

STATES OF JERSEY

OFFICIAL REPORT

WEDNESDAY, 20th NOVEMBER 2013

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[9:31]

The Roll was called and the Deputy Greffier of the States led the Assembly in Prayer.

PUBLIC BUSINESS – resumption

1. Dental Health Services: improvements (P.127/2013)

The Bailiff:

So, we return then to the debate on P.127. That is the proposition of Deputy Southern, Dental Health Services: improvements. Does any other Member wish to speak? Senator Le Gresley.

1.1 Senator F. du H. Le Gresley:

In July 2013 my officers produced for my consideration a written review of the Jersey Dental Fitness Scheme. This was 6 months later than the target my department had set when I made the statement to this Assembly concerning Senator Breckon's proposition, P.17/2011. I apologise for that delay, but the policy team has been kept very busy this year, in particular making sure we deliver a Long-Term Care Benefit Scheme in time for the start date of 1st July 2014. I do not know if the proposer is interested in what I am saying, but I will continue when he is paying attention. The review of the Jersey Dental Fitness Scheme suggested 5 options for improving the scheme. One of which was to increase the subsidy in line with R.P.I. (Retail Price Index), taking the monthly States subsidy to £13.48. I was at first minded to adopt this quick fix. There are probably Members in this Assembly, like Deputy Southern, who think this is an idea. But handing more money to community dentists is not necessarily going to deliver improvements in the dental fitness of our community. The proposition we have been asked to consider today tells us you can make improvements to dental services by placing more money into existing schemes providing training in oral hygiene, for care assistance and undertaking publicity campaigns. On first reading many of these ideas might seem attractive and the right thing to do, but I urge you not to support any of these proposals. Briefly I will set out the reasons why and my concerns. Firstly, and most importantly, these proposals do not target efforts and benefits to the right places. Research conducted in 2008 with Jersey school children identified a different set of priorities. Rather than extend provision to higher income bands as suggested in part (c) of this proposition, research suggests we should be looking to target the poorer and more socially disadvantaged groups. My concern is will any of these poorer families be helped by increases in States subsidy for the Jersey Dental Fitness Scheme. Do we believe that families from minority community groups join membership schemes? Is it not more appropriate we should be looking at preventative activity with younger age groups, such as the "Child Smile" programmes being rolled out in Scotland, referred to in my comment and also by Deputy Bryans yesterday. Part (c) of the proposition suggests the Jersey Dental Fitness Scheme should be extended to the upper boundary of the fourth quintile of annual household income. So to explain this in numbers: the current Jersey Dental Fitness Scheme earnings limit is £46,000 and is already index linked and has been since 2001. The proposal is to increase this limit to just under £60,000. The research that we have suggests that there are problems that need to be addressed, but these problems are not among the children of middle Jersey. They are among the children living in the lowest income families, but not necessarily households which qualify for special payments for dental treatment under Income Support benefit. The 2008 survey of dental health in children showed that 8 per cent of the children from the fee-paying schools included in the survey had a dental problem at the age of 5. By contrast one of our States Primary Schools with a catchment area including large numbers of low income and immigrant families reported 44 per cent of children with dental problems. The fact that there have been no further surveys since 2008 is a result of the decision of the Community Dental Department to allocate the Budget for further surveys to other departmental overheads. So, having cherry-picked from the Scrutiny recommendations of 2010, Deputy Southern is offering us some quick

time solutions and says: “We can fund these from the Health Insurance Fund.” But that is not the case. Primary legislation restricts how the fund is used. It can pay medical benefits to local residents when receiving treatments from G.P.s (General Practitioners) and pharmaceutical benefits. But there is no legislation already in place which covers the employment of dentists or dental nurses or to run publicity campaigns. If we really wanted to push ahead, these activities could only be delivered by the Health Insurance Fund following amendments to the primary legislation, which cannot be rushed through. I ask Members: do we wish to prioritise that over the urgent work which needs to be completed next year to implement the Primary Care Governance Framework? Furthermore, I have another concern about this proposed use of the Health Insurance Fund. Up until now, health insurance benefits have not been means-tested. There is a risk that in pursuing these short-term fixes proposed by Deputy Southern we fail to consider the wider implications for the use of the fund. The Deputy says the Health Insurance Fund is healthy. On page 6 of his report quotes figures from the 2010 Scrutiny Report, which in turn refers to the financial position of the fund as at the end of 2009, some 4 years ago. Members need to be aware that as at the end of 2012 the assets of the Health Insurance Fund stood at £80 million and that contributions only exceeded expenditure by £600,000, compared to a surplus of £5 million, excluding investment income, in 2009. Furthermore, the reserve increased by £8.4 million in 2012 as a result of exceptional returns on investments which are unlikely to be repeated in 2013 and the years ahead. Members must not forget that in the Medium-Term Financial Plan we have already agreed to make further transfers to the Health and Social Services Department from the Health Insurance Fund, totalling £14 million, which means that by the end of 2015 we could be running in a deficit position and needing to draw-down on reserves. We are currently awaiting a government actuary review of the funds for the 3-year period ending 2012. No decisions about introducing new benefits should be taken until this report is received. The implications for the long-term future of the H.I.F. (Health Insurance Fund) are considered.

[9:45]

My third area of concern is about the somewhat randomly calculated financial implications set out on page 10 of the report. This suggests that we increase our spending sixfold up to perhaps £770,000 a year. But the proposition does not demonstrate how this sudden surge in spending is going to help support the people who are most in need and why this area deserves more attention than any other. We all know the pressures on the Health Insurance Fund are only going to grow as our population ages and that the largest group of recipients of medical and pharmaceutical benefits are pensioners. I am happy to repeat the commitment that I made to the Assembly on 8th October 2013 when replying to an oral question from Deputy Southern that I am already looking into both the Jersey Dental Fitness Scheme and the range of pensioner benefits, including the 65-plus Health Scheme, commonly known as Westfield. I will bring forward proposals to address these areas in 2014. The Westfield Scheme is expensive to operate. We could achieve savings in administration by offering pensioners in the scheme more flexible ways of paying for the various health services available from local practitioners. An idea being considered is offering each member of the scheme a pre-paid credit type card, which would avoid the need for upfront payments. So I am already working with officers to improve the Westfield Scheme. I ask Members to allow me time to complete this work. Deputy Southern believes that both the Jersey Dental Fitness Scheme and Westfield are perfectly good schemes that just need, in his words, reviving. But I disagree. He wants action not more reviews. I can assure Members that I want action too. But the Scrutiny Report of 2010 cannot be the only basis for change, more research is required. I ask Members to allow me time to finish the work that has started. I hope my track record of delivering on promises is persuasive. Together with the Minister for Health and Social Services I can today give the following assurances that firstly in the first quarter of 2013 we will commission a survey of dental health to bring information on the status of dental health among primary school and pre-school

children up to date. Secondly, we will develop a business case considering a dental health education programme to increase awareness in schools. Thirdly, we will review State spending on dental health services and benefits, that is tax-funded spending, looking for ways to use that money more effectively. Finally, we will prepare an implementation plan for the delivery of enhanced public funded dental healthcare services or benefits in Jersey. So, in summary, this proposition has a hidden assumption. That the only barrier to improved dental health is financial and that putting money into the existing membership scheme is the solution. I hope Members having heard me will understand that this is not the case. I do not think the information we have, limited though it may be, allows us to make that assumption. I urge Members to reject all parts of the proposition and allow my department and the Health and Social Services Department to make positive action in a more measured, informed and balanced way. Thank you.

1.1.1 Deputy G.C.L. Baudains of St. Clement:

I was listening carefully to the opening speech yesterday and I have to agree with the proposer when he said that dental health comes behind other health issues. In actual fact it is really an important issue, because a poor degree of dental health can trigger other serious illnesses and it is not widely known. I will be supporting the proposition with the exception of paragraph (f). I know there is widespread belief that fluoride is good for teeth, but the actual information from trials and such proves the contrary. Fluoride is one of the most toxic substances known to man. It is used in drinking water to prevent tooth cavities. This practice has been discontinued in most countries. In my view it should be banned from toothpaste as well. It is a by-product of aluminium and it can encourage the body to absorb aluminium, mainly found in the brain and, of course, is a precursor to Alzheimer's. It is not a substance I would like to be using. For that reason I will not be supporting (f). In support of what the Deputy is trying to achieve, it is not long ago I recall one of my parishioners approaching me a couple of times, one of the younger members of our Parish was having severe toothache and simply could not afford the treatment that he required. In the end his employer had to pay for the treatment, which I found was completely unsatisfactory. I will be supporting the proposal.

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

As the Minister knows I very much respect him, but I thought he was a little hard on Deputy Southern, because there is no doubt whatsoever, as Deputy Baudains has said, that dental care is a major issue. It has been a major issue in Britain for years, with its rather unsure status within the National Health Service. It joins another issue, which I know the Minister for Health and Social Services is, as I speak, attending to, namely the price of visiting G.P.s. This is undoubtedly a passive time-bomb at the moment, but it is going to explode, because I simply think at some point we are going to have to face up to the fact you cannot run a universally accessed health dental service without a tax system that is commensurate with that service or a fee for payment service. The British are on the brink of having to look at payment for G.P. visits, nothing to the scale that is the case here, obviously, at the moment. There is no doubt that if you have full preventative programmes - and I am not sure I would accept all the arguments, although he is better informed than me about fluoride - you can do an awful lot to avert costs in later years and to establish the right habits. Having said that, I do accept that the Minister is a man of his word, he has pushed through an enormous amount of legislation. As far as I am concerned, he has shown himself as a committed reformer. I think he has been caught slightly on the back-foot in this case, but he has come up with an overall approach to the situation and I am prepared to wait for a fresh look at the situation. A clear delineation of what the current priorities are rather than throwing money at what I know from those early debates on the Westfield Scheme were seen by many Members at the time as a compromise that was hastily put together to try and prove we were dealing with dental care. But it was always seen as a very hastily put together compromise that had all sorts of bureaucratic

issues in the way people approached it, as the Minister has alluded to with his attempt to get some stored-value card working, for example. So if he stays to that promise, if the report comes up, hopefully when there is a bit of breathing space after the long-term care introduction, I would be prepared to accept his work. But, I think Deputy Southern has to be congratulated for ensuring that this is given a good airing. Thank you.

1.1.3 Deputy J.H. Young of St. Brelade:

Like the previous speaker, from my days working in the Health and Social Services Department back in the 1990s, I could see the lack of access to dentistry in this Island was a major problem. I can recall a massive campaign in those days. The Health Department of the day went to the extent of equipping itself with a mobile dental caravan and employing dentists and going round to the primary schools. There was a lot of follow up and that then led to the birth of the scheme which the proposition now asks us to endorse or enhance. I am certainly not aware from my own grandchildren that that publicity campaign is there. I am certainly not aware of it. I do not know what happened to the dental caravan. Perhaps it got sold at our auctions or elsewhere in the Island or shipped overseas. I do not know. But, it illustrates that particular side of the problem. The other one, we all know, is simply that dentistry is just not available to a large proportion of the over-65 group. It is not an option. We have heard many times about that. So, I am very worried about the way this debate has gone. Deputy Southern did an excellent service reminding us of these commitments or the work done in the past. He has brought those forward. I am equally worried about being put in the position where the Minister is saying, a Minister who we know is absolutely as committed as we all are to achieving reforms, and I trust, as I know most Members of the House trust, the delivery on his commitments. But, I worry about him saying: "Look, reject everything. All or nothing." Because when I look at the proposition, I look, for example, at proposition (d). Deputy Southern has already said that he will allow us to vote on those separately. It says: "To undertake a publicity campaign to promote dental health services provided in Jersey." The Minister said he is going to do that anyway. He agreed with it. So, I do not see an argument at all for not saying yes to (d), for example. If other Members can see it, I would like to hear it. Secondly, (e): "To ensure that the need for upfront payments for dental treatment required by the Westfield Scheme is eliminated." Well, we have heard it is a problem for the over 65s. It is right that when you get your pension letter you get a letter telling you about Westfield. That is exactly what happens. I know that myself. But, of course, what you see is a whole set of qualifications there. The first one, it is clearly right, you have to be exempt from income tax. So, that is it. That is the level that the scheme is for. Yet, the current scheme says: "Well, you can have your dentist as long as you pay it up front, which clearly you cannot do. Again, the proposition says to ensure that that is eliminated. The Minister himself said he is doing it. So I cannot see another problem for not supporting (e). Then we come to (g). It says: "To examine the potential for expanding the range of those eligible to partake in the Dental Fitness Scheme and report back to the States for recommendations." Unless I heard wrong, the Minister told us he is going to do that as well. Have I missed something here? If other Members will tell me, fine. But, what is wrong with (g)? Looking at the other ones I accept the Minister's assurance that the issue is more complicated than transferring the money. I accept that there is a complication there if we were to do Deputy Southern's proposition (a). I think his point is valid there. Then point (b), uprating the current scheme. What we heard, I thought, was an indictment of the current scheme. What we heard was saying 44 per cent of children at certain primary schools or pre-school are suffering from dental problems. Yet 8 per cent of youngsters in private school are having that problem. I accept that if we are to have a targeted scheme, in a perfect world we would have universal benefits, universal health service, the point Deputy Le Hérisssier made. We have not had that. The U.K. (United Kingdom) does not have it. We cannot achieve that. The Minister has made the point, and I think proposition (b) probably is going to have to await for what he comes up with. Similarly the

changes to the upper-earnings limit for the qualification. Because, obviously, he has pointed out that on the scheme for the 11 to 18 year-olds the qualifying thing is that the household income has to be not more than £46,000.

[10:00]

The interesting thing is that in order to get in the 11 to 18 scheme, the requirement is you have to be dentally fit. I ask: what happens if you are not? Well, you should be because the answer is you can go to the school health clinic if you are under 18. But does everybody know about it? How does that explain the 44 per cent of children in the schools? How is that explained then if that scheme works? Clearly there is a problem there. I think then that the Minister has made a good point that several of these parts of the proposition, we should trust him. He said he will come back in the first quarter. I will go with this commitment and I therefore shall not be supporting those parts of the proposition. But I really will be supporting (d), (e) and (g), as I have said and explained, unless others Members can point out to me where my logic is wrong. Thank you.

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

Like other Members, I do have respect for the Minister for Social Security. I do acknowledge some of the things he has done. On this particular one I almost get the feeling it is the standard material response to any criticism, in the sense that: "We have either been thinking on it, we are working on it, wait for us, listen to us, do not take on board what the proposer is putting forward." I will say again, I cannot necessarily support every single paragraph that is in Deputy Southern's proposition. But, like Deputy Young, I feel there are those that I can support quite happily. What I am concerned about too are the comments that were made about the Health Insurance Fund and the health of it and so on. We have had 2 debates in this Assembly on transferring money from the Health Insurance Fund to the General Hospital. We were told: "Oh, it is no problem. Do not worry about it. We can transfer it." I would not be surprised if in the future we have another raid on the fund. So it really suits the argument on the day. The other thing too is, I was concerned with what he said about the investments: "Do not rely on the investments always being there and generating a return." We only had the housing debate 2 meetings ago and we were being told by the Minister for Treasury and Resources that we had these fantastic returns and we can afford all this housing expenditure we are going to make over the years, because of the fact that we are earning so much on our investments. I gave the warning then that you cannot rely on investments in the sense of the usual warning that is given by regulatory authorities: "Investments go up and down." That argument is being used today to us, but a month ago the opposite was being given: "We can rely on these future earnings." Ministers are inconsistent with their arguments in terms of finance. It almost seems to be: "If we do not like it we will put forward that argument, if we do like it we will put forward the counterargument." I would like to see some consistency there. What I will say is, as much as I admire the Minister for Social Security I will be voting for some of these items that I think are acceptable.

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

I just want to speak briefly on this, because as a member of the Scrutiny Panel that produced this report I have always had the sense that it is in fact the forgotten Scrutiny Report, because nothing ever seemed to happen as a result of it. I applaud Deputy Southern for his tenacity, because he will not let the Scrutiny Report be forgotten. **[Approbation]** What he has done by bringing this proposition has reminded us that we went through due process, the process of Scrutiny, the report, the findings were evidence-based. We are at the end of 2013 and the Minister seems quite proud to stand up and say: "Next year I will be doing something about this." If we read the report from Deputy Southern it is clear that what has happened since the presentation of the Scrutiny Report is absolutely nothing. He tells us that in 2 areas on page 4 the response from the Minister for Health

and Social Services was accepting recommendations. But what happened? Nothing. Senator Breckon met with the Minister for Social Security, because he intended to bring a proposition relating to this. He was given assurances that something was going to happen. Deputy Southern tells us: "I recently asked Senator Breckon what had happened. He replied: 'Nothing'." So, if it is not the case that nothing has happened then it is certainly the case that not very much has happened. Looking at the separate parts of the proposition, what struck me particularly was clause (d). A couple of other Members have referred to this: "To undertake a publicity campaign to promote dental health services provided in Jersey." None of us know what the dental health service provision in Jersey is. Why do we not know? Because nobody tells us about it. In fact, I know that the Social Security Department can make emergency dental payments to Income Support claimants. Yet, they do not know about it. I know of people who have suffered agonies, because they have had an abscess on their tooth and they cannot afford to go to the dentist, as an Income Support recipient. I have told them: "Go to the Social Security Department and ask for some financial help." It has not been forthcoming. What do they have to do to get the support to which they are entitled? I think the Minister for Social Security needs to make sure, so let us begin this at home, in his department. Let his department start promoting the facility that they have to help people with certainly emergency dental health. It is quite right that we should vote on this separately, because as Deputy Young has said, there are clearly parts of this proposition which not only should we support them, but we must support them, because we need to express to the Minister for Social Security and the Minister for Health and Social Services that we want something done about dental health over here. I was chatting to the Connétable of St. Helier a few moments ago. People can obviously see he is not in the House. They may be interested to know that he has gone to the dentist. So we were having a laugh about that. He has said that he suffered for weeks. I am assuming he is in a position to deal with it himself, but he has suffered for weeks. He has put off going to the dentist and he has now reached the stage where the pain has forced him to go out and have something done. He may be in a more fortunate position than those Islanders who suffer the pain, yet cannot afford to go and get the treatment that they need and that they deserve. As we know, it can lead to further health issues, and a number of Members have mentioned that. While not wanting to criticise the Minister for Social Security, because I think we all do recognise that he has certainly made a valuable contribution to his department. While he has been bringing forward legislation that needs to be done, I go back to my opening comments that this has been a forgotten Scrutiny Report. We have forgotten that dental health needs to be prioritised over here. I applaud Deputy Southern for bringing the proposition. I will certainly be supporting most, if not all, of the sections in it. Thank you.

Deputy M.R. Higgins:

Can I just correct something that I said a moment ago? I think I mentioned the inconsistency in terms of funding. I mentioned housing. Housing has been funded separately. It is the General Hospital that is being funded through the actual States' investments and that is the one that I was referring to.

1.1.6 Senator S.C. Ferguson:

In reply to some of Deputy Higgins' comments about the Ministers doing what they think. I think it comes under the heading of "Nanny knows best". The fluoride comment, fluoride is available in excess in Bahrain. They all have wonderful teeth, but their spines fuse and they go around almost bent double, so it supports Deputy Baudains. I do regret the department's comments, because the comments made by the Minister for Social Security and the department do not include a proper assessment of the costs. Basically, we are going to have to review how we fund all our health services. I have mentioned Singapore before, but there has been some excellent work also in New Zealand. We have to stop concentrating on developing a United Kingdom-type scheme, because it

is not going to work. It does obviously occur. We talk about early prevention. But if we put more money into early years' dental care then we are going to have fewer cases of older people having dental problems. Early prevention means later health. This is something we have to do. I agree with Deputy Higgins, the comments about the Health Insurance Fund are worrying. It does make me wonder whether perhaps the rush to take away prescription charges was a step too far and they are going to have to be reinstated [**Approbation**] except for certain Income Support categories. Certainly the Minister's comments raised question marks over the use of the Strategic Fund, as Deputy Higgins has said, to finance the General Hospital. Remember we have not had a cost-benefit analysis of that project. There is a great absence in all these papers from the department of cost-benefit analyses. I would like to see a little more rigorous analysis. I think perhaps I will not be supporting all the measures, but I will certainly be supporting some of them.

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

I think in recent times we have been debating many things and we have been talking about things which perhaps people have said are not a doorstep issue. I think this is very much a doorstep issue, because this is something which my constituents definitely raise with me when I go canvassing. It is something which we all know there is wide concern about within our community. I thought that the speech by Deputy Young was very sensible. It got to the point on many of these things. Some of these things we should be doing anyway, as Deputy Young pointed out. Again, like other Members, I may not be supporting every clause within this. I would just like to talk to you about clause (c). Again, it is always another gripe which I get on the doorstep. Those people who perhaps are not quite poorest of the poor, but just earn a little bit too much, so they do not qualify for things which otherwise they could not afford. So, looking at point (c) I am minded very much to support that, because I think that targets some need there, which as a society need to work harder on and support. Again, many of these things are relating to the Minister's comments. I have great respect for the Minister for Social Security. I think that some of his points seem to address that. Some of these things are wrapped up in some of the work that he is doing already. Again, it seems a bit odd not to be supporting it. We have been in this situation before, I remember, when Deputy Higgins brought his amendment 2 Strategic Plans ago, where we were in the exact situation of: "Do not support this amendment, because we are doing it anyway." It just seems bizarre when we get into those situations. As I say, I think elements are very good. I am concerned about part (a), because I think there is a lot more detailed work that needs to be done here, much like Senator Ferguson, I think that the whole way that we fund social health care in this way must be done. Do we adopt perhaps the German model, which is to force everyone to have Private Social Care? The government picks up the insurance fall for those on, effectively, Income Support or low income households. I think that does ask some much wider questions. But, as I say, this is certainly a doorstep issue. This is something which all Members of the Assembly should be speaking on, because it is a very important issue to members of our community. I think it deserves that recognition. Thank you.

[10:15]

1.1.8 Deputy M. Tadier of St. Brelade:

Indeed. Why these provisions and mean-testing always hit the lower to middle earners primarily is because that is what happens in our low tax, low spend, low provision, bare minimum system. We know that the very poor will always be looked after, the very wealthy have independent means - I am not sure if that applies to the Constable of St. Helier or not - and the ones in the middle are the ones who just do not bother either going to the doctor or the dentist because they cannot afford to. I will go when I am ill. There is no point in going to see the doctor when you are fit, is there? There is certainly no point in going to see the dentist unless you have managed to save up for 3 years and then you might go and have your scale and polish, discover you need a filling. I wondered to

myself whether the Constable of St. Helier has opened up a backstreet dental surgery at the old Police Magistrates Court and that he has seen an opening in the market to provide some cheap health care for St. Helier residents, who we know tend to be most impoverished. He will probably be using the old cells as operating theatres and Russian bootleg vodka as a cheap anaesthetic, which might prove more cost effective for many. We joke, but this is a real issue. I know individuals - I am sure we all do - who have just simply not been to the dentist for years. The doctor is one thing, but the dentist is perceived as a luxury. Is that really the society we want to live in? For me, I may be an idealist, I would like to think we could live in a society, where you can go to the doctor and to the dentist when you need to and cost is not an issue. Ideally it would be free at the point of use and it would be paid for by some other fair mechanism. But we do not seem to be at that point yet, but I hope we will be soon. I also do not understand why dental health care is separate to health care. Why are those 2 separate? It is no doubt partly to do with cost. But, teeth and oral hygiene are part of more general health. We do not seem to separate feet or elbows or other parts necessarily. The issue is we live in a low tax, low spend. Who does that benefit? Who does having low taxes or even zero taxes benefit? It benefits those who are super wealthy and who have independent means. In the meantime we have to run a society in Jersey. We have a community here of people who are not super wealthy, who have day-to-day needs and who are constantly being failed. The Constable of St. Lawrence is quite correct. Although I would beg to differ, this is not the only Scrutiny Review that has been shelved and ignored. That is par for the course when it comes to Scrutiny Reviews, particularly when they tackle difficult issues like this. The Parks and Gardens one is one that comes to mind, although it is not as serious, by any means. This is of critical seriousness, which is why it is more important. Looking back on the comments that were made, I may have to summarise. Essentially I was looking at 2010, the Ministerial responses from December. The issue was still there, saying essentially this needs to be addressed and this was back in December 2010. It says: "Action will be taken in this area." Nothing for 3 years now. The Ministers may say there are certain parts of Deputy Southern project, which are not workable. That is fine, give us some action. The Minister for Social Security talks about action. Half of it we know already is acceptable and will be implemented anyway. The question is why does it always rely on a Back-Bencher having, in this case, to dig out a Scrutiny Report from 3 years earlier, which was very popular, in terms of submission and in terms of the interest that it generated, and really tapped into a very real issue that people were feeling. Why does it take 3 years for the Minister to take action? Why do we have comments coming on the 18th, which was on Monday, saying why we cannot do this? That is no use to anybody. It is no use to Deputy Southern or a Back-Bencher or any Member who wants to look at this and say: "Well, the Minister is right in that respect. Maybe what is being proposed does not quite do the job that we want it to do, but we will amend it." But, you cannot amend anything 2 days before, you barely have time to read the comments. I think that is the intention. We read them while we are here, probably in question time and you cannot have any meaningful debate and this is how things come on. So, what is the plan? The comments earlier were quite correct. There are some schemes available. I have been down to the Social Security Department on different issues and have been told: "No, cannot do that." Then I get the handbook out and say: "Well, it does say here you have special payments. You can do that." "No, you can only do that if they qualify for Income Support." "No, that is not what it says here. It says, 'You can even make special payments for people who are not on the Income Support scheme and who otherwise would not be able to claim'." "Oh, right. Well, we will have a look into that." "Oh, thank you. Thank you for having a look at it now that somebody has contacted the States Member, but what about the individual that has come into the Social Security Department? How much do they have to supplicate themselves? How much do they have to potentially humiliate themselves, get false erroneous information?" It is completely understandable that not everyone would be fully up to scratch, given the complexities of the system. Whereas we could have a fit and proper system where everyone knows what they are entitled to. So action does need

to be taken. I am wondering whether the actual proposal from the Social Security Department will be: “Well, what we will do, we will get you in, a one-off payment. We will take all your teeth out and then you will not have to worry about it for the rest of your life. We will give you some dentures when you are 25.” Then: “There you go; one-off payment and that will make you a saving for the rest of your life.” We joke about that, but that is what they used to do to women in the old days as a wedding present. They used to take their teeth out, so that there was no liability for the husband going forward. Thankfully things have changed when it comes to women. Things have not necessarily changed when it comes to dental provision in Jersey. That would probably seem like a very viable option for many in the Island. So, the current system is ideologically driven. We have the Minister for Social Security coming back in quite an authoritarian way saying: “No, we cannot do that, even though we know that there are aspects that can be done.” I think that is it, we do need action. I commend Deputy Southern and the previous work that was done by the Scrutiny Panel. We need to get something which works for everyone in our society. At some point we do need to grasp the nettle. The Minister has said in the past, and he said that he continues to support progressive taxation. As a Minister he is in a position to do something about that. He says that he fulfils his promises. Yet, as soon as we see something where progressive taxation or the principle of progressive taxation could be used, the long-term health care, it is completely absent. There is a carve-out for the most well-off in our society saying: “Oh, we do not expect the most well-off in our society to pay, because that would be wrong that they cannot be sharing their means with the rest of us in a more socially acceptable way.” The first evidence we have had is that the Minister has completed reneged on his election promises. So, more generally, I would say to the Minister ... clearly the best of a bad bunch. Would that he were running all the departments. At least we would perhaps have more cohesion there. But, we do need to move to a more progressive system. We all have a limited time in politics and I will ask the Minister: he will have a legacy; will he have a legacy for fulfilling the election promises of a fairer society where those with the most means, who are most able to pay give something back to the community, so that we can all not have these issues about going to see a doctor, going to see a dentist, which we would not expect in other civilised and developed countries?

1.1.9 Connétable P.J. Rondel of St. John:

Just think if this House had not raped the Social Security Fund of all those millions over the last 3 years. You people, you Members here, voted to take £6 million a year out, year-on-year for the last 3 years, of the Social Security Fund. Previous to that we had seen obviously the Chief Minister brought it to the House when he was Minister for Social Security. Before that we saw Senator Routier and he practically told us they had done away with prescription charges. Millions and millions of pounds, probably round about £30 million in total, if not more, probably closer to £40 million. That money could have been building up. It was supposed to be a ring-fenced fund, which belonged to the people who had paid into Social Security, not to the Tax Department. We are now seeing another tax of 1 per cent, which is going to increase to 3 per cent, for our old age when we need nursing care and full-time care, *et cetera*, which is going to run into many millions of pounds annually. The poor old taxpayer. Right, Social Security, if we have paid it it should still be ring-fenced. For the Minister for Treasury and Resources - who is not in the House unfortunately - to have found a way to convince the majority in here. I am looking around because the majority of you voted to take this money to bail out the General Hospital or was it to bail out higher paid civil servants who were here for a short period of time and disappeared? We do not know how that money is being properly spent. We find ourselves in this position today with Deputy Southern, although there are areas I cannot support him in this, because a lot more work is required by the Minister for Social Security and by the Social Security Department. I have real concerns that a Back-Bencher has to bring this type of proposition to the House to make things happen and to get departments to move forward in certain areas. As the Constable of St. Lawrence

rightly said: “The Scrutiny Report has been out for quite a while now.” Like many of our reports we make recommendations and Scrutiny has been around now since 2003. In the early days it was in shadow form and then since 2006 with the advent of Ministerial government. All this work has been done. The amount of Scrutiny Reports that have gone out ... yes, the Ministers all pay lip-service to what we say and they accept our recommendations. In real terms does it make a great deal of difference? I do not believe it does. I wonder sometimes if I am wasting the many thousands of hours that we put into Scrutiny Reports and our officers’ time for maybe just one little bit of it to be acted upon. That is a real concern. We have to keep on as Back-Benchers, coming forward and chivvying up the Ministers. Yes, we will hear the Chief Minister and his fellow Ministers paying lip-service to us continually: “We are doing a good job.” It is just to placate us. That is all it is about, placating the Back-Benchers. **[Approbation]** The Minister can have a chuckle to himself at the moment, but as far as I am concerned there is a lot more to it than that. We have to do what is right for our young people, the people of this Island. If we have to ring-fence funds, that is what it should be. The Chief Minister, along with other Ministers have found a way into that. That needs to be locked back to what it was prior to the proposition brought to the House to take this money out legally, for want of a better word. Unfortunately, the majority of you voted for it and it went through. Needless to say I was one of the few, the old dinosaur, as they call me. It is a fossil now, is it? It is probably going that way. At the end of the day, Deputy Southern is absolutely right to have brought this, because it triggers in the mind of the new Minister for Social Security, who I believe is doing an excellent job and is top of his game. I have said it in the House before, there are few Ministers who are as on top of their game as the Minister for Social Security. When he says he will bring this back in the first quarter of next year he will. I have been following him and Deputy Green at the Housing Department. Both those 2 gentlemen are really on top of their game and they are moving in the right direction. I sincerely hope he can convince me to support something that he is bringing later on. But, that said, I cannot say that about all Ministers, because some of them act in different ways and I just wonder if they are the leaders that they are supposed to be, that this House has put in place. I am not going to say a great deal more. But, there are areas within the Deputy’s proposition I cannot support. I know that the Social Security Department will be bringing something forward, but there are one or 2 that I will support. Thank you.

1.1.10 Senator P.F. Routier:

I am pleased to follow on from the Connétable of St. John, because he highlighted the good work that the Minister for Social Security has been doing and is doing. When the Minister spoke earlier I thought he gave a very good overview of the position.

[10:30]

He also explained that the work the department has been doing in bringing forward the Long-Term Care legislation, which has probably diverted their attention away from looking at this more urgently. I believe that we all in this House want to ensure that we have a good dental service for our Island population. I would just like to comment on a couple of speeches, one from the Connétable of St. Lawrence. She made some very valid points about people who are paid and who feel that they are unable to afford to go to the dentist. I think she said that they were Income Support claimants and they did not feel that they had the information to know that they could perhaps approach the Social Services Department for a special payment. That may well be the case, and I think there needs to be more. Perhaps an effort ensuring that people know that they can approach the Income Support Department to get support. I know there has to be an assessment made to see if it is a valid, affordable and appropriate price being paid for the dental support, but I think that there is a mechanism to support those people. This proposition does not relate to the Income Support payments. This is about the other schemes which exist. So although the

Connétable made, as I say, some important points with regard to Income Support it does not relate to this proposition. I think Deputy Young did highlight where the focus of some of the things that really are difficult to support. Paragraph (a) talks about, and I sense it from the speeches that have been had, there is a great deal of unease about supporting paragraph (a) because it would transfer the funding across. I support that. I think there is a lot of work that needs to be done to ensure that using the Health Insurance Fund in a different way ... moving that funding around between those funding mechanisms is a difficult thing to do currently without a bit more investigation. In saying that, I think it should be recognised by all Members that if (a) is not supported, or everything else below that requires ... I believe that everything below that will require some funding. So if (a) is not supported it does make it a bit more difficult to achieve (b) down to (f) certainly. I would just caution Members in thinking about supporting other items below (a). (b) for instance, talks about uprating the monthly payment to dentists. Of course that is all well and good. It gives dentists some more funds, but it does not necessarily give any support to the patient at all. All it does is give more money to the dentist. So I would be wary of doing that because I think there are probably other ways of supporting the patient rather than the actual dentist. I am not sure whether we get more children going to the dentist because the dentist himself is getting more funds. (c) the upper-earnings: I think there has been some good discussion about that. I think a lot more work needs to be done in that. I would be very concerned about supporting that item. When it comes to (d) the publicity campaign, I can understand that there is a wish to perhaps support that, but I would be more inclined to want to support whatever new scheme is brought forward by the Minister for Social Security in the future. I find it difficult to want to spend funds on supporting schemes which may change in the very near future. I think it is an easy one to support, but why promote something which is going to change? The upfront payments, yes; I think it is recognised that the Westfield Scheme is probably not fit for purpose at the present time. It does need to be reviewed and I know we have an assurance from the Minister for Social Security to do that. It does need to be looked at. The remainder I find it difficult to support. I just remind Members that I think Deputy Southern thinks that my comments about paragraph (a) can be challenged. But the way I read it, unless that funding in (a) is supported, the remainder does become rather difficult. I leave my comments there and hope Members will take note.

1.1.11 Deputy S. Pitman of St. Helier:

Just a few minor points really. With regard to the Health Insurance Fund, personally I do not see why this cannot be accessed and I think this dental care should be like Deputy Tadier said, part of primary healthcare provision. I know that doctors have been pushing not for dental care but for other primary care provision being increased, because they know this fund is absolutely bursting, increasing and it has been like that for quite a number of years. With regard to the Income Support, I just wanted to clarify - and I hope nobody else has done it - what the provision is for Income Support. I am sorry to say I do not have the same praise for the Minister for Social Security, nor his predecessors. But the actual provision is £500 and then after that you get a loan. Now that has been changed from the original provision and for people on pensions, people who cannot work because they have illnesses, that loan is very difficult to pay and puts them in even more debt. The provision is not sufficient in my view, and that is something else that needs to be looked at. Even with emergency and urgent work, my experience with constituents has been again, like Deputy Tadier says, that people have said that the Social Security Department say you can get provision. When you go down there you get a different message. I can certainly think of one very serious case where a young woman with a child had cancer and her chemotherapy caused all her teeth to fall out. She got her first dentures paid and she was told that she would get her second dentures paid because she needed second dentures because when the teeth fell out her gums shrank. Then when she went to Income Support at the time when she needed these second dentures, they said they would not pay for them. Her gums were sore and had ulcers; she could not speak properly, she

could not eat properly. Because of that she had lost a lot of weight; it caused her lots of stress simply because Income Support had changed their minds. So do not think that Income Support are providing. We hear lots about this in the media and from the Ministers. It is not providing for people who need that support, and that person was entitled. She had cancer. In the end we fought very hard to get that. Just going on, is it not funny how Jersey is one of the top 5 richest jurisdictions in the world. Yet we have this basic health need that people, even in middle income brackets, are finding difficult to pay for. When you look at somewhere like Cuba, which is considered one of the poorest countries in the world, less developed is a term I do not like using - but certainly its health provision is not less developed; all its dental care is free for everyone. A country like that can do that, but we force our people to pay for such basic provision. Also I think we have heard the people who get some support. We have heard the people who can pay for that; that is the very wealthy. We have heard the people who cannot get the support. But the other people we have not mentioned that do get all the support are our prisoners. They get everything. So we have vulnerable people who need this care, need this provision; they are not getting it. Yet we give our prisoners everything they need. So I think I do feel like assaulting somebody and someone in this Chamber in particular, and I might get all my teeth done because I have some work that I need doing.

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

I think what this debate has done, or should I say the comments from the Minister for Social Security have done, has exposed issues from the point of the Council of Ministers. The reason why I say that is because what we appear to be doing is fumbling around the edges as always. What I would say is where in this debate have we said: "Here is the vision. This is what we plan"? There is discussion in the comments about the White Paper by the Health and Social Services Department. Within that it says that it firmly places dentists alongside general medical practitioners, High Street optometrists and pharmacists as frontline providers in the new primary care model. If you do any research just pop into Google "good oral hygiene", and you look at areas where they discuss about dentists and what you have to do for good oral hygiene, and what else the benefits of having good oral hygiene can be. One in particular turns round and says: "Dentists are doctors who specialise in oral health." They have the ability to be able to regularly examine and look at possibilities of diseases, not only within the mouth but they can be caused elsewhere in the body and that all relates to the primary care model. What worries me about what has been said among us, and I am not just going to aim at the Minister for Social Security, I am going to aim this at the whole of the Council of Ministers, because this should be a co-ordinated approach. They should be working together. What I feel like is happening is that there is co-ordination between the Minister for Treasury and Resources and the Minister for Health and Social Services to put more and more funding into the Health and Social Services Department and say that we are going to achieve all these wonderful things in so many years. But then they go running to the Minister for Social Security when they need more money or they need legislation changed, not including him within that discussion from the beginning about what the vision is, how they can help, how they can work together. How can they create a better public service going forward? That is the way I feel that has come out of this debate. That is what it sounds like to me. The reason why I say that again is because then we go on to the last page of the comments and what worries me is that the Minister for Social Security has said in the comments that we cannot support Deputy Southern, in particular on the first page where it says because it is poorly targeted and does not address the areas of greatest need in Jersey. Where is the evidence, Minister? All the Back-Benchers have to provide the evidence. Scrutiny did the report and made recommendations and provided the evidence. If Ministers cannot do the work that has been suggested by Scrutiny, then do not accept it or suggest that this would be possibly placed better within the primary care discussions that are going to happen at this State in the future, rather than accepting to do something piecemeal that does not go

in the overall envelope of things. All these things interact. All these areas will create a better health system for the public of Jersey. On the last page of the comments, and this supports my concerns over piecemeal approaches and the arguments about Deputy Southern bringing something and the Ministers wanting to do this, is that they say that both Ministers are committed to improving existing dental services, which is great. We all support them in that and we hope that something happens very soon. Inevitably, and here we go, the primary care review will have a part to play.

[10:45]

But with that review proving to be a considerably more complex and difficult project than originally anticipated, both Ministers recognise that immediate steps can be taken in advance of the completion of the new model of primary care to improve dental health in key areas. To that end, and as set out above, specific actions will be included in 2014 departmental business plans. Now for me that just opens up a whole can of extra questions and further questions about why has this not been included as part of the business cases of the primary care review right from the beginning? Why were they not seen as doctors of oral hygiene? It really does concern me that this is not joined up, and that is what is coming across to me in this debate. Ministers bring propositions to the Assembly and ask for more and more money to do more and more things. So I would challenge the Ministers to come back with things that are targeted, that are achievable. Pace yourself within a smart framework. Be specific. Be measurable. Be achievable. Do not make promises that you cannot keep, because that raises expectations and only lets people down when you cannot deliver. I am in agreement with areas of the proposition. I do not agree with Senator Routier about the extra money being needed with regards to publicity campaigns for promoting dental health, because I understand there is a budget at the Health and Social Services Department that provides for promoting health in Jersey, and I would have thought that was an area that they would consider, or that that was an area that they already do. Also community dental services. There are dentists that go into schools on an annual check-up. The Education, Sport and Culture Department delivers educational services where they already have a significant budget from the States Assembly who has provided that within the M.T.F.P. (Medium-Term Financial Plan). So I would argue why are they not already doing it? I would support that anyway. I would say that they are already doing it. I do not know if the Minister for Health and Social Services would probably say whether they are or not. What bothers me is, take the personalities out of it, but when Ministers come to this Assembly and ask us to support something, especially when it is asking for millions of pounds, when it is asking for changes in services, when it is asking for helping the public in the future, long-term planning is part of the Strategic Plan, and making the health services of Jersey more sustainable. I would ask them to provide the evidence and to ensure that they are working in a co-ordinated way and not just with particular Ministers, but they are working together and thinking outside the box to make it a better service in the future.

1.1.13 Deputy A.E. Pryke of Trinity:

I am pleased to follow Deputy Vallois and reassure her that what she has just said is happening. There is a joined-up group. It may not seem so, and I am sorry it does not seem like that to her. But with the Ministerial Oversight Group led by the Chief Minister, it does include Ministers for Social Security and for Treasury and Resources. It is joined-up, and the aim there is to give the best possible care for the future health care of all Islanders. But, as we all know, health and social care is a very complicated piece of work and to get it right it will take time. Just to try and answer some of the questions that have been raised: routine dental treatment is provided free of charge by the General Hospital, the Community Dental Department for any child irrespective of their means, up to the age of 11. From age 11 they go into the Jersey Dental Fitness Scheme and, to pick up the point from Deputy Young, what happens if someone joins the scheme and they have not been and

are not dentally fit, then the dentist will get them dentally fit and the cost of that is picked up by the Health and Social Services Department, to make sure when they get into that scheme they are dentally fit. The Social Security Department gives dentists £6 a month. The dentists then work out what is needed with that child to keep them dentally fit, because that is the most important. If we can keep them dentally fit it will prevent them needing fillings, *et cetera*, in the future. Just on the side issue, if some of these children have special needs, all their care is picked up within the Health and Social Services Department's dental services; and also if they need high-level orthodontic treatment, that is picked up in the Health and Social Services Department as well. That is just a brief overview. There is no doubt that a piece of work needs to be done, and it is the 2 departments going to be working together to do that. But the way that Deputy Southern has done it in his proposition is not the way, because if we are going to do this review, and Deputy Vallois talks about strategic vision and we do need that vision. But first of all we have to ask those basic questions. What we have now, is it fit for purpose? It is a bit like the Chief Minister talking yesterday about Lean. In some ways it is similar to Lean. What are we doing? How can we improve the service? Also to look at nursery education: the dental team go into every primary school to do an annual check-up. But no mention has been made about nursery education. Do we need to look at going into nursery schools? I think we need to ask that question. Are we reaching hard-to-reach families? I think we need a review to find out are we doing that? Also, whatever future we plan out needs to make sure that we are fully funded. Deputy Vallois too mentioned about the Primary Health Care Review and all that information will be put into that primary care. It demands that we consider all issues, the options, the cost and the impact on the higher priorities of health care on which we must focus. In an agreement with the Minister for Social Services - because we do work well together and the 2 departments do work and meet regularly - we have given the following assurances that we will commission a survey of dental health to try and include all the primary schools and pre-schools and bring that information up-to-date. We will have a business case considering the dental health education to increase the awareness. But we need to do that work first and make sure that what we are going to publicise to raise the awareness is what we are going to do. Review of spending on dental health. Asking the question, are there ways of using that money more effectively; and also importantly more targeted. Also to prepare information implementation plan for the delivery of the publicly-funded dental health scheme for Jersey. But we must make certain that the outcomes of the work ensure that we have targeted the right services and the benefits in the right place. The assumption of this proposition is that money will improve it all. But that might not necessarily be the case. It undermines the importance of making sure we address all real issues from awareness education and culture to dental costs and the ability to pay. We need to do that piece of work, and that is important. Just picking up from the Constable of St. John, it is a shame that he is not in the House, about the Health Insurance Fund. The money has not come to the General Hospital. That money from the Health Insurance Fund has been used in primary care services, and mostly the service agreement we have for funding nursing services, which is a primary care service, as well as the other ones that Health Insurance Fund money went into. I will leave it there, but to finish up, we need to make sure that that piece of work is done, that more research and information need to be gathered and all options, costs and priorities need to be reviewed. We are also looking, as has been said, to work with the Education, Sport and Culture Department. But I really stress that that work needs to be targeted, putting more money into what is already there may not be all the answer. I cannot support the proposition in its current form and I urge Members to allow our department to address and make an informed and appropriate decision as a way forward.

1.1.14 Deputy S. Pinel of St. Clement:

I do not want to go on because everybody has spoken at length. Just to clarify that part (g) of this proposition is a review that the Social Security Department is already undertaking. Parts (b) to (f)

will require some funding to some extent and without the agreement of part (a), and also Members have expressed unease at using the Health Insurance Fund, then there is no adequate funding mechanism for these other parts.

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

I am slightly confused because on the one hand we are getting information regarding the issue of our additional funding required, but on the other we are reading comments and we have heard from Ministers: “We are doing a whole lot, and by the way we are going to undertake a whole load of additional actions.” Where is that money coming from? We have a Minister for Health and Social Services quite rightly saying: “Well, we need to understand what we are doing” but that is day-to-day management - that is not and should not be because a Back-Bencher has brought a proposition to the States raising an issue that was raised back in 2008 and not acted upon. These are matters that should be part of our everyday culture, whether it is in the Health and Social Services Department, the Social Security Department or other. Absolutely Senator Le Gresley is right. He has had a lot to do, and he still has a lot to do. Indeed, the Council of Ministers have a lot to do, and I am pleased that under the heading “Funding” on page 8 of the comments they highlight and reinforce this States Assembly decision and agreement that the Council of Ministers are required to come back to this Assembly before the end of September 2014 with a primary care funding model. We are going to hold you to that, as much as we are going to hold the Minister for Social Security and the Minister for Health and Social Services to their commitments that they have given today, regardless of what happens to this proposition. Also, the Minister for Health and Social Services said: “Oh, we have to do this review” but no one has explained why we have not had any dental health survey for local 5 year-old children since 2008. Yet when you look at the graph that has been currently provided on page 3 by the Minister for Social Security, it shows that we had one in 2000, we had one again in 2002, again in 2004, 2007, 2008; then nothing. Yet the Minister for Health and Social Services tells us: “We are going into all the primary schools on an annual basis and we have been doing that for some time.” So where is the information? Why are those people not reporting the health of those children’s teeth when they are looking at them individually on an annual basis? What is happening? Why do we have to have another review, another group of people to come and look at work that we are undertaking? Then I look at what we are doing, and we have comments about the issue around the publicity campaign. Quite rightly the Minister for Social Security highlights what we are doing now and, in fact, he enhances that in one of the commitments he gives. It is exactly the same point that Deputy Young made earlier, that (d) could be accepted. But the Minister for Social Services said: “No. Reject evidence.” I look at (f) and I think: “Well, okay. It seems sensible. Ensure that adequate training is provided by the States to all carers working in public or private residential care.” I look at the comments and we are told that earlier this year 3 dental teams, a dentist and a nurse, visited Health and Social Services-run care homes at the Limes, Sandybrook, Overdale and Samarès ward, to undertake inspections on patrons' teeth.

[11:00]

Well, good. Whoa, hang on a minute. These are not the only residential care homes that the States run. So why have these been selected rather than the others? Why not include the care homes that are run by the private sector? Why not? Yet we are told: “Oh, well, do not worry. We are doing it.” Well, you are not doing enough. If you are going to do something, do it properly or not at all. I think that is the message that I would like to give and that is why I will be supporting parts of this proposition.

1.1.16 Senator P.F.C. Ozouf:

This proposition, as a number of Members have said, requests a number of policy actions of one aspect of primary healthcare, namely health. Primary healthcare is at the heart of reforming our healthcare system. It is at the heart of reducing the growth in future costs, and it is at the heart of improving Islanders' lives in the long-term. In many health debates in recent years we have acknowledged the fact that our healthcare system, secondary and primary, probably had fallen behind those healthcare standards and healthcare services in other places. It is interesting that in recent weeks primary and secondary healthcare issues in other jurisdictions - in both the United Kingdom and in a number of small comparative jurisdictions - are now rising in terms of political importance, and I would say almost to a political crisis point. The problems that we have forecast in terms of healthcare and the forecasting work that was done with the KPMG model, with the policy document that the Council of Ministers brought by the Minister for Health and Social Services, but in close co-operation with the Minister for Health and Social Services, I think is showing again how we are jumping ahead of other jurisdictions in terms of planning for our future. There are important changes that need to happen in primary healthcare, but they must happen in a proper co-ordinated way, and those policy issues cannot - if I may respectfully say - be effectively required of a department by a Back-Bencher proposition in this way. It is just the wrong way in order to make policy and to require those departments to carry out those issues. So while it is difficult for me to say, and it is good, of course, to debate these things, it cannot be right that effectively the Assembly requires a department to interact and to get on with individual policy issues out with their overall plans. The Minister for Health and Social Services - and most importantly the Minister for Social Security - has set out a clear programme of what is going to be done when in terms of the reform of primary healthcare, of which dental is an important component. I would encourage Members not to cherry-pick just to almost make one feel a little bit better that one has given something. These issues must be taken, surely, as a package. Simply to pass one aspect of a proposition and to require the Minister for Social Security to go ahead with one aspect of which is out with their plans is the wrong thing to do. We either have confidence in the Social Security Department and the work that they are engaging in terms of reforming primary health care, or not. So I am afraid I am going to vote against all parts of the proposition because I have confidence in the Social Security Department and what they are doing in terms of reforming primary healthcare. They have a planned work programme. Finally, I did listen to the speech of Deputy Higgins who, once again, seems to indicate that there was an inappropriate policy position and an inconsistent policy position on funding. The Minister has been quite clear, there has been withdrawals from the Health Insurance Fund to pay effectively for a period of time, primary healthcare services that were being carried out in the General Hospital. That has meant that the Health Insurance Fund now, as far as income and expenditure, is almost at the limit of what can be currently paid for and so reforms are required. The capital of the Health Insurance Fund should not be used, effectively, to fund, or the capital should not be impaired in order to fund for ongoing revenue expenditure, in my view. That is a theme which we are going to return to in the overall Budget debate where I will be responding to the F.P.P. (Fiscal Policy Panel) report and clarifying, for the avoidance of any doubt, what capital value means in terms of funds. There is a read across between the capital value from the Strategic Reserve, which we will be paying for hospital facilities from income returns, but not effectively impairing the long-term capital value of those funds. That must be also the guiding principle behind the use of the Health Insurance Fund. What Deputy Southern is effectively asking us to do is to spend money unwisely in relation to the Health Insurance Fund. He is remonstrating, but I believe the prudence of this Assembly in terms of having basic rules, simple rules about what capital should be used for, capital can be used for one-off and revenue expenditure. So we should not be tempted simply because there is a Health Insurance Fund with a balance of £70 million or £80 million on it. To use the phrase that has been used before, it should not be used as a self-service buffet for political expediency in terms of dealing with issues. It should be planned, it should be organised, and it should be led by the

department that is responsible for the area of primary health care which I have absolute confidence that the Social Security Department is.

1.1.17 Deputy S. Power of St. Brelade:

Having listened to all of this, this morning, I am going to be very brief because I have just really 3 areas of specific comments to make. The first one is I think I laud Deputy Southern for being persistent in bringing this back to the attention of the States, and I then balance that statement by referring to the prodigious amount of improvements that Senator Le Gresley has brought to the Social Security Department. When Senator Le Gresley says he is going to do something he invariably does it. Sometimes timescales do slide, and I think this is one of them here. We have a mass of information within both the report, P.127, and in the comments by Senator Le Gresley. My particular area of concern - and I was reminded very forcefully of it last night at a Parish Assembly - is the dental health plan as it exists for older people. All of us have constituents who are perhaps dealing with damaged or fractured dentures or repairs that need to be done, and this upfront payment scheme where you claim it back has caused and is causing hardship. I hope that when the review is complete and Senator Le Gresley does come back with a Report and Proposition next year some time that this is a particular area where there is a catchall for younger people but there does not appear to be as strong a catchall for dental health for older people. I think the budgets that are allocated for Income Support and grants of a maximum of £500 every 2 years does need to be reviewed. There is quite a bit of information on page 5 of Senator Le Gresley's response, which I do not intend to go into now because Members will have had this and time to read it, but I believe in the revision of the Jersey Dental Fitness Scheme that this needs to be done. The other point that was made to me last night at a Parish Assembly by a constituent who listens to all our debates in detail because she has the time and she takes a great interest, she reminded me of the budget, and Deputy Shona Pitman referred to it earlier as the budget that there is at H.M.P. (Her Majesty's Prison) La Moye on dental care for inmates of La Moye. When I last looked at it, it was in excess of £100,000 so if, say, of the 150 or 160 inmates that are in there now and two-thirds, say 100, applied for some sort of dental remediation, dental restorative repair or just ordinary dental treatment, be it an abscess or whatever, you are looking at somewhere in the region of between £650 and £950 per annum per inmate. So Deputy Southern is correct to bring the time-lapse, which he is very clear on, on the last page of his report and proposition on page 10, and the fact that this has been going on for 21 years. I think his figures on the original and today reaching dental fitness and maintaining dental fitness, and the fact that the budget needs to be seriously looked at, there is a huge inequity where those of our society who have paid taxes all their lives are now not economically active who need a little bit of support and a little bit of help struggle to get help. Whereas on the other hand we have a group of people - not to be discriminated against - who seem to be able to get it almost immediately and the budget, for instance, at H.M.P La Moye is disproportionate to the budget that has not been reviewed over the years. So Senator Le Gresley is, in my opinion, a strong and prodigious Minister for Social Security and I hope he takes my words into account as he takes this back to his department. I also do think that it was appropriate that we had this debate again today from Deputy Southern and I look forward to Deputy Southern summing because I think this is a very important matter. Thank you.

1.1.18 Senator I.J. Gorst:

I think we as Ministers would admit that the debate today has not been a comfortable one. To answer the Deputy of St. Ouen, we have indeed heard loud and clear the message that the Assembly is sending to us. We admit that we are not at the place that we would like to be when it comes to transformation of how dental services are provided in our community. We do that because it ties in with some of the things that Deputy Vallois said. Sometimes it is easier to say we are going to do something and put an unrealistic timeframe and not appropriate resource in place, than it is to be

completely frank, talk about the length of time it will take, the difficulties around engagement when there are many parties involved, and the financial implications. Perhaps we find ourselves at a point today where we were not quite as frank or did not quite grasp the complexity of what really is about delivering a new primary care strategy. I think in the comments of the Minister for Social Security that has now been made clear, and the Deputy of St. Ouen said we still have a commitment to deliver that by the end of 2014 and that is looking extremely challenging, I have to be frank. But does that mean to say we should not endeavour for that important prize of getting a combined and co-ordinated primary care strategy? I do not think it does because again Deputy Vallois talked about the perception that perhaps we did not appear to be joined-up from where she was standing. I have to say that may be the perception but that is not the case. We have had a Ministerial Oversight Group for the health reform process. We have had a sub-group of that for looking at the General Hospital, and we have over recent months set up a Ministerial Oversight Group to look at this primary care strategy and trying to ensure that we meet the target and deal with those challenging issues which often need to flow up to the political level. The Minister for Social Security is chairing that particular co-ordination group and I think that is very important. I do not often agree it seems these days with the Connétable of St. John but I am pleased to say I was able to agree with at least half of his speech this morning.

[11:15]

I just want to reassure Members that when this Assembly agreed to transfer money from the Health Insurance Fund to provide for the funding of primary care services which were delivered by the Health and Social Services Department that it was not illegal as inferred by the Connétable. It was agreed overwhelmingly by this Assembly and in due course sanctioned by Privy Council. So there was nothing illegal about it. I think that it was a sensible and pragmatic way of dealing with the funding of primary care services which members of our community want, and it is only right that when we have money which has been gathered for the purpose of providing primary healthcare services we use it for that purpose rather than trying to impose another collection on our community. I return to where I started. We are not in a comfortable place, it is not a place where we like to find ourselves, but I would just ask again, in light of the Connétable of St. John, and many Members have said that the Minister for Social Security have their support and they have recognised his hard work, the challenge of that portfolio, and the progress that has been made. We recognise where we are and, therefore, I ask that Members will support the Minister and allow him the appropriate time to deliver in this area and deliver on a primary care co-ordinated strategy because that is what is best for our community, taken in the round as a whole, to make sure that we are making unintended consequences for other areas of healthcare provision in our Island. Thank you.

The Bailiff:

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

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

I thank all Members who took part in this debate for their contributions, either for or against. I think it is, as Deputy Power just said recently, a very serious issue and one that deserves serious attention. Apart from the fact that we almost had the debate curtailed after half an hour last night and 2 minutes this morning, there are ways in which we need not have had this debate at all. Promises that were made in 2011 for 2012 could have been kept. We could have been - instead of discussing what can we do - praising ourselves for what we had already done. At least we have this corner of primary health care sorted. It never happened, and that is a shameful thing. We could have curtailed this debate and not had it today by the Minister for Social Security coming back to me and saying: "We are nearly there, will you postpone your debate?" I would have considered it,

because this debate is to say to those 2 Ministers involved, get on with it. Do something. We could have not had this debate today if the Minister for Social Security - who now tells us today that he has a report and had it on his desk since July about dental health services - if he had brought that, lodged it as a report, and developed what he was going to do: "Look, we have done the report. We are ready to move. We will bring back what we are going to do at a future date, let us say, in the first quarter or next year." We would not have had this debate. I would have gone away and said: "All right, we have provoked action, something is going to happen, I am happy." But we have had this debate today because nothing has happened. The facts are that despite the 10 sides that are involved in the comments, nothing in those comments and nothing in the actions proposed by the 2 Ministers to solve this problem is in any way restricted by this particular proposition. Nowhere does it say this is the only way forward and nowhere does it say, for example: "You must target wisely where you put your effort in." We are told that one school in particular has a 44 per cent occurrence incidence of dental decay compared to 8 per cent elsewhere in other schools. That is not surprising. We knew that back in 2011 when we did this original Scrutiny Report. Of course there are areas of poor dental health among our young children in primary schools that are predominantly in the poorer areas and the schools that cater for them. That has been long known. But there is nothing in here that says: "Do not do anything else, this is the only way forward." For example, if we are to take a look at (d) to undertake a publicity campaign to promote dental health services provided in Jersey. I should have said: "Particularly targeted at primary schools and hard to reach groups." We have not said that, but it goes without saying that if that is the area of priority that is what we should be doing. Let us have a look at each of these individual paragraphs. Each, as I said, can be taken separately, nothing prevents stuff that should be going on anyway from going on. The first one says: "Transfer to the Jersey Dental Fitness Scheme from the budgets of Health and Social Services and Social Security Departments to the Health Insurance Fund." We are told 2 things about that: first of all we could not possibly do it in the timescale I am asking because it might require a law change. Indeed I have spoken to the Law Draftsman and she says: "Yes, if you wanted to do what you want to do it would require a minor law change." We could not possibly do that. But what did we do when we wanted to take £6 million out of the fund to go into a completely new area paying for home helps or Jersey district nurse services, which is not covered by the fund? Why, we simply changed the law so we could do it. The Health Insurance Fund already provides for primary dentistry care. The description of the benefit provided by the law is as follows: "Medical benefit, dental benefit, ophthalmic benefit, and pharmaceutical benefit." So already the intention was to provide dental benefits. It is closer than the law that said: "Do this for home helps, Jersey district nurses." But we did it. The second reason we are told we cannot do that is because the Health Insurance Fund is running out of funds. Cannot possibly afford. Absolute nonsense. I included the figure that I had at the time from the report back in 2010/2011. But I have just got the annual report from the Social Security Department with the 2011/2012 results here and low and behold here is £6,131,000 in both of those years coming out of the fund into the provision of primary care in both years, and in 2012 surplus of income over expenditure for the year, income £37 million, spending £32.8 million, net £2.8 million surplus in 2012. Looking at the balance sheet as at 31st December 2012, financial assets 2011 £77.7 million, reserves 2012 £80.5 million. So despite what we have been told the fund is still growing and can easily, I believe ...

Senator F. du H. Le Gresley:

Would the Deputy give way just to clarify the figures?

Deputy G.P. Southern:

You are going to clarify the figures?

Senator F. du H. Le Gresley:

I would just like to clarify your figures. Would the Deputy like to read out the deficit for 2011?

Deputy G.P. Southern:

There was a deficit of £5.3 million in 2011. Why, because we took £6 million out of it and gave it to primary health care. That is why. The net gains in investments over the year, and we said we cannot rely on those, but nonetheless the Minister for Treasury and Resources is very proud of his collective investment fund, it is producing super returns. Yes, it is, I believe it is super returns, because we have been told by him it is producing great returns. Net gains on investment during the year: £8.4 million. This is a healthy fund. That reason to not use this in this way is not valid. It would be possible to accept paragraph (a) and this would avoid the eternal argument that lies underneath, this is not our priority. It never will be priority for dental health. It will be cancer, it will be operations, it will be stroke, and we will always have this fight. This is a way to use a fund we have, designed for primary health care, for the delivery of primary health care going forward. An end to those arguments. Paragraph (b) is the absolutely critical one. It is the issue not being dealt with to uprate the monthly payment to dentists to bring children to, and then maintain, dental fitness and to ensure the value of the payment is index-linked in future. It does not contain any numbers. The figures I have produced is a total uprating for each of the 2 decades, but it has not been uprated. This is the maximum you might spread it to, but it does not say do that, that is the action you should take, uprate it completely overnight. It allows the Minister for Social Security, should he wish to, to gradually uprate it. It has not been uprated for 20 years and unsurprisingly the dentists are saying: "We are doing this work, we are not getting any return for it." The dentist in charge of this service says: "The private dentists who provide the treatment are very concerned that the fees paid to them have not been increased since 1991." Listen carefully: "Many are getting fed up and will withdraw from providing care under J.D.F.S. (Jersey Dental Fitness Scheme) unless this is addressed as suggested in your submission to bring it up-to-date with current costs and in future to index-link it." This happens time and time again in our benefit system. We make a benefit or provide a service and then we do not uprate it and over the years its value goes less and less and less. But listen to the words of the dentists. It is costing us to run this service because we are not getting paid enough. It does not cover its costs and some dentists will start to withdraw from it. So whatever is in those long-term plans, this major revision of how we deliver primary healthcare, whenever that comes in it may well be too late because this system which we are using at the moment, and we have used for the last 20 years, may have broken down. That is the reality. Providing updated support, even at half the rate I have suggested, would do the trick in order to preserve what we have and not put it at risk is what we should be doing. It does not stop some years down the line, this major change delivering this particular service in a different way. Nothing in here stops anybody doing anything. Paragraph (b) says make sure that what we have - even though it is not perfect - is maintained for the next couple of years, because who knows how long it is going to take to complete all this revision. By September 2014 will we hit that date to get this is the situation, this is the way forward? Will it be 2015 before that comes in on stream? Or 2016, or 2017?

[11:30]

We do not know. We cannot say. But judging from history what we attempted to do usually comes in late. That is the reality. In the meantime this particular service may well have folded. That is the risk. So paragraph (b), please, that is critical. It was interesting to hear the Minister for Treasury and Resources speak up in a debate which is not his field. He does not always do it. He does not do it enough, because he has a very sharp mind. I heard him say the "C" word: "confidence": "I have confidence in this Minister and he will deliver it." I am glad he has confidence in this Minister and that he will deliver it and, as he has promised, deliver it in the first quarter of this coming year, because if he does not, it is an election year and I will be chasing him

about his not delivering it, if that is what happens. It is coming up to election year. What I did not hear him use was that other “C” word, it is called: “contingencies.” There will be a cost of this. If we do not accept paragraph (a), there will be extra expenditure needed. That is an area where contingencies should be used because if need to save this particular service, then we should do so. It is easily done. The Minister for Treasury and Resources has just taken £1.1 million on a Ministerial decision to aid the restructuring programme and modernisation of the workforce in the Health and Social Services Department, I believe. There is something there in the contingency if we accept that we need to cover paragraph (b). Paragraph (c), to raise the upper-earnings limit, is separate and has been attacked as inappropriate. I think I will still maintain it to let Members decide whether they want to expand the remit of the Jersey Dental Fitness Scheme, but I do not think that is necessarily critical at this stage. Paragraph (d) is something that should be happening anyway. What do we do? What services do we supply? Publicity is absolutely essential to it. People do not know what is available and if that said: “Starting with schools”, they are particularly vulnerable. Starting at vulnerable groups, hard-to-reach groups, then it is fine. Let us get to those people and make sure at least we are delivering dental fitness for them. Paragraphs (e) and (f), (e) have certainly been accepted, I think, by the Minister for Social Security. He is already working on it and will be delivering quite soon so there is no harm in that. Paragraph (f): “To ensure that adequate training is provided by the States to all carers working in public or private residential care...” Again, we will need some funding but it is something that should be happening because it is so important that we maintain dental fitness among the elderly because it leads, as was said at the very beginning by Deputy Baudains, to all sorts of complications if we neglect it. Paragraph (g): “To examine the potential of expanding the range of those eligible to partake in the Jersey Dental Fitness Scheme and to report back to the States with recommendations.” I think that has been accepted. I think they are already going to work on this and there is no reason why they should not. My original thinking had pregnant women as particularly targeted but I took it out because I thought I did not have the evidence that that is still current medical thinking that pregnant women need to maintain their dental fitness and should have special provision. I do not know what the modern thinking is, but certainly to examine the potential for expanding who can access it is worthwhile. I would like to maintain the proposition. I would like to take (a) separately from (b) and to treat (c) separately and then I believe there is not much controversy in (d), (e), (f) and (g). I would like to take those together, if that is possible.

The Bailiff:

So you want to take (d) to (g) together?

Deputy G.P. Southern:

Yes. Unless Deputy Baudains...? We will take it all separately.

The Bailiff:

All separately? Very well.

Deputy G.C.L. Baudains:

I wonder if the proposer would permit (f) to be taken separately?

The Bailiff:

He has just agreed to take everything separately, yes. Very well then.

Senator P.F.C. Ozouf:

A point of clarification, Sir? I did not wish to interrupt the Deputy but he spoke in relation to his arguments for (b) that restructuring could be used effectively to fund (b). I am afraid that is not correct. The restructuring, which the Deputy referred to, is restructuring of the Health and Social

Services Department. It is not for revenue expenditure issues, which clearly (b) refers to and so I am afraid the restructuring fund would not be a permitted expenditure for (b), I am afraid to say.

Deputy G.P. Southern:

I was referring not to the restructuring fund. I was referring to the spend that had come from restructuring from contingencies.

The Bailiff:

Very well, so the appel is called for then in relation to the proposition of Deputy Southern. Each paragraph is going to be taken separately. I invite Members to return to their seats and the first vote is on paragraph (a).

POUR: 9		CONTRE: 35		ABSTAIN: 0
Senator A. Breckon		Senator P.F. Routier		
Senator S.C. Ferguson		Senator P.F.C. Ozouf		
Deputy G.P. Southern (H)		Senator A.J.H. Maclean		
Deputy of Grouville		Senator B.I. Le Marquand		
Deputy S. Pitman (H)		Senator F.du H. Le Gresley		
Deputy M. Tadier (B)		Senator I.J. Gorst		
Deputy M.R. Higgins (H)		Senator L.J. Farnham		
Deputy G.C.L. Baudains (C)		Senator P.M. Bailhache		
Deputy J.H. Young (B)		Connétable of Trinity		
		Connétable of St. Clement		
		Connétable of St. Peter		
		Connétable of St. Lawrence		
		Connétable of St. John		
		Connétable of St. Ouen		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of Grouville		
		Deputy R.C. Duhamel (S)		
		Deputy R.G. Le Hérisssier (S)		
		Deputy J.A. Martin (H)		
		Deputy of St. Ouen		
		Deputy J.A. Hilton (H)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy A.K.F. Green (H)		
		Deputy J.M. Maçon (S)		
		Deputy of St. John		
		Deputy J.P.G. Baker (H)		
		Deputy S.J. Pinel (C)		
		Deputy of St. Mary		
		Deputy of St. Martin		
		Deputy R.G. Bryans (H)		
		Deputy R.J. Rondel (H)		

The Bailiff:

Very well. We will move next to paragraph (b) and the Greffier will open the voting. Now the voting is open.

POUR: 13		CONTRE: 31		ABSTAIN: 0
Senator A. Breckon		Senator P.F. Routier		
Senator S.C. Ferguson		Senator P.F.C. Ozouf		
Connétable of St. Lawrence		Senator A.J.H. Maclean		
Connétable of St. Brelade		Senator B.I. Le Marquand		
Deputy R.G. Le Hérisier (Senator F.du H. Le Gresley		
Deputy G.P. Southern (H)		Senator I.J. Gorst		
Deputy S. Pitman (H)		Senator L.J. Farnham		
Deputy M. Tadier (B)		Senator P.M. Bailhache		
Deputy T.A. Vallois (S)		Connétable of Trinity		
Deputy M.R. Higgins (H)		Connétable of St. Clement		
Deputy J.M. Maçon (S)		Connétable of St. Peter		
Deputy G.C.L. Baudains (C)		Connétable of St. John		
Deputy J.H. Young (B)		Connétable of St. Ouen		
		Connétable of St. Martin		
		Connétable of Grouville		
		Deputy R.C. Duhamel (S)		
		Deputy J.A. Martin (H)		
		Deputy of St. Ouen		
		Deputy of Grouville		
		Deputy J.A. Hilton (H)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy E.J. Noel (L)		
		Deputy A.K.F. Green (H)		
		Deputy of St. John		
		Deputy J.P.G. Baker (H)		
		Deputy S.J. Pinel (C)		
		Deputy of St. Mary		
		Deputy of St. Martin		
		Deputy R.G. Bryans (H)		
		Deputy R.J. Rondel (H)		

The Bailiff:

Very well. The Greffier will reset the machine and open the voting now on paragraph (c).

POUR: 9		CONTRE: 35		ABSTAIN: 0
Senator A. Breckon		Senator P.F. Routier		
Connétable of St. Lawrence		Senator P.F.C. Ozouf		
Connétable of St. Brelade		Senator S.C. Ferguson		
Deputy G.P. Southern (H)		Senator A.J.H. Maclean		
Deputy S. Pitman (H)		Senator B.I. Le Marquand		
Deputy M. Tadier (B)		Senator F.du H. Le Gresley		
Deputy M.R. Higgins (H)		Senator I.J. Gorst		
Deputy J.M. Maçon (S)		Senator L.J. Farnham		
Deputy G.C.L. Baudains (C)		Senator P.M. Bailhache		
		Connétable of Trinity		
		Connétable of St. Clement		
		Connétable of St. Peter		
		Connétable of St. John		

	Connétable of St. Ouen		
	Connétable of St. Martin		
	Connétable of Grouville		
	Deputy R.C. Duhamel (S)		
	Deputy R.G. Le Hérisssier (S)		
	Deputy J.A. Martin (H)		
	Deputy of St. Ouen		
	Deputy of Grouville		
	Deputy J.A. Hilton (H)		
	Deputy of Trinity		
	Deputy S.S.P.A. Power (B)		
	Deputy E.J. Noel (L)		
	Deputy T.A. Vallois (S)		
	Deputy A.K.F. Green (H)		
	Deputy of St. John		
	Deputy J.P.G. Baker (H)		
	Deputy J.H. Young (B)		
	Deputy S.J. Pinel (C)		
	Deputy of St. Mary		
	Deputy of St. Martin		
	Deputy R.G. Bryans (H)		
	Deputy R.J. Rondel (H)		

The Bailiff:

Now we will move to paragraph (d). The Greffier will open the voting.

POUR: 27	CONTRE: 17	ABSTAIN: 0
Senator A. Breckon	Senator P.F. Routier	
Senator S.C. Ferguson	Senator P.F.C. Ozouf	
Senator B.I. Le Marquand	Senator A.J.H. Maclean	
Senator L.J. Farnham	Senator F.du H. Le Gresley	
Connétable of St. Peter	Senator I.J. Gorst	
Connétable of St. Lawrence	Senator P.M. Bailhache	
Connétable of St. John	Connétable of Trinity	
Connétable of St. Ouen	Connétable of St. Clement	
Connétable of St. Brelade	Connétable of St. Martin	
Deputy R.C. Duhamel (S)	Connétable of Grouville	
Deputy R.G. Le Hérisssier (S)	Deputy of Trinity	
Deputy J.A. Martin (H)	Deputy A.K.F. Green (H)	
Deputy G.P. Southern (H)	Deputy of St. John	
Deputy of St. Ouen	Deputy J.P.G. Baker (H)	
Deputy of Grouville	Deputy S.J. Pinel (C)	
Deputy J.A. Hilton (H)	Deputy of St. Mary	
Deputy S.S.P.A. Power (B)	Deputy of St. Martin	
Deputy S. Pitman (H)		
Deputy M. Tadier (B)		
Deputy E.J. Noel (L)		
Deputy T.A. Vallois (S)		
Deputy M.R. Higgins (H)		
Deputy J.M. Maçon (S)		
Deputy G.C.L. Baudains (C)		

Deputy J.H. Young (B)			
Deputy R.G. Bryans (H)			
Deputy R.J. Rondel (H)			

The Bailiff:

We will move next to paragraph (e). The Greffier will open the voting.

POUR: 19	CONTRE: 25	ABSTAIN: 0
Senator A. Breckon	Senator P.F. Routier	
Senator S.C. Ferguson	Senator P.F.C. Ozouf	
Connétable of Trinity	Senator A.J.H. Maclean	
Connétable of St. Clement	Senator B.I. Le Marquand	
Connétable of St. Lawrence	Senator F.du H. Le Gresley	
Connétable of St. John	Senator I.J. Gorst	
Connétable of St. Brelade	Senator L.J. Farnham	
Deputy R.C. Duhamel (S)	Senator P.M. Bailhache	
Deputy R.G. Le Hérisier (S)	Connétable of St. Peter	
Deputy J.A. Martin (H)	Connétable of St. Ouen	
Deputy G.P. Southern (H)	Connétable of St. Martin	
Deputy J.A. Hilton (H)	Connétable of Grouville	
Deputy S.S.P.A. Power (B)	Deputy of St. Ouen	
Deputy S. Pitman (H)	Deputy of Grouville	
Deputy M. Tadier (B)	Deputy of Trinity	
Deputy M.R. Higgins (H)	Deputy E.J. Noel (L)	
Deputy J.M. Maçon (S)	Deputy T.A. Vallois (S)	
Deputy G.C.L. Baudains (C)	Deputy A.K.F. Green (H)	
Deputy J.H. Young (B)	Deputy of St. John	
	Deputy J.P.G. Baker (H)	
	Deputy S.J. Pinel (C)	
	Deputy of St. Mary	
	Deputy of St. Martin	
	Deputy R.G. Bryans (H)	
	Deputy R.J. Rondel (H)	

The Bailiff:

We come next to paragraph (f). The Greffier will open the voting.

POUR: 17	CONTRE: 27	ABSTAIN: 0
Senator A. Breckon	Senator P.F. Routier	
Senator S.C. Ferguson	Senator P.F.C. Ozouf	
Connétable of St. Ouen	Senator A.J.H. Maclean	
Deputy R.C. Duhamel (S)	Senator B.I. Le Marquand	
Deputy R.G. Le Hérisier (S)	Senator F.du H. Le Gresley	
Deputy J.A. Martin (H)	Senator I.J. Gorst	
Deputy G.P. Southern (H)	Senator L.J. Farnham	
Deputy of St. Ouen	Senator P.M. Bailhache	
Deputy J.A. Hilton (H)	Connétable of Trinity	
Deputy S.S.P.A. Power (B)	Connétable of St. Clement	
Deputy S. Pitman (H)	Connétable of St. Peter	
Deputy M. Tadier (B)	Connétable of St. Lawrence	
Deputy T.A. Vallois (S)	Connétable of St. John	

Deputy M.R. Higgins (H)		Connétable of St. Brelade		
Deputy J.H. Young (B)		Connétable of St. Martin		
Deputy R.G. Bryans (H)		Connétable of Grouville		
Deputy R.J. Rondel (H)		Deputy of Grouville		
		Deputy of Trinity		
		Deputy E.J. Noel (L)		
		Deputy A.K.F. Green (H)		
		Deputy J.M. Maçon (S)		
		Deputy G.C.L. Baudains (C)		
		Deputy of St. John		
		Deputy J.P.G. Baker (H)		
		Deputy S.J. Pinel (C)		
		Deputy of St. Mary		
		Deputy of St. Martin		

The Bailiff:

Finally we come to paragraph (g). The Greffier will open the voting.

POUR: 26		CONTRE: 18		ABSTAIN: 0
Senator P.F. Routier		Senator P.F.C. Ozouf		
Senator A. Breckon		Senator B.I. Le Marquand		
Senator S.C. Ferguson		Connétable of Trinity		
Senator A.J.H. Maclean		Connétable of St. Clement		
Senator F. du H. Le Gresley		Connétable of St. Peter		
Senator I.J. Gorst		Connétable of St. Martin		
Senator L.J. Farnham		Connétable of Grouville		
Senator P.M. Bailhache		Deputy R.G. Le Hérisier (S)		
Connétable of St. Lawrence		Deputy of St. Ouen		
Connétable of St. John		Deputy of Trinity		
Connétable of St. Ouen		Deputy E.J. Noel (L)		
Connétable of St. Brelade		Deputy A.K.F. Green (H)		
Deputy R.C. Duhamel (S)		Deputy of St. John		
Deputy J.A. Martin (H)		Deputy J.P.G. Baker (H)		
Deputy G.P. Southern (H)		Deputy S.J. Pinel (C)		
Deputy of Grouville		Deputy of St. Mary		
Deputy J.A. Hilton (H)		Deputy of St. Martin		
Deputy S.S.P.A. Power (B)		Deputy R.G. Bryans (H)		
Deputy S. Pitman (H)				
Deputy M. Tadier (B)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy J.H. Young (B)				
Deputy R.J. Rondel (H)				

Deputy G.P. Southern:

May I thank Members for an interesting debate and a vote that ghasts my flabber. [Laughter]

2. States Members' remuneration: proposed increase 2014 (P.128/2013) - proposal of the Connétable of St. John to lift Standing Order 106 to enable P.128 to be debated

The Bailiff:

The next matter on the Order Paper is P.128/2013, States Members' Remuneration: proposed increase 2014, lodged by the Connétable of St. John. Connétable, you will need to apply to lift Standing Orders first of all though.

2.1 The Connétable of St. John:

Could I apply to Members to lift Standing Order 106 so that we may debate this proposition?

The Bailiff:

Yes, is that proposition seconded? **[Seconded]** Very well, so the proposition before Members is to lift Standing Order 106, which relates to conflict of interests, so that the proposition may be debated. Does any Member wish to say anything on that proposition?

2.1.1 Senator L.J. Farnham:

Before we spend an hour or 2 debating our own salaries and expenses, I would ask Members to think carefully whether this is desirable. We are, of course, all at liberty to decline any increases in Members' remuneration that is offered to us and I really think that before we sink any lower in reputation on these sorts of issues, we should not be spending our time discussing this and I would ask Members to think carefully and perhaps not agree to lift the Standing Order.

2.1.2 Deputy G.P. Southern:

If I could support that plea with reference to the reporter on TV last night, who said with a big grin on his case: "They are discussing their pay tomorrow. They love nothing more than talking about themselves." Let us at least squash that.

2.1.3 Connétable M.P.S. Le Troquer of St. Martin:

Déjà vu, I think. January 2013 and the Constable of St. Saviour and her proposition basically withdrawn. I had prepared some notes then, opposing the Connétable of St. Saviour's proposition and if we are to agree to discuss the Constable of St. John's proposition, then I would be voting against it too for reasons that I would discuss during the main debate.

[11:45]

On that occasion, we had shortened the debate on whether to rescind Standing Orders in order to debate it. Today, we are here again with the exact same wording and they need to try and lift Standing Order 106, which of course is very unlikely to be approved. If we do not agree to lift it, then we would have to declare an interest. Another headline for the newspaper and that is difficult to make up. Of course, I suppose I am not sure if I and other Members would have to withdraw if we had no intention of receiving the remuneration. We could just carry on and discuss. Today I will be voting against lifting Standing Orders. Last time I indeed voted for the matter to be debated, as did some other Members. However, that attempt was beaten 31 votes to 16 and nothing has changed since January. I will accept that decision that the current procedure really prevents us from discussing the matter today. I thought we were going to reach this debate yesterday afternoon and I have to say that I was disappointed to receive P.P.C.'s (Privileges and Procedures Committee) comments during the afternoon while trying to listen to another debate taking place in the Assembly. As it was we had no time overnight to read the comments. The Constable's proposition was, however, lodged on 11th October 2013 and we only received P.P.C.'s comments during the sitting, during which it was to be debated. Not even before, but during a debate. Maybe that is something for another day but this issue has already been raised earlier this morning. It might be

raised again later today on another debate and I am sure it will be debated in the future, so it is something P.P.C. might wish to look at. There are, however, 3 issues that I would like to seek clarification from P.P.C. at this point. Back in June 2012, I asked questions in this Assembly to the Vice-Chairman of P.P.C. regarding changes that were being proposed in P.44 to the terms of reference for the Remuneration Review Body.

The Bailiff:

I am sorry, Connétable. It is not clear to me that this is on point. At the moment, you are simply discussing whether to lift Standing Orders for this current proposition of the Connétable.

The Connétable of St. Martin:

I think the replies that I was given at that time, Sir, from the Vice-Chairman, if I can raise those now.

The Bailiff:

Are they relevant to this debate?

The Connétable of St. Martin:

Yes, I think they will be, Sir.

The Bailiff:

Well then, let us hear them but it is not clear to me that they are at the moment.

The Connétable of St. Martin:

During the reply, Deputy Tadier replied to my concerns on the day, including an explanation of the role played by the Appointments Body. However, during his reply, Deputy Tadier gave the hypothetical example of one where the Remuneration Body was maybe to recommend a 50 per cent pay increase to the States Members, while most workers were receiving none. He went on to suggest that there would be probably no shortage of States Members willing to bring a proposition, it was similar to the one that we have today, and also probably to bring a vote of no confidence in the Remuneration Body. I put it to the Assembly today that is exactly what we are trying to do in a somewhat less dramatic fashion. A proposition being put forward but we cannot debate it. Fortunately, we have not been offered a 50 per cent increase. They have however recommended a very modest increase, one that does not reflect a diminishing remuneration package that those Members who have served in the States since before 2005 have seen. Diminishing in comparison...

The Bailiff:

I am sorry, Connétable, but it seems to me that you are getting on to the merits of this particular raise. At the moment, it is simply as to whether Standing Orders should be lifted in order to debate it.

The Connétable of St. Martin:

I accept that, Sir. Thank you. Can I just make my second point then?

The Bailiff:

Well, let us hope that it is a bit closer.

The Connétable of St. Martin:

I think I better leave it, Sir. I was going to ask the Constable of St. Helier whether or not he had made a representation to the Remuneration Board, which he was ...

The Bailiff:

Not relevant to this.

The Connétable of St. Martin:

No, not at this point, Sir. The final query, again, I think I will have to leave it. This is in relation to the work that might be undertaken by the review body in the future because we cannot carry on like this every 12 months.

Senator L.J. Farnham:

I think I understand why the Constable was at the dentist this morning, Sir.

2.1.4 Senator P.F.C. Ozouf:

I will be very brief. We should not, in my opinion, be lifting Standing Orders. Doing so would be divisive and unfair. Forgive my voice, Sir. I agree rarely with Deputy Southern. Many Members of this Assembly work hard in their duties. Some Members rely upon their remuneration entirely for their living. In having a debate, we pit those Members who have other income against those Members who do not have other income [**Approbation**] and that undermines the standing of States Members. It puts a popularity contest of those who have outside income versus those that do not and it is wrong. I will be voting against Standing Orders for those reasons.

The Bailiff:

Connétable, do you wish to reply then to what ...

2.1.5 The Connétable of St. John:

I am hopeful that we can have the debate so I can answer all the questions that will come. I am not getting drawn into a “them and us” scenario at this time. The proposition is quite simple. Do we or do we not lift Standing Orders?

The Bailiff:

Thank you very much. The appel is asked for in relation to the proposition of the Connétable of St. John that Standing Order 106 should be lifted so that the debate on his proposition can take place. The Greffier will open the voting.

POUR: 1		CONTRE: 43		ABSTAIN: 0
Connétable of St. John		Senator P.F. Routier		
		Senator P.F.C. Ozouf		
		Senator A. Breckon		
		Senator S.C. Ferguson		
		Senator A.J.H. Maclean		
		Senator B.I. Le Marquand		
		Senator F.du H. Le Gresley		
		Senator I.J. Gorst		
		Senator L.J. Farnham		
		Senator P.M. Bailhache		
		Connétable of Trinity		
		Connétable of St. Clement		
		Connétable of St. Peter		
		Connétable of St. Lawrence		
		Connétable of St. Ouen		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of Grouville		
		Deputy R.C. Duhamel (S)		

	Deputy R.G. Le Hérisssier (S)		
	Deputy J.A. Martin (H)		
	Deputy G.P. Southern (H)		
	Deputy of St. Ouen		
	Deputy of Grouville		
	Deputy J.A. Hilton (H)		
	Deputy of Trinity		
	Deputy S.S.P.A. Power (B)		
	Deputy S. Pitman (H)		
	Deputy M. Tadier (B)		
	Deputy E.J. Noel (L)		
	Deputy T.A. Vallois (S)		
	Deputy M.R. Higgins (H)		
	Deputy A.K.F. Green (H)		
	Deputy J.M. Maçon (S)		
	Deputy G.C.L. Baudains (C)		
	Deputy of St. John		
	Deputy J.P.G. Baker (H)		
	Deputy J.H. Young (B)		
	Deputy S.J. Pinel (C)		
	Deputy of St. Mary		
	Deputy of St. Martin		
	Deputy R.G. Bryans (H)		
	Deputy R.J. Rondel (H)		

3. *Ex Gratia* payment to Mr. Terry McDonald (P.130/2013)

The Bailiff:

We move on to P.130/2013 *Ex Gratia* Payment to Terry McDonald, lodged by the Deputy of St. Martin. I will ask the Greffier to read the proposition.

The Deputy Greffier of the States:

The States are asked to decide whether they are of the opinion to request the Minister for Treasury and Resources to make an *ex gratia* payment of £50,000 from central contingencies to Mr. Terry McDonald as compensation for costs incurred in the setting up of an unsuccessful charity fireworks display in the summer of 2007.

3.1 Deputy S.G. Luce of St. Martin:

At the outset I would like to say that I am aware that it is not usual practice in the Assembly to name individuals but I might ask, however, that I be allowed to use the name from the proposition during this debate.

The Bailiff:

Of course, it is unavoidable and therefore it is within Standing Orders.

The Deputy of St. Martin:

Before I start my proposition, I wish to speak briefly about the comments paper that Members have before them today, issued by the Minister for Home Affairs yesterday morning. First, could I say that I find it extremely unsatisfactory that anyone, especially Back-Benchers working on their own **[Approbation]** to be given comments as they sit down to a States sitting on the day of the debate. That timing gave me no option other than to leave the Chamber for the whole of question time

yesterday morning so as to study the paper. While I realise that most of the comments made are from a report previously published, I still needed to be sure that I had looked over the document. Secondly, could I just make the point that these comments and papers were made up of about 75 individual sheets of paper and that the vast majority, has already been referenced in my own report and we all received a copy of the comments. To my very quick calculations, that counted to over 4,000 sheets of paper. I cannot help but think this was a complete waste of resource and extremely unnecessary. It is also interesting that the Minister's initial comments, after fully accepting that I am not proposing to proportion any blame with this proposition, it is then made up entirely of comments defending the officers and departments concerned. Before I go back over my report, I would reiterate that I am not looking to reopen the investigation. I am not looking to proportion blame. It is very unfortunate that the Minister has chosen to spend so much time and effort defending something that he or anyone else is very clearly not accused of. Some Members may remember that on Thursday, 17 March 2011 a proposition was brought to this Assembly by the then Deputy of St. Johns, now Connétable Rondel. The proposition concerned Terry McDonald, the well-known, indeed local fireworks expert. That proposition was debated and received unanimous support from the then Members of the States Assembly. The proposition requested that the Ministers for Home Affairs, Economic Development and Planning and Environment review the events surrounding the importation of over 100,000 fireworks for a charity attempt at a world record in 2007. In particular, it was requested that the Ministers review the actions taken by their own departments in relation to this matter. This, and with a view to ascertaining why difficulties arose, which led to the eventual cancellation of the proposed launching of the fireworks and a substantial financial loss for Mr. McDonald, even though the importation was initially approved by all relevant authorities and a Bailiff's Permit issued for the event. The request was for those 3 Ministers to present their report to the States no later than the end of May 2011. A report setting out the results of their investigations and details of any appropriate actions they intend to take to compensate the organiser for the losses he incurred. I expect that all Members of this Assembly will either know or have heard of Terry McDonald and I do not intend to go over the very good material that was presented by the then Deputy for St. John in the original debate. I would just seek to highlight the fact that when it comes to planning and execution of major fireworks displays, Mr. McDonald's record was exemplary. His efforts previous to 2007 provided not only huge enjoyment for tens of thousands of Islanders, young and old, but also considerable income for many local and national charities. It was not only his fireworks that provided charitable income, Mr. McDonald was and still is well-known on the Island for his charitable work in his own right. Mr. McDonald's efforts back in 2007 would have created thousands of pounds for the Jersey charity, Side by Side, providing a fitting finale for the Battle of Flowers, the Island's number one tourist event and possibly, most importantly, promoting the Island in a hugely positive way on the worldwide tourism stage. There is no doubt that nearly everyone on the Island was bitterly disappointed when this major publicity event did not take place. Given the unanimous decision of this Assembly to support proposition P.21, there must also have been disappointment in this Assembly that a way could not be found through and despite the Minister's report to admit at least some responsibility for the failed display. I am sure that many politicians felt responsible and I know that large numbers of the public certainly did feel responsible. In my view, we should have done more and at the very least found a way to compensate Mr. McDonald financially or in some other way at that time. The Minister's comments say that because I have referred to both the Deputy of St. John's original proposition and the paper from the 3 chief officers in my report, I am effectively incorporating into my own material the allegation of fault on the part of the 3 Ministers. In my view, I feel my report would have been lacking had it not, at the very least, given a brief overview of the previous history of this case and the links to those 2 documents. I find it unfortunate that the Minister chooses to deflect Members' attention away from my no blame approach and chooses to concentrate on blaming someone. Re-opening the inquiry and

proportioning blame was absolutely not the reason I bought this proposition and I would ask Members to disregard the Minister's comments and concentrate on the words at the top of my proposition. In the last few years, Mr. McDonald has, in my view, been quite literally dominated and consumed by the consequences of the cancelled event. From that moment, over 6 years ago now, and just 2 hours before the fireworks were due to arrive on the Island, he has fought an ongoing battle to fund the financial commitments he undertook when he reached the decision to take on the responsibility for organising the world record attempt. We must never forget that he undertook this commitment for the Island for charity, for others and not for himself, and that he took this commitment with the full support of the necessary States department. In bringing this proposition, I fully appreciate that while Mr. McDonald's present position is as an indirect result of the cancelled event, nearly all the financial decisions he has taken since August 2007 have been his own. He could have decided to act differently and as a consequence of his current position, might not be where he is today.

[12:00]

So I would like to make it very clear that my proposition does not seek to compensate him for any financial matters that have occurred as a result of his decisions since August 2007. The initial bills that Mr. McDonald incurred in order to proceed with the display fall into 5 categories: the transport and freighting of the fireworks, the material for the construction of the fireworks platforms, the fabrication of some additional structures, the purchase of the fireworks themselves and finally the insurance for the event. As part of my work over the past 9 months in bringing this proposition, I took it upon myself to contact all the parties concerned with those 5 categories. In each instance, I inquired on behalf of Mr. McDonald to see if there would be a chance of a negotiated settlement in order to clear his indebtedness to those people concerned. The results of efforts are listed in my report but I would wish to point out that, as we sit here this morning, all of Mr. McDonald's have now been paid. One company specifically were particularly accommodating and that was the fireworks company in England that had supplied the pyrotechnics. Despite incurring considerable legal costs in attempts to recover the money they were owed, this company agreed with me to accept a sum equivalent to the original purchase cost, money which Mr. McDonald has, as I just said, now paid back. The U.K. company were very sympathetic to this issue and have kindly agreed not to seek compensation for any of their legal costs and I would like to thank them publicly for this kind offer. Details of the amounts of money paid out, again, are listed in my report but amounted to just over £17,000 for the transportation of the fireworks and the hire of containers, just under £4,500 for the construction of platforms, £1,200 for fabrication work that was undertaken at La Moye Prison, £19,000 for the fireworks themselves and just over £7,700 for insurance. The total amounting to £50,356.24. This whole sad saga is very difficult to sum up in a few words and I do not wish to go through the full and extensive chronology of all the many attempts to bring this issue to a conclusion over the last 6 years, however, it would be remiss of me not to remind Members of a few significant events that have occurred in the intervening time. In August 2008, another local fireworks company offered to pay off over time all the associated debt incurred with the purchase of the fireworks, but only if the States could provide an interest-free loan. This offer was refused as unworkable and I hope that the Minister for Home Affairs will mention this if he speaks, as I do not see any reference to it in his report.

Senator B.I. Le Marquand:

That is not correct of the comments put in. That is correct of the initial report but not of the comments.

The Deputy of St. Martin:

I accept, Minister. Thank you. In April 2009, after sleeping in a caravan for 618 nights, Mr. McDonald was requested by the owners of Ronez Quarry to abandon the site where he had been guarding the fireworks. He did so but left the fireworks remaining *in situ*. I then jump to February 2010, where Mr. McDonald resigned from his employment with a local funeral directors so he could continue to fight his case in the local media. In July of that year, Mr. McDonald also resigned as chairman of the Jersey Association for Spina Bifida and Hydrocephalus because, as in the other case, he felt it was inappropriate for him to retain these positions while he fought legal battles to clear his debts in the public gaze. As I have already mentioned, in March 2011 this States Assembly debated a proposition by the then Deputy of St. John and the proposition was won, 43 votes to none. The report that was commissioned as a result of that States' decision was published in September 2011 and stated that no compensation is necessary to Mr. McDonald from the public purse. During this current year, and in order to clear his accumulated debts, now well into 6 figures, and the majority of which had been incurred since 2007. Mr. McDonald was forced to sell his house, the house he inherited on his mother's death 2010. Finally, and only a few weeks ago now, Mr. McDonald used the proceeds of that house sale to pay off all his outstanding debts. It would be impossible to conceive back in June 2007 that Mr. McDonald would find himself in this current position, be that physical or financial. He was a well-known and successful businessman, renowned through the Island for his charitable work but as a result of one decision, he has endured 6 years of financial and emotional turmoil. Over the last 6 years, Mr. McDonald worked to pay off many of these debts himself. In order to help meet those bills, he also instructed that 20 per cent of his police pension be deducted at the source and utilised to pay his outstanding income tax arrears. And finally, he has had to sell his house. I ask Members if they are prepared to back up the decision they took back in March 2011 when they voted unanimously to investigate this whole unsavoury incident. It is clear to me that at the time Members felt extremely unhappy about how this matter had been handled. I am also aware that 31 of those Members who voted in that vote are still in this Assembly today. Before I close, I wish to make it clear once again that with this proposition, I do not seek to reinvestigate the decisions that led to the event being cancelled or try to accept or proportion any blame of how events transpired. I do not seek to blame anyone. I simply seek to make an *ex gratia* payment to Mr. McDonald, a payment that makes no comment about how we found ourselves where we are today. Up until the eleventh hour back in 2007, Mr. McDonald had received full support from States departments. He had his Bailiff Permit, something that I know personally is never given out lightly and certainly not to events that are not well prepared, detailed and covered every eventuality of health and safety. Mr. McDonald cannot have foreseen the events that were about to transpire as the fireworks were being freighted across the Channel. Regardless of who is to blame or where the fault lies, Mr. McDonald has suffered financially and emotionally through, in my opinion, no fault of his own over the decisions that were taken in the first few months of this whole unfortunate affair. I hope that Members will agree with me that even at this very late stage we have the opportunity to make some compensation to Mr. McDonald. The public certainly think he was let down by this Assembly in the past and I hope that Members of today's Assembly will agree with me. I would only ask Members to consider my proposition and vote as they see fit.

The Bailiff:

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

3.1.1 Senator P.M. Bailhache:

There was a discussion around the table of the Council of Ministers when this proposition first came up and the Minister for Home Affairs emphasised that no fault was being alleged against any department of the States and that therefore there was no question or case for an *ex gratia* payment to be made to Mr. McDonald. I reserved my position at that time because I did have a gut feeling,

not very well-informed perhaps at that time, that something had gone wrong and the Minister for Home Affairs invited me to read very carefully the report that was put before the Assembly in 2011 and, in particular, the 2 reports of the Environment Division. I have done that and I am very grateful to the Minister for Home Affairs for drawing my attention to what I think were the key documents. I should like to make a declaration that I held the office, which you hold, in the months leading up to August 2007. But I must say, I have no recollection whatsoever of being consulted about the application by Mr. McDonald. I may be wrong, but I simply have no memory of being consulted about it and I have not checked with your Chief Officer, so that is my memory of things at the moment. It would not have been surprising, if I am right, that I was not consulted about that time because what is called the Bailiff's Panel for the licensing of public entertainment has very little to do with the Bailiff. Perhaps things have changed since my successor took office but I certainly had very little to do with the workings of the Panel. Most applications for the licensing of public entertainment are very straightforward and are dealt with administratively by the Bailiff's Chief Officer. In those cases where there might be something out of the ordinary, the practice is that the Bailiff's Chief Officer convenes all the key officials from relevant government departments, from the States of Jersey Police, from the Fire and Rescue Service, from the Health and Social Services Department, the Accident Prevention Department and so on. So all of the relevant officials can get round a table and all the issues can be discussed and resolved. Now, this application by Mr. McDonald was not in principle a controversial application in the sense of being an event which people might not have wanted to permit. It was obviously a good idea to try to regain for Jersey the relevant record in terms of fireworks and it was an idea which would have given great pleasure to many members of the public and indeed excitement too. The only issues were really to do with public safety, public order and the environment - noise and pollution. I would have expected all those issues to have been thoroughly discussed and resolved before the Bailiff's Permit for public entertainment was issued. The Bailiff's Permit is generally the final stage in the process. The permit will often have attached to it conditions which are relevant to various issues that have been discussed before the Bailiff's Panel. For me, this is the tipping-point in this debate. A permit for public entertainment was issued to Mr. McDonald and everything should have been resolved by that stage. Yet the reports of the Environment Division seem to have been issued after the Bailiff's Permit was issued. The Bailiff's Permit was issued on 2nd July 2007 and the reports of the Environment Division, which have been circulated by the Minister for Home Affairs, are dated 24th July and 27th July 2007. The consequences for Mr. McDonald, as set out in the report of the Deputy of St. Martin do not have to be repeated. They seem to me to be wholly disproportionate, grossly disproportionate, having regard to the fact that he was doing this not for a profit but for a charitable purpose.

[12:15]

I do not think, as a matter of fact that Mr. McDonald is entirely blameless for his misfortunes. I think he should probably have stuck to his guns and carried on but then Mr. McDonald is a law-abiding person. He has spent most of his life in a law enforcement role. He would not, I am sure, have wanted to have found himself hauled before a criminal court if any mishap had occurred. I have said that I am not like the Deputy of St. Martin, going to point a finger or to suggest that blame attaches to anyone. That is an easy thing to say because I do not think as a matter of fact that blame does attach to anyone. Even in the absence of blame, things can sometimes go wrong. The reports of the Environment Division were entirely proper. Pointing out all the risks and difficulties that arose from the proposed firework display. But these issues should have been resolved before the Bailiff's Permit was issued. On page 90 of the report of the Environment Division, there is a reference at 2(3): Risk to areas of ecological importance, including eel grass beds. Eel grass beds occur within the intertidal zone of St. Aubin's Bay. The beds are important fish breeding and feeding areas as well as feeding areas for migratory birds. On the opposite page, risk of damage,

pollution from zeros. The risk assessment of 17 vehicles, tractors, trailers, lighting, clean up, first aid, catering and portaloos vehicles will be on the beach leaking fuel and oil from the vehicles represents a risk to the environment. St. Aubin's Bay is monitored for bathing water quality and any pollutants could affect the results. All that, of course, is true but these are exactly the issues which could and should have been discussed and debated by the relevant officials, before a decision was made to issue the Bailiff's Permit. I would expect the officials to say: "Are these risks so great that we should not permit this particular display to take place because of the potential environmental damage? Or can we minimise the risks by attaching appropriate conditions to the Bailiff's Permit for public entertainment." I make the point that the Bailiff's Permit would not have been granted against compelling environmental objections. But the Bailiff's Permit in this case was issued on 2nd July, some 3 weeks before these reports from the Environmental Division. Mr. McDonald had been encouraged by the Bailiff's Permit, to press on, and to commit himself to all the expenditure which was dependent upon this firework display. Yet at the stage only a few days before the event, reports were produced and, as I have said, they are entirely proper reports. I make no criticism of the officials concerned. Reports were produced that do not prohibit the display but set out in black and white that if anything went wrong, Mr. McDonald would be liable to prosecution under the Water Pollution (Jersey) Law 2000. Page 90, if Members want to have a look at it. Mr. McDonald is aware that pollution arising from the record attempt could make him liable for prosecution under the Water Pollution (Jersey) Law 2000. Being told you can do it but if there is a mishap if, for example, the wind changes and fireworks are blown out to sea, we will come for you. It does not seem to me to be appropriate in this context. If this had been a commercial venture from which somebody stood to make a profit, perhaps it would have been right to have left the risk with the entrepreneur who was carrying out the display. But Mr. McDonald was not undertaking a commercial venture. He was doing it for charitable purposes to benefit the charity, Side by Side, and to regain for the Island a record which had been lost to somebody in the United Kingdom. Now, in that context, to leave all the risk with Mr. McDonald seems to me to be unfair. The authorities should have taken a view. Either the risks are so great that the performance should not be allowed altogether and the Bailiff's Permit should have been refused or they should have said: "Well, the risks are very slight. We think they can be accommodated because overall, it is going to be a wonderful event which is going to be appreciated and enjoyed by thousands of people." I congratulate the Deputy of St. Martin for bringing this forward. I think this is one of those very rare cases where we can take the view that we can act as a small and sympathetic community and to mitigate the catastrophic consequences for a well-intentioned member of that community of an event that went badly. I think that this is a wise, moderate and compassionate proposition and I will support it. I just want to add one point before closing because the Minister for Home Affairs has characterised the decision for Members at page 7 of his report in a way with which I do not entirely agree. I do not think that this is a fair characterisation of Members' choices. Members can take the hard line, if you like. This is public money. We should not spend public money on a case where there is no legal liability to spend it. Or they can take the compassionate line because it was unfair, I suggest, to leave Mr. McDonald in a position where some parts of the government machine had said: "Yes, you can go ahead", while another part of the government machine was saying: "If anything goes wrong we will prosecute you for a breach of the law." That does not seem to be fair and I shall vote for the proposition.

Deputy R.G. Le Hérisier:

Sir, can I ask a point of clarification of the speaker? When a permit is issued, is a checklist available which demonstrates whether all relevant departments have been approached and have had to submit a report as to their role in the matter?

Senator P.M. Bailhache:

I think the answer to that is yes. I do not know if there is a checklist but I would be very surprised if the Chief Officer and the Bailiff's Department did not seek to bring together all those officials who had something to say on the matter.

Deputy J.H. Young:

Can I ask for further clarification on that point? Did the Bailiff's Permit make it clear that their permission being given was subject to all other consent? Why are other apartments being required?

Senator P.M. Bailhache:

I have not seen the permit.

Deputy M. Tadier:

Sir, I have a point of order. It relates to declarations of interest and it may or may not be relevant but in terms of transparency I will err to the side of caution. Is it appropriate that any individuals who are of the same society or club that Mr. McDonald belongs to, should declare an interest in this debate?

The Bailiff:

I have no idea. What is this society or club? [Laughter]

Deputy M. Tadier:

The Freemasons, Sir.

The Bailiff:

No, I cannot think that is a declaration. There is no financial interest in it. No, I cannot think that that is an interest that needs to be declared.

Deputy M. Tadier:

The reason I ask and that is no prejudice to that, I think in the interest of openness, it is noteworthy that the previous individual who brought this similar proposition was a member of the same club and I think it should be declared if that is the case, certainly for the proposer or any other individual who may be speaking in this debate. I am quite happy to say that I am not.

The Connétable of St. John:

I have no problem in saying that I am a Freemason. I have made it known publicly many times in this Chamber and that has no bearing whatsoever on seeing justice being done to Mr. McDonald.

3.1.2 Deputy S. Power:

I read the Deputy of St. Martin's report and proposition with interest because I doubt if there is anyone who has not got some sympathy for Terry McDonald. I felt ill as he went through the chronology from 2007 to now and what Mr. Macdonald went through. For the life of me, I do not know why we are in this position today that we have debated this once and we are now going to debate it again. It seems to me that we have to lance this boil that is recurring within the Chamber and see that some justice is done today. The other reason I will support the Deputy of St. Martin and take exception to some of the comments made by the Minister for Home Affairs and his recommendation and I will read them, on page 7: "The Members take the view that Mr. McDonald, while very well-meaning, got himself into a tangle, which left him with debts but it is not the responsibility of the States of Jersey to get people, no matter how well meaning, out of financial tangles which are of their own making." The second point he makes is that: "Members take the view that although Mr. McDonald got himself into a tangle, which was of his own making which left him with debts, nevertheless because of his past record of service to the Island and desire on

this occasion to do something for the Island, the States of Jersey should pay the sum of £50,000.” While the Minister for Home Affairs has given us 2 options, I think his language is unfortunate and, to be honest with you, I take exception to that and this leads me on to what I want to say. Before I say what I want to say, I want to refer to what Senator Bailhache said: “In all of the vast environmental reports that are included in this 141-page response, it is very clear to me at any rate, and I do not know whether my colleagues will agree, that the Environment Department went to extraordinary lengths.

[12:30]

The Minister for Planning and Environment or people in the department went to extraordinary lengths to explain the risks attached to mixes of chemicals dropping on the beach and responsibilities and liabilities to prosecution under the Water Pollution Law and we have these very threatening reports that were sent to various States departments and referring to Mr. McDonald. Again, I think the report that Senator Bailhache referred to, it is appendix 7, which runs from page 88 on up to page 94. You pick some of the paragraphs out of this, and you question how this is going to happen afterwards: “Should significant harm come to any living resources on the beach or wherever the eco-system is that Mr. McDonald could be liable for prosecution under the Water Protection Law.” So there we have Mr. McDonald setting up to set off these fireworks, somewhere on the beach, not quite sure of the location and then we are going to have an army of environmentalists waiting in Land Rovers to say can they take samples before the tide comes in so that they might be able to prosecute Mr. McDonald. It was written almost on the basis that you could not make it happen. I doubt whether had Mr. McDonald gone ahead, whether they would have been able to prosecute him for pollution because the mean inter-tidal convergence zone would have been such that there would have been a vast flushing effect and what I want to summarise, quoting all of this, is that in my opinion, these reports were written in such a way as to almost intimidate and make sure that this thing did not happen. One reference that Senator Bailhache referred to was 2.4 on page 891. The risk mentions: “A minimum of 17 vehicles, lighting, cleaning up, leaking oil and fuel from vehicles.” Every day of the week we have got vehicles on beaches. Every day of the week we have got vehicles parked on different beaches on the Island. I cannot see ...

Senator L.J. Farnham:

Will the Deputy please give way? He raises a good point but they should not be parked on the beaches ...

Deputy S. Power:

There are people towing boats and trailers and doing all sorts of things, launching things. We have vehicles at the point where water meets beach every day of the week. So I think again this 141-page tome was inappropriate to be produced yesterday and it almost smacks of: “Well, we covered our rear-ends and that is where we are.” The comment I really want to make is that reference was made to the fact that this event went badly wrong. Well, it did not go badly wrong because there was not an event. The cause and effect and the consequences of cancelling this event are what went wrong and what affected the life of Mr. McDonald and his financial security. I want to make these few points before I sit down. Senator Bailhache did not use the word but I will. I believe that there has been a degree of hypocrisy within States departments in the way that this has been dealt with and I think that States Members then and now have created cause and effect that this situation has occurred. I make these 3 points. In the lead up to the Battle of Flowers function in 2007, a small number of people who had a disproportionate degree of influence made a number of presentations and objections to the Minister for Planning and Environment at the time. Those people who could be loosely classed as, I suppose, environmentalists, put a great deal of pressure on the then Minister

for Planning and Environment who in turn put pressure on the Council of Ministers and for a number of reasons ... and I think that pressure was conveyed to Mr. McDonald and, being the man he is, and being the reasonable man he is, as the Deputy of St. Martin said, he decided not to go ahead which was hugely unfortunate. The references that the Minister for Home Affairs talks about: "getting himself tangled up in debt" is the effect of these intimidatory reports and letters that came from the Environment Department. I think that as politicians, we in this Chamber, really from a moral point of view, have got to take some responsibility for this. This is just a horrible place to be for States Members today because wrong has been done. A decent man thought he was doing the right thing. As it turned out, there was a consequential series of disastrous effects on his life and I think, given our responsibilities as public officials and States Members, we need to fix this boil. I also agree with Senator Bailhache that the reaction to what happened at the time was disproportionate. It should not have been cancelled. Mr. McDonald should have gone ahead but in some ways he was intimidated by some of these horrific environmental reports which probably could never have been enforced or certainly prosecution could not have been enforced. That is all I really want to say. I will support Deputy Martin. I hope colleagues do and let us close this unfortunate chapter on the 2007 Battle of Flowers and the attempt at this world record for a fireworks display that never took place.

3.1.3 The Connétable of St. Martin:

It is difficult to follow Senator Bailhache and Deputy Power. I am not a Mason, I will say that at this point, but I will declare an interest. I have known Mr. McDonald for some 40 years possibly and I suspect probably that every Member in this Assembly knows Mr. McDonald one way or another. If by chance there is someone that does not know him in this Assembly, let me tell you that you would not find a more sincere person, a man with a heart of gold and who, of course, loves fireworks. He must love fireworks because he slept with them for 2 years. Mr. McDonald likes to entertain the public and he has done so for many, many years but not just entertaining the public but as a fundraiser too. Some might describe him as a risk-taker and I can understand that. However, you have got to remember he was one of the Island's bomb disposal officers and I worked with Mr. McDonald on the bomb operations, and you do not hold that role if you are a risk-taker and I have got many examples I can speak to Members later about that. He gets things done. He does not sit back and let things happen. He gets on and does them himself. We have seen the risk assessment that accompanies the package at appendix 3 of the comments paper. He prepared that himself and got it ready. He is a man of principle and the success that he had hoped for did not happen. I think most of us in the Assembly today would think that the event's plans were progressing very well and when he had gone public, he explained to the public what was happening. He had made his vision known. He had liaised with what he believed to be every relevant body and even received what appeared to be E.D.D. (Economic Development Department) with £2,000 being set aside for the event. There are so many permits that you have to have, not just for this type of event, and I came close to it earlier this year with a permit so we had certain things in our Parish, and we did not know but we needed other permits that were from a different department and that was a problem that he encountered on this occasion. The comments paper we received yesterday from the Minister outlined a number of other issues that were taking place at the same time that the public were not aware of, issues behind the scenes. I should say I think it is a shame that we received the papers only yesterday when we turned up yesterday morning and although there was only 5 or 6 pages at the beginning and the remainder I had already managed to download, the 150 pages of the report I had downloaded previous to that, but we only had those on our desk yesterday morning and we all know now that things were indeed going wrong and they got worse after the event was cancelled. I do not want to support giving away taxpayers' money for no obvious reason. However, I feel that someone has been hard done by and then surely we have a duty to do that. I think there is some disagreement as to the amount of support and advice that was given before the

event, at the time of the event and since the event. I do not know what would have happened if the boat would have turned round and taken the fireworks back to the U.K. but hindsight is a wonderful thing. I know the Deputy of St. Martin has put a £50,000 limit and he has this morning explained how he has reached that figure. He may well have decided to withdraw a sum of £4,700 less for the actual disposal of the fireworks that has been paid for. I have spoken to Mr. McDonald this morning but I am not sure if the Deputy of St. Martin has as to what happens in the future after today's decision, whether this matter goes further, and that is the worry that Mr. McDonald will find himself in even further ... well, not further debt but further expense. It is a dreadful nightmare escalating by the day and I cannot really see a way out. This morning option 2 on page 7 has been mentioned several times in speeches for the comment of the Minister for Home Affairs, and I put them "helpful" yesterday. When I was writing something, I put them they were helpful. I think it is not so much helpful as they are interesting. I think it is more than a tangle ... the words "tangle of his own making" because of his past record of service in the Island we decide to give something. I think it is far more than that and I think the comments of Senator Bailhache this morning have been very pertinent to the debate and I think that is the main point that we should take from the debate when we decide to vote one way or the other. That element is very important. I will be supporting the proposition and I thank Senator Bailhache for his views as the former Bailiff.

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

I would like to declare before I say anything more that I do know Mr. McDonald and he very kindly proposed me in the first of my 3 elections so I just wanted to make that point. I thank Senator Bailhache for his speech this morning. I think he laid out very clearly some of the circumstances around what happened and I think what did it for me is, if I have understood correctly, the Bailiff's permit being issued on 2nd July after Mr. McDonald had gone through the rigmarole of providing all the reports and everything else that he had to supply with risk assessments and various other things. My understanding is that the rockets arrived in the Island on 24th July and from reading the report, that is my understanding; the rockets arrived in the Island on 24th July which was the date the first report from the Environment Department was received by Mr. McDonald followed by another one on 27th July. It is very easy to see why Mr. McDonald would feel that in the circumstances, he really could not go ahead with this project. I do totally understand that and, like other Members, I have to say in all the years that I have known Mr. McDonald, he is a very principled man of the highest integrity and the whole saga over the last 6 years has left me with a very uncomfortable feeling in my stomach that the States of Jersey has somehow let this man down and I do believe we have. As Senator Bailhache mentioned in his speech earlier, I have been looking through this document from the Home Affairs Department and I was looking at page 108 and it was from one of the charity organisers to Senator Ozouf basically saying from a Jersey Side by Side point of view: "The project represents an exciting opportunity to do several things", and he goes on to say: "raise all the money we need for our partnership project with the Red Cross in Pakistan where we will aim to build a girls' school in a town devastated by the 2005 earthquake, bring the entire Island together in a community fundraising effort and to gain national and international exposure for Jersey's continuing efforts to help communities less fortunate than ours." Mr. McDonald was doing this for charity, not for his own benefit, and I would appeal to Members to seriously consider supporting the Deputy of St. Martin's proposition. I feel a wrong has been done and by doing this we can right this wrong. Mr. McDonald has suffered greatly over the last 6 years not only financially by losing the family home but emotionally as well, and I think morally it is the least that States Members can do so I would appeal to all of you to seriously consider this. Something has gone wrong. As the Deputy of St. Martin said in his opening speech, he is not looking to apportion blame but he feels that this would be a fair outcome to a situation that quite frankly has gone on for too long.

LUNCHEON ADJOURNMENT PROPOSED

The Bailiff:

The adjournment is proposed so we will reconvene at 2.15 p.m.

[12:45]

LUNCHEON ADJOURNMENT

[14:15]

The Bailiff:

I do not think that we are quorate at the moment. Perhaps I could recall Members. We are just quorate now. Very well, I have seen next the Connétable of St. Lawrence.

3.1.5 The Connétable of St. Lawrence:

I stand to speak as one of the Members who voted initially to support the inquiry to which the Deputy of St. Martin has referred and having read the findings of that inquiry, my feelings were that it showed that we had gone through shambolic administration process and, in my view, few, if any, parties emerged with credibility from it. We have heard today and we have read how Mr. McDonald has incurred emotional turmoil for 6 years and not only emotional turmoil but he has also incurred huge financial debt during this very sorry saga. In my opinion, the Deputy of St. Martin has been quite astute in restricting his request for compensation, if decided upon, to costs incurred by Mr. McDonald only to August of 2007, and that point I think has really helped to decide me towards the way that I am going to vote on this proposition. We have heard today that no one has been trying to apportion blame but what I could not see from the documents that I have read is, without apportioning blame, knowing who was responsible for this. I have not been able to discern that so my question is, was the tangle referred to by the Minister for Home Affairs in his report solely the responsibility of Mr. McDonald and if not, how did others contribute to it? I know that the Minister for Home Affairs has not yet spoken in this debate. Based upon what I have read and indeed what I have heard today, particularly the comments from Senator Bailhache about how the Bailiff's permit is approved, at the moment I am minded to support this proposition because I do feel that as an Assembly there are times when we have to make decisions based on our moral responsibility and I think we do have a responsibility in this case. I look forward though to hearing the words this afternoon of the Minister for Home Affairs.

3.1.6 Deputy R.G. Bryans of St. Helier:

I am very pleased to rise behind the Constable of St. Lawrence because she has articulated quite well some of the thoughts that I had during this debate. I should probably state that I am not a Mason by the way. I applaud the Deputy for grasping this particular nettle because I think it has been very difficult. All of us have talked about the emotional content of this and have seen it previously when myself, as not a politician but seeing it through the press, and I felt extremely sorry for this individual. But I have read both papers and have formed the opinion that although this event was created for charity, it was an opportunity for grandstanding and breaking a record, a personal choice and, post that, he had become engulfed in a financial quicksand. But Senator Bailhache has analytically stripped it back and identified the key point, the tipping point as he talks about it, the issue of the Bailiff's permit of which we have now all just been handed a copy. It is that permission, as the Constable was just talking about, that suddenly shifts the moral responsibility. So I do not seek to blame. I want to solve the problem. Let us put this to bed, make recompense and move on. I will now support the proposition.

3.1.7 Senator B.I. Le Marquand:

It may be that I can assist in bringing this debate to a very speedy conclusion. I have passed out to Members of the Assembly a copy of the relevant Bailiff's permit, which was referred to by Senator

Bailhache this morning. That Bailiff's permit, of course, does not contain any conditions relating to permissions from other departments. The reason for that, and I can say this on the authority of having visited the Chief Officer of the Bailiff's Chambers during the lunch hour, is because it is, in his view, not within the remit of the Bailiff's Panel to consider environmental issues. It was not then and it is not now. Its sole remit, and its constitution is made up for this purpose, is public safety and, as I say, its constitution reflects that. Now, it may be that in future that that may need to be widened in order to consider environmental matters as well. My approach has always been that I wanted to put the fullest information possible before Members so that they could make up their own minds. So I reject the criticism of me of putting in a very lengthy report, most of which was already in the public domain, because that was the intent and indeed, it is ironical that during this debate that people have made detailed reference to different parts of that. I do not see how Members could reasonably have made a decision without seeing that information. I think my position is this now, and perhaps I want to offer a third option. I have been criticised, perhaps justly, for only suggesting there were 2 options open to Members. Perhaps there is a third option and I sense perhaps that this is the direction that the mood of the Assembly is going. The third option that Members might be tempted or might wish to follow would be that Members, while accepting that there was no failure on the part of any individual department, feel that the system as a whole let down Mr. McDonald and that that can properly be reflected in accepting this proposition. I suspect that that may accurately reflect the mood of the Assembly. I have done a great deal of work on this with a view, as it were, to ensuring that Members knew exactly what happened and what did not happen. The position, I think, of the Environment Department was, of necessity, difficult in relation to this matter. I think it has to be remembered by Members that the Environment Department does not grant permissions. If you wish to do something, you do not go to the Environment Department and seek permission to do it. The way the Water Pollution Law works is entirely the other way around. If you do something and then it goes wrong so that there is pollution, then you are liable to be prosecuted and so the Environment Officers were facing a difficult position. It is clear from their lengthy report that they were not that happy with what was being proposed because setting 5 and a half tonnes of fireworks up into the air over a tidal bay was always bound to have some sort of effect but nevertheless, at the end of the day, it is also clear that they did not attempt to stop Mr. McDonald. They did not say at the end of the day: "You cannot do this." Indeed, the final report which they produced, the 24th July report which they produced, makes it clear that although they are not particularly happy with it, they are taking a pragmatic view that it can go ahead provided that the necessary cleaning-up operation follows from that. That is the whole purpose of it. It is unfortunate that that report arrived quite late in the day but indeed, if Members have tracked the sequence of events, they will see that as late as 10th July, which was sent to the department on 16th July 2007, that Mr. McDonald was slightly changing the parameters of what he was doing and, in fact, that report suggests there might be further alterations in relation to this. I think that they therefore had the same problem, if I can put it this way, as I had in relation to the getting out of the comments document that matters were still moving and they therefore did not want to produce things in bits and put it out as a whole. I personally like Mr. McDonald, have always had a good relationship with him, and will be quite happy if the States votes him the money today, but I cannot accept in any way or form that there was fault on the part of any particular department, not even on the part of the Bailiff's Department because, as I say, their role is simply looking at public safety issues. But nevertheless, if Members as a whole take the view that there was a systemic failure, that he was let down by the totality of the system in some way and wish to vote in that way, then that is a perfectly reasonable decision.

3.1.8 Deputy J.H. Young:

I will try and be brief but I do need to deal with what has been said about the role of the Environment Department in this matter. In a previous life, I have had to deal with many cases of *ex*

gratia payment. In all cases, one is looking for an element of fault. That judgment is never an absolute matter. Invariably it is a question of contributory factors and apportioning, if you like, blame is difficult but nonetheless there has to be an element somewhere where the person, the individual, has been let down. My starting point on this before I saw Deputy Luce's proposition, was one of sympathy for Mr. McDonald because I had certainly heard rumours that the reason why things had gone on was because there had been some unreasonable intervention at the very last minute on the environmental factors that persuaded Mr. McDonald that he should not go ahead. I do not think anything Mr. McDonald has said in public says that but, nonetheless, rumours go around and I was anxious to see the facts. I was delighted when we saw the report that has been circulated, the re-circulation of R.113, which gives us a lot more thorough information. I think when I read that report I saw quite clearly that when the proposal first came forward to Environment in April 2007, well before July, the Environment Department had responded by asking for information which resulted in a risk management report produced by Mr. McDonald himself on 20th May. The whole purpose of that was to show what would be necessary in order to minimise any risks from putting 1.8 tonnes of chemical into what is a sensitive environment, an environment where we know there are commercial interests and so on. So I think it is absolutely right that the Environment Department would raise those issues and I am very pleased with what the Minister for Home Affairs has said. I want to defend that group and say that I do not believe they went to extraordinary lengths; O.T.T. (over the top), as it was suggested this morning and therefore they were doing their job. But the thing now hangs for me on this latest document that we have just been given. I am very pleased that we have it because I asked the question this morning, was there any reference to the requirements, as I would expect there to be, to all other consents under all other laws to be obtained. I see there is nothing in this document and I think that shifts the whole thing now in the balance of Mr. McDonald. So I think in a perfect world, we would have had all the information, we would have reached that conclusion sort of before we came here but we have had to arrive in it *sur-le-champ*, as it were, but I think that is where I certainly finished up. It is certain that Mr. McDonald has been a victim of the collective States not functioning as one body but I absolutely want to put on record, as I have done, my defence of the Environment Department. They are doing their job and it is quite right and proper that they do so.

[14:30]

3.1.9 Deputy R.G. Le Hérisier:

Deputy Young has taken some of the wind out of my sails. I came into the House very reluctant to debate this because I felt the proposer, although he has done an excellent job, should at least in my view have analysed the situation. It is very hard to say to the public: "Look, we have ended up in a mess. Somebody has suffered as a result and therefore we are going to give an *ex gratia* payment." There are many people in that situation unfortunately and we do not end up as a 51-person sort of *faux* court of law every time and I think that is, to me, the real issue. I was only prepared to change my mind on the grounds that Deputy Young has alluded to and I think if the Minister for Home Affairs, as I sense, is shifting his ground on the basis of the evidence he has seen, I think it would make much more sense if we were to concede in a specific way what has gone wrong and then the public would see that there was a clear line of reasoning and we were not just responding in some emotional fashion. I think they really need to feel, in my view, for this case to be sustainable that yes, we did go wrong. Now, the question will arise and, in a way, I think we have all possibly got the answer because of the terrible financial stress to which the gentleman was exposed. The question would arise, well, if the States was culpable in the way it handled this and it misinformed an individual, why were we not sued as a body as a result of that misinformation or as a result of that incorrect decision-making or misleading decision-making or whatever? Why were we not sued? That would also be an issue to consider. As I said, it could be argued the gentleman was in such financial hock that moving ahead with legal action with a question mark over it obviously

until the matter had been resolved was simply not possible. Yes, we have seen the Bailiff's permission but, if I may say, I think we are going to have to revisit that whole system. I know it has changed a lot. We did have a discussion about it in the debate recently about where should the *loci* rest for public entertainment and I know it has been a very difficult issue to administer. But I was looking to Senator Bailhache's speech to be a game-changer and certainly in terms of some individuals, it clearly proved to be that but I wanted to deal with the issue that when people go when they present their cases, Senator Le Marquand said, on health and safety grounds. The grounds that the Environment Department picked up were health and safety grounds, and that was after I imagine a person had got their permit and thought they had been cleared. That is certainly the impression I get. They thought they had been fully cleared once the permit had been granted and that subsidiary issues would not arise thereafter and perhaps the Minister for Planning and Environment may wish to address that issue. So to go round in a circle, I have no problem whatsoever in conceding the case if it can be clearly demonstrated either because our systems were dysfunctional or because clearly people were misled and they were led to believe that they had got a full permission when it appears they had not got a full permission.

3.1.10 Senator F. du H. Le Gresley:

To quote from one of the documents in R.113: "Forty years to build a reputation and potentially 40 seconds to lose it." Those are the words of Terry McDonald and it is true. That is what has happened to Terry McDonald. I took a great interest in this case when I was first in the Assembly and I spent a lot of time when the then Deputy of St. John, now Constable, produced his report, particularly with the papers that accompanied that which, of course, are not in this Chamber today and unfortunately I have not still got them. There were discrepancies in the chain of events that were described in the Chamber on that day and I have in front of me the Hansard of that debate and I particularly said that I do feel that there were gaps in what was being presented by the Deputy, albeit not in any attempt to mislead the Chamber. I asked for a committee of inquiry. Although the 3 Ministers have done their report, and a very thorough report it is too, I did feel that we would probably get to the situation which we are today where we would feel that we would want to discuss the issue of compensation or *ex gratia* payments and that it would be far better if a committee of inquiry was directing us as they did with the Reg's Skips issue as to the level of compensation. I would also remind Members of the debate. Some of us were there and others were not, but the then Deputy of St. Martin made the point that a proposition from the then Deputy of St. John asked for the States to move in the part (b) to deciding on the level of compensation and the Deputy of St. Martin made a very valid point that we had to prove that there was fault and Deputy Le Hérissier has just made that point. We have to prove that there is fault if we are going talk in terms of compensation and he would have preferred - this is the former Deputy of St. Martin - that those words about compensation had been removed from the proposition. I have fluctuated, if that is the right expression, from wanting to do something for Terry McDonald and to knowing what are our responsibilities as States Members to the public. I think this morning we heard a very good speech from Senator Bailhache. I think some of us did not realise perhaps the importance that Mr. McDonald probably placed on the permit from the Bailiff's Office. I do believe that he saw that as a seal of approval and therefore felt that he should therefore progress to purchase the rockets in his own name, take out the insurance in his own name and I can see that many of us in that situation would feel that with the Bailiff's Permit, here we go, rocket launch attempt record on the Battle of Flowers. Where I was perhaps concerned was, and I am going back to how I started my speech, 40 years' experience. So this is a gentleman who has conducted fireworks displays for many years for charitable causes, Battle of Flowers and he is known as "Rocket Man" so we know the valuable things he has done for our community. In 1997, he had a world record attempt and he broke the record and fired 39,210 rockets precisely simultaneously from St. Aubin's Bay to obtain the record and it is a fact, and it is reported in the papers, that there was pollution of the controlled

waters which includes the seabed between the low and high tides. I think that is the right expression. I did look up the law but I am not going to check on it now for the benefit of the speech. So what was the pollution at that time? Well, mainly it was because of the type of rockets that were used had plastic red caps to presumably - I am no expert on rockets I would stress - to contain the explosives and these, according to the reports, were still being collected some 6 weeks later from the beaches. So there was pollution but the key fact here, and this is perhaps something I have not really taken in because I repeat, this is an experienced pyrotechnic expert. In 1997, we did not have the Water Pollution Law. It came into force in 2000 so whatever happened in 1997 was not water pollution and it would not have been prosecuted in the way that Senator Bailhache described. So I would submit that Terry McDonald, when he came to decide that he wished to regain the record in 2007, probably was not aware, as he should have been perhaps, of the Water Pollution Law and his responsibilities under that law. Now, Senator Bailhache quite rightly has pointed to the 2 reports from the Environment Department towards the end of July of 2007. However, to be fair to the department, and I do wish to draw to Deputy Le Hérisier's attention, the department were doing their job. On 14th May, they wrote to Mr. McDonald in response to his original suggestion that he wished to try to regain the record and combine it with a charity event and that letter is appendix 2 of the report and it is dated 14th May and in that letter, they draw the organiser's attention to the Water Pollution Law and also the Waste Management (Jersey) Law. So I would suggest to Members that Mr. McDonald, if he was not already aware of those 2 pieces of legislation, should have made inquiries as to what his responsibilities could be, given that he was going to launch certainly twice but nearly 3 times the number of rockets given his experience in 1997 when there was pollution. Now, we do know, and this is because he worked with the Environment Department at their request, that the types of rockets that were purchased from China did not have the plastic red caps that had caused the problem in 1997, that he had, and in agreement with the Environment Department, made strenuous efforts to put together a team to collect the debris as it fell from the record launch to ... I think he intended to string fishing nets across the part of the beach he was using. He had timed the display to fit in with movement of the tides. Low tide was, I think, just after midnight so he had about 2 or 3 hours to try and with his team of volunteers clear the beaches. So the Environment Department was absolutely willing and made it quite clear that they would assist him in all ways possible to put on the record attempt. So where are we now and where am I now, because I am going to express my view now. I came to the Assembly this morning thinking very much like some other speakers have said: can we really do this? In my mind, there is absolutely no question this is not compensation. I do not believe States departments have done anything wrong. After all, we appoint these departments to administer our laws and if they do not point out the laws given the amount of debris that would fall from such a record rocket attempt, they would be failing in their responsibilities and we would be very critical of those departments. I do not believe there is fault but, and this is a big but, the Deputy of St. Martin is asking for an *ex gratia* payment and that is different. That is saying looking at all the facts and the fact ... the key one I think we all need to take into consideration, is that Mr. McDonald did not organise fireworks displays, nor did he intend the record attempt in 2007 to be for financial gain. He was doing it for Jersey, he was doing it for the charity Side by Side. He had been encouraged by the Economic Development Department at the time to go ahead with this launch. He did believe he was acting in good faith and on the basis of his honourable way, he has dealt with his creditors to the extent that he has repaid the charity Side by Side for the money that they gave him for the insurance premium. I believe we have a duty to honour the request from the Deputy of St. Martin to grant this *ex gratia* payment.

3.1.11 Deputy M.R. Higgins:

First of all, let me just say, in answer to Deputy Tadier, that I am not a Freemason. I have been asked but I have not joined and it is not a point that I am against Freemasons. It is just not me.

However, what I would say is that I am an event organiser and Deputy Lewis is an event organiser and others have and we have all had experience of meetings with the Bailiff's Panel and departments, and what I would say is that not everything is contained in writing and put down there. There is an awful lot that goes on behind the scenes that people do not know and there is a lot of tension at various times as well. What I would say is that I have known Terry McDonald for many years. I have found him to be totally honest and reliable and principled and I remember saying when this debate first came that success has many fathers and failure is an orphan, and event organisers do feel that is the case because you are left out and you are hung out to dry. You will get no support from official sources. They do not really want to support you.

[14:45]

They want to claim credit and they say it is all wonderful and everything else but if anything goes wrong, you are on your own. Terry McDonald, to my mind, has done this Island and a great many charities a great service over the years and I have no doubt that this House would be doing the right thing by supporting the proposition and making this payment and I also believe the vast majority of Islanders would also support what we are doing. He has been the victim of, I think, a major injustice and it is time that we correct that injustice. Thank you.

3.1.12 Connétable L. Norman of St. Clement:

I too can declare that I am not a Freemason, I did not wish to be a Freemason but what really annoys me is no one has ever asked me to be a Freemason. **[Laughter]** But on this proposition, I have to confess that I am very uncomfortable with this proposition. Yes, I am absolutely sure that Mr. McDonald is a good, honourable and honest man and I am prepared to accept totally what Senator Bailhache said this morning, that he is also an expert and knowledgeable in pyrotechnics. But if that is the case and he is an expert and knowledgeable, then he must have been aware of the rules and regulations regarding pollution and environmental matters and if he was not, then unquestionably, as I think Senator Le Gresley said, he should have been because he is an expert, knowledgeable and experienced in creating large firework displays and indeed previous record attempts. Re-reading the 2011 report, there is no question I think, and it has never been said differently, that the 3 Ministers - Home Affairs, Economic Development and Planning and Environment - were all fully supportive of this world record attempt. Every encouragement and support was given by the officers and departments that those 3 Ministers represented. There is no doubt that he was aware of the reasonable steps needed to mitigate the risk of pollution but in the report of 2011, which has never been criticised, it was Mr. McDonald who chose not to proceed with the world record attempt. It states quite clearly in there the reason he chose not to attempt it was nothing to do with advice given by the Planning and Environment Department but he chose not to proceed apparently because of the lack of support from the public. If there was a lack of support from the public, it was very likely this attempt was not going to succeed in the way that he and others had hoped. On that basis, if the States decide to use taxpayers' money to make an *ex gratia* payment - as it would appear they are going to - then so be it but I, for one, will be very, very uncomfortable not only if that was the particular case but as to what sort of precedent is it going to.

3.1.13 Senator L.J. Farnham:

I remember the period of time very well. Not only did the organiser have political support but there was a great deal of public excitement as well. I may be wrong but I am pleased at most of what I was going to say is being said already. However, to help me decide this, I know a lot of people have alluded to and provided glowing character references for Mr. McDonald and what he has done, but I think we should remove the personality from this because regardless of whether it was Mr. McDonald or anybody else organising this event, the organiser of the event, I believe, was not treated properly. So by removing the personality from it, I felt I was able to have a really good and

independent look at what had happened and, as I have said, not only was there political support, there was political encouragement from senior States Members and of course we all would have basked in the glory of Jersey's success had the event have been carried, and I wish the organisers would have gone ahead and done it. Senator Bailhache alluded to that but it is too late now because with a bit of luck, some of the 5 and a half tonnes of fireworks might have sprinkled all over the thousands of tonnes of green seaweed that adorned the base and would have helped clean all that up at the same time. No, but of course I am not making light of the potential for environment damage. The only shame is that it has taken so long for it to get here. There has been a lot of hardship along the way and, as Deputy Power alluded to, this has been festering for far too long so it is a shame it has taken so long. I will be supporting the Deputy of St. Martin's proposition. Thank you.

3.1.14 Deputy J.A. Martin:

I did not really intend to speak but as the debate has gone on, I am probably like the Constable of St. Clement ... he is my Constable and I am forgetting where he lives at the moment. I am very uncomfortable with this. Reading the report of the proposition - and I have not, admittedly, read everything that has been put in from the Minister for Home Affairs and the original support - but the way I read it ... and I prefix that I do not think Mr. McDonald has done anything wrong except by, if I can say, in dealing with the States department, he has absolutely been very naïve because in the last 14 years - and I am told of this by other speakers - he has dealt with and done this type of thing for many years because you get things in writing. You get agreements. I know what Deputy Higgins said but you learn. I was going to say: "You get burnt once." What I wanted to ask, just by what else has been said, in my little brain, I look at this like a gamble that did not work out. On page 5, I have got 5 bits of money that were outlaid by Mr. McDonald. Now, presumably, he had an agreement with a charity because on page 3 of the proposition in the penultimate paragraph, it says: "Mr. McDonald's efforts back in 2007, had they come to fruition, would have created thousands of pounds for the Jersey Side by Side" *et cetera*, and great publicity for Jersey and everything else. So my question is who originally was paying this money? Obviously, there was an agreement because it did not work out. I am seeing it did not work out. So Mr. McDonald did not have the money upfront because he had been paying it off. Who, as an astute businessman and somebody who is dealing with the States, should be ordering anything where someone is not guaranteeing it? So did Side by Side guarantee it? I am sure the Deputy of St. Martin will have that information for us because it was an event for Side by Side and they, very kindly, funded the insurance. The difference of: "Yes, it was going to be an event that did raise thousands" is, again, subjective because I do not know as we get different reports. The Battle of Flowers entry money is what the Battle of Flowers entry money is. Were people going to pay extra to see this world record attempt? To me, really reading it more, people have been saying: "It is not compensation" so maybe Senator Le Gresley could live with it because we call it an *ex gratia* payment. It is not money and the case has to be made. This is where, going right back to this morning, we had a very learned judge who is now a Senator go through the case piece by piece and he said: "The case had been made" basically. With the rest of us, it is how we find ourselves on P.P.C. (Privileges and Procedures Committee). I am not equipped to make court judgments and pay out money, and I am certainly getting more and more uncomfortable, and, yes, the turning point may have been we have one judge in here who has put that part. Normally, in a courtroom, you have defence, prosecution and the judge sitting and guiding on points of law. I have asked the Deputy of St. Martin for some really good points. I want to know why this money was put up if it could not have been afforded unless there was an agreement with the charity that was involved and how much money? It says "thousands." Who has researched this? Really, that to me is not the point though. Even if I read every single bit of this, am I, as a States Member, qualified to judge and make *ex gratia* or compensation payments of taxpayers' money to a member of the public? I am feeling very, very uncomfortable and, at the moment, I am not convinced I am going to support this proposition and I

will listen very carefully. My mind is not made up, whatever people may think. I need to be convinced that this was not just a gamble and we may have not helped the States departments but with gambles, you put your money on, you take your chance. You do not always win. Thank you.

3.1.15 Senator P.F.C. Ozouf:

I will not speak for very long because my voice, as Members can hear, is not going to hold out for very long. This is I think, from memory, the first time that I have addressed the Assembly on this issue in any great extent. I was the Minister for Economic Development and I would ask Members to turn, if they have got their report, to page 106. I am speaking as a Back-Bencher. I want to be clear that, from a Minister for Treasury and Resources' point of view, whatever the will of the Assembly, the Minister for Treasury and Resources will make a decision. We are not going to start second-guessing it. This is an *ex gratia* payment so I am just simply informing Members that the request is obviously for the Minister for Treasury and Resources. If the Report and Proposition is successful, then the *ex gratia* payment will be made without, I do not think, any further investigations or anything. That would not be appropriate. I was the Minister for Economic Development and, as Members can see from page 106, I was enthusiastic with the organisers of Side by Side and perhaps Members will say: "Characteristically enthusiastic." We wanted to see a higher-profile end to the Battle of Flowers. The former Assistant Editor, I think he was, of the *J.E.P. (Jersey Evening Post)* - he is named in the thing but I will not name him as Members know who he is - approached me and, indeed, approached the then Minister for Planning and Environment, former Senator Cohen, and asked whether or not we, if it came to the Economic Development Department, would be supportive of an initiative that would, as the email very clearly says, bring the Island together. At page 208 and 209, it is said by the Assistant Editor of the *J.E.P.* who was obviously acting as the representative of Side by Side: "An important event" which, on page 108 says: "Would raise money for charity." The charities are set out there, a Pakistan school and other charitable endeavours. The Economic Development Department looked at the issue, I took advice and I think Members can see we were very careful to set out exactly the basis on which the support was given. It was clearly up to others to do proper risk assessment. In fact, my email asks for a risk assessment and to ask what risks have been taken, *et cetera*. The Economic Development Department supported it, we gave a grant and we were enthusiastic. We could not of course take a judgment on other matters. I was not qualified and my department at the time was not qualified to make an assessment as to the environmental issues or the other side. The question I had in my mind was not whether or not there was going to be any debris from the rockets; it was carbon offset. Those were the questions that were made. I have no doubt that all of those political individuals who were involved acted upon advice and were well-intentioned and supportive in relation to what was going to be an exciting project. I will also remind Members that I got into difficulties with other potentially exciting aspects of the Battle of Flowers in relation to other attempts to make the Battle of Flowers work, but history records all of those things better than is the case of me rising in the Assembly to support it. But of course we wanted to make things work. People acted in good faith and they wanted things to happen.

[15:00]

That is what Ministers should do. They should say yes to something but handover responsibilities to officers. Perhaps surprisingly, I was not involved in the preparation of the report, from what I can recall, of the 3 Ministers. Maybe I should have done, maybe I should have taken part in this original report and so my comments about this are not necessarily paper-based in relation to a forensic judicial type investigation of this. But what I will say is this. Something went wrong. There was, at best, a misunderstanding. At worst, there was a problem. I am not pointing a finger to any individual. That would be wrong. Clearly, Ministers carried out an investigation and they have found no fault in the operation of their departments. Clearly, there were some individuals that

I recall that did not want a project that was going to be environmentally impacting, if I may use a word. To address the Constable of St. Clement's issues, as I recall, the rockets were not sold because environmental issues came higher up the consideration and the charity and the organisers could not sell the rockets because there were these concerns about the environmental impact. Should these issues have been known about? Well, maybe. Certainly the organisers were attempting to raise money. As far as the individual is concerned, it was a "not for profit" initiative. I do not believe that any profit was being taken out of it. It was all done with all best intentions. Clearly, there was a misunderstanding to some extent and I have always been uncomfortable about that. I have always been uncomfortable. Perhaps reliant, perhaps it is naivety, perhaps the organisers were overly reliant upon permissions and they should have known more details of risk assessments and others, but there were other conflicting issues about some people who clearly did not want the rocket launch to happen or they wanted the risk to be significantly limited. We cannot undo all of that. The fact is that what has happened happened, reports have been issued and this issue has gone far too long in relation to investigation. In fact, the time that it seems to have taken to investigate the officer might have been better. Sometimes when you realise that there is a problem, sometimes an early decision is best taken. If lessons can be learnt, lessons clearly ought to be learnt. Perhaps it will surprise Members but I did not hear all of the remarks of Senator Bailhache but I know his views because we discussed it and we discussed it at the Council of Ministers, and I have to say that I am in a very similar place to Senator Bailhache in relation to this issue if this brings to a conclusion what we could spend an awful lot more time doing; committees of inquiries and spending more time on investigations. This is not compensation; this is an *ex gratia* payment. It is a series of exceptional circumstances of the like of which in nearly 15 years in politics, I have never seen anything else. Well-intentioned, good people with the best attempts trying to achieve something good and it went wrong. Things go wrong in life sometimes. Sometimes in this Assembly, we are very keen to point the finger and to say that that is wrong and we hang people out to dry. We have got an organisation which is terribly risk averse. We do not like people taking risks. I do not mean this in any disrespectful sense but we want an organisation in which risks do need to be taken and mistakes will happen. We have to accept that mistakes will happen and sometimes we need to deal with the consequence of when mistakes happen and, for that reason, I will be supporting the *ex gratia* payment. I have always felt that there is something wrong with this issue to some extent and that there was a wrong that needed to be righted. I only make the comment about the handling of the issue at the time the event was cancelled. I would prefer not to make any comment in the subsequent handling of the issue by the individuals concerned later. I think that it is probably best to have a veil drawn over it. But this can be solved by the acceptance of the Deputy of St. Martin. The Deputy of St. Martin has spent a long time on this issue. I know that a couple of other States Members have taken a great deal of interest in it. They probably know more about the circumstances than other Members of this Assembly will ever do and so I trust the judgment of the Deputy of St. Martin to a great extent. He is a fair individual and he came to this with an open mind and he did also have the courtesy to speak to me about it, and so I am going to be supporting the Deputy of St. Martin's proposition. I think this puts an end to a sorry tale, something that was well-intentioned but went wrong and so I will be supporting the proposition.

3.1.16 Deputy R.J. Rondel of St. Helier:

First of all, could I just declare that I am not a Freemason either but I am considering joining the Jersey Dog Club, which Terry McDonald is a member of. **[Laughter]** I hope that allows me to carry on.

The Bailiff:

I realise that Members are doing this in jest but it is really not necessary.

Deputy R.J. Rondel:

One of the primary reasons for putting myself forward for election was to represent the people of Jersey and, by this, I specifically refer to the smaller person who is too often overlooked in favour of the preservation of the *status quo*. In this case, I refer to Terry McDonald. In 2007, 6 years ago, I believe he was mistreated by this Government and having met him and collated the evidence, I will be offering the Assembly reasons as to why he should be compensated as per the Deputy of St. Martin's proposition for the trouble that we, as a Government, have caused him. I find it disheartening that it has taken 6 years to get to this point. However, this does not mean that time has healed the wounds of Mr. McDonald. He is due remuneration and we cannot bury our heads in the sand any longer. In this speech, I will be referring to 3 key reasons as to why we should support this proposition. The first is with regard to our duty of care as a society and, more importantly, as a Government. This tale is of a man who had long retired from the firework industry but had been persuaded to return and gain a world record because it would generate a substantial sum for charity, namely Jersey Side by Side. Although the launch failed to take place, it is my belief that we should bestow upon Mr. McDonald the same goodwill that he highlighted when he was organising the launch voluntarily. The second argument that I shall make today is admittance of responsibility and the fact that it is our responsibility to acknowledge any mistakes and make amends. I shall endeavour to point out to you where we have made mistakes in the hope of us, as an Assembly, being able to recognise them and finally rectify them. I have added to my speech the large firework display on 4th June 2012. I feel that is a poignant indicator of just how badly the States judged Mr. McDonald's rocket attempt and I will explain why in due course. The report demonstrates the sequence of events which occurred prior to the supposed rocket launch. I am hoping that, from this report, you will be able to see that Mr. McDonald did everything possible to prepare for the event and inform the interested parties of his intentions. Indeed, Mr. McDonald received permission to hold the event from your very own Bailiff's Panel, and I believe that I am correct in stating that comments were expressed at just how detailed the risk assessment of the launch was. The risk assessment, which Mr. McDonald himself produced, comprised of 57 pages. It highlights the extent to which all eventualities were trying to be covered and the meticulous nature of Mr. McDonald, a man who left very little to chance. Indeed, it was Mr. McDonald himself who introduced the very early warning system for all firework displays in Jersey in the 1970s. This is not a man who was reckless and a novice at co-ordinating firework displays but he is a trusted figure in our community. The period from where the timeline in the report stops and today has been a very difficult time for Mr. McDonald and his quality of life has been seriously hindered as a result of our actions to prevent this launch just hours before it was due to begin. Whether we look financially at how this sequence of events has nearly bankrupted a man or if we look at his social conditions, such as having to live in a caravan for such a long time to protect the rockets, only for the States to dispossess him of them and leave them unmanned and open to tamper. Whichever way we look at this, it is a sad story. My argument is that we have a duty of care to this gentleman, in fact we have a duty of care to all Islanders, but it is in situations like this where the little man needs our support in the same ilk as the Reg's Skips' case as well as individuals involved in the First Tower takeaway saga. Where we have done wrong we must hold our hands up and compensate the Islanders who we fail. If I move on to my second point, the House may begin to see how the actions, and when I say "our" I infer to particular departments within the States rather than the Assembly itself. It is clear that Mr. McDonald was placed in this situation because perhaps an official had cancelled the event at the eleventh hour and an environmental report produced incorrect information that made it impossible for Mr. McDonald to resell his rockets or to reuse them as he had planned as a backup. If we read a response to the world record launch attempt we see that an Associate Professor of Physical Chemistry at Plymouth University has outlined the flaws in the report of the Environment Department. In the summary and conclusion we can see just how damning this response is to our very own report on the rocket launch. It states that: "Given the information that the authors presented in the paper, the only reasonable conclusion that could be

drawn was that the launching of the rockets as a one-off event posed no reasonable threat to the environment of St. Aubin's Bay. This is stated in the section, but diluted with statements that are not scientifically incorrect, but misleading." You should not need me to highlight the problem with this. All of our reports should be neutral, unbiased and above everything clear, and most definitely not misleading. The Professor goes on to suggest that the conclusions that the Environment Department have drawn are not from the calculations of chemicals within the paper, and therefore we must know where these conclusions have come from. As the paper rightly identifies: "Perception of environmental impact and actuality can be very different and the result of the author's paper was to worsen the perception of the impact of the event." I would like to know what we are doing if we are producing reports which are geared into triggering certain outcomes. This cannot be right. As the Associate Professor identifies: "Even in the worst case scenario Mr. McDonald's rockets, if they were all unlit and all ending up in the sea", which was scheduled to be at low tide during the launch, but that is neither here nor there, if they somehow ended up in the sea the environmental impact according to the Associate Professor of Physical Chemistry would be minimal. Minimal. He goes on to say that: "The report contained several factual errors and omissions from processes" and if it were submitted as a piece of under-graduate coursework he would believe that it would have been completed by someone in a hurry who did not understand the principles and processes involved. I am not trying to discredit any Civil Service. For the most part they do a sterling job, but in cases such as this where we produce something inappropriate, if you like, we must hold up our hands. This report did not just mislead the public, it created a situation or was certainly the main catalyst in reducing the quality of life of one of our Islanders substantially and for a long period of time.

[15:15]

This is where it draws back to our duty of care to Mr. McDonald and to all Islanders. We have a duty of care to him, to ensure that we hold our hands up and compensate him for the trouble that has been caused. It is the least that we should do. My third factor which I bring to the Chamber is the rocket launch of 4th June 2012. I found it staggering that this was permitted to proceed when we had previously declined Mr. McDonald to hold a display on 4th June last year. According to the organisers, 6 tonnes of fireworks were fired from Elizabeth Castle. Would anybody care to guess the weight of Mr. McDonald's pyrotechnic material that he intended to use? It was exactly the same, 6 tonnes, but it does not stop there. It was fired from the same location, St. Aubin's Bay, and at more or less the same time of year. I have to ask what are we doing here when we are affecting someone's life as well as a charity's money raising opportunity when it is all in vain? Even if we still took a stance that this launch could not take place because of the environment to the detriment of Mr. McDonald, then how could this launch have been allowed to take place? We cannot work by a rule for one and a rule for another. For the record, I must also state that the proposed display in 2007 was not allowed to launch blue rockets due to the chemical makeup and Elizabeth Castle could not be used due to the nesting of birds. Both of these were seemingly overlooked for the display on 4th June. We must deliver some consistency on this matter. If we are to say that launches of this nature can take place, then the only logical solution is to apologise, I believe, for our actions and reimburse Mr. McDonald as the proposition states, as an *ex gratia* payment. We have to remember that, unlike the launch of June 2012, Mr. McDonald was not a commercial venture. He was asked, as a professional, to give up a large amount of his time to do something for charity, to which he obliged. Despite all that has happened over the course of the last 6 years, a good, Christian man who was looking to do something good for the community has been driven to despair and near destitution. I hope we will finally place closure on this sorry saga. We cannot give him back the time he has lost and his relations that have become strained, but we can do this. We can accept the proposition of the Deputy of St. Martin and award him with the *ex*

gratia payment. I commend the Deputy of St. Martin for bringing this proposition to the Assembly and I ask all Members to support it. Thank you.

Deputy R.G. Le Hérissier:

I wonder if the speaker could give us the reference. It struck me that the report from which he quoted from the professor is absolutely key. Could he give us the reference to that report?

Deputy R.J. Rondel:

I do not believe it is in the report we have got here but I have been going through hundreds and hundreds of pages of documents before the Deputy of St. Martin and I have read those. Thank you.

Deputy J.H. Young:

I am sorry, can I ask for further clarification on that point, Sir? The Deputy made very strong statements criticising the Environment Department's own work in this and, obviously, he has referred to a report there. Could he tell us who the professor is and who he works for and when and where we find this report?

Deputy R.J. Rondel:

There was a report done, which I believe is in the public domain. I have not had a chance to go through the comments because they were so late but I thought it would have been in there. But for my own research, I have read those reports. The problem was it was like the Environment Department at the eleventh hour coming in here now and saying: "You cannot all drive your cars home if they give pollution out tonight." That is exactly the situation.

The Bailiff:

Well, I do not think you need to go for another speech, I think Deputy. There was a question about who the Associate Professor was.

Deputy J.H. Young:

I am sorry. I am not sure if there is a point of order, Sir, but the Deputy in his clarification has not been able to give us information in respect to, as it were, criticising the motives of the Environment Department in this matter. I wonder if the Deputy would be prepared to withdraw that because without that reference for us to follow up we are really left with a smear being put on the Environment Department staff. If we do not have the evidence to check that out, I wonder if it is possible to invite the Deputy to just withdraw that.

Deputy R.J. Rondel:

I am happy to withdraw it if none of it is referred to in the comments referred back by the Minister for Home Affairs, then I am happy to withdraw it, thank you.

The Connétable of St. John:

I better declare my various memberships because if I do not I will be picked up by somebody yet again. I am a member of Channel Island Air Search and a former trustee ...

The Bailiff:

Connétable, we really do not need to have this. Members have to ...

The Connétable of St. John:

And I am a Free Mason. I have a whole list, just in case Members wish to look they are all registered across the road in the business interest and clubs I belong to. An injustice that can be put right today, we all know this saga has been going on for 5, 6 years, and I think most of it has all

been said, and most eloquently, this morning by the former Bailiff, Sir Senator Bailhache. Quite rightly, I, as a Connétable, have to give permits and my colleagues likewise on a regular basis. One of the things I always ask for: “Have you got the Bailiff’s Permits?” To me, if they have got that, I am 99 per cent sure that all the boxes are ticked, because it is quite rigorous. I have seen some of the documents that go to your office for your Panel to look at. I have documents that thick that are returned to me, this was what we had when we had the Bailiff’s Permit. Like everything, we cannot have everything in a box that can be ticked, it is impossible, absolutely impossible. New regulations get put into place and have to be acted upon in short notice, as it happened probably in this case, we do not know. That is probably what did happen. But I would not expect your permit to change a great deal. It is difficult enough, I see when we have our Water Carnival, all the additional paperwork and risk assessments that come across my desk. I suppose, I, like others, am quite happy to say: “Well, if you have the Bailiff’s Permit then go ahead.” But with a little proviso that it has to be policed for certain hours, *et cetera*, by our Honorary Police and also we might need additional security. But really the gentleman concerned, Mr. McDonald, I believe he had done what was right and in the 6 years since this has all happened, as Members know I brought an earlier proposition to the House which was accepted by 40-odd votes, but we are still here today X number of years later. Can we put a close to this and let us move forward? We all know that, unlike other people who have had issues with the States, you will get a continual dialogue coming across the internet by way of uncomfortable remarks about the way the States behave, the way Members behave, the way the Constable of St. John behaves and other Members. We have not had that from this gentleman, not had that at all. He has done everything correctly. The same as when he ran his business when he was doing the fireworks for the charity. Everything is done correctly. He stood back and he has allowed process to happen 3 years ago and again today, he has not been out there creating a lot of furore that he has not been getting justice, he is looking for justice in this Chamber here today. I am certainly hoping that when we take the vote, and hopefully it will not be too far away, that we see the fruits of this gentleman’s labour, I cannot say being rewarded, just let us do what is right and pay that *ex gratia* payment because we cannot make up for those many years of grief and suffering that has gone before. Let us draw it to a close. I will be supporting this and I sincerely hope the majority, if not all other Members, will support it because we do not need to spend any more time on this particular debate, I think everything has been said. Obviously the proposer has to sum up, but really could I say at this point can we draw it to a close and if need be call for the half hour warning? Is that the exact word? I cannot think of it. But if it is possible, so that we can all move on and Mr. McDonald can move on as well. Thank you.

3.1.17 Deputy G.C.L. Baudains:

I will be brief, I had not intended speaking, but I have become a little concerned about the speeches that I have heard because I keep hearing about injustice and compensation. Well, I was not privy to the previous debate, I can only relate to the information that I have in front of me and I am concerned that Members may be letting their hearts rule their heads. This is certainly a very emotive subject, but I see no evidence that Mr. McDonald was a victim of bureaucracy. He was not told he could not proceed. In my view, insurmountable obstacles were not put in his way. I cannot see any other reason for this not going ahead other than for reasons unknown to me that he decided not to proceed. I do not think a compensation or an *ex gratia* payment is appropriate in these circumstances. I have to wonder whether Members who have spoken in favour of this proposition will be so generous over other issues such as investors losing money when the company they were dealing with maybe was not properly regulated by us, where we might have had or should have had some input. It is being suggested that the department basically made the attempt impossible. I do not see that. I regret I will be unlikely to support the proposition.

3.1.18 Deputy M. Tadier:

Before Members shout, the light is not working but the microphone is. The light is not on, but somebody is home, so to speak. There was a principle, which I think needs to be applied here, and I first came across it when dealing with the Freedom of Information Law which has not come in yet. It says that no matter who the application comes from you treat them the same. You have to be applicant blind when you are dealing with a case. It is difficult in a small society because many of us do know Mr. McDonald, as was said by the Deputy of St. Martin quite correctly, and I think many of our parents and grandparents, if we are young enough, do also know him. He is really a central figure in our Island. When I was younger I would have watched the very good displays that were put on. But we cannot be influenced, as I say, by the individual, although some would say maybe it is inextricably linked. So when Deputy Rondel stands up and says that this is good Christian man, to me that does not matter, he could be Muslim, Hindu, or atheist for that matter. I think that would not influence one iota the way in which that decision should be made. It should not matter the fact that many of us know him and think he is respectable, which he is. We should judge it on the basis of what is fair, and we should also be willing to make the same decision with a different individual on a different day faced with similar circumstances. I am not sure if the expression that hard cases make bad law, and what I interpret from that is that certainly individual States Members and members of the public are quite willing to pursue an individual case which is perceived to be an injustice.

[15:30]

It may be an injustice for which nobody is specifically responsible, it is just perceived that something is not fair. That happens quite a lot in various different departments and we all take up individual cases as States Members and we try and get remedies which sometimes will be liaising with those departments, sometimes it will be talking to the Ministers formally or informally to try and get a result for the individual in question. But this is quite rare, and because it is a lot more difficult to change those processes when it is apparent that they are not working. I am reserving my position here, it is quite likely that I will support this today, but I think we have to be consistent. I would say you cannot have it both ways. We have had numerous Members saying that: "Nobody is at fault here, no one has done anything wrong, but let us make this payment anyway." Because that simply does not wash. It is a very bizarre argument to be made, because we have in the past, when we are talking about giving away taxpayers' money - let us think of the times we have talked about that - there have been other *ex gratia* payments where stronger cases have been made when fault has been alleged in no uncertain terms, if not proven. We have also had incidents like the Woolworths workers when there was a gap in the law where they were let down because these States had failed to provide in proceeding decades. How difficult was that debate, which ultimately did come up with a resolution which resulted in a change of policy, and quite rightly, I think. It was very painful. Here we have the suggestion that there is no wrongdoing. I am sorry, that does not wash. If we are to decide here today that a payment is going to be made, an *ex gratia* payment then it has to be on the basis that the States have at some point shown either deliberate, or not deliberate necessarily, but shown some form of neglect or unreasonableness, or conveyed an impression to Mr. McDonald in this case that he reasonably presumed that he had permission to go ahead when other obstacles were put in his way subsequently. It is also worth reminding Members at the moment that there is a Scrutiny review going on. We all love Scrutiny, do we not? So why not remind Members that there is a Scrutiny review going on into the exact subject of entertainment, about who should be issuing entertainment permits. If there are issues that come up like this one, they should be directed to the Scrutiny Panel, we would love to hear from you, it is too late, quite, to make submissions because we are very keen to make sure that the process is streamlined and to make sure that there is not red-tape, because we know that the events that are put on, large and small, in the Royal Square or elsewhere are important for our Island's economy and for locals and culture. In that respect we should be supporting as much as we can, individuals who

want to put on events in our Island. But let us talk about precedent again. Certainly the next time I want to get an *ex gratia* payment I will not be bringing it myself, I will be asking the Deputy of St. Martin to do it, because he has clearly got the support of the party members. It is interesting to hear the Minister for Treasury and Resource speak, there are only 2 occasions I can recall where he gave unconvincing speeches when his heart, in my opinion, was not in it. One was over Plémont, because he did not want to do it, he was being put up to that by somebody else, in my opinion, and so his heart was not in it and all of his close allies voted against that, interestingly enough. It will be interesting to see whether those same close allies also vote against this today. But that is politics. A good example of when one might ask for an *ex gratia* payment is when a department has been at fault. But if I were to come to the Assembly today with a hypothetical case which could be a real case, where a department has given advice to an individual which has led him to stay in his home, get evicted, said: “No, just stay in your home, get evicted and then when you are evicted you will be a priority, you can come and live in housing, we have got something for you, we will put you up the list.” That individual then stays where he is in his private rental only to find out that when he gets evicted he has got a legal bill from the Petty Debts Court and he now owes £1,500. I could bring this to the States Assembly and say: “Let us make an *ex gratia* payment to this individual, because clearly bad advice was given.” Document it all, clearly it was not the intention of the department to do it, but their internal policies about giving this advice out have been incorrect. I am fairly sure I would get short shrift from the Assembly saying: “This is not the place to sort these things out. We have at least a Complaints Board, we have a process though housing, have you been to that?” “Yes, we have had a meeting with Housing they said, ‘No, sorry we cannot give the payment’.” “Have you been to the Complaints Board?” “Oh, right, the Complaints Board. No I have not done that.” “Well, go back to the Complaints Board first, see if they rule on it.” They are independent, they are not a 51 group of individuals acting as a jury who can be swayed by emotional arguments, they will look at the facts and say: “Was anything done wrong, yes or no?” Then on the back of that if they make a recommendation, the department still does not pay. At the very extreme bring it to the States Assembly. That is what I would expect to happen and that may well be what does happen if my real life case, which resembles the hypothetical case, does not get any resolution down that avenue. I will be expecting all the Members who vote here today *pour* to support that because there will be a strong case for that of misconduct or error of judgment on the department. Let us be honest here; was there somebody who made a mistake? Was it the Bailiff’s Panel who should have been giving out better advice? It certainly seems to me that as soon as you have one of these documents in your hand saying: “You can go ahead with your rocket launch at the Battle Of Flowers on 10th August 2007 at 10.30” then you would presume you can go ahead with that. That seems reasonable. I will be interested to hear in the summing up whether there is blame, because we cannot simply give £50,000 out willy-nilly to individuals if no one has done anything wrong because then we can all bring hard cases where compassion might be a factor. But at the end of the day we have to be fair, not simply compassionate, and we have to accept that precedents will be made and we must be applicant blind.

The Bailiff:

I have 2 more Members to speak. It has been a lengthy debate, so can I ask Members to ensure they have something new to say and not repeat the points already made. Senator Maclean.

3.1.19 Senator A.J.H. Maclean:

No pressure then, Sir. I am disappointed all Members are not in the Assembly at the moment. I was really hoping to have a slightly bigger audience before I did make my repeat comments. **[Laughter]** In all seriousness what I have seen today, it has, as you have rightly commented, been a long debate. What it has created in my mind is complete and utter confusion. Confusion among Members; diametrically opposed views. Is he right, is he wrong, did he say this, did he say that,

was the department right, were they wrong? When was the report delivered, was that material or not? Even down, if I may say so, to your own Bailiffs Panel. I know of course you were not in your role at that present time, but even the permission of the Bailiff's Panel has been brought into some question. I mean, we could go through, and I am not going to spend time making evidence for and against and doing exactly as Members have been doing most of the afternoon, but in every case there is an argument for and against, even with that particular permission that comes from the Bailiff's Department. It has of course, and says quite clearly, despite what the Constable of St. John has commented on earlier, he said: "In 99 per cent of cases when I have the Bailiff's Permit then I will approve." Well, the Bailiff's Permit says: "Subject to the conditions of the following, X, Y, Z." It also says, the overriding caveat at the end, quite rightly: "This permission may be altered, modified or revoked by the Bailiff if he sees fit." That would not give me an awful lot of confidence, obviously it is part of process, but I did not really want to get into the details. This is clearly extremely difficult. More than anything else this decision today is turning into an emotive one. I can understand why. I have a great deal of sympathy, as other Members have demonstrated today, with Mr. McDonald, who is sitting up above. We can all empathise with the circumstances that he has found himself in, and nobody would wish anybody to have to suffer in the way that he has, particularly when he was doing it in the name of charity, to support charities as he has done for a lot of his working life. Fantastic support of charities. I am going to make one comment about the Economic Development Department. I was not the Minister at the time, as Senator Ozouf has already covered the point, but one fact, and again it was another caveat contained within the approval, the £20,000 that was offered by the Economic Development Department to support this, aligned to the Battle of Flowers event and, for the reasons Senator Ozouf made, it was a very supportable objective. If the firework display had gone off, the world record would have in fact have happened at the Battle of Flowers, it would have added significantly to that event and obviously to the reputation of the Island. But the Economic Development Department did put a caveat, understandably, like everybody else has done, and it was on the basis that if the event went ahead then the money would be paid. If the event did not go ahead then it would not be paid. We have here a report which was put together by the 3 Ministers, 141 pages of information, largely concluding that the departments were not involved. This is a report prepared by departments defending themselves. You could argue quite reasonably that we would say this, would we not? There are other reports allegedly floating around. Deputy Rondel mentioned some professor who had said X, Y and Z. We do not know who he is or we have not got a reference in the report, but nevertheless there is a suggestion that some eminent individual has also made comment on these matters. We have then got the subject of payment. Whether it should be a compensation payment, there seems to be general agreement that it is not compensation it is *ex gratia*. *Ex gratia* is marvellous, is it not? If you look it up and see what it says under the definition it says: "*Ex gratia* is compensation payments which are often made when a government or organisation is prepared to compensate victims of an event, such as an accident or similar, but not to admit liability." Well, it is apparently okay to be *ex gratia*, that is not compensation as so many Members have said today, yet in the definition here it talks about the fact it is compensation. It either is or it is not. To quote something that Senator Ozouf used to often say: "If it looks like a duck, if it waddles like a duck and if it quacks like a duck then it probably is a duck." I would say, whichever way we look at it, if we are making a decision here today, as an *ex gratia* payment we are opening ourselves up in the future for many more of these types of claims to come forward. That is where my biggest concern today is. Investor compensation, whether it is investors who have been misled, whatever it happens to be, there will be many good arguments. It could be consumers who have put money down to purchase furniture in a furniture store before it goes bust and they thought the money had gone to the finance company and it did not. They want their money back, it is all very unfair: "We have lost £3,000" or whatever it happens to be. "Ah, we know where we can go. We will go along to the Deputy of St. Martin, or somebody else", there will be plenty of Members I am sure who will

be prepared to come forward. We are opening ourselves up in the future if we support this case. I cannot stand here today and say whether it is right or whether it is wrong. Emotionally it is right. Emotionally I would write out a cheque tomorrow to support Mr. McDonald, I think he has gone through a terrible time and he does not deserve it. But it is not right, as a Government, I do not believe that we make the decision today in the absence of, at the very least, independent verification and independent report, we have had in the past Reg's Skips, there was an independent Committee of Inquiry that was undertaken which demonstrated that there was some fault and an *ex gratia* payment followed as a result of that. Now that is an appropriate process to follow. That is something that I think as a Government we have to show leadership, and in that respect we do have to have something to hang a decision such as this on. It cannot be, I am afraid, listening to all the arguments and views that Members have got on this from the information that they have read, we cannot possibly form a fair and reasonable conclusion. We are after all, if we make this *ex gratia* payment today, allocating taxpayers' money in order to compensate Mr. McDonald for his very sad circumstances that he finds himself in. On that basis I find regrettably I cannot support the proposition today. I do understand there are many Members who are supportive on an emotional level and I do understand that, but I would really urge Members to think, please, twice about it so that we do not open ourselves up for very many claims in the future by doing so. If necessary we should reconvene the concept of a Committee of Inquiry and let an independent body go through this and decide whether there are genuine grounds for compensation or not. That is the way to go forward. I would on that basis encourage Members to vote against this very compelling and well-meaning proposition. Thank you.

3.1.20 Deputy J.M. Le Bailly of St. Mary:

This scenario makes me wonder how it is possible to have the New Year Day celebrations on the River Thames. This is someone who has been scare mongered into withdrawing his charity attempt for the world record which would at the same time given a little bit of status for the Island.

[15:45]

Due to his previous law enforcement career he felt obliged to do that, rather than endure possible negative public opinion and even prosecution. He appears to have done so without at the time considering any financial repercussions to himself in complying with Environmental Officer's recommendations. When based on logic, pollution would have been absolutely minimal, owing to a well-organised clean-up operation. After all there is pollution in that bay every day of the year by commercial and pleasure craft and of course rain water runoff and sometimes worse. With hindsight I think he should have lit the fuse. Mr. McDonald is a victim of misadventure not of his own making. I will try to right a wrong by supporting the proposition. Thank you.

3.1.21 Senator P.F. Routier:

I will be very brief. I will follow up from perhaps what Senator Maclean was mentioning about the issue of more claims coming because of what we might be doing today. I would suggest to Members that it might set a precedent, but what precedent will it set? It will set a precedent that if somebody comes with a claim to have a large firework display and is going to raise a lot of money for charity and is going let off these fireworks, that will be the precedent that will have been set. It will not be a precedent that will be set that will be for people who have had failed investments. It will not be a precedent that will be set for other sort of claims which could come out of the blue. The only precedent that will be set is for somebody who is letting off fireworks. I would suggest to Members that it is completely different and I am quite prepared to support the proposition.

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

Just a few points, really, as mostly everything has been said. I do not know why, but I am going to declare I am not a Freemason, I am not a good Christian man either. I only mention that because it

crept into Deputy Rondel's speech, but that should not matter anyway from whether we are going to give this gentleman an *ex gratia* payment. I was quite intrigued by some of the things that the Minister for Home Affairs said, because he said to us, I believe I heard him correctly, that if the Assembly thought there was some general systematic failure then that was okay. That was grounds to support this proposition. I thought that was an ideal chance for this Assembly to support something because we would be admitting some failure, but we would not be blaming anyone or holding anyone to account, and that is surely what this Assembly likes to do. Nobody is ever accountable and I think that is the problem really. It is not about blame, it is about making sure these things do not happen again. But I would like some answers because we heard that Mr. McDonald personally chose to cancel the world record attempt, and yet in Deputy Rondel's speech which really ignited the debate, we were led to believe that Mr. McDonald was left with no choice but to cancel that world record attempt because at the eleventh hour, he was told that if he went ahead and there was any pollution then he would be prosecuted. As I understand it he then went with this information to the insurers and that insurance was withdrawn. Thus to say he personally decided to abort this world record attempt I think is a bit unfair. I think what really pushes me to support it is the fact that this seems to illustrate once again that our systems in place for granting such consents for these charitable causes, and always very good causes, as we know, just does not seem to be joined up. If these confusions can come about, and on such huge sums of money at stake, then I think this is a reasonability of government. It is fine to just blame the individual, and I think the individual probably has to take some responsibility, but when you have got your permit in your hand and you have been and met various departments and everything seems to be going smoothly, then I think the onus, and I have sat in on a few cases where people have been trying to illustrate how, as Deputy Higgins said, you do not get everything there in black and white. The I's are not all dotted and the T's are not all crossed. I think for that alone and the fact, which we all accept, Mr. McDonald has done a great service to this Island over many years, this was a charity event. It was being done for the best reasons. We cannot just go out giving money to everyone who does that or we would very soon be bankrupt. But I think it is fair to say that he is a victim. He is a victim not of deliberate failures on the parts of States departments and individuals, but he is a victim of a system that I think we can all see is less than perfect. Is it right that we do nothing for fear of setting of precedent where there is somebody who has had to sell his home and live in a caravan? Well, not even a caravan, a container I think it was practically, for a number of years. Do we not have that duty of care? I think we do. I think we have a chance to bring some closure to that long sorry saga over what certainly appears to me, a good ordinary man, whether he is Christian or not. He is a nice gentleman, I do not know him well, I have met him and discussed various issues with him, but it would not matter if he was not a nice man. He is a victim and I think that alone is reason for us, because we have the means to put it right to a degree. I think we should take that opportunity, and thus I will be supporting the Deputy of St. Martin and would urge all Members to do so and perhaps bring that closure to Mr. McDonald and the strains on himself and his family. Thank you.

The Bailiff:

Does any other Member wish to speak? Then I invite the proposer to reply.

3.1.23 The Deputy of St. Martin:

I would like to thank Members for their contribution to this proposition. It has been a long time coming to this Assembly, but I am very glad today that we can finally draw a line under things and reach a conclusion. Some speeches have drawn an analogy between this proposition and members of the public who invest, or wish to invest their own money for their own personal wealth. I would refer those Members back to my own report where I say at no time did Mr. McDonald undertake this project for personal gain. He was not speculating to increase his own wealth, he was

progressing a project with States Department approval for the benefit of the Islands, and specifically for a local charity. Then the tricky bit begins because I have to start to read my own handwriting, because I had a considerable number of people who have contributed to this debate and I would like to give them all a very short reference if I may?

The Bailiff:

Well, it is up to you Deputy, you do not need to deal with every Member's speech you just pick up the points **[Approbation]**

The Deputy of St. Martin:

I feel I sense the mood of the Assembly. **[Laughter]** I would still like to start with the first speaker, which was Senator Bailhache, and I would like to thank him for his comments. I certainly was not attempting to link him in his personal capacity and his time as Bailiff with the Bailiff's Permit, but I was linking my own personal experience of Bailiff's Permits through the small amount of work that I do to assist people in my own Parish who undertake the Gorey Fete and the St. Martin's bonfire every year. We have a number of people in St. Martin who undertake fantastically good community work on behalf of your Parish, again to raise money for local charities. But I am only too aware of the size of the document they have to submit to the Bailiff's Chamber every year and every time they put forward an event. It is an extensive preparation that takes days and days of their time and every year gets more difficult to acquire. I would like to thank the people who contributed in my support and there were considerable numbers of them, and I wish I could go over them, because I did make copious notes in the hope of thanking them all greatly. But I will try and pick out the few that spoke maybe on the other side of the fence. I think I will first go to potentially the Constable for St. Clement who was very uncomfortable about this. He highlighted the support of the 3 departments that have come up with the report, but he also highlighted the lack of public support for Mr. McDonald's endeavours back in 2007. He spoke about potential re-investigations. Deputy Martin was also uncomfortable and she spoke about the 5 different issues which came to the total of around £50,000 and the way the money was spent and the thousands of pounds that was potentially going to be raised by Side by Side. She wondered how the money was going to be raised, where the guarantee was coming from and I think we have heard during the debate from the Economic Development Department that there was a guarantee of some money from them to the tune of £20,000. There was a potential grant from the Economic Development Department if the event went ahead, and I accept that; I was going to come to that later. So there was £20,000 from Economic Development. Side by Side Charity were guaranteed to pay for the insurance for the fireworks display, which they did, and I believe the rest of the money or a lot of the rest of the money was going to be raised by the sale of individual fireworks to corporate and individuals. There was obviously a huge potential to raise a lot of money, there were 100,000 fireworks and I think it stands to reason when you can see that there was only a £50,000 cost in putting the firework display on, some of which was going to come back from the Economic Development Department. But there was potential for tens of thousands of pounds to be raised for the Side by Side charity. Deputy Baudains spoke about injustice and compensation. Well, I agree with him that he said that Terry McDonald was not a victim and that compensation was not appropriate. But he is entitled to his opinions, I hope he might have his opinion swayed by others that have spoken. I think the only other person who spoke against the proposition was Senator Maclean, and he spoke about confusion and the rights and the wrongs and how we see rights and wrongs wherever we look, and I would agree with him. He did however talk about the potential loss in confidence in the Bailiff's Permit, but I would only say to him in my own personal experience and the experience of others that have contributed today that acquiring a Bailiff's Permit is not something that happens easily, it is not something you gain lightly. There is a huge amount of work that goes into it and I could only empathise with the views of the Connétable of St. John

when he said that when he has a Bailiff's Permit in his hands he knows a huge amount of work has going into acquiring that. Senator Maclean mentioned the £20,000 which was offered from the Economic Development Department if the fireworks display went ahead, and he also said of course that the money was not paid because the event did not happen. He spoke about the definition of *ex gratia*, and the fact that no liability is associated with *ex gratia* payments, and he was also concerned about future claims. But what I would say to him is I feel this is a different type of event. This is a public event, this was to raise money for charity. The Senator called for maybe an independent inquiry and he thought that might be appropriate and urged the House to think twice about voting in favour. But I would say to the Senator that in my view I am not sure this is the time for any more expensive inquiries. This proposition I tried very hard, and unsuccessfully, as it turned out, to keep people on the subject of not proportioning blame and not reopening the investigation. This proposition is not about what is right or wrong, who said what, where or to who or when they said it.

[16:00]

It is absolutely not about who was responsible, who made the decisions and for what reasons those decisions were taken. It is not really about anything that happened back in 2007 or in the intervening years, it is about where we are today and it is a very simple question: "Do we wish to support Mr. McDonald or not?" I realise that Members felt they needed to refer back to 2007 and the events that happened previously, but this proposition I tried very hard to say it really is not about those times. I would ask Members to put all thoughts of the past out of their minds when it comes to the vote. I would just finally like to say that we have an opportunity here, in my view, to draw a line under this issue and to bring this unsavoury situation to an end. I would like to thank Members for their contributions today and I would like to call for the appel, please.

Senator A.J.H. Maclean:

If I may, Sir, I would just like to clarify a point made by the proposer in his summing up. I think he suggested, if I heard correctly, that I had suggested a loss of confidence in the Bailiff's Panel or the permit during my speech. I just wanted to clarify that was not what I said, I simply said that the permit itself did not represent a guarantee that the event would go ahead, because there are various caveats, quite rightly, as part of the permit, which means that you could of course withdraw it at a future date. I just wanted to clarify that point.

The Bailiff:

Thank you. Very well, the appel is called for then in relation to the proposition of the Deputy of St. Martin. I invite Members to return to their seats and the Greffier will open the voting.

POUR: 29		CONTRE: 14		ABSTAIN: 2
Senator P.F. Routier		Senator S.C. Ferguson		Connétable of St. Ouen
Senator P.F.C. Ozouf		Senator A.J.H. Maclean		Deputy of St. Ouen
Senator A. Breckon		Senator B.I. Le Marquand		
Senator F. du H. Le Gresley		Senator I.J. Gorst		
Senator L.J. Farnham		Connétable of Trinity		
Connétable of St. Helier		Connétable of St. Clement		
Connétable of St. Peter		Deputy R.G. Le Hérisier (S)		
Connétable of St. Lawrence		Deputy of Grouville		
Connétable of St. John		Deputy E.J. Noel (L)		
Connétable of St. Brelade		Deputy A.K.F. Green (H)		
Connétable of St. Martin		Deputy J.M. Maçon (S)		
Connétable of Grouville		Deputy G.C.L. Baudains (C)		
Deputy R.C. Duhamel (S)		Deputy of St. John		
Deputy J.A. Martin (H)		Deputy J.P.G. Baker (H)		

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 M. Tadier (B)				
Deputy T.M. Pitman (H)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

The Bailiff:

Very well, that concludes public business. We move now to arrangement of public business on future occasions, and I invite the chairman of P.P.C. to speak to it.

4. Deputy J.M. Maçon (Chairman, Privileges and Procedures Committee):

For 3rd December there is addition of amendments to the Budget in the name of Deputy Young and Deputy Southern. Also that for 10th December there is amendment in the name of Deputy Tadier to the Long-Term Care Scheme. It is anticipated with the business for the next sitting, it is potentially up to a 3-day sitting, Members may want to mark that in their diaries, other than that I have not been notified of anything else. I would like to propose that as public business.

The Bailiff:

Does any Member wish to say anything about the public business?

4.1 Senator I.J. Gorst:

Members will be aware that I have got the Chairman of the Historic Abuse Inquiry and the members of that inquiry for, in effect, ratification by the Assembly at that sitting. They are eager to start their work and could potentially be in Jersey as soon as we, in effect, have agreed that proposition. I am wondering if I could ask the Assembly to take that first on the understanding that we might get through questions and any statements and that item prior to lunch so that the Minister for Treasury and Resources can start his Budget directly after lunch, unless of course, that he is going to propose that we take questions on the Monday afternoon, which sometimes we have done.

The Bailiff:

Thank you. Are Members happy to take the Chief Minister's proposition?

4.2 Deputy M. Tadier:

I have heard someone whispering in my ear saying would it be possible to take it today if that were appropriate. It does not seem like it is going to take a long time and it would get the ball rolling, because we have already been set back quite a long time.

The Bailiff:

I think it has to be taken next time, but it can be taken first next time. It has not been lodged with enough time, has it? Yes, Senator Ozouf?

4.3 Senator P.F.C. Ozouf:

I just wondered why P.P.C. were not proposing that ... we have in previous years commenced the Budget in the start of the sitting and I wondered why the P.P.C. have not indicated this time that we were going to deal with questions on the Monday so that we can start first thing on Tuesday. It may be not appropriate to just move that at this stage without having ... but I was expecting, and that has been certainly the convention in previous years. I also would just, while I am on my feet, say that there will be, of course, full comments to all Budget proposals which are now in amendments. The Minister for Treasury and Resource can put forward amendments to the Budget, we will be considering all the amendments and it is likely that there will be an amendment made, but I will consult the Council of Ministers, but we will inform Members as soon as possible. I have had an initial look at the Budget and there are going to be obviously some items which are going to be really quite lengthy I imagine. So I do not know where the Chairman of P.P.C. gets his 3 days from, but there is going to be quite a lengthy debate on some issues concerning the Budget. As far as my own proposition of reform is concerned, that is on the Order Paper, and I would like that to be taken, because I am out of the Island on 10th December on other important States business. I just politely ask the Chairman perhaps to inform as to the reason why we are not starting on Monday?

4.3.1 Deputy J.M. Maçon:

I am in the States Assembly's hands, I do not think there is a particular reason why it has not been done. I have inherited the proposed dates as such. However, if Members would like to convene on Monday afternoon in order to clear questions, so that we begin afresh on Tuesday, it is in the Member's hands. Perhaps you should take a vote on it, Sir?

The Bailiff:

Very well, are you proposing then ...

Deputy J.M. Maçon:

I will do it, yes.

The Bailiff:

... that the Assembly meet on the Monday in order to do questions and take Minister's propositions.

4.3.2 Deputy M. Tadier:

Notwithstanding the chairman's suggestion, I cannot but help feeling it is slightly rich from the Minister for Treasury and Resource when he could have easily put his reform debate today. We could be debating this now and finishing it this session, and it has been left over to a very busy Budget schedule, which he knew about. We deliberately already delayed the reform debates so that we could all debate them on the same day at the behest of the Minister for Treasury and Resource, yet he seems to be setting the agenda and asking us to come back half a day early when many Members may already have busy schedules on the Monday and certainly it is a day that I use for constituency work and preparing other area. So it does seem like short notice to me. We have made provisions in the past on P.P.C. to make sure that when we have heavy agendas, like at the end of the season, people know well in advance. So I do not think this is a satisfactory way to proceed.

4.3.3 The Connétable of St. John:

Yes, I must say, I do not often agree with the previous speaker, but on this occasion I have to, because I have a number of meetings because usually we have a bit of notification. I have got several meetings that day of which a number of people are going to have to be rescheduled if we do that. Really, doing it on the hoof, as we are on this occasion, I think the Minister for Treasury and Resource could have spoken to P.P.C. much earlier.

4.3.4 Senator L.J. Farnham:

I hear what Senator Ozouf has just said about P.93, which is a proposition for the composition of former States Assembly, but the Assembly did agree recently to hold a further referendum asking the public key questions. So I was just wondering if it is a good idea to go ahead with another reform debate, having agreed to take question to the public at the election next year. [Approbation]

4.3.5 Senator P.F. Routier:

I would just make an observation: I think it has been usual practice for us to come in on the Monday afternoon before the Budget to do questions. But I would say that, as myself, and I know other Members as well, I will be out of the Island on Monday and I think there will be other Members who have probably a prior engagement. I think it should go ahead on Monday, but if Members are unable to make that they should be excused rather than being en défaut.

The Bailiff:

Well, at the moment we have a proposition that we should sit on Monday which will be put to the vote in a moment. Yes, Deputy Green?

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

Could I suggest that we do not sit on Monday, because I think many of us have got lots of engagements now, but that we start earlier on the Tuesday and the Wednesday.

4.3.7 Senator I.J. Gorst:

We know that there seems to be that over the last number of sittings you are extremely generous with the allowance of follow-up questions when it comes to oral questions, we seem to fill the full 2 hours ...

The Bailiff:

Well, that is what the Chief Minister thinks, I am not sure that I would agree. [Laughter]

Senator I.J. Gorst:

We seem to fill the 2 hours quite amply, whether we have got 10 questions or 23. I think the Minister for Treasury and Resource's point is that we have got a very heavy agenda with the Budget, whether we have the reform or not. It is likely to take those 2 to 3 days, so it is far better to get the questions over and done with on the Monday afternoon, as I think we have done at least for the last 2 years.

The Bailiff:

Very well. Well, do you wish ...

Senator P.F.C. Ozouf:

May I just make a point of clarification, Sir? Deputy Tadier suggested that the reform debate could have happened today, just for the record that could not have happened because the Connétable of St. Mary was on an overseas trip and she is making an amendment to that proposal. That is the reason why it is not today; if he would withdraw his remarks.

The Bailiff:

Well, you have corrected the position. The appel is asked for then, in relation to the proposition of the chairman of P.P.C. that we should meet on Monday in order to do questions and the proposition concerning the Committee of Inquiry.

Senator A.J.H. Maclean:

Sorry, just to clarify, is that Monday starting in the morning or Monday afternoon?

The Bailiff:

In the afternoon. Starting at 2.30 p.m. Very well, so if you want to sit on Monday you vote pour, if you do not vote contre and the Greffier will open the voting.

POUR: 26		CONTRE: 18		ABSTAIN: 0
Senator P.F. Routier		Senator S.C. Ferguson		
Senator P.F.C. Ozouf		Senator F.du H. Le Gresley		
Senator A. Breckon		Senator L.J. Farnham		
Senator A.J.H. Maclean		Connétable of St. Lawrence		
Senator B.I. Le Marquand		Connétable of St. John		
Senator I.J. Gorst		Connétable of Grouville		
Connétable of St. Helier		Deputy R.C. Duhamel (S)		
Connétable of Trinity		Deputy of Grouville		
Connétable of St. Clement		Deputy S.S.P.A. Power (B)		
Connétable of St. Peter		Deputy M. Tadier (B)		
Connétable of St. Ouen		Deputy T.A. Vallois (S)		
Connétable of St. Brelade		Deputy M.R. Higgins (H)		
Connétable of St. Martin		Deputy A.K.F. Green (H)		
Deputy R.G. Le Hérisssier (S)		Deputy J.M. Maçon (S)		
Deputy J.A. Martin (H)		Deputy G.C.L. Baudains (C)		
Deputy G.P. Southern (H)		Deputy J.P.G. Baker (H)		
Deputy of St. Ouen		Deputy J.H. Young (B)		
Deputy J.A. Hilton (H)		Deputy of St. Mary		
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy R.J. Rondel (H)				

4.4 Deputy M. Tadier:

In light of that, can I suggest that given the fact that some Members will not be here on the Tuesday, question time I think is a very important aspect of our Assembly, that should remain on Tuesday and I would invite Senator Ozouf to give his reform debate on the Monday afternoon. It is not fair on those Back-Benchers who ...

The Bailiff:

I am sorry, Deputy, the Assembly has just agreed to sit on Monday in order to do questions, so I do not think we can now reverse that.

4.5 Deputy J.M. Maçon:

Now that the States has taken that decision can I remind Members therefore that the deadline for written questions will be Friday at the usual time, and oral questions will be next Wednesday at the usual time. Therefore, I have not got anything else to say.

The Bailiff:

Do Members agree to the Order Paper as set out by the P.P.C.?

4.6 Senator L.J. Farnham:

Does the Senator want to just comment on the point I raised about the P.93?

The Bailiff:

I do not know, does he?

4.6.1 Senator P.F.C. Ozouf:

My proposition has been before the Assembly and as a Back-Bencher I have a right to have my proposition heard, which I would ask the Senator to prepare for that because he has amended it.

4.6.2 Senator L.J. Farnham:

That is why I was asking the question. **[Laughter]** I have not succeeded yet though.

The Bailiff:

The meeting will now close and the Assembly will reconvene on Monday 2nd December.

ADJOURNMENT

[16:13]