it. I just wonder if he could tell the Assembly why he said that and what the evidence for that very important statement is.

Senator B.I. Le Marquand:

I am sorry I cannot point to chapter and verse without taking some time, but I believe that I read that within the report and within the analysis of the report, and that was the reason. I cannot, I am afraid, point immediately to chapter and verse but that is my understanding.

The Deputy Bailiff:

Senator Le Marquand you have been asked to clarify; if during the course of the debate you find the passage in question I am sure the Deputy of St. Mary ...

Senator B.I. Le Marquand:

I shall start doing some work on it now and if you will allow me to clarify it later then I will gladly do so to help the Assembly.

2.3.10 Senator F.E. Cohen:

Reg and Rita Pinel have very clearly been through a very terrible experience. They have suffered health issues and life has been miserable and their business still does not have a permanent home. So, please, Members, do not think that the matter is happily resolved because presently it is not happily resolved. Reg and Rita Pinel are, as Senator Shenton has said, a good Jersey couple just

trying to make a living and run their business in the best way they possibly can, but money will not reverse their suffering and paying more will not absolve our consciences any better. Senator Shenton has mentioned the secret telephone call. I had no intention of mentioning it but as he has it is necessary that I clarify the issue that he raised.

[14:45]

This relates to the suggestion that at a site meeting at Heatherbrae Farm in 2006 I gave an undertaking to approve the covering over of the storage area without any caveat. I most certainly did not and I made it expressly clear at the site meeting that my support was conditional on pre-acoustic testing showing that without doubt the noise limits would not be exceeded. I did this for a good reason. I, as Minister for Planning and Environment, was trying to resolve the issue and to try and find a way through these very difficult matters. The administration of noise limits does not come within my portfolio; it is with another Minister and I am therefore not able to vary noise limits. I simply did not want to see the applicants waste their money on an application that would not deliver the necessary noise suppression. During the secretly recorded telephone conversation with Senator Shenton I did not make it clear to Senator Shenton that pre-acoustic testing was a requirement of my intention to support. I also, in the telephone conversation, made it very clear that I would caution the Pinels against launching an appeal. I said it could be expensive and it would probably be unsuccessful. I was not sufficiently precise when I referred to my support for the covering over, but that was because I was not aware that reliance would be placed on the telephone call. I thought it was a private telephone call between 2 serving Ministers and I assumed it was entirely off the record. Had Senator Shenton sought to rely on the content of the call he should have advised me that the call was more than just casual, but to repeat, I most definitely made it very clear to all those at the site meeting that my support was conditional on pre-acoustic testing. In relation specifically to the Deputy of St. John's amendment I will make a few points. Firstly, the Committee of Inquiry were quite specific in their recommendations and they, after very careful consideration, set recommended levels of payment. Secondly, the Committee of Inquiry were quite clear that planning were not responsible from the point of the appeal. Thirdly, the advice I have received is that there is no legal liability to pay any sums whatsoever and it is for this reason that I have recommended *ex gratia* payments. Fourthly, the financial loss incurred by the Pinels, as we have heard, largely related to 2 legal bills. I will leave it to Members to decide for themselves whether or not these represented reasonable value.

The Deputy Bailiff:

Does any other Member wish to speak? If not then I ask the Deputy of St. John to reply.

2.3.11 The Deputy of St. John:

In summing up I am not going to respond to everybody because a number of people have been positive. The Minister for Transport and Technical Services asked where the balance of the money was coming from. As far as I am concerned, and in fact this is part of the entire argument, this entire case would not have come to the floor of this House at all if Planning had not dealt with Reg's Skips in the way they have; 2 wrongs do not make a right, let me put it that way. You have to instruct lawyers and at the end of the day there is an action in court, and you in your own mind believe still that you would not have been put in this position if it had not been for the officers who advised the family, or the business, to move from their legitimate site to another site elsewhere. All this has come about because, being a typical Jersey family, and I went to school with Reg Pinel, so I should declare that for people who may wish to say I have an interest to declare, I was at school with Reg Pinel; he is just an ordinary man trying to make a living. He is not a man who wants to break the law. If he thinks there is a possibility he may have been breaking the law and an officer from a department comes along and says: "We would like you to move" and are very eloquent in the way they speak then you think: "Well, am I breaking the law or is this black, white and shades of grey?" unfortunately having experienced the life of having spent many years as a Centenier in a couple of Parishes and being allowed to use black, white and in fact shades of grey to decide what

actions one should take. But most ordinary people are reluctant to challenge the shades of grey; they live in a black and white society. A black and white society. Therefore, when you are told by an officer from the Planning Department: "We want you to move and we are going to assist in all these ways possible" and then you move from a perfectly legal position to one that creates all sorts of problems, because you are trying to accommodate what that department are asking you to do, and it goes pear-shaped, and you find you have to pick up lawyers' bills and it goes to court and certain advice is given from the judge to other parties, and you are not happy, quite rightly you would want to make sure that the advice that had been given, rightly or wrongly, you would see it to the end. If it means an appeal it means an appeal. But this all comes about because of the advice they were given by the planning officers. Nobody can turn around and say: "This would not have happened if they had not been put in the position they were in the first instance by the Planning Department." As for the Minister for Transport and Technical Services, given my comments about the position they had been put in, I believe the money should come from the Planning and Environment Department. They were the one who made the error and they admit an error, therefore all expenses, and I say all expenses, should be picked up by that department and I can see the Minister about to press his button, is he? No, maybe not. Someone else asked a question ...

Senator F.E. Cohen:

Sir, would the Deputy give way just for a second? While not wishing to in any way counter the proposal suggested by the Deputy, I should point out to the House that it would be impossible for the department to pay more than £157,000 within our existing budget. It would result in us going overspent. That does not mean we cannot do it, but the House should be aware of that.

The Deputy of St. John:

I respect the Minister for his comments, but if the second payment has to come out of your budget for next year then so be it. Things can be put in place and whether the Minister for Treasury and Resources likes it or not, we saw things happen this morning where money can go from one fund to another, so therefore when the Minister for Treasury and Resources, who can make whatever gestations he wishes, nods his head or shakes his head, we know he has done it before and it can happen again, and it will, yes, absolutely. Senator Le Marquand, thank you for your comments but they will only stack up given that all the costs which he explained are there and they are broken down; I do not know if Members have them in their entirety. Le Gallais £40,000-odd; Southdowns Consultants £16,678; Sinels £11,000, which the Minister was talking about; Appleby which was the £80,000; £9,132 Le Neveu which was manual labour; that accounted to £157,000. But then the £76,500 and the Diamond Associates account of £14,825, which was for the legal advice, or the fee negotiations, that amount comes in as part and parcel of one big bill, believe it or not, because you do not start something you cannot finish. If you are going to an appeal you go to an appeal. Your lawyer's opinion might turn around and say: "Well, I do not think you have much chance here." This all started by Planning. If Planning had not gone outside of their remit by asking somebody to move there would have been none of this. No bills at all. No 4 years of anxiety. No, I will not give way, Senator, if you are thinking of pressing your button. I will not give way.

Senator B.I. Le Marquand:

I was going to ask the Deputy if he would give way to me because I have now found the relevant passage of clarification. With the help of Senator Le Gresley it is, in fact, all explained very clearly in relation to the comments of the Committee of Inquiry. They explained their reasoning on page 3. If Members have not all fallen asleep by now I would like to turn to that. Then you will see that there is quite a long section starting with the words which I can read out: "R.S.L. had been advised by Messrs. Le Gallais & Luce that the scope for an appeal was not wide, but the change of circumstances argument was a runner provided the Minister's assurance could be had promptly in writing. As is normal in such circumstances R.S.L. were not discouraged from seeking a second opinion if it were unsure as to whether it was adopting the best course of action. In the circumstances this was not an imprudent course for any company to take. Messrs. Sinels were

approached for that second opinion. As noted above we estimate Sinels' costs attributable to this process, that is the second opinion, were some £11,000. Sinels identified possible different grounds for appeal from the single ground cautiously identified by Le Gallais & Luce. Essentially these concerned the lawfulness of the Royal Court's application of the rules of voisinage. On 20th February 2008, or thereabouts, R.S.L. having considered new arguments elected to instruct Messrs Sinels and the grounds the company's appeal were accordingly changed. This was a calculated risk taken by R.S.L. and was not a decision influenced directly by the actions of the Planning Department. As things turned out the revised grounds of appeal were resoundingly rejected by the Court of Appeal, which was also critical of Sinels (but not of R.S.L.), for making changes at a late hour. Admittedly with the benefit of hindsight it was clear to the committee that the stance taken by Messrs Le Gallais & Luce had been appropriate in the circumstances. And once it would have become clear that written confirmation of the Minister's assurance to his fellow Senator was not to be forthcoming and indeed once the Assistant Minister (not knowing of her Minister's assurance) had turned down the 'roofing-over' application the only advice to R.S.L. would have been to withdraw the appeal. Substantial costs would have been averted as a result, as indicated in a table above. The considerable risks surrounding the appeal as pursued by Messrs Sinels could not, we decided, be attributed to any failings by the department and so we excluded them from our recommendation accordingly." Hopefully that assists Members and gives also the Deputy of St. John the chance to deal with that point in his closing.

The Deputy of St. John:

Yes, absolutely. A calculated risk. I can accept that, but as I have already said, nothing of this would have happened had the first building block not been knocked out at St. Peter 4 years before in 2005-2006. None of this would have been required. That is where I am coming from. All the expense that the family had to go to arose out of what happened on the very first meeting by the department and the Pinels in asking them, or encouraging them, to move to another site. That is where I am coming from. I think I have covered all I want to say, and I will ask for the appel and I will ask Members to use their minds but also use their hearts and think; it could be your own family tomorrow. The Government should not get away at a reduced rate to the expense of a citizen of this Island, or 2 citizens of this Island and their business, by not paying the costs which I am asking for.

The Deputy of St. Mary:

There is a matter of clarification from what the Minister said. While the Minister did make a lengthy point of clarification about the risks involved with the appeal on page 3 of the original report for this proposition, second paragraph from the bottom: "The conclusion of the Committee of Inquiry was that they were far from certain that the Court of Appeal would have reached exactly the same conclusion had it been aware of all the information" and in their report they suggest that the information at 1.11, if people have the full report, says: "We also comment on aspects of the department's evidence submitted both to the Royal Court ..."

[15:00]

The Deputy Bailiff:

Deputy, who are you asking to clarify and what?

The Deputy of St. Mary:

I am just pointing out that there is a clarification to be made ...

The Deputy Bailiff:

You are making a second speech and it is not permitted. The appel has been called for. Now, the vote is on the fifth amendment for the substitution of the sum of £249,000 for £157,000. I invite Members to return to their seats and I ask the Greffier to open the voting.

POUR: 21	CONTRE: 24	ABSTAIN: 1
Senator T.J. Le Main	Senator T.A. Le Sueur	Senator F. du H. Le Gresley
Senator B.E. Shenton	Senator P.F. Routier	
Senator A. Breckon	Senator P.F.C. Ozouf	
Connétable of St. John	Senator F.E. Cohen	
Connétable of St. Lawrence	Senator J.L. Perchard	
Deputy of St. Martin	Senator B.I. Le Marquand	
Deputy R.G. Le Hérissier (S)	Connétable of St. Helier	
Deputy J.A. Martin (H)	Connétable of Trinity	
Deputy G.P. Southern (H)	Connétable of Grouville	
Deputy of St. Ouen	Connétable of St. Brelade	
Deputy of Grouville	Connétable of St. Saviour	
Deputy J.A. Hilton (H)	Connétable of St. Clement	
Deputy P.V.F. Le Claire (H)	Connétable of St. Peter	
Deputy S. Pitman (H)	Connétable of St. Mary	
Deputy K.C. Lewis (S)	Deputy R.C. Duhamel (S)	
Deputy of St. John	Deputy J.B. Fox (H)	
Deputy M. Tadier (B)	Deputy of St. Peter	
Deputy of St. Mary	Deputy of Trinity	
Deputy T.M. Pitman (H)	Deputy S.S.P.A. Power (B)	
Deputy M.R. Higgins (H)	Deputy I.J. Gorst (C)	
Deputy A.K.F. Green (H)	Deputy A.E. Jeune (B)	
	Deputy A.T. Dupré (C)	
	Deputy E.J. Noel (L)	
	Deputy J.M. Maçon (S)	

2.4 Reg's Skips Limited – Planning Applications (R.118/2010): compensation and further action (P.130/2010) – fourth amendment (130/2010 Amd.(4))

The Deputy Bailiff:

We now come to the fourth amendment which is in the name of Senator Le Gresley and I invite the Greffier to read the amendment.

The Greffier of the States:

Page 2, Paragraph (a) – for the words “to Mr. and Mrs. R. Pinel, (the proprietors of R.S.L.), as compensation for costs incurred as set out in R.118/2010;” substitute the words “to Reg’s Skips Limited being reimbursement of legal fees and other costs incurred until 25th February 2008, as set out in R.118/2010 and a further *ex gratia* payment of £50,000 to Mr. and Mrs. R. Pinel, the directors and beneficial owners of Reg’s Skips Limited, as compensation for pain and suffering caused by the failings in the processes and actions of the Planning and Environment Department over a 4-year period from 2004 to 2008.”

2.4.1 Senator F. du H. Le Gresley:

It is important to state at the outset that the Committee of Inquiry’s terms of reference did not require the committee to make a recommendation for compensation. The States are not therefore bound to accept the recommendation in R.118/2010, that the States should compensate Mr. and Mrs. Pinel, as owners of Reg’s Skips Limited, the sum of £157,000. Senator Shenton’s proposition seeks the approval of the States to make that *ex gratia* payment of £157,000 and the third amendment from the Minister for Planning and Environment also makes reference in his report to making an *ex gratia* payment of £157,000 to Mr. and Mrs. Pinel in compensation to cover legal costs. However, since we have now debated the third amendment we now know that the Minister is

recommending that the payment is made to the company. Now, Members will have noted that my amendment differs from previous amendments in that I am seeking States approval to make the *ex gratia* payments in order to reimburse, and I stress those words, reimburse the company, Reg's Skips Limited's legal fees and other costs incurred totalling £157,000. Now, in the debate at the last amendments Senator Le Marquand kindly, which I was planning to do, went through the breakdown of the £157,000 so I will not do that. In the report of the Committee of Inquiry on page 135, for those of you who have it with you, it is stated in 17.12: "If the States accept our recommendation that some recompense should be made to R.S.L. and some reimbursement to Mr. Taylor, we have instructed our clerk to make available to the Treasury of the States all the information on which we have based our considerable estimate of the total costs incurred by the company." So, on 2 occasions in that paragraph there is mention of the company and that the recompense should be made to the company. Reg's Skips Limited is a legal entity and was the defendant in the voisinage case and the appellant in the subsequent appeal. We know that the company paid for legal representation, incurred a bill of £16,668 for noise consultancy in order to support the application to the Planning Department to roof over the Skips sorting yard. The company also incurred manual labour costs totalling £9,132 during 2006 following the Planning Department's instruction to cease use of the mechanical digger to sort mixed skips at Heatherbrae Farm. A full breakdown of the £157,000 costs, up to the date that the company, on the advice of Sinels, changed the grounds of appeal is found on the comments from the Committee of Inquiry which is this document here: "Comments of the Committee of Inquiry P.130." Members will note that the figure of £157,000 includes an estimate of £11,000 for Sinels' fees up to 20th February. Now, my amendment has a date of 25th February, and that date is according to page 129 of the report, where the date that the revised grounds of appeal were formally submitted to the Judicial Greffe. I mention this only to explain why my date differs from that of the report. I should say, and most Members know, that I originally had an amendment which was the figure that the Deputy of St. John has also requested, which we now know has not been carried. The reason I changed was because I went to see the Committee of Inquiry, I had a private meeting with them which I am very grateful for, and I have to say that I think as a result of that meeting the comments that came out from the Committee of Inquiry covered a lot of the ground and the questions that I asked of the Committee of Inquiry, because I felt there was some confusion and I feel that their comments have helped us today. So, we have already perhaps agreed, by the fact that the last amendment has been lost, that it is not for this Assembly to debate beyond the question of whether the £157,000 for costs is attributable to failings of the Planning and Environment Department. I think in losing that amendment the majority have taken the view that the Committee of Inquiry were in fact correct when they said that it was a calculated risk that they change the grounds of appeal for the voisinage appeal. So, it is important to stress why I am asking that the £157,000 compensation is made to the company rather than Mr. and Mrs. Pinel, and when I sit down I would like the Solicitor General to comment on this aspect, if he may, because I believe that reimbursement of costs to the company, rather than the proprietors, is important because I have no knowledge of their financial position but there is a strong argument to say that any creditors of the company could be disadvantaged if the *ex gratia* payment is made to the owners and not the company and into the company's bank account. I would like now to turn to the question of whether Reg and Rita Pinel themselves should be compensated for pain and suffering. I was asked by a Member why I did not split my proposition into 2 parts. The reason I did not split it into 2 parts is because I think they are integral. I think the reimbursement of costs to the company is one step, but looking at Mr. and Mrs. Pinel is the second step, but I would not want the 2 separated. So, should they be compensated for pain and suffering caused by the failings and the processes and actions of the Planning Department? I would ask Members to consider how they would feel if they had been through all the turmoil and distress that was inflicted upon this hardworking couple over the 4-year period 2004 to 2008. I understand in these austere times that some Members may be reluctant to support my proposal, that this couple receive an *ex gratia* compensation payment of £50,000, however, the principle of compensation awards is set out in paragraph 27 of the Planning and Building (Jersey) Law 2002 and I will just

read that to Members because probably some of you do not know what it says. Paragraph 27, section 5: "If the Minister revokes or modifies planning permission the Minister shall pay compensation to a person to whom paragraph 6 applies." Paragraph 6: "Compensation is payable to a person with an interest in the land who has incurred expenditure in undertaking work that is rendered abortive by the revocation or modification or be as otherwise sustained loss or damage that is directly attributable to the revocation or modification." I would say that the Minister, via his officers, did modify the planning permission at Heatherbrae Farm by not allowing the mechanical sorting of skips. The beneficial owners of Reg's Skips did incur personal expenditure in undertaking work that was rendered abortive by the modification and have sustained loss or damage. Mr. and Mrs. Pinel had to borrow money in their own names in order to inject capital into the company. They have paid, and are still paying, charges and interest on these loans. Mrs. Pinel was required to attend numerous meetings with lawyers and when the money ran out for legal fees she represented the company herself on 24th November 2008 at the Court of Appeal's hearing of the Minister's appeal against his having to contribute to the company's legal costs. Pain and suffering compensation is a feature of personal injury claims and is a payment provided to someone who has experienced physical or mental harm. The payment is awarded on the grounds that the plaintiff experience pain and suffering as a result of the actions of the defendant and deserves compensation for it. Apart from any direct medical expenses, the compensation is intended to address mental suffering that the plaintiff may have experienced, or is continuing to experience. The amount of pain and suffering compensation award is usually determined by a judge. Typical compensation awards for psychiatric suffering are up to £75,000. Pain and suffering compensation can provide some form of relief for someone who has experienced harm caused by another. Anybody who has read through the report of the Committee of Inquiry can be left in no doubt that Mr. and Mrs. Pinel suffered mental anguish as a result of the failings and actions of the Planning Department. It is also a fact, sadly, that Reg Pinel suffered a stroke in March 2007. I have proposed a figure of £50,000 compensation for Mr. and Mrs. Pinel, which is midway on the scale of compensation awards for psychiatric suffering. I should point out that as these are a couple you could say that I have gone for the lower point of the scale, if it was based at £25,000 per person. Some Members will argue perhaps that this figure is too low and others too high. What I hope we will all agree is that we need to remedy the wrong the Committee of Inquiry concluded was indeed suffered by this couple. The Minister has unreservedly and wholeheartedly apologised to Mr. and Mrs. Pinel. He has accepted corporate responsibility for the failings and actions of his department and agreed that the *ex gratia* payment of £157,000 to the company will come from his budget. As previously stated, I am firmly of the opinion that this payment should be made to the company, Reg's Skips Limited. I also believe that now is the time for the States at political level to apologise to Mr. and Mrs. Pinel and to pay to them an *ex gratia* compensation payment of £50,000 out of the consolidated fund, or central provision.

[15:15]

Now, there is a comment from the Minister for Treasury and Resources which says that this is not possible, but we are all aware of the Public Finances (Jersey) Law 2005 and Article 11(8) requests. So, I would say that it is quite possible. I will close by saying members of the public expect us to be fair with those we have wronged. I propose the amendment.

The Deputy Bailiff:

The amendment is proposed. **[Seconded]** Solicitor General, you were asked to give advice to the Assembly as to the legal implications for making a payment to Mr. and Mrs. Pinel personally insofar as creditors of Reg's Skips Limited are concerned, if there are any.

The Solicitor General:

The company is obviously a separate legal entity from Mr. and Mrs. Pinel. It follows that if you pay the couple, rather than the company, then those funds cannot be used to satisfy any creditors insofar as there are any. So, if a payment is made by the States to the Pinels there is a very

substantial risk, is there not, that in fact that payment might be construed as being made in such a way as to defeat legitimate creditors. I do not know what the company's position is but I have heard various speakers refer to the existence of creditors and/or the company having had difficulties. Against that background I feel obliged to advise in the strongest terms that no Minister, or indeed the States, should really be contemplating making a payment to an individual if there a substantial risk that in so doing you are in effect defeating or frustrating legitimate creditors.

Deputy J.G. Reed of St. Ouen:

Sir, can I ask a point of clarification from the Solicitor General? The point is this, that although Reg's Skips is a legal entity it has obviously major shareholding which are, in this case, the Pinels, so therefore surely if there was any issue to do with creditors and the company the directors themselves, which in this case would be the Pinels, would be liable.

The Solicitor General:

I am not sure that is right at all. The company is a separate entity and so the risk here, and I qualify this advice by saying I do not know the structure of the company or what liabilities, if any, there are, but the risk of making a payment to the Pinels as opposed to direct to the company is that the result will be a frustration of legitimate creditors and I do not advise any Minister, or the States generally, to take such a risk.

Senator B.E. Shenton:

If I could maybe clarify something for the Solicitor General. If you have a company, a company cannot borrow unless it has assets to put up against those borrowings. The company has substantial call on the assets of Reg and Rita Pinel as guarantors to the company. Therefore if they did not repay the creditors they would lose their property and most of their possessions as a result.

The Solicitor General:

As I think I have already said, I do not know what the arrangements are with the company and Mr. and Mrs. Pinel. If there is some sort of guarantee in place that means that Mr. and Mrs. Pinel must repay the creditors that relate to the company then all may be well, but as I stand here speaking to you now I simply do not know what the position is and therefore my advice stays the same.

The Deputy Bailiff:

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

2.4.2 The Deputy of St. Mary:

I want to address the issue of payment out of the Consolidated Fund, which was mentioned by the proposer, and I think it is a very important point that he made there, and I refer Members to the paragraph numbered 2 on page 4 of his report where he says he met the Committee of Inquiry and has come to the following conclusions, and he quotes the Committee of Inquiry who found that: "The true failing in this case was a corporate one and the responsibility for that has to be shared quite widely, including at the political level, where justified." I think that is a very wise comment and I, for the life of me, cannot see why other bits of the Planning Department, other sections of the Planning Department, should automatically pay for the failings of another part of the Planning Department. If we follow that logic, if a major, major error was to be made by one part of the Planning Department we would suddenly find ourselves without any marine protection at all, or without any compliance mechanisms for some other area of environmental control. So, I do not see the logic of that, and it seems to me very logical that it should come out of general funds. Indeed, the entire compensation should come out of general funds, but that is for another day. For this amendment the additional amount is being asked for out of consolidated funds. We, as an Assembly, set the envelopes for departments; we make them be adequately staffed or short staffed and many times I reflect to myself, as other Members say, or even sometimes myself: "Oh, well, why was that not done?" For instance, the sustainable transport policy. I have heard Members say:

“Well, it should be more complete.” Well, maybe it should be more complete, but how many people were there to write it? How many people were employed to do the research and produce the dotting of the Is and the crossing of the Ts which some Members seem to want? It goes on. Comments arrive late on our desks from the Council of Ministers. Why? Well, maybe they do not have someone full-time to write comments. Maybe there is a bit of pressure there. Maybe they work like us and do things at the last minute. There you go. I think we have to be a little bit careful saying: “Well, it is their fault.” We have not had part 2 of the report of the review board, and it may very well point to failings that can be corrected without any expenditure at all, but it may not. It may say that we need additional governance measures. It may even say that we need an extra person. Who knows? We do not know yet, but I am very aware that we, the Assembly, set the manpower, we set the parameters and the envelopes for departments and so it is our responsibility. It comes back here. I take the point that in this case there may have been individual failings, or there were failings of officers within that department, but I think the general point that it is a corporate body, the States acts as a whole, that we are responsible for the overall way the departments function and can function, and so I think it is quite right that we should share this responsibility and find that money not from the department’s other work.

2.4.3 Senator F.E. Cohen:

This is not meant in any way as a criticism of Senator Le Gresley, either of his proposition or his speech, it is merely a matter of clarification and it relates to the points he raised in relation to the variation of an existing consent under Article 27 and the consequential loss provisions. Article 27 specifically relates to the revocation or modification of the planning consent by formal notice and in this case there was no formal notice served, and therefore it is not relevant. In relation to the very sensible point raised by the Deputy of St. Mary the consequence of paying £157,000 out of the Planning and Environment budget will be that it will have an effect on both arms of the Planning and Environment Department, being planning and environment. There simply is not enough slack in the planning budget to take £157,000 out and not substantially reduce our services. That does not mean that we should not do it, but I am just raising the point that it has an effect on both elements of the department.

2.4.4 Deputy P.V.F. Le Claire:

I have the pack that the Chief Minister circulated to me from the comprehensive spending review meeting that Members attended on 11th October on the court and case costs. The issue flashes back into my memory and the 11(8) call for unexpected court and case costs when millions is approved on the hoof and other opportunities that are identified within these papers demonstrating millions of pounds of savings that are possible if we tweak things left, right and centre. So, court and case costs. Court and case costs 11(8), 11(8).

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

Very briefly. I just want to remind Members because much has been said about where is the money going to come from? I want to remind Members that Ministers can pass money around their departments provided that the Minister who is willing to let go of the money and the Minister who is willing to receive the money both agree to it. That is what I wanted to add.

2.4.6 Senator T.J. Le Main:

I have been sort of boiling in the back row here for a while and, in fact, I was going to say a few words when the Deputy of St. John made his proposition. Like many people in this Assembly I know this very hardworking, decent family and while I am certainly not going to criticise the Planning Department, because I think the staff in the Planning Department have an awful job to do at times, and like everybody else they make mistakes like we do. I have a high regard for the staff and I would like to say that I have full support in the staff of the Planning Department. But as quite rightly said over a period of time, some of the staff that have been involved in this case have moved on and we are where we are today. I want to get this off my chest. I believe that the legal system

in my view has a lot to answer for in Jersey. It has a lot to answer for in not being able to assist ordinary working people. In my view the legal system is predominantly there for the finance industry and the wealthy. I still cannot comprehend the hourly rates of £400 and £500 an hour. The injustice that I saw a little while ago assisting a lady who was disputing a small bill for bad workmanship and she was summoned to the court and, at the end of the day, I had to sit her down and explain the indignity that she was having to defend and fight this civil action and the fact was that it was cheaper for her to pay this bill, this disputed bill, than go to a lawyer and get a lawyer to represent her, in my view, because she had some assets. This happens all the time where the cost of someone wanting to defend themselves over an injustice, which may be bad workmanship or a bill that should not be there, that the cost of a letter from a lawyer will cost far in excess of even the cost of defending that action and the cost of that.

The Deputy Bailiff:

Can I ask you to return to the amendment shortly?

Senator T.J. Le Main:

No, Sir, I want to explain to you please, if I may, through the Chair, that I think the legal system has a lot to answer for in this case.

The Deputy Bailiff:

The Chair is only interested in having speeches which are relevant.

Senator T.J. Le Main:

Well, Sir, I really want to get this off my chest. **[Laughter]**

The Deputy Bailiff:

You may well do, but you are still confined in this ...

Senator T.J. Le Main:

I am confining it to the amendment of Senator Le Gresley that I am going to support this amendment because I believe that, as I say, the costs and the hardship and the sleepless nights this couple must have had over what was an error by the Planning Department. I believe that morally all of us that sit in this Assembly are defenders of ordinary, hardworking people. People of all classes, races, creeds, whether you are wealthy or whether you are poor and, in this case, I believe that I want to support Senator Le Gresley because this family have really ended up in this position, in my view, on advice and other issues given by lawyers.

[15:30]

I know they were advised that the appeal might have been a lost cause, but it has come to my notice that there are many legal practices in Jersey at the moment that have seen a downturn in their business. The downturn in their business where fees for property purchases, which normally paid the normal day-to-day running of their businesses, has gone away at the present time and some of these legal firms have been chasing business and quite honestly I believe that some people have been badly advised. So, I believe that this House has a moral duty to support this devastated family that has suffered and continue to suffer the indignity of having all their affairs publicly put into the open and the difficulties they find themselves in having to find all this. I believe that at the end of the day Senator Le Gresley is correct; this request by Senator Le Gresley is fair and proper. It was all attributable to Planning errors and in my view if all of you or any of you have got the morals that we require of people to be Members of this Assembly and to represent the people of this Island then for once we should cast away the opposition of the Council of Ministers and support this proposition.

2.4.7 Deputy M.R. Higgins:

I stand to support Senator Le Gresley's amendment and Mr. and Mrs. Pinel. I do so in support of the ordinary men and women of this Island who have been wronged and to see some consistency in the way that this House deals with these matters. In P.130 that Senator Shenton brought on Reg's Skips Planning Applications (R.118/2010): compensation and further action, he quotes from an extract from the official report on 13th May 2009 where he relates what Senator Maclean said in the case of Alternate Investments. Now if you remember Alternate was the company that gave misleading advice to investors and there was criticism in the courts of Alternate, and what happened was the Minister said quite simply that these investors had been let down by the fact that the system did not suitably protect them. He was not critical of the Jersey Financial Services Commission for not having legislation in place to cover these things but he wanted to make sure that these investors were compensated because of the actions of a private firm which had misled them and this House paid compensation out to those people. Now here we have a government department that through its actions has caused these people to suffer great loss and yet here we are debating whether they should be compensated for that loss. Basically a government department, and I am going to use an un-parliamentary term, has messed up, and these people have suffered by it. I do believe that they should accept, as they have accepted, that they were at fault but I do believe that we should compensate these people. Now I know much has been made of the fact that they took legal advice and they went against it. Let us face it, any one of us who has been wronged wants to try and get the matter dealt with. We get in there and we take the advice of lawyers and others because we do not have the expertise ourselves. Why should we be penalised for listening to these people? They were placed in the position because of the failing of the department and we should recognise that fact and we should compensate them accordingly.

2.4.8 Deputy T.M. Pitman:

Apologies if my speech strays, as I have forgotten my reading glasses so I cannot read what I have written. I honestly thought that Senator Le Main was going to quote Martin Luther King there, he was getting so fired up. I do not know where I am going politically but I am going to support Comrade Senator Le Main 100 per cent. It is very difficult in these situations, because as someone said, most of us here are laymen. We are not lawyers and I quite like lawyers because I always remind myself that as long as they exist I will not quite be a member of the most hated profession in the world. Of course the Solicitor General, he has got to tell us the hard facts as it is there in the law books, but I do think that what Senator Shenton told us about the Pinels and their assets was very helpful. It just seems to me as a layman, I think back to when I decided to change my career and went off to university, and one of the things that was stressed by the great gurus of informal education was that sometimes you had to have the backbone to do what was the good thing but not necessarily perhaps the right thing, if that makes sense to people. I have got an hour and I can try and explain it but I am sure we want to get on. It seems to me as a layman that, as I said earlier, if you embarked on a desperate course of healthcare that was risky and ultimately did not work, to me - and I know lawyers might disagree with this - it seems quite justifiable to say: "Well, I only did this as a result of the person who attacked me or injured me" or whatever, and this is where I think a lot of people lose faith with lawyers. People end up in positions where they are there because they trust experts. I was always told to run a mile when someone says they are an expert, because it does imply that you should follow their advice. I think what Senator Shenton said was very helpful, and I think it is one of those occasions where even taking on board what the Solicitor General said very helpfully, where you have got to be willing, Members, to do the good thing. It might not necessarily be the correct thing in law but, as Senator Le Main said in his Martin Luther King speech, you have got to have the morals and the backbone to stand up. I think this is right. These people have been through an absolute nightmare. I did go, as Deputy Pitman did, I think we met with the people one day when Senator Shenton was there and they have been through an absolute nightmare, and I really think their case was triggered really not through their own fault, and I think it comes down to doing that good thing. Money is not everything but for these people it might be, because if we do not do the right thing, the good thing, it is going to result with them

probably losing everything through no real fault of their own. I will be supporting Senator Le Gresley.

2.4.9 Senator J.L. Perchard:

On the face of it this is the right thing to do and certainly on the face of it we need to recognise that Reg's Skips Limited and the proprietors have suffered hardship, and the cause of that hardship has been an error of a States department. That I do not think anybody is arguing about. I have a problem that this may not be the end of the claims that may be made against the States of Jersey. There is no provision for full and final settlement in the deal, and if the States were to agree to pay the £157,000 plus the £50,000 there is absolutely no reason why a law firm, no-win, no-fee law firm, could come back and start an action against the States for more. So I will not be supporting this, but I do hope that the proposer of the substantive proposition comes back with a full and final settlement proposal to the Pinels that the States could agree. But I cannot at this stage find myself supporting a number that we all agree is a random number at this stage, yet I do believe that they are due some compensation for hardship. So I will not support the amendment. I will support the substantive proposition, and I do hope that the proposer of the amendment will come back with a full and final proposal for the Pinels and that the States can with dignity agree a proper settlement with this couple and know that there is not another action pending.

The Deputy of St. Mary:

May I seek clarification from the Solicitor General in the light of what this previous speaker just said? Is it true that the States if they approve this amendment would still be open to a challenge? In other words are we in the realm of *ex gratia* entirely or is there any legal liability possible in this case?

The Solicitor General:

As I understand it what is proposed is an *ex gratia* payment. What is an *ex gratia* payment? It is not based on any considerations of liability for which there may be at civil law. Rather the payment is offered in recognition of hardship caused by a wrongful act or omission, notwithstanding the fact that the circumstances may give no ground for a claim in civil damages.

The Deputy of St. Mary:

I was not quite clear in what the Solicitor General said there, whether he excluded the possibility. I can understand that it comes under *ex gratia* payments, what we are discussing now and in the main proposition, but does the Solicitor General exclude any possibility of legal liability which could underlie a future claim?

The Solicitor General:

The *ex gratia* payment, if approved, will not preclude in principle someone bringing a further claim in action. If you are asking me today whether that is a realistic prospect then the answer is no.

2.4.10 Senator B.E. Shenton:

I find it very difficult to believe, having followed the Committee of Inquiry and the proposition, that anyone thinks that Reg and Rita Pinel, Reg Pinel who has had a heart attack and is in his 60s and have gone through hell at the hands of the legal profession, almost bankrupted themselves and lost every single asset, that anyone would think that the first thing they are going to do is start up another legal action. I think it is quite incredible that anyone's thought processes should go down that road. The other point is I hope Members do support this, because this will still leave Reg's Skips substantially out of pocket, because it will not cover the legal bill of Sinels. I would like the Minister to correct me if I am wrong; he suggested that they had received questionable legal advice from Sinels. Is that the case, Senator Le Marquand?

The Deputy Bailiff:

Senator Le Marquand is not the Minister.

Senator B.E. Shenton:

Sorry, when Senator Le Marquand spoke?

The Deputy Bailiff:

Whether he speaks in this debate will be a matter for him.

Senator B.E. Shenton:

Okay. He said they received questionable legal advice. Now I have never said that they received questionable legal advice. I am not a lawyer but the lawyer who gave them that advice is no longer with us and was an ex-Member of this Chamber. I think it would be wrong for me or any other Member of this Chamber to infer that he as an individual would give questionable legal advice. So the advice was taken in good faith and you win some and you lose some and they lost. This amendment of Senator Le Gresley will give them compensation I think of £207,000, well short of their expenditure after being caught up in this case. They will still be out of pocket, and I can assure you they will not be suing the States or anyone else. They will be putting their lives back together and trying to find a permanent home for Reg's Skips Limited, which is so important. I think this is where we do have a moral duty as an Assembly to stop making excuses why not to pay and just pay up. We as a Government did wrong and we need to compensate. It is as simple as that. We are not lawyers. Our job is not to find excuses not to pay or to defend the indefensible. Our job is to represent the people and you cannot get more honest, hardworking people than Reg and Rita Pinel.

Senator F.E. Cohen:

As a point of information I feel I must again point out to the Assembly that we have received notification directly from Mr. Taylor of a substantial claim in relation to his part of this affair.

Senator B.E. Shenton:

I should point out I do not represent Mr. Taylor and I have never represented Mr. Taylor.

Senator F.E. Cohen:

It was not a criticism of Senator Shenton; it was a point of information, that is all.

[15:45]

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

That last piece of information that has just come forward is the reason that I stood up or intended to speak and stand up. I have been dealing with law for years in my previous life, but I have always believed that natural justice was of far greater importance where a wrong has been committed and one is seeking to redress that wrong, especially when it comes to ordinary folk. In this case clearly this amendment is more beneficial than the previous amendment, but I also recognise that it does not stop anybody else from making a claim. But it is something which to me, although this is an *ex gratia* payment which I will support on this occasion with the circumstances that have been related, I feel it is important that we show that we have the courage and moral fibre and aptitude to, in some way, address the wrongs and the resulting grievance that has been caused to this particular family. But to me the recognition also is that if other people choose to sue the States, or anybody else for that matter, and it went to a Royal Court, the Royal Court in my estimation being the highest court in our Island, would recognise the decision of the States today. Therefore I feel confident that that decision would recognise that the States were concerned as a result of this case, and I believe that this amendment would be taken into consideration for the reasons, in good faith, that it will be successful I am sure.

2.4.12 The Deputy of St. Martin:

I am glad to follow the last 2 speakers because I think we want to get it back on course. I was particularly disappointed at the last vote and particularly disappointed that the proposer of this proposition abstained for the last one. I would have thought he might have been consistent right the way through, but that is a matter for the proposer. I think Senator Shenton has spoken about the family. I do not think I have knowingly ever met them but from all accounts they are probably hardworking people who have got themselves into a very difficult position, and I think the least we can do is for the States to show that we have some heart as well. If one looks at page 9 of Senator Shenton's report and we look at the 4 recommendations, it says the department should apologise publicly to Mr. Pinel and the others for the various mistakes, misguided actions and inactions that have been set out in the report by the particular review body. I think paying £50,000 to them is small beer for the hardships that they have suffered, bearing in mind that they still are going to have to be suffering because of the decision of the last vote, whereby this family now has still got to find £90,000-odd for another legal fee. I think £50,000 is probably small beer for us, but a large amount for them. There is also the issue about where the money should come from. It might be interesting just to remind Members that some time ago, a few months ago, we managed to find £160,000 to give back, I think it was to the Home Affairs Committee for the abortive inquiry carried out by the Wiltshire Police on Operation Blast that got nowhere, yet we could find £160,000 to pay off that bill. Yet here we have got £50,000 and we cannot find £50,000 to pay up for an innocent couple who have been victims of I think the States inactions and mistakes, so I will again be supporting this and would ask that also Members give their support again to this proposition.

Deputy M.R. Higgins:

Could I seek a piece of clarification from the Minister because his intervention talking about the possibility of further law suits, and Mr. Taylor I think it was, could sway Members here. The point here is that Mr. Taylor, if I remember correctly from the first figures, was offered compensation of £7,000 or something and you say he was seeking more. Can he give an indication of what sort of figures we are talking about there, whether or not he is going to have any success or not?

Senator F. du H. Le Gresley:

Sir, I would object to that, because my amendment does not mention Mr. Taylor at all and we are debating my amendment. [Aside]

The Deputy Bailiff:

The matter arises out of the question to the Solicitor General as to whether the payment of this compensation to Mr. and Mrs. Pinel, if agreed by the States, would preclude them from bringing any further proceedings. So that is the answer from Senator Shenton, that it would be unreasonable to expect them to do so and the other side of that coin, as mentioned by the Minister, is that Mr. Taylor has indicated that he would intend to bring a claim. It seems to me that it is easily a matter for Members to balance those factors for themselves. I call on the Chief Minister.

2.4.13 Senator T.A. Le Sueur:

Certainly I do not know where Senator Le Main gets the idea that the Council of Ministers are vehemently opposed to this particular amendment. Frankly I welcome the amendment as being a model of clarification of a difficult issue. Clarification because it identifies the difference between any payment to the company and payment to the individuals. So on the one hand I accept it is very much a step in the right direction in clarifying that, but I still have a couple of comments that I want to make going forward. But firstly I think we have to accept that there is a real distinction between the personality or the existence of a company and that of its individuals or directors, even though to many people it is one and the same operation. I think there is a danger here that rather than 53 planners we are today risking being 53 quasi lawyers, and I hate to tread down that particular path because I do not profess to be a legal expert in any way. There are 2 things which give me concern. The first is that we have the clear notion that the £157,000 being paid to the company is an *ex gratia* payment and that the money proposed here to Mr. and Mrs. Pinel is also an *ex gratia*

payment. So from that point of view the 2 payments rank in similar status, they are both *ex gratia* payments. The first part of the payment, the £157,000, has been based on a figure calculated as reimbursement of legal fees and other costs, and that is in accordance with the Committee of Inquiry findings and is therefore justifiable on that figure. When we come to the figure of £50,000 payable to the directors of the company, again as a further *ex gratia* payment, but to the people rather than the company, this the Senator details in his amendment is clearly as compensation for pain and suffering caused to the individuals by the failings of the process and actions of the Planning and Environment Department between 2004 and 2008. Nothing whatsoever to do with legal activities, legal fees or poor advice. It is in terms of personal suffering. He has proposed a figure of £50,000. I have to say, just as I said in the previous amendment, how do we justify one particular figure rather than another figure? The proposer has said that £50,000 is, in his view, in the light of other similar cases a sort of halfway figure the range within which compensation for pain and suffering might be made. My difficulty is that I have got no evidence other than the word of Senator Le Gresley, who I do not doubt, to suggest whether that £50,000 figure is a suitable average figure for pain and compensation in this sort of situation. Should it be £50,000, should it be £20,000, should it be £100,000? I honestly have no idea. So if we go into this and accept the amendment, we do it in the blind faith that £50,000 is perhaps not an unreasonable figure but not one which I can justify by relation to any legal advice. It might be helpful, and I really do not want to put the Solicitor General on the spot here, but just an indication maybe that he would confirm that £50,000 would not be an unreasonable figure in this sort of compensation situation. I say that because otherwise we are just plucking figures out of the air and thinking: "Well, this seems a nice figure on which to base what I agree is a moral obligation that we probably have." We have a discharge obligation in some form or another. I just would prefer to have a more concrete and tangible basis on which to say: "Yes, that is the figure which I can support."

The Deputy Bailiff:

Chief Minister, the question that you want to put to the Solicitor General is on the assumption that there is a legal liability and if the matter were being dealt with by a court is £50,000 the sort of sum of money as compensation for pain and suffering that a court would order. Is that the question?

Senator T.A. Le Sueur:

That is the question, Sir, although I accept that there is no legal liability, it is an *ex gratia* payment.

The Deputy Bailiff:

Well, on that hypothetical question, Solicitor General, are you able to assist the Assembly today? It comes out of left field, and I am sure the Members will forgive you if you are not.

The Solicitor General:

Yes, I think I would like some time to consider whether that figure is all encompassing. I think I would say now that I would want to know first of all what the cause of action is that the Pinels have against the Planning Department, because it is very clear in the law that the States are precluded from litigation in respect of planning decisions however wrong or misguided they may have been. So I think that the first question is not how much are the damages; the first question is what is the cause of action that might give rise to damages. But I would certainly like to think about damages and I would not want to offer an off-the-hoof figure to you.

2.4.14 The Deputy of St. John:

It would yet again seem to me on this side of the Chamber, and I have been listening to a number of the speeches, that those people who could make this happen are finding reasons not to make it happen. They want to know why the £50,000 and not £30,000 or £80,000 or whatever. You are asking a layman, like myself or Deputy Le Gresley, the Minister himself or Senator Shenton for the answer. I think the only people that can really answer that is yourselves. Have we done an injustice to this family? It is for each one of you in this Chamber, and at the moment I suppose

there are probably 45 or 43 within the House, whatever the number is, to give it really serious thought and consideration. Have we done this family a disservice? You cannot put a figure at the end of the day on the damage that we have done to this family. I would say it is probably 10 times as much as what is being proposed. But that said, Senator Le Gresley has put an amendment on the table with a figure. It is for you and me to search our conscience. We can ask the Solicitor General as many questions as we like and he cannot give us the answer, because there is not really an answer. It is the damage that will have been done over the last 4, 5 or 6 years to that family, to the children, to Mr. and Mrs. Pinel's parents who are elderly. I am asking each and every one of you to search your conscience and let us put this to rest. People have drawn in other things into this debate, i.e. Mr. Taylor. He is not in the amendments. He is not in this amendment. We are talking about doing what is right, and I think each and every one of us I am sure want to do what is right. It will come to us in different ways. Sometimes I sleep on an action I am going to have to take, one night, maybe 2 nights before I have got it in my mind that that is the right thing to do. I am sure we have all taken actions that have hurt somebody else at different times.

[16:00]

I was told last week about an action that I had taken a number of years ago which hurt that family, not this family but a family. These things come back and people remind you of this. Frequently, as you all know, I can be quite pointed in my comments across the Chamber about other Members and sometimes you do find out that that person has taken it to heart. Everything that is being said here today is being listened to I am sure by many of the public and it is for us now to bite the bullet and let us put this to bed. I am sure we will not see Mr. and Mrs. Pinel taking further action. They have seen enough of lawyers, they have seen enough of politicians. To put this to bed once and for all, I am asking each and every one of you to search your conscience and do what is right, once and for all and let us put this to bed.

The Deputy Bailiff:

Does any other Member wish to speak? I call on Senator Le Gresley to reply.

2.4.15 Senator F. du H. Le Gresley:

I would like to thank all Members who have spoken on the amendment and particularly those who have spoken in favour of the amendment. There are a couple of points I would like to pick up if Members would excuse me a second, as I am not an expert at doing this sort of thing. The Deputy of St. Mary was concerned about the advice of the Solicitor General and I quite understand why, but I think at the end of the day we have come to an agreement that it is appropriate for the £157,000 to go to the company which is a separate legal entity. So hopefully I think we are agreed on that. The Deputy of St. Mary also supported my proposition in the sense that payment of £50,000 *ex gratia* to Mr. and Mrs. Pinel should come out of the Consolidated Fund, and I hope that if I am successful with this amendment that is what will happen or something similar. Certainly I am not proposing that this extra £50,000 should come from the Planning and Environment Department budget. The Minister for Planning and Environment challenged me on my Article 27 part of my speech, which is fair comment. I am not an expert in the Planning and Environment laws and I did not notice that it required formal notice to be given otherwise it is not relevant. But I think it is relevant in the sense that it perhaps conveyed to Members that the principle of compensation is there, even if this particular case did not match up to Article 27. So I think the principle is there even if in the small print it may have been excluded. Senator Le Main made a very passionate speech, and I am pleased that he was supporting my amendment. I am not here to criticise the legal system today, I am merely trying to get what I think is right for this couple. Deputy Higgins made the point that there is some precedent in this Assembly paying compensation and in that particular case that he mentioned it was a matter of a company failing members of the public and in this case we are talking about a government department. Senator Perchard is not supporting my amendment. He started quite positively because he said on the face of it it is the right thing to do, but then he went to great length to explain that potential further claims could

come forward. He also accused - or perhaps accused is not the right word - suggested that my settlement figure of proposed compensation to Mr. and Mrs. Pinel was chosen at random. I will explain when I sum up why that is incorrect. I am grateful for the intervention of the Solicitor General who clarified what an *ex gratia* payment is and I think there is still, I have to accept, a grey area about subsequent claims but I think he did conclude that this is not a realistic prospect in the case of my amendment. Quite understandably Senator Shenton was very supportive and similarly Deputy Fox and also the Deputy of St. John who made a very passionate speech which I fully support and thank him for that. The Deputy of St. Martin criticised me for abstaining in the last debate and I will explain why I abstained, because I do believe that the £157,000 is the correct figure to go to the company. I have arrived at that figure by meeting with the Committee of Inquiry, going through the report in great detail and that is the conclusion I came to. For that reason I could not support but I also did not want to damage, if you like, that amendment, and that is why I abstained. The Chief Minister has indicated he might be supporting this amendment, which I am delighted to hear, but he is still concerned about how I arrived at a figure of £50,000. He thinks I have probably done my best in coming up with that figure and the Solicitor General is still mulling it over, so we have to, as Members, make a decision very shortly. I would say perhaps 3 things before I finish. I was not in the House in March 2009 but there was a proposition, P.29/2009 from Senator Shenton to pay a figure, and I think it is very important that Members take note of these figures, a figure of £297,469 compensation to Mr. and Mrs. Pinel. That as you know did not proceed because it was decided to consider using a Committee of Inquiry. Today we have debated the fifth amendment from the Deputy of St. John to pay a compensation figure *ex gratia* of £249,000. So that is £50,000 less or thereabouts and now my amendment to pay in total £207,000 so we have dropped another £42,000. Now if my amendment is not approved we will go a further £50,000 down, so we will be less than half of the original figure of P.29/2009. If that is what the House intended so be it, but I think or I hope that most Members will be supporting my amendment. I did say that I would, for the benefit of the Chief Minister, clarify why I came up with the £50,000 figure of compensation to Reg and Rita Pinel for pain and suffering. I did do the research on personal injury claims and the scale. I did quite a lot of research on that, but I have to be honest with you, because States Members are supposed to be honest, I asked the Committee of Inquiry how much they would have paid if they had been asked to compensate Reg and Rita Pinel for pain and suffering and the figure was £50,000. I maintain the amendment.

The Deputy Bailiff:

The appel is called for. The vote is on the fourth amendment in the name of Senator Le Gresley and I invite Members to return to their seats and ask the Greffier to open the voting.

POUR: 40		CONTRE: 6		ABSTAIN: 1
Senator P.F. Routier		Senator P.F.C. Ozouf		Senator T.A. Le Sueur
Senator T.J. Le Main		Senator J.L. Perchard		
Senator B.E. Shenton		Connétable of Trinity		
Senator F.E. Cohen		Connétable of St. Brelade		
Senator A. Breckon		Connétable of St. Clement		
Senator A.J.H. Maclean		Deputy A.E. Jeune (B)		
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Grouville				
Connétable of St. John				
Connétable of St. Saviour				
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 Hérisseier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)		•		•
Deputy K.C. Lewis (S)		•		•
Deputy I.J. Gorst (C)		•		•
Deputy of St. John		•		•
Deputy M. Tadier (B)		•		•
Deputy of St. Mary		•		•
Deputy T.M. Pitman (H)		•		•
Deputy A.T. Dupré (C)		•		•
Deputy E.J. Noel (L)		•		•
Deputy M.R. Higgins (H)		•		•
Deputy A.K.F. Green (H)		•		•
Deputy J.M. Maçon (S)		•		•

2.5 Reg's Skips Limited – Planning Applications (R.118/2010): compensation and further action (P.130/2010) - as amended

The Deputy Bailiff:

Very well. We now return to the main proposition, P.130 as amended and the floor is open to Members in case any Member wishes to speak.

2.5.1 Senator F.E. Cohen:

I speak because there are other elements of Senator Shenton's proposition that require addressing by the Minister for Planning and Environment. The Reg's Skips saga is a very sorry tale indeed, for it is an example of how a small mistake can cause events to spiral out of control with very unpredictable consequences. The core error occurred in 2005, so it is 6 years ago, and was a simple error in drafting a planning consent condition. It was an error that spiralled, eventually, into a voisinage action and finally to Reg's Skips moving from Heatherbrae Farm. I did my best throughout the process to try and find a way of resolving the conflicting positions and I am pleased that the Committee of Inquiry recognise this and were complimentary of my actions. I proposed the establishment of the Committee of Inquiry and I am pleased that they identified the key issues and got to the bottom of the matter. But back to the central planning issues. There will always be errors in the planning process for planning is more an art than a science and many of the processes and many of the decisions made are very subjective in nature. One person can have one view, another an entirely different view. In this case Planning clearly got it wrong in the view of the Committee of Inquiry and when things go wrong we have to learn from our errors and improve the process, always accepting that errors will never in the planning process be entirely eliminated. In this case we have discovered a problem in the writing of conditions and the scrutiny of those conditions. For those reasons I have launched a full review of our processes by leading external planners. This review is going on at the moment and the review will include an assessment of condition writing and the drafting for the department of a range of standard conditions. I do again

have to refer to the core telephone conversation, and Members will have their own opinion of the rights or wrongs of that recorded conversation but there are, and this is not a criticism of Senator Shenton, lessons to be learnt from that experience because it has been effectively claimed that I was caught out. Well, I was not caught out. I have always tried to help Reg and Rita Pinel, and Senator Shenton himself has acknowledged that in this Chamber. The problem with the call was that Senator Shenton did not say that he was calling me on an important matter and a matter upon which he intended to rely on what I said. Very often if one records a telephone conversation without explaining that there is an intention to rely upon what is said in the conversation the transcript is out of context. Had Senator Shenton said that he was relying on the content of the call I would have been extremely careful and would have undoubtedly advised him of the caveat that I had clearly expressed at the site meeting, and I repeat clearly expressed at the site meeting that my support for the application was entirely subject to successful pre-acoustic testing. The circumstances are rather like the question that was asked of the Solicitor General. The Solicitor General was asked a question and he knew that reliance would be placed upon his answer. He therefore decided that he would like time to consider his answer. Had it been a casual conversation the Solicitor General may have just given his off the cuff opinion and then followed that up with written advice, had he been told that reliance would be placed upon it. So I think in future the lesson that we can all learn from this is that it is much better to be honest when seeking an opinion from another Minister or from another States Member and had that been the case much of this could possibly have been avoided. I now turn to the specifics of Senator Shenton's proposition in relation to other matters. Firstly I think (a), (b) and (c) have been dealt with by the previous amendments and I am pleased that Senator Le Gresley's amendment was approved. Senator Shenton's proposal in relation to (d), which was the search for a suitable site, I believe has been broadly satisfied by the proposition of the Deputy of St. John that was successful only a few weeks ago and work will shortly commence on that particular project.

[16:15]

Part (e) of Senator Shenton's proposition suggests some form of further disciplinary investigation through the States Employment Board. I do not support this proposal. The majority of officers identified in the report no longer work for the Planning Department. Only one officer in fact who played a key part remains in the department. As is often the way, this officer happens to be extraordinarily diligent, very hard working and exceptionally competent and importantly he is a most honest and caring man. Yes, he was part of a mistake but it was a systemic failure and nothing would be gained at all by targeting the one remaining officer. Therefore I cannot concur with the Senator's suggestion of referring the matter to the States Employment Board. In conclusion there were undeniable failures identified by the Committee of Inquiry. I have apologised to the Pinels for the distress caused to them. We as an Assembly have agreed to pay compensation on an *ex gratia* basis. Planning will never be perfect, but I will endeavour as long as I am at Planning to make it better.

The Deputy of St. Martin:

Sir, may I ask a question of the Minister before we move on? That is to ask the Minister under (e) the Minister mentioned that the employees are no longer employed at Planning, but could I ask whether they are employed elsewhere within the public service?

Senator F.E. Cohen:

One is, 2 are not. I think that nothing further would be gained from referring the matters in relation to the officer who was moved on to another department. He too is a caring, diligent person but like everyone else, like me, he made a mistake. We all make mistakes. The important issue is that here we are accepting that mistakes were made and we are dealing with those mistakes in a practical manner as best as we are able.

2.5.2 Deputy P.V.F. Le Claire:

I am pleased to follow the Minister for Planning and Environment and I also will be not supporting (e) of the proposition for many of the reasons so eloquently put by the Minister for Planning and Environment. I think on this one occasion, and it is very rare, the States can hold their head up high and get behind Senator Shenton and demonstrate to the public of Jersey that the States of Jersey is accountable. It may be accountable through a variety of mechanisms, one of them in this instance being brought about by various amendments and the hard work of Senator Shenton. But that should not be put aside from the fact that all along the Planning and Environment Minister has endeavoured, as he so often does, to get involved with issues and work at them as hard as he can to deliver solutions. I would normally if there was, in my belief, something that had happened that was being done deliberately or criminally or out of malice be pursuing disciplinary actions against employees through the States Employment Board and requesting the Chief Minister to do so. But I certainly also do believe that in this instance, with the variety of issues that come before the States departments on an annual basis, human error had an effect. Sir, I am uncertain. I can hear Senator Shenton saying that I am getting it wrong. If I give way to him maybe he can explain to me what it is in part (e) that I am misunderstanding.

The Deputy Bailiff:

He will be able to reply at the end. Continue.

Deputy P.V.F. Le Claire:

I am not able to at this instance and I do not think I am going to be persuaded to request the Chief Minister or support part (e). I stood up to congratulate Senator Shenton and also too for my part as a States Member say sorry, because we so rarely do say sorry. But I think that 40 votes in favour on the previous amendment by Senator Le Gresley demonstrate that the vast majority of us have voted with our hearts and our minds, and I hope that we will do so in supporting the proposition of Senator Shenton.

2.5.3 Deputy A.E. Jeune:

I do not know if it is possible at this stage to ask for a clarification from the Minister for Planning and Environment that if we were to reject this proposition in its entirety am I correct in the understanding he has written a Ministerial Decision and is that to pay Reg's Skips? Thank you, Sir.

Senator F.E. Cohen:

The effective Ministerial Decision was signed yesterday. It is conditional on the Assembly's support and it is to pay Reg's Skips Limited and Mr. Taylor.

2.5.4 Senator T.J. Le Main:

I am not going to support (e). I honestly believe that Senator Shenton should withdraw (e). I have not a lot more to say after listening to the Minister for Planning and Environment. I have always felt that the Planning Department is one of the most difficult departments where staff in my view are working in extraordinarily awful conditions. I just would not want my staff to be working in offices cramped like they do. I do not think the office environment is conducive to looking after good staff and, in my view, the staff and the officers in the Planning Department are probably one of the most helpful departments dealing with people in this Island. It is not an easy matter and in my view errors do occur often when they occur because officers are always trying to assist in resolving minor matters, which often will involve a planning application. I think they are being very unfairly criticised, officers of the Planning Department and the Minister in this area. I have got a lot of faith, from the Chief Officer down to the bottom rung of all the staff including the secretaries and the ladies that answer the phones, how helpful they are. It would in my view not be of any benefit whatsoever to further support this request. As stated by the Minister, we have now got one person working there that was involved in this saga and I would urge Members to put it to bed now, let us finish with it and let us move on. As I say I do not support (e) and I would honestly like to advise Senator Shenton that he withdraw (e) and let us move on and get on with the work.

2.5.5 Senator J.L. Perchard:

It is difficult and we know it is messy and we have made a decision to compensate the Pinels and really now we are looking at part (d) and (e) of the proposition, because presumably we will confirm the decision to support the Pinels and Mr. Taylor by approving parts (a), (b) and (c). I have no problem with (d), but I do have a problem with (e) and while I understand the difficulty as outlined by Senator Le Main that planning officers have, and the tough decisions that they make, and that possibly, as hinted by the Minister, in an effort to be helpful to the Pinels the officers operated slightly outside of their remit. I understand that and I think we all feel some sympathy for it. But this error has cost the States over £260,000 today, and I am sure a lot more in days gone by by other costs that we are not aware of. I think it would be wrong of us to make a judgment about the performance of any officer because we do not have the information. The proper channel for this is the States Employment Board. The States Employment Board will consider formally and privately the actions of officers. They will deal with it appropriately and I am not quite sure why we should be expected to brush this one under the carpet. The proper channel is the States Employment Board and hopefully they will come up with a similar answer to that which Senator Cohen has come up with. But we cannot stand here today and act with integrity and say: "Let us just sweep this one under the carpet, shall we?" No, I think Senator Shenton is right to highlight this and I suggest to Members that we hope the outcome is as we would wish but we must support (e).

Senator T.J. Le Main:

Can I ask for information that would help and assist Members? Could I ask the honourable Solicitor General a question? In view of 2 of the staff involved in these errors who are not now in public service employment, what authority could the States Employment Board have in looking or investigating those members of staff that are not now employed in the public sector?

The Deputy Bailiff:

Solicitor General, what disciplinary jurisdiction does the States Employment Board have in relation to people no longer employed?

The Solicitor General:

The short answer is not much. **[Laughter]** I suppose there might be extreme exceptions, if it is found out that they have stolen money, but otherwise none.

Deputy A.E. Jeune:

Excuse me, Sir. May I ask just a point of clarification from Senator Perchard in that when he spoke just now he mentioned that it was £260,000. I came to about £210,000. I wonder if he could just explain.

Senator J.L. Perchard:

I beg your pardon, mathematics was never my strong point. £213,000, yes.

2.5.6 The Deputy of Trinity:

It is very sad that we are in this situation and it has been a long haul for the Pinels. I would just like to say that when I was Assistant Minister for Planning and Environment I did sit to hear one of the applications, it was not for Reg's Skips Limited, it was for the other one, the other applicant, Chris Taylor. We are here. Hindsight, as we said before, is a wonderful thing and there were things done as the various applications went along and now with hindsight and the Committee of Inquiry we know that it was not done at the right time. I just go on to part (e) to say that to carry on with a witch hunt for one person who is still working within Planning and Environment is wrong. They are all honest, hardworking, caring staff. They make decisions day in, day out. Some decisions applicants are happy with. Some decisions applicants are certainly not happy with. Some decisions

the objectors are happy with and some objectors are definitely not happy with. As Senator Le Main said, they are hardworking staff who try to give their best at all times and try to come to a compromise of what is best. This witch hunt and with the States Employment Board I do not think is right. Lessons have been learned and, as the Minister said, it is systemic and he has put a review into place and I think that is the most important thing. They all are hardworking staff and I have worked with them and there are difficult cases and I would not support (e).

2.5.7 The Connétable of St. Peter:

I am going to restrict myself to talking about item (e). I am going to support the rest of the proposition. Item (e) gives me a big problem inasmuch as I am quite concerned that we as an Assembly are possibly sending out a message that it does not matter what you do, we are not going to do anything about it. It is one of the criticisms that one so often hears out in the public domain of States workers are never held to be accountable. In this particular case we are looking at a mistake that has cost £210,000. How much has it got to be before we take some form of remedial action? It may well be in this particular case, as the Minister for Planning and Environment has said that the horse has already bolted, the stable door has been left open and they have already gone and are outside of our control, and it may well also be with the member of staff remaining within the employment of the States that some action has already been taken to resolve his position. But if there is an item of negligence I do still feel it appropriate for the States Employment Board to look at it. If it is an item of judgment then that is an issue that the department needs to look at itself. So I would encourage Members to really think carefully about item (e) and the messages we are sending out into the public and into the public sector workers and the public at large about how we deal with errors that occur within the public sector.

[16:30]

2.5.8 The Deputy of St. John:

I do not want to repeat what was said by the previous speaker but I believe he is absolutely correct. While I am on my feet it would be remiss, as I believe the Committee of Inquiry did the work in an honorary capacity, not to thank them for all the hard work and their officers. **[Approbation]**. I have the name of Mr. Mills, obviously the Chairman is Mr. Edward Trevor, but I understand there was a third member and I do not have his name and I was looking through the report and I did not see it. Mr. Richard Huson. I would like it put on record on behalf of the people of Jersey and in particular Mr. and Mrs. Pinel to thank them for the work they have done to date in producing this report. Hopefully by the end of this debate there will be a satisfactory conclusion.

2.5.9 Deputy J.M. Maçon:

Again my comments are to point (e), and I ask Members to re-read the paragraph and they will note that it does not say that if the States Employment Board were to investigate actions it would necessarily lead to disciplinary actions. It could lead to wider policy recommendations, bigger recommendations for the whole system regarding personnel matters. It could also lead to helpful staff giving them better guidance when finding themselves in similar situations. Senator Shenton is not asking for a witch hunt. He is asking for the States Employment Board to investigate these matters and in that way I see absolutely nothing wrong with point (e).

2.5.10 Deputy R.G. Le Hérissier:

The wind was taken out of my sails by Senator Perchard and the Constable of St. Peter, but I think this has been a continuing issue as they have both indicated with the public, that we are not seen as holding ourselves, let alone our employees, to account. I do not think people should confuse the application of accountability with witch hunts, as Deputy Maçon said, for example, or with a desire for punishment. I think this is a proper thing to do. If it is done professionally it reflects well on the employees, believe it or not, because it shows that we have a department that is proud to maintain standards and will ensure that they are applied. I also found that there had been 2

confusing lines of argument. There has been the argument that this is systemic, in other words it is all somehow in some vague melange where the system is to blame. Yet on the other hand people have been running the argument that we have excellent employees, as indeed we do in Planning, and let us not do anything further about this for fear, I suppose, of upsetting them all or prejudicing further staff morale. We cannot have it both ways. A good department does seek to apply accountability but it applies it in a professional sense and as Deputy Maçon said, if for example the finding is that there were wider policy issues at fault then they will be remedied. If there were individual actions that brought it about then they will be dealt with. But I think it is totally wrong to close the gate on these things and to say: "Everyone is a jolly good chap or chapess, let us move on." That goes against everything we have been trying to do to professionalise the public service and it just confirms people's view that there is no accountability in the system which we have seen so obviously in areas like Health and other areas. So we cannot have it both ways. I would very much support it. I do not like the use of the word "poor". I would have thought "alleged actions" would have been a better wording. But other than that I will support it.

The Deputy Bailiff:

Senator Shenton, paragraphs (a), (b) and (c) all have the same generic subject matter. Paragraphs (d) and (e) are slightly different. Are you proposing to ask the Assembly to vote on the whole as one lot or to take paragraphs separately?

Senator B.E. Shenton:

I was going to take all paragraphs separately.

2.5.11 The Deputy of St. Mary:

I was going to make observations on paragraph (e) but they have all been said most excellently, and I will be supporting paragraph (e) for the reasons given by Deputy Le Hérissier and the Constable of St. Peter and Deputy Maçon. It is quite clear that the S.E.B. (States Employment Board) should find out what happened in a sensible way. Paragraph (d) no one has been addressing, yet I find it very prescriptive. I know it is a direct quote from the review board's findings pretty well but I have just written: "Why?" in the margin. It is one solution to the issue of separation of waste and who should deal with it and where they should deal with it, and it says that the Minister for Planning and Environment should encourage the sorting and recycling of inert waste on private land throughout the Island or find sites for that. Now that is one solution. It could be on non-private land or it could be at La Collette, grouped, not even sorted and taken down there to be sorted in one go, which might be more land-effective and it certainly might create less nuisance. So I think that to pre-judge that, it worries me and I would welcome the clarification of the proposer as to why he wrote that in uncritically in my view. I think that really does need expansion and clarification. My final point is the wider issue of liability and the contract between the States and the people of Jersey that is implicit in the fact that we take tax money and then spend it in order to provide services and in order to protect people in different ways. In this case there was a failing of specifics within one department, which damaged 3 individuals and in other cases, last year by simply not having regulation in place we found it necessary, or the Council of Ministers found it necessary, to compensate investors who had been damaged by taking out dodgy investments with a dodgy company, and the company had not been regulated out of existence. They were criticised by the court as having been basically totally negligent in misleading those investors and we, the Assembly, picked up the tab. I just want to explore that a little bit because it seems to me that liability is an issue which I have tried to raise, and other Members have tried to raise, in various ways in questions and so on, and it seems that there is a little sort of wall around the States responsibilities when it delivers services to the public. I think one lesson we can learn from this whole sorry saga is that mistakes are costly and I think that has been said already. I would add that government is not a business. We cannot dispose of awkward customers. I am not saying the Pinels were awkward customers, but I am saying we cannot, like a business would do, limit our liabilities, limit our costs, just sort of shuffle things aside. Because we are the Government and we

have to be fair and we have to be seen to be fair. There is a cost in that. There is a contract between us and the people, and part of it is that we take some of their money and provide services that are safe to a certain degree, which is an open question, to what degree. Infrastructure that performs to a certain standard, protection to a certain degree from various kinds of harm, and the question of course is where do we set these levels and what does the public have a right to expect? The comment that I want to make in this whole context is that we deceive ourselves if we think that modern services, modern infrastructure and modern protection can be afforded to the standard that the public expect cost-free, on the cheap. That has direct implications for the budget debate which we are shortly going to have, and in this case one mistake, lots of debates later, the whole saga and compensation of £200,000. It seems to me that there are issues around all kinds of operations of the States and liability, and our responsibility is just around the corner. We just do not get to grips with this. Maybe we should have a sign at the harbour saying: "The roads of this Island are in an appalling state, drive with great care and we do not accept any liability for what happens to you." Or: "The cycle tracks on this Island are in an appalling state" and I refer specifically to opposite La Fregate where repeatedly in between the stones there the plaster wears away, the cement, and it is dangerous to the point of really dangerous. Who is liable? Who will pay?

The Deputy Bailiff:

Deputy, can I ask you to return to the point?

The Deputy of St. Mary:

Yes, Sir. So my plea is that we learn the lessons from this proposition. £200,000 this time. We have to take on board the issue of our responsibilities when we take people's money and provide services and infrastructure for them that we do not lay ourselves open to claims. It is cheaper to get it right first time. It would have been cheaper in this case, and I do pray that Members learn the lesson because if we do not learn the lesson it is going to cost us in the long run.

2.5.12 The Deputy of St. Martin:

I think we are on a roll now for Senator Shenton's part (e) and I would hope that Members will support it. I think it is very important that this is not seen to be as a witch hunt against the individuals concerned, because there should be a line management, and at some stage there must be checks and balances along the line. I would hope that we will be finding out where the system went wrong, because I know there are some very good people who work in Planning as indeed the Minister will know. We have some in different offices as well. But at the same time what I would hope that we will be finding out is is the system in place that makes the checks and balances so mistakes cannot be made? I have heard that the Minister is going to carry out an internal review but I think what we really need is an external one and indeed if it is going to be done by the S.E.B. it should not be costly, but what it should be seen to be doing is that we are seen to be doing our job. I know the Minister for Health and Social Services is out of the Chamber at the moment, but when she was saying that we must move forward and move on I really despair, because when I think of all the problems that we have had with the Health Department and we have moved on, and yet where are the lessons, where is the accountability? So I would ask that Senator Shenton certainly does not leave out part (e) and that we will all give it support, if only to show that we are concerned about accountability, not witch hunts.

2.5.13 The Connétable of St. Brelade:

I will refer once again to (d) and (e), (d) particularly I hope that the Senator is not trying to coerce the Minister for Planning and Environment in a sort of veiled threat to encourage him to give approval to the operation in its existing position at McQuaig's Quarry at St. John. I have received complaints or comments, not necessarily from lawyers I have to say, about the operation down there. So I would urge that the Senator considers that and perhaps deals with that in his summing up. With regard to (e), as a member of the Employment Board I would say that just because a matter gets referred to the Employment Board does not necessarily mean that the individual is

going to get castigated. They may well get a pat on the back, so I would like to think we are a fair and even body.

2.5.14 Deputy I.J. Gorst:

Yes, I just want to make a comment on (e). I would like to be able to support it, I am just not certain what exactly that it is asking because in effect the States is an employer of around 6,000 people and the States Employment Board are not dissimilar to the board of directors overseeing employment issues, and the Chief Minister being the chairman. In light of that I am not certain that it is appropriate of that board to oversee disciplinary procedures of actions of individuals. Now that does not mean to say however that we should not have appropriate disciplinary procedures within our H.R. (Human Resources) policy and that they should not be working appropriately. Having said that, it sounds to me, from the comments that the Minister has made, that those appropriate procedures are in place, that the individuals or an individual has made a mistake. I am slightly alarmed to hear the Deputy of St. Martin believes that you can have a system which eliminates mistakes. You can have a system which tries to mitigate the making of mistakes as far as possible but it is not possible in any system where we as humans are involved that mistakes will not be made. When mistakes are made individuals must be held accountable and we must develop and amend our policies and procedures accordingly.

[16:45]

If that is what is being asked for in part (e), i.e. that the States Employment Board should review its policies in regard to disciplinary processes, or what is more likely appropriate should be that the Minister for Planning and Environment should investigate and review policies at the Planning Department as I understand it is already committed to do such a thing. If we are saying that that is what (e) is desirous of then that is a good thing. If we are saying anything else, I am not certain what it is going to achieve because it is the wrong tool to implement systemic changes in the Planning Department, and it certainly is the wrong tool to deal with any supposed systemic failing, so we are placed in quite a difficult area because I think we do want to ensure that the policies are appropriate and that they are reviewed. But I am not certain that by asking the States Employment Board to do that, that is what we will achieve. We are placed in quite a difficult position by that part of the proposition I would suggest.

2.5.15 Senator T.A. Le Sueur:

If I can build on the comments of the last speaker, certainly my aim as Chairman of the States Employment Board is to aim for the highest possible standards of service, both in Planning and in every department of the States, and States employees themselves are also generally committed to improving their standards and improving their performance. But I wanted to explain other reasons why part (e) of this proposition should be rejected. To me the first thing that Members need to appreciate and perhaps some have forgotten, while we have been praising the review board for the excellent work they have done in this report to date, there is a second part to their work. Senator Shenton highlights that in his report on page 9. The second part is to look at the planning process itself. I believe that what I would like to do, as Chairman of the Employment Board, is to await the outcome of the findings of the planning process and to see what suggestions and recommendations they may make in the future performance of the departments, of the planning process and of the staff themselves. To investigate past performance, at this stage, without the benefit of their additional work, strikes me as being premature. The Minister, himself, is looking at matters internally, as he should, as any department should. The States Employment Board, in the normal course of events, would expect to hear and know that instances of poor performance are being dealt with, not to do it themselves but to make sure that they are being dealt with. What reassures me even further is that the review board is doing this outside work, looking at the planning process because really what we have seen in many cases in the present situation is a one of a failure in the process as much as the failure of the individuals concerned. There is no point in trying to improve the individual's performance in an inherently flawed process. So let us, at least, get the process

right first, let us then aim for higher standards of service by those employees and, as I say, all States employees, but let us not put the cart before the horse and let us not agree to part (e) at this stage.

2.5.16 The Connétable of St. Helier:

The Chief Minister's remarks prompt me to join the debate because it sounds like a familiar story, let us not inquire, let us not investigate, and let us wait for more reports. I am getting a *déjà vu* moment here. If we do not approve part (e), the message that will go out today is the States have handed over £200,000 in compensation, and quite rightly, but will take no action in the case of any employees who have been at fault, no action will be taken. That is the message that will go out. I am quite satisfied that the terms of (e) enable the Chief Minister and the States Employment Board to carry out an investigation, and despite possibly the poor phrasing of the paragraph, investigation is just that and that should be carried. That is the very least we should be doing today as well as awarding the compensation. So I would urge Members to approve the proposition as amended in its entirety.

2.5.17 Deputy T.M. Pitman:

I just wish to take on from my Constable and say if we do not pursue (e), and I do not believe in witch hunts, I do not think anyone in this Chamber believes in witch hunts, but if we do not go with (e) then my fear is that it might give the Chief Minister a sort of "get out of jail" clause when it comes to doing the necessary with the Napier Report. So I think we have to support it and let justice take its course.

Senator F.E. Cohen:

As a point of information, can I just make it clear that there is a full process review going on presently within the Planning Department and I am expecting the results relatively soon.

The Deputy Bailiff:

Minister, you have said that already, that was a second speech.

Senator F.E. Cohen:

Sorry, I forgot.

2.5.18 Senator B.E. Shenton:

I will stand up before the Minister makes a third speech. I will start off with paragraph (e). Nowhere in my report, or in my initial speech, as far as I can remember, did I use the word "disciplinary". What I said was to request the Chief Minister to request the States Employment Board to investigate the poor actions - I take notice of the Member that criticised my use of the word "poor" - of employees in the Planning Department as highlighted and take the necessary action as appropriate. The reason I have put it in is because Ministers do not employ staff. No Ministers employ staff. All staff is employed by the States Employment Board. By that logic it is not up to the Minister to decide whether action should be taken, it is up to the States Employment Board. I put in the report that one would expect this to be treated in a professional manner as befits good government and a government that may admit its errors. When the Minister for Planning and Environment spoke originally he sort of gave the impression that this all emanated out of one small mistake. But the Committee of Inquiry did find sloppy report writing and administrative practice, absence of due process and, seemingly, a lack of recognition of its importance, want of analysis in order to ensure well founded decisions, poor record keeping and recording of decisions, overformal decision making, unsatisfactory arrangements for the proper taking of decisions under delegated authority including the signing off of planning conditions and the lack of clarity about the rules or conventions pertaining to delegation, poor understanding in 2006 of the important changes brought by the new planning law, looseness of the application of the Island Plan policies and the planning applications and procedures, insufficient robust procedures for consultations with other States departments and planning applications, poor report writing coupled, in some cases, with marked

lack of analytical rigor, insufficient evidence of genuine team working with planning and enforcement officers operating in an informal conversation driven setting with insufficient sharing of knowledge and oversight of policy and practice, uncertainty as to precisely what the aims and objectives of enforcement function was, or should be, and an absence of established procedures for dealing with enforcement matters and complaints, including mechanisms to ensure balance between rightful interests of applicants and the legitimate concerns of complainants, lack of rigour in ensuring appropriate dealings with complainants in relation to the interests of legitimate expectation; and I could go on. Now, what I am saying is the States Employment Board should look at this report and see how the Planning Department is being run or has been run in the past. I commend the Minister for taking the action of carrying out a review of the department, but you cannot turn around to me and say that the department is running perfectly. I think Deputy Maçon had his finger right on the button when he **[Aside] [Laughter]** clarifies what I was trying to achieve. So my message to Deputy Le Claire is this is not looking for a witch hunt or anything like this. It is sending out a message to the people of Jersey that we will investigate and we will look into things when things go wrong. It does not give a timescale to carry out the investigation; it does not say: “Report back to the Assembly”, or anything like that. It simply says: “Go off, look at the report, see what went wrong and make sure the correct action is taken.” The Deputy of St. Mary spoke briefly about item (d), which was lifted word for word, more or less, from the recommendation of the Committee of Inquiry. I have been involved in cases with 3 different skip companies, bad neighbour, bad nuisance problems because, as an Island, as we grow and become more populous it becomes more and more difficult to find locations for these skip companies to operate. I have no preconceived ideas as to where these companies should operate but there did seem to me, from my understanding of the Committee of Inquiry, a lack of urgency within the Island Plan to find places for these difficult neighbours to operation. From memory, I think the Deputy of St. John’s proposition of a few months ago, highlighted finding publicly owned sites. This amendment just sort of fills the circle and asks them to look at publicly and privately owned sites so we should get there. No one wants a skip operator next door, but we do all want to pick up the phone and order a skip now and again. I have very little else to say, I do not want to go over items (a), (b) and (c) again in the summing up. I would like to thank the Deputy of St. John and Senator Le Gresley for bringing their amendments. I know an awful lot of Members have been involved in this case and I am sure the Pinels would like to thank them for their support over the years as well. Hopefully, we will vote the right way here. Hopefully, the Chief Minister will realise that paragraph (e) is not a witch hunt, it is simply doing the right thing and sending out the right message and learning from our mistakes. I would ask for the appel and thank Members for the considerable time they have debated this proposition.

The Deputy Bailiff:

You confirm the appel in relation to each paragraph separately? The appel is called for and the vote in the first instance in paragraph (a) as amended which reads: “To approve and therefore provide the legal authority for the making of an *ex gratia* payment of £157,000 to Reg’s Skips Limited, being reimbursement of legal fees and other costs and a further *ex gratia* payment of £50,000 to Mr. and Mrs. Pinel, the directors and beneficial owners of Reg’s Skips Limited.”

Senator B.E. Shenton:

Sorry, my colleagues are moaning that I could have taken (a), (b) and (c) together.

The Deputy Bailiff:

If that is your wish I shall put paragraphs (a), (b) and (c) together. So paragraph (a) and (b) as amended and paragraph (c) are being put to Members to vote upon. I invite those Members to return to their seats and ask the Greffier to open the voting.

POUR: 48	CONTRE: 0	ABSTAIN: 0
Senator T.A. Le Sueur		

Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator J.L. Perchard				
Senator A. Breckon				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

The Deputy Bailiff:

It will just take time for the Greffier to reset the system and then invite him to reopen the voting on paragraph (d). The Greffier will open the voting.

POUR: 44		CONTRE: 3		ABSTAIN: 1
Senator T.A. Le Sueur		Connétable of St. Brelade		Deputy of St. Mary
Senator P.F. Routier		Deputy S.S.P.A. Power (B)		
Senator P.F.C. Ozouf		Deputy J.M. Maçon (S)		
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator J.L. Perchard				
Senator A. Breckon				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				

[17:00]

The Deputy Bailiff:

Finally, we come to paragraph (e) to request the Chief Minister to request the States Employment Board to investigate the poor actions of employees in the Planning Department and take the necessary actions appropriate. I will ask the Greffier to open the voting.

POUR: 33	CONTRE: 14	ABSTAIN: 1
Senator B.E. Shenton	Senator T.A. Le Sueur	Connétable of St. Lawrence
Senator J.L. Perchard	Senator P.F. Routier	
Senator A. Breckon	Senator P.F.C. Ozouf	
Senator F. du H. Le Gresley	Senator T.J. Le Main	
Connétable of St. Ouen	Senator F.E. Cohen	
Connétable of St. Helier	Senator A.J.H. Maclean	
Connétable of Grouville	Senator B.I. Le Marquand	
Connétable of St. Brelade	Connétable of Trinity	
Connétable of St. John	Connétable of St. Saviour	
Connétable of St. Clement	Deputy of Trinity	
Connétable of St. Peter	Deputy S.S.P.A. Power (B)	
Connétable of St. Mary	Deputy I.J. Gorst (C)	
Deputy R.C. Duhamel (S)	Deputy A.E. Jeune (B)	
Deputy of St. Martin	Deputy A.T. Dupré (C)	
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		
Deputy of St. Peter		
Deputy J.A. Hilton (H)		
Deputy P.V.F. Le Claire (H)		
Deputy S. Pitman (H)		
Deputy K.C. Lewis (S)		
Deputy of St. John		
Deputy M. Tadier (B)		
Deputy of St. Mary		
Deputy T.M. Pitman (H)		
Deputy E.J. Noel (L)		
Deputy M.R. Higgins (H)		
Deputy A.K.F. Green (H)		
Deputy J.M. Maçon (S)		

3. Minister for Planning and Environment: powers (P.132/2010)

The Deputy Bailiff:

We now come to P.132/2010 in the name of Deputy Le Hérisssier, the Minister for Planning and Environment: powers 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 the opinion (a) to request the Privileges and Procedures Committee, in consultation with the Minister for Planning and Environment, to examine the Minister's current powers with regard to planning applications so as to establish whether the extent of powers vested in that one individual should be reduced, and (b) to request the Privileges and Procedures Committee to report to the States with recommendations by 1st June 2011.

3.1 Deputy R.G. Le Hérisssier:

Hopefully we can get this finished in rapid time. The reason I am bringing this is not because I do not hold the Minister for Planning and Environment in the most highest of esteem, which, of course, he knows from my regular emails, I do. The reason is I think it is an anomaly under the ministerial system and it seems quite strange, I suppose, in the light of what was discussed a couple of weeks ago in terms of reverting to a committee type approach. I am of the view that the powers vested in the Minister as he, himself, has said on one or 2 occasions, are too broad. I am of the view that they are dissimilar to the kinds of powers that Ministers are exercising in other ministries because there are different checks and balances, usually of a political nature. In a sense, the Minister for Planning and Environment is shielded by the Island Plan and the well known precept, well it is more than a convention, that he takes decisions within the confines of the Island Plan and in that regard, other than recourse to the courts on legal grounds, he reigns supreme. It has not happened recently in the States, but there were a whole series of cases, previously. I suppose the most recent is indeed the dairy site at Five Oaks. There were a series of cases where the States made an attempt to change the mind either of the Planning and Environment Committee or, more importantly, of the Minister for Planning and Environment. The line was always held on the basis that the Minister's view was supreme, short of legal challenges. What I am saying is that some of those decisions, even though the Minister in his paper has said he only took 20 decisions, and he is now taking them in the company of people who, he argues, form a committee, even though they are his Planning Application Chairman and his Assistant Minister. So while they are honourable men, good and true, they are, in a sense, beholden to him in their other roles. The Constable of Trinity may wish to furrow his eyebrows, but we shall continue on that theme. My view is even though he will argue it is only 20 decisions, these could well be 20 vital decisions. I think they are decisions that have enormous implications in terms of the financial viability of proposals, in terms of the reach of the proposal. I think it is better that we should look at a more structured way where there are clear checks and balances in doing so. I have not put forward prescriptive proposals, even though I suppose it could be argued it does lead to a committee style structure. I have not put a prescriptive proposal because I want the matter to be looked at. I want it to be looked at in terms of how other jurisdictions deal with this issue and how decision making can be broadened. I am not naïve enough to think that it will lead to a planning paradise where decisions will be more easily accepted. We all know that that will not happen as the former Assistant Minister for Planning and Environment said recently. What I think it will do, and if I can mention the dreaded phrase "Field 621", for example, which I know is not mentioned in polite company. But if I could mention Field 621, there is a never-ending debate about several issues, but one of the debates is, was the Minister able to make a decision there on the basis that his decision was an insubstantial departure from the Island Plan, because, were it to be construed as a substantial departure, then it would require a public inquiry? Well, it could be argued that there an enormous amount turns upon who makes the decision as to what is insubstantial as opposed to substantial. There is no doubt that that issue is one of those that has been an issue of considerable concern to people who have been campaigning, for example, on that particular issue. I do not want to bog this debate down around the merits of the decisions that have been or will be taken about Field 621. But I use it to illustrate the fact that when the Minister is taking decisions, albeit with his 2 highly esteemed and trusty advisers. When he is taking decisions he is exercising a considerable discretion. I think that is the sort of situation in which it is much better that there is a formal body around him and that formal body is acting as a system of checks and balances, as we indeed have on the application panel. I think we did make a mistake and the Minister has, himself, said that he wondered if the States had considered how much

authority they were placing in the hands of the Minister when they set up the new system. I do see, and I do thank him for this, that he has accepted the proposition and hopefully, because it is very open ended, it is not prescriptive, it is addressing concerns that exist. I am hoping it will lead to a fairly brief debate without having to rehash planning decisions, which I do not agree with on the basis of every individual.

The Deputy Bailiff:

The proposition is made, is it seconded? [**Seconded**] Does any Member wish to speak?

3.1.1 Senator F.E. Cohen:

I welcome this proposition and in so doing I think it is worth reviewing the facts as they are in relation to planning decisions. The powers are vested specifically in the Minister for Planning and Environment and those powers are then delegated by the Minister for Planning and Environment to officers and to the Planning Applications Panel. Some decisions are made by officers, indeed the vast majority are made by officers, with no political supervision whatsoever. It is only a minority of decisions that are determined by either the Planning Applications Panel or by the Minister. Those tend to be decisions where there is some unresolved objection, but that is not in all cases. The principles of the way that the planning systems works presently is basically that if you have a good Minister, you can deliver great results and if you have a bad Minister you could have a potential disaster. Members will disagree or agree on the determination of whether the present Minister is any good or not. However, I will, later, be attempting to defend my record. The process is more transparent than ever. All meetings held by the Planning Applications Panel, or the Minister, are now held in public. The public are invited to make representations both before and during the hearing. Last year, I introduced a new system where, as we have heard, I sit with the Constable of Trinity and my Assistant Minister, Deputy Duhamel. It is true that they only act in an advisory capacity, but I am too frightened of them to go against their collective view. So far, I do not think there is any case where I have gone against their collective view. Decision making, I would say, has been good and that is evidenced by the appeals record. Over the last 5 years there have been 65 Royal Court appeals and of those 65, only 4 have resulted in costs being awarded against the Minister which, I think, is a pretty good result over 5 years. Planning, as we all know, is something that will always be contentious. It is a very subjective matter and one person's disaster is another person's iconic building. There have been comments made recently by a particular Senator who has suggested that I have ruined the Island. He referred to particular buildings. They were the La Coupe Building, the waterfront, the Portelet scheme, the St. Aubin reclamation project, which has recently been announced, and Field 530A, which is next to the dairy. I would like to quickly run through those. La Coupe, I had absolutely nothing to do with whatsoever. The Waterfront, other than the Castle Quay one, which we are seeing coming out of the ground and is a competent piece of architecture, I have had nothing to do with any of the other buildings. That includes the Radisson Hotel, the swimming pool and the variety of other disasters which have little to do with my predecessor either. They date back many years before that. The Portelet scheme had an existing consent when I got the job. I made it very clear that I was only prepared to consider the new scheme designed by Sir Richard McCormack on the basis that it was a better replacement for an existing, not desperately good scheme, in my view, and I consider it is a great improvement. The St. Aubin reclamation project has absolutely nothing to do with me whatsoever and I think I have made my views, politely, known on that particular proposal. Field 530A, the dairy site, at no time did I formally give any consent for building on that part of the dairy site. I merely gave an indication that I intended to refuse the application for, I think, 8 houses and would consider an application for a smaller number of properties but that, of course, never came to pass. I would prefer to concentrate on what we have delivered and I would point to a number of buildings, 50 Colomberie, designed by a local architect, Naish Waddington, an excellent piece of architecture that encompasses, as I have said, competent architecture together with an excellent percentage for art piece and shows what we are trying to deliver. 44 Esplanade ...

The Deputy Bailiff:

Would you forgive me? If this Assembly is going to consider, in the context of this proposition, every planning decision that has been taken, we could be here for years.

Senator F.E. Cohen:

We have only got another 4.

The Deputy Bailiff:

If I do not interrupt you, then I will not be able to interrupt anybody else who wants to talk about the planning applications.

Senator F.E. Cohen:

I will cite 44 Esplanade, the Ogier building which, of course, is the Island's first BREEAM very good building, also designed by Naish Waddington and an excellent piece of local architecture. We are now in a position [Aside] ... I am not allowed to mention the incinerator because I promised I would not detail any further applications. [Laughter]

[17:15]

We now have an amazing array of great architects working in the Island which, I think, for a small jurisdiction, is second to none. We have Robert Adam, Quinlan Terry, Sir Richard McCormack and, of course, Sir Michael Hopkins, all currently delivering buildings in the Island. So I think we can defend our record, hand on heart and say we have done the best that could reasonably have been expected. However, it is always a good idea to review. I accept the process is not perfect. There are, as I have said, particular risks in relation to planning and putting too much authority in the hands of one person and I welcome the review.

3.1.2 Senator B.E. Shenton:

I will be very, very brief. I had submitted proposition, P.78, that looked at the Minister's power and I sought notice of the Assembly to withdraw this proposition before debate because it covered many of the matters that will be looked at with this proposition. This is just a formal request to the Privileges and Procedures Committee if this proposition is passed, as it should be, to have a look at the comments in respect of P.78 and perhaps include it within their remit when they are carrying out the investigation.

3.1.3 Senator A.J.H. Maclean:

Just very briefly. I am sure, like myself, Members have not appreciated what a splendid job the Minister has done [Laughter] even though you have cut him off at his knees, to use the phrase of the Deputy of St. John, it is quite remarkable. I think we should pay testament to, in all seriousness, to some very fine buildings that have been constructed in recent years. I think they are a direct result of the work that the Minister has done. I would also like to just, very, very briefly, mention the fact that I was honoured to be able to attend the opening of the anchor tenant, down at Liberty Wharf. I would encourage all Members who have not had the opportunity to go to Liberty Wharf yet, to please go there. It is absolutely fantastic and a testament to some superb architecture. I think the Island can be proud of what has been delivered down there. It really is an example of the waterfront beginning to deliver some genuine advantage for the Island and for Islanders. Thank you for being so patient.

3.1.4 Deputy A.E. Jeune:

Having seen both the Planning Panel meetings and the ministerial public hearing meetings, I have to say I have been very impressed with the way the Minister carries out those public hearings. I would fully endorse continuing. I feel he is not taking the decision solely at all. So I really do not, necessarily, see the need to give P.P.C. any additional work.

3.1.5 The Deputy of St. John:

It would be remiss if I did not mention the cladding of the incinerator as what I would call a bad decision by the Minister because it has probably put £X million on the bill and raised the building that much higher. That said ...

Senator F.E. Cohen:

I did not raise the building.

The Deputy of St. John:

I am supportive of this review by P.P.C. if for nothing else for the way that the public hearings, not the ones by the Minister, because I think those work well, the Minister and his Assistant Minister and the chairman, but the way the public hearings are held by the panel, the panel hearings, where members of the panel work one minute as a member of the panel and the next case or next case but one, they will leave the table and go and sit with the public because they want to represent a member of their Parish or represent a member of the Island. Having sat through a number of them now, I feel very uncomfortable when I see a member move across from one position to another. It is like going to sit in the Police Court, in my days of a Centenier, you would have the judge come in, sit down, deal with a case, or several cases, then leave and go and sit in the gallery and then be called to represent somebody as a lawyer. I feel uncomfortable that this happens. Therefore I think if P.P.C. are going to look at the powers of the Minister and ...

The Deputy Bailiff:

Deputy, can I just ask you to repeat what you said there because it is just not right for the public to be hearing that a judge sits as the judge one moment and goes and sits as defence counsel or prosecuting counsel the next.

The Deputy of St. John:

That is what I am trying to explain. It is the way I have put it across; it probably has not come across right. But it is like holding 2 positions, one minute you are judging a planning application and then next minute you are on the other side of the table, or quarter of an hour later on the other side of the table presenting the planning application on behalf of your parishioner or member of the public. It seems wrong, in my mind; it has been expressed to me by members of the public that it does not seem very professional. I will withdraw the remarks about the court because ...

The Deputy Bailiff:

If I may clarify it, it would be wrong if a judge did it and you say it seems wrong if the Minister does it.

The Deputy of St. John:

Correct, thank you. Thank you for helping me out.

Connétable G.F. Butcher of St. John:

Can I ask for some clarification from the Chair, if you would give way just for a moment?

The Deputy of St. John:

Yes, by all means.

The Connétable of St. John:

I thought what we were discussing is the Minister's powers, not the panel's powers

The Deputy Bailiff:

We are discussing whether there should be a review of the Minister's powers.

The Deputy of St. John:

I accept that it is a review of the Minister's powers hence I am bringing in the panel, the panel's work. [Laughter] Yes, but it is at the behest of the Minister, so that is part of his powers. Would I be correct?

The Deputy Bailiff:

You are entitled to look at the powers ...

The Deputy of St. John:

It is delegated powers by the Minister, so therefore I am hoping that ... I have only got 5 minutes to go and I do not want to waste any more of Members' time. But that said I do have concerns ...

The Deputy Bailiff:

Well, can I say there are 3 other Members after you to speak so do not use up the time unless you have something to say.

The Deputy of St. John:

I agree with you. I will call it a day. I think I might have dug a hole I cannot get out of.

3.1.6 Deputy J.A. Martin:

It is a pleasure to follow the Deputy of St. John because I am reading the proposition and I am reading the Privileges and Procedures terms of reference and cannot see where this would go anywhere near. It should be his panel scrutinising this and if he feels the powers are wrong and the procedures are wrong, he should be doing it and he should have been doing it already. Having said that, I am also in full agreement with Deputy Jeune, I do not want any work coming towards P.P.C.'s way which is unnecessary. If the work is going to be done it should be done by Scrutiny, they have the right set up, and they have the panel. I can see the Deputy of St. John is really up for it because he can already see the dangers there. I am sorry, but at the end of the day, I agree with the comments in the proposition that we will not just be sitting on the fences, we will be going around and around and around for ever if we delegate powers to the States of Jersey. So, maybe, I am probably conflicted if it does come to P.P.C., but it is certainly not a piece of P.P.C. work, it is definitely Scrutiny.

3.1.7 Senator A. Breckon:

To come back to the proposition, Deputy Le Hérissier says in there: "Regarding to planning applications so as to establish whether the extent of powers vested in that one individual should be reduced." Can I remind the Deputy and the Chair, 2 weeks ago I stood here and suggested exactly this scenario using the Minister for Planning and Environment as an example of where one person's iconic and, of course, they were the ones that the Minister for Planning and Environment mentioned, he did not mention the other ones that are not quite so iconic. Then Deputy Le Hérissier is suggesting something he voted against 2 weeks ago because he is suggesting a reversion to the previous committee structure. It is highly likely that the solution would involve the resurrecting of committee. Well in some instances Planning have already got a committee, so are we there or are we not, are we going to go back? It says: "Obviously if a committee type solution is proposed there still exists the issue of a dominant chairperson strongly influencing decisions." That is a challenge for all the groups and is not a reason to stop reform. Now that is what the Deputy is saying and he voted against possible reform 2 weeks ago and I am wondering if Deputy Duhamel, obviously he is involved with the Planning, so it will be interesting to see how he feels about reform because they both voted against it only 2 weeks ago. So where are we with reform, is it a bit of reform, is it Planning reform? I cited this very example, it says: "Furthermore, a reform process should benefit from a diversity of views where Members are challenged to justify their stances." That is exactly what we are talking about. I do not know where Deputy Le Hérissier was 2 weeks ago, he was here. I am sure he was, and Deputy Duhamel was so why have they changed now? If this was a similar proposition, it would not be allowed because they are proposing

something that has been debated in the same session. I am not sure; perhaps the Deputy can tell us where he is coming from. I mean this is classic fence-sitting of the highest order, definite.

3.1.8 Deputy T.M. Pitman:

I was one Member who did not have a clue what the Deputy of St. John said. I am going to finish on an enigmatic note myself. In Mexico there is a political saying that says: "Even the smallest of dogs can cock its leg to the tallest of buildings", which seems quite apt with the Minister for Planning and Environment. I have to agree with Deputy Martin and say this really should be thrown over to the Deputy over here. It is not for P.P.C. to do, I think. I have got a real difficulty in supporting this I am afraid. I will end on that note and sit down.

3.1.9 Senator P.F.C. Ozouf:

I am in the position of the Deputy Greffier yesterday by losing my voice, so that is one of the reasons why I have kept quiet this afternoon. But I will say, very briefly, I was responsible for setting up some of the arrangements for the ministerial position and the panel, because I was the last Planning and Environment President. We set up arrangements that were going to be quite subtle between the panel and the Minister. I have to say I think that what the Minister has done since he has been there, working the panel, has improved the standard of architecture dramatically. It is not only the buildings that he cites, but if you drive around Jersey and you see the quality of buildings that is now being constructed, all over the Island, it is something that I think that we should be proud of and I think Islanders are increasingly proud of. As Minister for Planning and Environment you only see the benefit of your work a number of years later and we are beginning to see that. So I am not at all sure, I think the interplay between ... some people do not like the decisions of the Minister, nobody will ever like all decisions by the panel or the Minister. I think the interplay works quite well. I am not at all sure that there is a real issue that Deputy Le Hérissier is going to have to justify in his summing up as why he thinks there is a problem, as opposed to the actual decision-making which is legitimate for Scrutiny in terms of is there something structurally wrong with the arrangements that are there at the moment? Also, I have to say I am not at all sure that it is a matter for Privileges and Procedures. If anything, it is a matter for the Council of Ministers to review, because Ministers should be responsible for Minister's powers, et cetera, or it should be something that the Scrutiny Panel does itself. I am going to give up on that point.

The Deputy Bailiff:

I advise Members that the Connétable of St. Saviour and Deputy Le Claire have indicated a wish to speak, and Deputy Power.

The Deputy of St. John:

I propose the adjournment.

Deputy P.V.F. Le Claire:

Mine was only going to be a minute.

The Deputy Bailiff:

Thank you. The adjournment has been proposed. Deputy Le Hérissier will, no doubt, have regard to Standing Order 128 which sets out the terms of reference to the Privileges and Procedures Committee, and he will want to address that in his replies Deputy Martin has asked. **[Laughter]** A Standing Order for which I think he might have been responsible. The States now stand adjourned until 9.30 a.m. tomorrow.

ADJOURNMENT

[17:29]

