

# STATES OF JERSEY

## OFFICIAL REPORT

WEDNESDAY, 21st JUNE 2017

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[9:34]

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

**Senator A.K.F. Green:**

Before we start could I just correct something I said in question time yesterday? When Deputy Hilton was questioning me, among others, I said that the Jersey practice model was in place. That is not strictly correct. Some components are in place but the whole system is not in place yet.

**PUBLIC BUSINESS – resumption**

**1. Immigration (Amendment) (Jersey) Order 2017: extension to Jersey by Order in Council (P.26/2017)**

**The Bailiff:**

Right, we turn to Public Business and the next item on the agenda is P.26 Immigration (Amendment) (Jersey) Order 2017: extension to Jersey by Order in Council and I ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether they are of opinion; to signify, pursuant to Article 31 of the States of Jersey Law 2005, whether they agree that a request be made to the Privy Council for the making of an Order in Council that would amend; (i) the Immigration (Jersey) Order 1993; (ii) the Immigration and Asylum Act 1999 (Jersey) Order 2003; (iii) the Immigration (Jersey) Order 2012; and (iv) the Immigration (Jersey) Order 2015, with the purpose of; (a) transferring functions and powers under the Immigration Act 1971, the Immigration Act 1988, the Immigration and Asylum Act 1999, the Immigration, Asylum and Nationality Act 2006 and the Immigration Act 2014 (as each of those Acts has effect as extended to Jersey) from the Lieutenant-Governor to the Minister for Home Affairs; (b) replacing remaining references in those Acts, as so extended, to committees of the States with references to the Minister for Home Affairs; and (c) re-extending section 25(5) of the Immigration Act 1971 to Jersey so that the offence of assisting illegal entry, under subsection (1) of section 25, applies to things done whether inside or outside of Jersey irrespective of the nationality of the person who does them, as summarised in the report of the Chief Minister R.35 2017 dated 11th April 2017.

**Senator I.J. Gorst (The Chief Minister):**

Could I ask the Minister for Home Affairs to act as rapporteur please?

**1.1 Deputy K.L. Moore of St. Peter (The Minister for Home Affairs - rapporteur):**

The main purpose of this proposition is to request that the States Assembly approve a transfer of the immigration functions of the Lieutenant-Governor to the Minister for Home Affairs. Those functions arise under the Immigration Act and are extended to Jersey by several Orders in Council, the details of which are outlined in the report to the proposition. The draft Order in Council also brings up to date any pre-2005 references to the “the Committee” so that there are consistent references throughout Jersey’s immigration legislation to “the Minister”. In addition, the Order in Council would implement an important change to the offence of assisting illegal entry under section 25 of the 1971 Immigration Act. I shall return to those areas in greater detail in a few moments. I am sure Members will be aware that in order to give effect to the changes envisaged it is necessary to amend certain parts of the Orders in Council extending to Jersey and this is something which can only be done by another Order in Council which appears as an appendix to this proposition. I can confirm that Jersey law officers have liaised with U.K. (United Kingdom) Home Office, legal advisers and Ministry of Justice legal advisers in order to settle, in principle, the text of the current draft which appears in the appendix. Members will also have noted that the full text of the Immigration Acts in their intended form as amended has been prepared and presented to the States as R.35/2017. I should like, at this stage, to thank the Corporate Services Scrutiny Panel

for their balanced comments on this proposition. I am aware that some Members of the panel had reservations on a matter of principle. This was referred to in a speech yesterday regarding to the proposed transfer of functions from His Excellency to the Minister but it should be on the record that those Members did not impose their personal principles and opinions on the objective function of Scrutiny and I am grateful for that. With regard to the recommendation made by the panel that any future changes to the immigration rules be presented to Scrutiny before being implemented; I am entirely comfortable with the suggestion and would endorse it. Indeed, allowing for such an arrangement is a core purpose of the proposition, transferring the functions to a Minister who is answerable for his or her actions to the Assembly. I also agree that the rules should reflect, as far as possible and where relevant, the standards elsewhere in the British Isles. I return now to the principle purpose behind the draft Order in Council which is the transfer of the Lieutenant-Governor's functions under the Immigration Acts to the Minister for Home Affairs. I should be clear from the outset that in no sense does this proposition imply any criticism whatsoever of past incumbents of the office of Lieutenant-Governor and the manner in which they have exercised their functions. As the report states it was simply thought appropriate to consider whether it would be more fitting that the relevant functions are exercised by the Minister rather than by His Excellency in order to be properly subject to democratic accountability and oversight by the States Assembly. To this end the Law Officers Department have confirmed that the functions under the Immigration Acts are purely statutory functions rather than an exercise of prerogative powers and it is accepted by legal advisers in Jersey and legal advisers at the Ministry of Justice, as well as the Home Office, that it is proper from a legal and constitutional perspective that such functions be discharged in Jersey by a Jersey Minister.

[9:45]

Turning now to some of the specific functions exercised under the Immigration Acts. The rules regarding applications for work permits are already made by the Minister for Home Affairs and this will still be the case. Similarly, immigration fees are prescribed by order of the Minister for Home Affairs and this will also continue to be the case. The power to order deportation currently resides with the Lieutenant-Governor in cases where he or she deems such deportation to be conducive to the public good. This power is often exercised on a recommendation of the Royal Court although, of course, the court only recommends, His Excellency makes the decision, having reviewed all of the circumstances. As the proposition states, leave to enter is a power already exercised directly by immigration officers. The powers of the Lieutenant-Governor relate to the grant and variation of leave to remain. It is the immigration rules made by His Excellency that contain the policy detail about granting leave to enter or remain. It is important to mention at this point that in the last 18 months there has been an agreed arrangement with the Lieutenant-Governor whereby His Excellency acts in consultation and with the advice of the Minister for Home Affairs when amending the immigration rules. Members will also be aware of the political spotlight that can now be involved with asylum claims. Historically asylum claims had tended not to concern Jersey on the assumption that claimants could easily be returned to their original destination but in recent months the Lieutenant-Governor has been required to determine claims within the Island as well as enact more detailed rules for procedures on dealing with such applications. Such claims are almost inevitably liable to court controversy and there is a strong potential for judicial review in the Jersey courts and His Excellency's decision in any such case. To summarise, the functions would be transferred ... relate to the power to order deportation, to the grant and variation of leave to remain, to amending the immigration rules even though the Minister is already consulted in this regard and in dealing with asylum claims. If this draft Order in Council is made the Lieutenant-Governor will be removed from the political arena not only in terms of policies underlying the immigration rules but also in terms of application to the court for judicial review which will no longer have the potential to draw Her Majesty's representative into civil litigation as is likely under the present structure. The Minister will undertake the functions, working within the framework and with the

advice and support currently available to His Excellency, with the added benefit of being democratically accountable for any decisions made to this Assembly and the people of Jersey. As mentioned in my introductory remarks, the Order in Council would undertake some tidying up that removes any remaining references in Jersey's immigration legislation to "the Committee". Most of the Orders in Council that extend the Immigration Acts to Jersey were made before Jersey's move to ministerial government and therefore still refer to Committees of the States in relation to several functions. While those references are able to be construed as references to the appropriate Minister the text has still not changed because Orders in Council are not within the powers of the Law Revision Board to update. The Order in Council in this case would therefore also take the opportunity to update all remaining outdated references. This brings me to the remaining purpose of the current draft Order in Council, which is to re-extend section 25(5) of the Immigration Act. In 2007 the U.K. amended the Immigration Acts to ensure that any person who did anything outside the U.K. to assist an illegal entrant should be guilty of an offence. In other words, that it did not matter whether or not the accused was British. Before 2007 only a British person could commit the offence in cases where the assistance had been given abroad. To date there has been no Order in Council to extend this amendment to Jersey which means that a non-British person who acts abroad to assist someone to enter Jersey illegally commits no offence. The draft Order in Council in the proposition would extend the 2007 amendment so that this will no longer be the case. Before I conclude, I hope it is helpful to make a clear distinction between the Lieutenant-Governor's powers and functions under the Immigration Acts, which I have referred to this morning, as opposed to His Excellency's powers and functions under the British Nationality Act. To be clear, matters concerning British nationality will remain with the Lieutenant-Governor. This includes responsibility for naturalisation and registration as a British citizen. His Excellency's functions in this respect are functions of the U.K. Secretary of State delegated to the Lieutenant-Governor and cannot be sub-delegated. In summary, and for the reasons and purposes I have described, the Order in Council will mean that Jersey's legislative framework has evolved to that of the position of the Home Secretary under the Immigration Acts in the U.K. and is largely mirrored by the position of the Minister for Home Affairs under the Immigration Act as they have effect in Jersey. This is a logical and practical step removing His Excellency from the political arena and ensuring greater democratic accountability and oversight for decisions taken under the Immigration Acts. I, therefore, hope that Members will feel able to support this proposition and allow the Order in Council to proceed.

### **The Bailiff:**

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

#### **1.1.1 Deputy S.M. Brée of St. Clement:**

I am sure for most Members after the excitement of yesterday this is somewhat of a dry debate and for most Members having read the Scrutiny Panel's comments, which I hope they have done, will note that the Scrutiny Panel's comments, I think, represent a very balanced view. It will come as little surprise to most Members that I am the person who had the principle objection. However, I think it just shows how well Scrutiny works. We put that aside and we looked at the evidence and there is no evidence that this is not properly formed. There is no evidence that the legislation will not work. However, there are a number of things that I feel we need to just consider before automatically voting for this and then moving on. I think one of those things is principle. Now, any person really has to stand by their principles and that is what I am doing today. I would stress that I am not speaking as a member of the Corporate Services Scrutiny Panel. I am speaking as an individual Deputy and none of the views that I may express reflect those of the panel itself. I think we have to look at this and say: is this in the best interests of the Island? What we are being asked to do here is to remove the Lieutenant-Governor from the decision-making process about immigration, asylum and deportation and place it instead into the hands of the Minister for Home Affairs. Now, the Minister for Home Affairs will also be able to amend, change or alter the Jersey

immigration rules by Ministerial Decision. So, what will happen is that you have a Minister, who is obviously politically motivated, who is answerable to the Council of Ministers, being the person who determines what happens, applies the rules, that he or she has the ability to change and more importantly, interprets those rules. Now, at the moment we have in the body of the office of the Lieutenant-Governor a check and balance in place to ensure that matters of immigration, asylum and deportation not only meet with the stringent requirements as in the United Kingdom but also do not become a political football. Now, you may well think that: "Well, it is how it is done in the U.K., we should be mirroring that. It makes sense that you have a politically accountable person in charge of that area." Well, my concern is what we are doing is removing a totally independent, non-political check and balance, to ensure that immigration, asylum and deportation cannot be used as a political tool in order to bring about a certain course of events. Now, I am sure at the moment that is not the intention of this particular law. I merely wish to raise in Members' minds the question, that in the future should we find that a Chief Minister, a Council of Ministers or indeed a Minister for Home Affairs has a very particular view on matters of asylum, immigration and deportation that we then become out of sync with the United Kingdom. Now, bear in mind when somebody is granted immigration or asylum in Jersey they immediately enter the common travel area so there can be no restriction to their movement from Jersey into the U.K. There is not a border there. So if they are granted asylum into Jersey they can then move into the U.K. and what would happen if our immigration rules, which are going to be determined by the Minister for Home Affairs by Ministerial Decision are changed so that there is ... in financial worlds it is called an arbitrage possibility. It is easier to get into Jersey than it is the U.K. Once you are in Jersey there is no restriction on moving into the U.K. Now, as I said, I would stress that I do not believe that is the intention here nor is it anything that I believe at this moment in time will cause a problem but I think we have to look at the principle. Are we happy and are we totally satisfied that it is in the best interests of Jersey to allow decision-making, application, interpretation and change of immigration rules to lie in one body; that being the body of the Minister for Home Affairs? Personally, I do not feel comfortable with that. I believe that the Lieutenant-Governor plays a very important role in being the check and balance, being there to ensure that fairness wins over political pains. I think to remove him would be doing a disservice to this Island and, therefore, I will be voting against this purely on a matter of principle.

#### **1.1.2 Connétable C.H. Taylor of St. John:**

Following on from that; how does Jersey stand in relation to the other Crown Dependencies? I feel that this is something that perhaps should be done in unison with other Crown Dependencies and not, as it were, stray on our own.

#### **1.1.3 Deputy R.J. Renouf of St. Ouen:**

While I understand the point of principle expounded by Deputy Brée there is, of course, another principle on the other side which is that the powers presently vested in the Lieutenant-Governor could be seen as capable of politicising that office and, therefore, wholly appropriate to remove the conflict that might arise if the Lieutenant-Governor were to become involved in contentious matters. We have seen certain judicial reviews being brought to the Royal Court in which executive decisions taken by the Lieutenant-Governor are reviewed, pulled apart and criticised and that is perhaps not the right place. That is not the right process to look at this in that way. If a Minister, as an elected Member of this Assembly, was to make those decisions any changes found by the Royal Court that were perhaps necessary, any criticism, could be the subject of debate in this political arena. So to me it is perfectly right and proper that this process should be brought into the political world rather than vested in the office of the Lieutenant-Governor.

[10:00]

But may I ask the Minister in her reply if she could advise whether there will be a right of appeal from any decisions made by her under this revised legislation. That is a right of appeal prior to any

full judicial review to the Royal Court. Is there another body that could look at the merits of any decision she might take on allowing persons into the Island or deporting or such decisions that might be within her power. May I also ask if the decision of the Minister would be capable of being reviewed by the States Complaints Board?

#### **1.1.4 Senator P.M. Bailhache:**

I am glad to follow the Deputy of St. Ouen because I think that Members need to understand this small change in its historical context and against the nature of the current role of His Excellency, the Lieutenant-Governor. There was a time when the Assembly could not meet without the consent of the Governor, just as an England Parliament could only meet at the pleasure of the King. We did not need a civil war to resolve that issue but there were ferocious disputes during the 17th and 18th centuries as to the proper role of the Governor in this Assembly. As all Members will know, your chair is 7 inches higher than the chair of the Lieutenant-Governor in order to emphasise that in this Chamber the Bailiff takes precedence over the Governor and in terms of the public administration it is this Assembly and not the United Kingdom Government which has responsibility for the internal affairs of Jersey. But even after the chairs were adapted the Lieutenant-Governor retained a power of veto, the power to veto any resolution of this Assembly which might offend the Royal Prerogative. A very wide power which was only ultimately removed in 2005 when ministerial government was introduced. The Governor's role is no longer a disputatious role. It is more analogous to that of a governor general than of a colonial governor or even the governor of an overseas territory. The job is, of course, partly ceremonial but much more important than that the job is to understand the community, to get underneath the surface and to understand how the community works. In that way a governor can become a bridge between the Government of the United Kingdom and the Jersey Government. The Governor is trusted in London because he is the man on the spot and because he is independent. He is respected in Jersey because he represents the monarch and because he is not the agent either of the United Kingdom Government or of the Government of Jersey. His job is to represent the interests of Her Majesty's subjects in the Bailiwick and indeed also to represent the community as a whole. That is not a political role and it is why we should try to protect the holder of the office of Lieutenant-Governor from political controversy. But there are only a small number of executive powers which are still exercised by or influenced by His Excellency, the Lieutenant-Governor. Some Members, I think, may recall the last occasion in which a political controversy engulfed the Governor and that was the dismissal from office of a Crown officer about 20 or 25 years ago. Some Members may recall a large and angry crowd gathering in the Royal Square where much of the anger was directed against the Governor as the representative of the Crown. Indeed there was one occasion when Senator Chinn, as he then was, a man of quite considerable physical substance, had to escort the Lieutenant-Governor through a jeering crowd to his official car in the Royal Square. It was not a happy occasion. The Chief Minister lodged, a few days ago, a consultation paper which relates to the proposed creation of a Judicial and Legal Services Commission and in the event that in the future it might become necessary to remove a judge from office, I hope that it will be done by judicial process rather than by executive order of the Crown. The power to order deportation is a potentially politically controversial power. It has led, in the past, to an appeal to the European Court of Justice. On other occasions it has led to the Lieutenant-Governor being arraigned before the Royal Court at the instance of a disappointed litigant. I think that that is an undesirable state of affairs and that as the Minister for Home Affairs has explained, it is infinitely preferable that the power should be exercised by a politically accountable person who is accountable in this Chamber for the actions that she might take under the Order in Council bringing changes to the Immigration Act. Deputy Brée asked what would happen if the immigration rules were to become out of sync with the rules in the United Kingdom and my answer to that is that if any Minister for Home Affairs were to be so unwise as to change the immigration rules as to bring them into conflict with the immigration rules of the United Kingdom and to affect the integrity of the Common Travel

Area, the United Kingdom Government would act to protect the Common Travel Area in one way or another. I hope that Members will support this proposition of the Minister for Home Affairs.

#### **1.1.5 Deputy L.M.C. Doublet of St. Saviour:**

I just wanted to briefly touch on what Deputy Brée was discussing about checks and balances and to just remind him that the Lieutenant-Governor does not have checks and balances and the Minister for Home Affairs does indeed have plenty of checks and balances upon that ministry, namely the Scrutiny Panel, which I chair. Ministers are also elected by this Assembly, so we have the power to put forward a vote of no confidence or a vote of censure to remove them so there are plenty of checks and balances on the Minister and I find it entirely logical that these powers should be with a democratically elected Minister. So the Assembly can rest assured that my panel will be holding the Minister to account. I wanted to request that the Minister update the panel regularly on any use of these powers, please. If Deputy Brée does have any specific concerns, please if he could come and talk to the panel if any such concerns arise.

#### **1.1.6 The Connétable of St. Lawrence:**

As the Assistant Minister for Home Affairs with delegated responsibility for the Jersey Customs and Immigration Service, I am pleased to follow Senator Bailhache and Deputy Doublet who have both helpfully confirmed, first of all in Senator Bailhache's case, that the role of the Lieutenant Governor is non-political, as we know, and in Deputy Doublet's case, to reiterate to the Assembly that any decisions following the implementation of this would be put to the Scrutiny Panel before any changes were implemented by Ministerial Decision. I think that is one of the issues that Deputy Brée raised. So we find ourselves in a situation where the current system puts our Lieutenant Governor into a position where he might well be brought into the political arena and that is clearly one of the reasons that these changes are being proposed. I reiterate, the important thing is that a Minister of this Assembly will in future make the decisions which therefore makes the Minister accountable, Deputy Brée said, to the Council of Ministers but ultimately to this Assembly. I thank Deputy Brée for the report that he did and I support the words of my Minister when she thanked him without naming him but he has held his hands up for undertaking a review and presenting a report that did not allow his personal views to cloud the outcome and the views of that report. So it is important to state that when these functions are transferred, the Minister would be supported, as the Lieutenant Governor is now, by the Jersey Customs and Immigration Service so there can be no concerns as to the support structure that will be in place for the Minister, given that the support will not change, it will be merely redirected from the Lieutenant Governor to the Minister. Again, another extremely important consequence of this proposition would be the enhanced role of Scrutiny and of this Assembly; and I do not think that can be stressed enough. By removing effectively what is the current political role of the Lieutenant Governor, it becomes the responsibility of a Minister who is accountable to this Assembly and that has, I think, been articulated well by the Deputy of St. Ouen. Now Scrutiny mentioned in their comments that any future changes by the Minister to the Jersey Immigration Rules should be presented to the relevant panel before being implemented and I fully support that recommendation. We have already heard the Minister for Home Affairs support it and that is the norm for this Minister and for myself. I stress that because we do work very closely with our Scrutiny Panel and everything that we are considering is shared with that panel. As Senator Bailhache has said, it would be an unwise future Minister for Home Affairs and Assistant Minister for Home Affairs who decided to make decisions arbitrarily without reference to the Scrutiny Panel. They would not stay in their position for very long, I am sure, because this Assembly would not accept that. It is absolutely right that Members are able to hold Ministers to account for all of the important decisions that are made under the Immigration Acts and this proposition would allow that to be the case, so I ask Members for their support on this proposition.

[10:15]



It removes the Lieutenant Governor from the political arena, it allows accountability by the Minister for Home Affairs to this Assembly, and the Assembly is the ultimate arbiter of the actions of the Minister for Home Affairs. I think that covers the points that have been raised and again I ask Members for their support on this proposition and thank them.

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

Could I ask a point of clarification from the previous speaker? She mentioned an enhanced role for Scrutiny in the process and it seemed to me she was referring to when the Minister for Home Affairs deals with particular individual cases. Surely Scrutiny is not allowed to deal with individual cases and in which case where is the enhanced role? Could she clarify what the enhanced role for Scrutiny is in this process?

**The Connétable of St. Lawrence:**

Yes, I can clarify. If the Deputy misunderstood what I was saying, I apologise that I was not clear. The enhanced role for Scrutiny is that before any proposed changes to the immigration rules would be made, they would be discussed with Scrutiny in advance, as is the recommendation in the Scrutiny report. The Deputy is quite clear that there would be no discussion with Scrutiny before decisions were made by the Minister on matters such as deportation or asylum; he is correct in understanding that.

**The Bailiff:**

Connétable, you mean on individual cases?

**The Connétable of St. Lawrence:**

Yes, Sir.

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

I genuinely came to this debate with an open mind this morning. I had a brief word with the Minister for Home Affairs yesterday in the coffee room and I heard the comments of Deputy Brée which were obviously given in a different context in yesterday's debate. But when I hear this morning something which is a logical fallacy, when I hear somebody standing up and saying over and over again that the justification is that we must not politicise the Lieutenant Governor when he is not political anyway; he is probably the least political person in this Assembly and I think that is for a reason. I think all of us, in one way or another, and you, Sir, at times get charged with being political even though you are also independently appointed. Yet to say, because we want the decisions of deportation and those life-and-death issues in many ways, although perhaps not literally, although they could be of course to do with life and death, we want to give them to a politician so that the decision does not become politicised, it is completely illogical. It is the opposite. If you do not want it to become politicised, then you give it to somebody who is independent because that is what we do with decisions that we do not want to become politicised. When we discuss our own pay we do not discuss it because that would be politicising it, we give it to an independent body called the Remuneration Body. When we set the minimum wage we do not let politicians decide it, we give it to an independent body who decide on what the minimum wage is, even though in fact that is a political decision in many ways, but of course it comes back to us. There are a whole host of decisions which we do not want to be politicised and we give it therefore very correctly ... I have seen the Assistant Minister shaking her head. She has spoken already and her Minister can sum up. But if I am wrong, please tell me in summing-up, but we surely have an independent person here. When you look up the duties of the Lieutenant Governor it says: "The Lieutenant Governor is primarily diplomatic and ceremonial." He is a diplomat in that sense but it seems to me for different reasons. I am sure there are different factions in this Assembly, which makes me uneasy for different reasons, who want to reduce the diplomatic import of the Lieutenant Governor and give more power to an elected Minister of this Assembly. Now we have a British passport. You will know that I am not especially nationalistic. I have spoken on different

occasions about the need to have open communities where we do not value people on the basis of their nationality but we value them on their shared humanity, and I think that is still true and I will come on to that. But Jersey does not have its own nationality. If we did, that is fine, we could give this extra responsibility to the Minister for Home Affairs. But we have our passport, albeit some of us with a stamp in it, grace of the United Kingdom and the British Isles via Her Majesty, and it is the Lieutenant Governor who essentially issues that passport for us. So we are British and matters to do with immigration, deportation necessarily have to be checked by the wider British Isles. It is not Jersey, we do not have the authority to do that. The other point is that this needs to be seen in the wider global context of what is going on around us. If we were talking about fire safety and introducing fire regulations, it is quite likely somebody would stand up and say: "The reason we are doing this, of course, is because we do not want people to die." The reason we might want to install sprinklers is because ultimately it will save people's lives and we would decide about who makes decisions and what the right course of action is. I know that Members of this Assembly, along with others, were invited to watch a film, and I know that at least some of us chose to go, and watch a film called *Fire at Sea* and that gave a context of what is going on around the world to do with immigration. I know it is something that is close to the Chief Minister's heart, for example, and it is close to many of our hearts. It is absolutely right that when there is a British tragedy, whether it be an act of terror or whether it be an accident like we saw in that fire block, which is absolutely terrible, that our hearts and our sympathies go out to those individuals and we think: "What can we do to make this situation better?" But there are hundreds and thousands of people dying around the world in crises every week and every month and the situation in the Middle East still goes on. There are people fleeing for their lives, being crammed into boats by the most despicable of human traffickers who charge extortionate amounts to leave people in boats to die, to cross a stretch of ocean, to not know whether they are going to be allowed to get into the country, if indeed they make it over that short stretch of water alive in the first place. I defy anybody to see those images and to not be moved by them, and this is exactly the context in which we are talking. Now I might be wrong, but what it seems to me, and it is a question for the Minister for Home Affairs first and foremost, is what is our asylum policy in Jersey? We know that asylum seekers are coming from all over the world in very desperate situations and it seems to me we have been pretty sheltered from it in Jersey in our little bubble. We like to say that we are a British Island. Some of us like to say that we are monarchists and we celebrate the ceremony and everything that goes with it but what about the rights and responsibilities that come with that? Because when an asylum seeker turns up to the U.K., whether it be Portsmouth or Gatwick or wherever, there is a due process that they have to go through and if they are a genuine asylum seeker, they go through that process. Yet in Jersey, it seems to me, we never hear about it. The only occasion we did is, I think it was last year, when an asylum seeker came over in the boot of a car, got off at the wrong place, meant to be going to the U.K., found himself in Jersey, and I had the privilege of meeting that individual. We took him out for lunch with someone else down to St. Brelade's Bay to show him at least a beautiful corner of the Island during his brief sojourn over here. I can say that despite some of the public rhetoric, he was a genuine individual, he was not trying to scam anybody, he was fleeing for his life from a tyrannical regime in Iran. I suspect, quite frankly, and correct me if I am wrong, Minister, that Jersey got caught with its pants down. I do not know if that is a parliamentary expression but I think it got caught short and I think there was scrambling around saying: "Oh no, what do we do now?" We normally just send these people back. If somebody comes over and says: "Look, I want to get asylum in Britain." "Sorry, we are Jersey, we do not deal with any of that. We like to be British but, I am afraid, go back to the last place you came from, they can process you." Even if they have got a genuine claim, even if they are fleeing for their lives, and this is in the world context, are brown and black lives inherently less valuable than white British lives or non-white British lives? Because that is the way it is portrayed in the media, that is the question we have to ask and that is the question we get in Jersey. Indeed, yesterday we saw our English lives and English contributions less valuable than Jersey ones and I think this is the whole context in which we have that. Now I for one would be much happier, even though I am a

self-declared not particularly a monarchist, I think there is something reassuring about having the Lieutenant Governor in this Assembly because I would much prefer those issues of deportation to be taken out of or kept out of the political arena and dealt with by somebody who is not a politician, who does not have to answer to people. Because the Minister for Home Affairs is the Deputy of St. Peter. In the future, she may be a Senator. In the future, who knows, she may be the Chief Minister of this Assembly. But at the moment she is the ... obviously that is the plan, we know that. But we have a Minister for Home Affairs who has a constituency basis. Now, she or he is going to be moving there at the supermarket saying: "Why did you make that decision? We do not want more foreigners coming over here." She is going to have to say: "Oh well, you do not understand the pros and cons of it." She will be coming under pressure to make decisions based, not just on the legal factors and the factors that have been set out in precedents, but also no doubt from her constituents. So, we are deliberately politicising decisions that should not be politicised. People can seek to politicise the role of the Lieutenant Governor if they wish to do that in the same way that people can seek to politicise when our Bailiff gives a speech but they would be wrong to do that because those individuals are above politics. Now there might be other reasons, for example, why we want to elect our own Speaker - and that is an argument for a different day - but to suggest that these individuals could be politicised, I think that is a very flimsy argument. I am very suspicious of what is going on here but for me the primary concern is the outcomes. Does it make it more likely that people will get a fair crack at the whip when they come to Jersey if we change the rules? I would be interested to hear whether that is true and also what appeal mechanisms are in place. We know that there are ways to appeal a decision and we have seen that played out publicly in the courts, not through the political channels. What will the appeal mechanisms be for somebody who gets deported and feel they have been deported or not allowed into Jersey or into the British area without good reason? Will there be an appeal mechanism in place and, if not, is that human rights compliant? So I think these questions need to be answered. Certainly for my part, I am very suspicious of any move when we have got a system that I think works very well already, when we have an individual with a tried and tested method. I do not see the need for this change.

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

I must say, it is nice to have a few nice remarks about Scrutiny. We have had a number during the last few weeks and that is absolutely super. I took part in the Scrutiny review but there are still a few queries that sort of kind of linger. We have been assured by eminent persons that this is absolutely kosher and that both the Lieutenant Governor and the law officers are content with the changes. What does concern me a bit is, why was all this done during the interregnum between 2 Lieutenant Governors? Perhaps the Minister would be able to explain that because we never really got an answer to that. The other comment, in the proposition it says: "The power to order deportation resides with the Lieutenant Governor." Now, our understanding on Scrutiny was that the deportation would be transferred to the Minister for Home Affairs, so perhaps the Minister could explain that. The trouble is that we had a particular incident. We have got organised and changed the law because of the weaknesses that have been identified through a particular incident, which we got the impression that there was plenty of consultation, but was it sufficient? Why did we do it in the interval and who is going to be ordering the deportations?

[10:30]

#### **1.1.9 Deputy A.D. Lewis of St. Helier:**

A lot of what I was going to say has been said but there are a couple of things that have been said by recent speakers that I just had to stand and say something about. I had the honour of having a similar role to the Constable of St. Lawrence and I had a lot of dealings with the Lieutenant Governor's office and I always thought this was a little bit of an odd arrangement because it was politicising the issue of immigration. Immigration is a very political issue and I think it is very important that the likes of the office of the Lieutenant Governor does not get involved with such a

sensitive political issue and that is why this change is taking place. I found it almost bizarre that I spent time in the Lieutenant Governor's office discussing matters of immigration which was a political issue. I was never comfortable with that, so I am very pleased that this legislation has come forward to change that. But I was just a bit disturbed by some of the comments of Deputy Tadier. Does he really want to put a signal out that Jersey is a place to seek asylum? I would be a bit concerned about that when it is not established and set up to deal with that type of situation on a very regular basis. That is not to say we should not be humanitarian and deal with it when we absolutely have to, which has happened in recent history, but to send out a signal that Jersey will be a soft touch and be close up and personal with a Lieutenant Governor, I am a bit concerned about that. Perhaps the Deputy did not intend that to come across in that way but it certainly did to me and I would be very concerned about that. The Governor is independent but he is also a representative of the Crown and we have Crown officers who of course then sit in our Courts. That does not mean that the Governor should be exposed to an appeal, judicial appeals, and the possibility of would be simply wrong to expose the Governor to Court proceedings which can happen, has happened, and could happen again if you do not make these legislative changes. I believe there is an appeal mechanism in place at the moment for nationality and again the Governor's office has to deal with that and again I do not think that is right and proper. The office of the Lieutenant Governor should be not put in that position of such a sensitive area of what is essentially a political issue, particularly when it comes to a judicial review of an application. It is simply not correct, so I would fully support these legislative changes. I think it is somewhat overdue. It currently exposes the office of the Lieutenant Governor significantly and I think that should be changed. I would urge Members to support this proposition. Thank you.

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

It is always nice to hear my colleague on my left develop an argument which ranges wide and far. But I want to reduce the argument down to something very straightforward and very, if you like, conservative with a small "c" and it is based on my own experience. I have been around for long enough that I have taken an appeal on deportation to the Lieutenant Governor in order for him to exercise his powers and I found the process then very satisfactory. The Lieutenant Governor listened very carefully to the case which was about a young child's right to stay in the Island with his father in order to complete his exams which was going to take something like 15 months. The solution I got was that he would have exceptional leave to stay and the Lieutenant Governor exercised that discretion very satisfactorily in terms of dealing with this particular case. So my small "c" conservative position says I have had experience of this and the system worked. Why are you changing it? So, I do not know about others, but certainly my position says do not change what you have already got because it apparently works very well. The position of the Lieutenant Governor is one not of politicisation, I think that argument is silly, it is one of independence and that is what I am looking for in a system.

#### **1.1.11 Senator I.J. Gorst:**

I am slightly surprised by 2 Members speaking against a democratic process and rather having an appointed person to make political decisions. I am not sure if that was 2 out of 3, maybe that is their party policy, I am not sure. But it seemed to me that midway through one of those speeches, the suggestion was that because we are British citizens, we in Jersey should have nothing to do with these decisions. The position then would simply be that some U.K. Home Office official would make that decision. Is that right? Yesterday I was accused of, I think the word was "anglicisation". I did not respond to it yesterday but I do not apologise if upgrading our social housing to U.K. decent home standards is considered anglicisation. I stand by it. Of course we should be improving living standards to a good standard that we find elsewhere and there are many others where we must continue to show that we meet the very highest standards of probity, of governance, of transparency and we do that day-in and day-out. It is about delivering our future. But this morning we have heard that just doing what the U.K. Secretary of State, or what really happens is

one of their officials will make a decision, is the right approach for us. This morning we hear that U.K. approach: U.K. should be making decisions about who can be deported from Jersey. I do not think that is right. I think that the change the Minister is proposing is absolutely right. We are developing our personality, our democracy every day. This is a natural development of that. Deputy Tadier mentioned a particular case and he did not want that case to be politicised. I am sure he knows what happened in that case because it was so highly politicised because there was such deeply, strongly-held views in the community, we had to develop a work-around whereby the Minister made the decision and then had to recommend that decision to the office of Lieutenant Governor because it was not right, and the Lieutenant Governor did not want to be forced to make a political decision. I think Deputy Tadier was in the Town Hall on the day that I was there as well and understood and felt the strength of feeling that some in our community had about these issues. He and I were aligned. We were standing shoulder to shoulder that day, strange as it may seem to some Members or to some listeners, because we share the view that all life is inherently valuable, no matter of one's origins, one's colour, one's creed. This is an absolutely natural development of Jersey and an enhancement to our democratic processes. I never thought I would hear the day where my colleagues on the left argued against a proper decision by a democratically-elected and accountable Member of this Assembly but I have heard it today. I hope Members will not accept that argument but will vote to make the changes that the Minister is proposing because we in this Assembly believe in democracy. We have been shoulder to shoulder with our friends on the left trying to get electoral reform and improve our democracy. This is just another part of that improvement.

**1.1.12 Deputy T.A. Vallois of St. John:**

Firstly, I would just like to say I support the proposition in front of us. I think what I have heard so far is an inherent distrust of the processes in the machinery of government in which we have and the concerns about how Members are held to account or how Members scrutinise certain things. I would just like to ask the Minister to, if she is able, provide a timescale in which she expects the Privy Council to make an Order in Council should the proposition go through but also to ask that with regards to the Jersey Immigration Rules, which I believe came in in August 2014, whether she would be willing, if an Order in Council was made by the Privy Council, to share that with the relevant Scrutiny Panel, which I am a member of, to state and account for why she believes those rules as set should stay in place or whether she intends to change them and as to the reason why so that there is that security in that process and there is that accountability.

**1.1.13 Deputy S.Y. Mézec of St. Helier:**

In the debate yesterday I said that democracy was the best form of government and of course I stand by that; I am a democrat. But when you put a democratic system together there is a sort of art to deciding where which power gets delegated to, which politicians have which powers, which powers retain sovereignty from the people rather than elected representatives and which decisions have to be handed out to independent bodies which are not susceptible to political lobbying. When you decide how those powers get distributed, there in each decision-maker's mind will be a philosophy that underpins where they think those decisions are best made. The Chief Minister, I think, is confusing the words "democracy" and "independence" here. For me, the philosophy that underpins my view on this subject is based on my view of where Jersey's position constitutionally in the world is. Jersey essentially has 3 options for where it stands in the world. It could be an independent country altogether, it could be an autonomous jurisdiction with an association with the United Kingdom, as we currently are, or it could just be an incorporated part of the U.K. Now, all of those options present opportunities and challenges. With being an independent country, we would have all of the opportunities to completely decide everything ourselves but we would also face the challenges of having to make very difficult decisions and provide very expensive and difficult public services by way of things like defence, by way of having Supreme Courts, by way of having international diplomats. By being an incorporated part of the U.K., we would struggle in

that decisions would be taken out of our hands and the people who are best capable of deciding what is best for this Island, would have much less power and it would be decided somewhere much further away. I am somebody who believes that being an autonomous jurisdiction with an association with the U.K. is the best situation for Jersey because we retain the local powers to make the best decisions according to public services here; however, we have the protection ultimately of the United Kingdom. We are British citizens here, we have the protection that they provide with defence and we have the use ultimately of their diplomatic services when we, as individuals, get into trouble around the world. I find it very comforting when I go abroad knowing that my passport says "British citizen" on it rather than saying "Jersey citizen" because I know that I have much greater protection that way. But being an autonomous jurisdiction, of course, presents difficulties because there will ultimately be some decision-making that we do not have a say on here and it is our call as individuals to decide if that is worth it. Now I think it is worth it not having a say over citizenship of people in Jersey because of the benefits we get back from it. I think that it is a good thing that we do not have complete authority over the immigration rules in Jersey because, ultimately, we are pooling that right and that sovereignty with other jurisdictions, Crown Dependencies and the U.K., and I think we benefit from it. The natural conclusion of supporting Jersey's position as an autonomous jurisdiction with a strong association with the U.K. is the acceptance that there are some things which will be better decided independently, not by people who are susceptible to political lobbying.

[10:45]

One of those, as Deputy Southern, I think, very powerfully described, was the process there currently is whereby the Lieutenant Governor has the role that he plays in this, somebody who is politically independent but who will apply the rules fairly and justly with no political considerations to make on an issue, which for many people can be very emotionally difficult and can lead to terrible upheaval in their lives if the decision does not go well, but he will make that decision objectively. So the reason that I am against this change is not out of any antipathy towards democracy because I am a democrat and I think I have a much better record of supporting democracy than some of those on the Chief Ministerial Benches, it is because I support Jersey's position as an autonomous jurisdiction with a strong association with the United Kingdom. I do not support us becoming more of an independent country, nor do I support us becoming closer entwined with the U.K. We have a good constitutional situation today, it does not need to change, and it is perfectly acceptable in a democracy for this power to be retained by the Lieutenant Governor rather than a politician.

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

I will speak briefly just to say that I agreed with 50 per cent of what the previous speaker said. I use the words "British Jersey" regularly in being the best of all worlds for us. I think where Deputy Mézec, if I may say, is incorrect, and the Minister will no doubt in her summing-up explain this, is that it is just simply not an option for the Lieutenant Governor to continue to discharge this function. It is not possible. So effectively there are 2 choices: either that the decision is made by an elected politician in the United Kingdom; invariably that would be an official, or alternatively the Minister for Home Affairs in Jersey and, of course, upon advice. The one issue which we will always be discussing and perhaps when we get to the Innovation Fund, is Ministers act upon advice. They cannot simply make a decision in isolation of advice. When advice is given, if they do not agree with the advice, then they have to say so and they can issue a letter of instruction which then overrides that. But they always act upon advice and that is one of the things, I think, better communication is the way that Ministers operate. They are not individuals who just simply make decisions. So there are 2 choices: either this decision is moved to the elected politician of the United Kingdom, which will mean an official will make it subject to exactly the same lobbying in the supermarket of a Weston-Super-Mare or Bristol or Edinburgh, or whether or not Ministers in Jersey can be trusted to act upon advice and do things properly. The latter is the best way to do it.

The Lieutenant Governor cannot continue and, my understanding, does not wish to continue: cannot, does not wish to, it is just simply impossible. So there are 2 choices, are we grown up enough to have a democracy and Ministers that can make these decisions or not? I think we can. British Jersey is working and in supporting the Minister for Home Affairs we strengthen British Jersey with our autonomy and showing that we can do things properly.

**The Bailiff:**

Can I just say to Members that it is not in accordance with Standing Orders to use the name of the Lieutenant Governor to influence the debate in any way? It is difficult in this particular case and I understand. Can I ask if any other Member wish to speak? The Deputy of St. Ouen has returned. We were wondering whether you would be inclined to make a charitable donation, Deputy?

**The Deputy of St. Ouen:**

I will certainly do so, Sir. I apologise to you.

**The Bailiff:**

Thank you. It would have been double if you had been singing on the way out as well. Does any other Member wish to speak? Then I call on the Minister to reply.

**1.1.15 The Deputy of St. Peter:**

Thank you to all Members who have taken part in what has been an interesting and wide-ranging debate that I think has asked some important political and philosophical matters of Members. It is good to see that level of debate occurring here today, so I am grateful. Firstly, and most importantly, perhaps, is the question around the anglicisation or not this Order in Council is asking of the Assembly. Simply, as I mentioned in my conclusion, this is a logical and a practical step removing His Excellency from the political arena. I think as Deputy Doublet mentioned, this is really a matter of democratic accountability. That is a matter, therefore, for the electorate of Jersey when they consider who they are going to vote for at an election, that they shall put that cross by the name that most represents their feelings. So, therefore, if the public of Jersey decide to go down a particular route, then that will be a matter for them and the people that they therefore put into office. There are democratic avenues that will be followed as a consequence and that is simply a matter for the public. It is right and proper, I think, that this matter does become democratically accountable and, therefore, as it has been described very well by Senator Ozouf and the Chief Minister, the office of the Lieutenant Governor is clear that this is now time for a change and there has been full communication with that office over these changes and the office is content to see this happen. Constable Taylor asked about what occurs in other Crown Dependencies. The same potential problems do exist in the other Crown Dependencies, notably in Guernsey; however, there, there is a different system of government, a non-executive system. Therefore, they are seeking a solution, I believe, but it is not as simple as it may be here in Jersey, and so that is another point for us to celebrate that we are able to deal with these questions here in the Assembly today. Rightly, the role of Scrutiny has been highlighted and we are grateful for the special role that will occur in that Scrutiny in future will be able to consider the Ministerial Decisions relating to this Act prior to them being signed off by the Minister which is a novel but a good conclusion and a good compromise that has been agreed between the Executive and the Scrutiny function. It has been a rather interesting debate going off at various tangents, so I want to ensure that I have answered all of the questions that have been raised. Senator Ferguson asked whether deportations would be included in these changes and, yes, that is correct, the functions will be moved to the office of the Minister for Home Affairs. Review has been an important part of the debate today. The review process will in the future be that an internal review would occur which is what currently happens at the senior management level. Next, rather than an appeal being made to the Governor, which is what currently occurs, an appeal will be made to the Minister. It is absolutely right that the Governor's office, as Deputy Southern pointed out, has in the past discharged this duty very well, yet it is time to make this change. The final right of appeal will of course be a judicial review, as I

am sure Members would expect. Deputy Tadier raised the issue of asylum and I am grateful to the Chief Minister who explained and explored that area as we have seen in recent past. Essentially, that is a good example of why this role and function does now need to move into the Executive. I do not wish to be drawn into any further debate about asylum. I can repeat my speech if you wish but this debate is really about the changing and transferring of certain functions by Order in Council and I think we should remain on that subject and not stray too deep into the water. I think, and I hope, that in so doing I have answered all Members' questions. Before I resume my seat, no matter what the outcome of the vote today, I would like to express my appreciation to law officers for their excellent work on the Order in Council and for liaising with their colleagues in the Home Office and the Ministry of Justice. I am also grateful to the Head of Service at Customs and Immigration and his officers for their support during the preparation of this proposition. It was the law officers and the immigration officers who jointly put together R.35/2017, which I am sure Members will have seen the full text of the Immigration Acts in their intended form. It is a significant and helpful piece of work for which I am, and the Assistant Minister also is, very appreciative. Last but not least, I thank my own officers in Community and Constitutional Affairs for their assistance. I ask that we vote on this proposition *en bloc* and call for the appel.

**Deputy G.P. Southern:**

A point of clarification, if I may, from the Minister? The Minister appeared to contradict her Assistant Minister who made it clear earlier that when she referred to Ministerial Decisions being referred to Scrutiny they would not be about individual cases and yet the Minister seemed to suggest that they would. What sort of M.D.s (Ministerial Decisions) will be made that are not about individual cases, could she explain to me, so I can understand?

**The Deputy of St. Peter:**

Of course, very happy to. I think what I was suggesting was exactly as the Assistant Minister described it, that the M.D.s that will be sent to Scrutiny will be those that change the Act, not individual cases.

**Deputy M. Tadier:**

I have a point of clarification. I know the Minister said she did not want to get drawn into the process of asylum but how the asylum applications will be treated under the new arrangements was a question I asked because it is germane to how I might vote on this and perhaps how others would vote. So, would she give consideration to explaining how asylum applications might change under the new arrangements, if at all?

**The Deputy of St. Peter:**

I am happy to. There are no changes to the asylum function. Today we are simply being asked to agree the transfer of functions, the transfer of immigration functions, and the others as I have outlined in my speech.

**Senator S.C. Ferguson:**

I wonder if the Minister could clarify. I think she said that deportation is one of the functions that is being transferred to the Minister for Home Affairs. Well, the report to the proposition says that the power to order deportation resides with the Lieutenant Governor in cases where he or she deems the person's deportation to be conducive to the public good. Are those cases also being transferred to the Minister for Home Affairs?

**The Deputy of St. Peter:**

I think I have made that point quite clear.

**The Bailiff:**

I am sorry?



**The Deputy of St. Peter:**

I think I made that point quite clear.

**Senator S.C. Ferguson:**

Sorry, I am just querying the fact that in that case the report to the proposition appears incorrect.

**The Deputy of St. Peter:**

No, the report says, as the Senator said, that the function resides currently with the Lieutenant Governor.

**The Bailiff:**

Minister, I think the question is whether all the deportation functions of the Lieutenant Governor are to be transferred to the Minister. As I understood it, your answer was yes, is that correct?

**The Deputy of St. Peter:**

Yes, Sir.

**The Bailiff:**

Very well, the appel is called for. I invite Members to return to their seats ...

**Deputy M. Tadier:**

Can I ask that they be taken individual Articles as well?

**The Bailiff:**

No, I cannot do that, I do not think. No, it is one proposition, Deputy. I invite Members to return to their seats and I ask the Greffier to open the voting. If all Members have had the opportunity of voting, I ask the Greffier to close the voting.

**POUR: 40**

Senator P.F. Routier  
Senator P.F.C. Ozouf  
Senator A.J.H. Maclean  
Senator I.J. Gorst  
Senator L.J. Farnham  
Senator P.M. Bailhache  
Senator A.K.F. Green  
Senator S.C. Ferguson  
Connétable of St. Helier  
Connétable of St. Clement  
Connétable of St. Peter  
Connétable of St. Lawrence  
Connétable of St. Mary  
Connétable of St. Ouen  
Connétable of St. Brelade  
Connétable of St. Martin  
Connétable of Grouville  
Connétable of St. John  
Connétable of Trinity  
Deputy of Grouville  
Deputy J.A. Hilton (H)  
Deputy of Trinity  
Deputy K.C. Lewis (S)  
Deputy E.J. Noel (L)  
Deputy of St. John  
Deputy M.R. Higgins (H)  
Deputy J.M. Maçon (S)

**CONTRE: 5**

Deputy G.P. Southern (H)  
Deputy M. Tadier (B)  
Deputy S.Y. Mézec (H)  
Deputy S.M. Bree (C)  
Deputy T.A. McDonald (S)

**ABSTAIN: 0**

Deputy S.J. Pinel (C)  
Deputy of St. Martin  
Deputy R.G. Bryans (H)  
Deputy of St. Peter  
Deputy A.D. Lewis (H)  
Deputy of St. Ouen  
Deputy L.M.C. Doublet (S)  
Deputy R. Labey (H)  
Deputy S.M. Wickenden (H)  
Deputy M.J. Norton (B)  
Deputy of St. Mary  
Deputy G.J. Truscott (B)  
Deputy P.D. McLinton (S)

## **2. Channel Islands Lottery: allocation of proceeds from 2016 (P.27/2017)**

### **The Bailiff:**

We now come to P.27/2017 Channel Islands Lottery: allocation of proceeds from 2016 lodged by the Minister for Economic Development, Tourism, Sport and Culture and I ask the Greffier to read the proposition.

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

The States are asked to decide whether they are of opinion to agree, in accordance with the provisions of Regulation 4(5) of the Gambling (Channel Islands Lottery) (Jersey) Regulations 1975, that all monies standing to the credit of the Channel Islands Lottery (Jersey) Fund which have not already been set aside by the Minister (representing 100 per cent of the total Jersey portion of the proceeds of the Channel Islands Lottery for 2016) should be paid to the Association of Jersey Charities for the benefit of the local community and the charitable needs of the Island.

[11:00]

### **2.1 Deputy M.J. Norton of St. Brelade (Assistant Minister for Economic Development, Tourism, Sport and Culture - rapporteur):**

This is, as you have heard from the Greffe, a very simple proposition in that 100 per cent of the profits of the proceeds of the Channel Islands Lottery, I am asking the Assembly if we can, as we have in previous times, transfer this to the Association of Jersey Charities for the benefit of good causes in our local community. I have to say I do feel a tremendous sense of privilege and pride having the responsibility of presenting this proposition again this year. This time last year, if I may, I reminded Members that as recently as 2010 the Channel Islands Lottery was in decline. It was facing an uncertain future and it was putting funding for good causes at risk. Last year I expressed my delight that in recent years the lottery has been rejuvenated for the benefit of Channel Islanders. I had also told Members that I set an ambitious target of generating £1 million of profit average per year by the year 2020 to go to good causes. There has been a lot of hard work and expertise that has improved the product, that being the lottery, which in turn has led to increased sales. Increased sales have led to greater footfall for local retailers and increased sales have meant higher and better-quality prizes. At its core, the Channel Islands Lottery is a simple concept. The more tickets sold, the more money raised for local good causes. This is, be under no doubt, the primary purpose of the Channel Islands Lottery, to generate proceeds for the benefit of good causes to our community. Members will have seen that the *Public Lotteries Report for 2016* which came out in March 2017 was presented to this Assembly and I am delighted to report that the proceeds from lottery activity in Jersey in 2016 was record-breaking: £1,250,482. Be in no doubt, this in Europe per capita of population is the most successful lottery in Europe to date. Achieving this turnaround in fortunes of the Channel Islands Lottery in Jersey represents real achievement for our community, an achievement which we should all, as States Members, be immensely proud of. Now

if Members support the proposition today, the proceeds will be transferred, as in previous years, to the Association of Jersey Charities. As Members know, the Association represents over 300 member charities and allocates funds from the Channel Islands Lottery on a basis of need. I will publish a Ministerial Decision, which will be a 3-year Service Level Agreement once the Association of Jersey Charities have agreed that S.L.A. (Service Level Agreement). That will then sit in place for further subsequent allocations over the next 2 years. The Association publishes its annual report on their website so everyone can see where the funds are distributed. I will also arrange for the Association to present their annual report to all Members. The amount of money will allow the Association of Jersey Charities to make an even greater positive impact on the lives of people in our community. The Channel Islands Lottery support is vital for allowing organisations to continue their work and I would express my thanks and the thanks of the Assembly for the work undertaken in supporting our community by the Association of Jersey Charities. They do an immensely valuable job. It is no exaggeration to say that the lives, especially those who are in some way disadvantaged, have been transformed by lottery money. I would also like to acknowledge everyone that has supported and contributed to the success of the Channel Islands Lottery during 2016. I would especially like to thank Islanders for their continued generosity in supporting the lottery. The Channel Islands Lottery really is a treasure of this Island. It has delivered for the community since the 1970s. It will keep flying high for decades to come if we maintain our focus on improving with attention to detail. I maintain the proposition.

**The Bailiff:**

Is the proposition seconded? [**Seconded**] Does any Member wish to speak? The Connétable of St. Brelade.

**2.1.1 Connétable S.W. Pallett of St. Brelade:**

Very briefly. I very much obviously support the proposition but as the proposition states in the report, there is an intention to examine whether lottery proceeds should be available to a wider range of community organisations. I certainly support the widening of the scope to include those involved in sport and all that it delivers within Jersey. Sport plays a hugely positive and productive role within the Island's community, irrespective of age, so the opportunity for non-profit sports clubs and organisations to benefit from lottery funding I believe is only fair. Culture groups already benefit from the proceeds of our Channel Islands Lottery and I am looking forward to the day, I hope in the not too distant future, when the new Charities Law is in operation. The Association of Jersey Charities has the scope to deliver funding to the sports community, to fund projects that meet any necessary criteria. As I said, I very much support this proposition but really only under the caveat that the scope is truly widened to include sports and, like I say, all the positive work it delivers.

**2.1.2 Deputy D. Johnson of St. Mary:**

I simply note that the transfer is subject to the entering into of a Service Level Agreement. Could the Assistant Minister advise how soon that might be?

**2.1.3 Deputy S.M. Brée:**

My question is of a similar vein to the Constable of St. Brelade with regards to the Association of Jersey Charities. I believe their membership is about 300, I may be wrong there, but it more is a question of will distribution of the lottery funds be solely restricted to members of the Association of Jersey Charities or will they be able to distribute funds to other good causes, i.e., not recognised charity bodies? Because, I quite agree, there are a large number of sports or clubs over here that would benefit greatly from an input of funding from this. Because if we look at the slightly bigger picture here, the Dormant Bank Accounts Law that is due to go for an Appointed Day Act uses the Association of Jersey Charities as its distribution partner, if you want to call it that. I would hate to think that all money was going to be restricted to only membership or a charitable body because I think there are many, many worthy causes, good causes, institutions over here which are not

recognised charities. Therefore, the question is, will the Association be willing to distribute outside of their own membership?

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

I would like to ask the Assistant Minister, with the possibility of a Service Level Agreement coming forward, whether the intention of the department will be to require the process of allocating the funds in future by a ministerial order rather than bringing it to the States and what the ability for scrutinising the Service Level Agreement will be? Under the Financial and Manpower Implications it states that there are no financial or manpower implications for the States arising from this proposition. Can I ask what the financial and manpower implications will be for enforcing the Service Level Agreement and holding those people to account for the way that public money is spent?

#### **2.1.5 Deputy S.M. Wickenden of St. Helier:**

I will just ask the Assistant Minister, is this the cart before the horse? Should we not be doing the S.L.A. first before we come here and agree to send the money? I may have missed that in his speech but I would just ask him to clarify on his summing-up, please.

#### **2.1.6 Deputy R. Labey of St. Helier:**

Just following the Constable of St. Brelade who is waving the flag for sport. Maybe I could do the same for the arts, not just the performing arts, all the arts and culture. I think there is a shortfall somewhere with regards, for instance, young people gaining experience, say in dance or drama, off-Island. Recently I was approached by the mother of a very talented 14 year-old young lady who for the second year running had got on to a prestigious summer school with the English National Ballet, which has to be paid for, but is highly selective. The young lady went to the Jersey Arts Trust to ask for assistance with funding and were told: "Well, we helped you last year. We cannot really do it again this year." Now, that is something that would never occur with a sportsman or woman, because it is understood in the sports world that to get to the top, you need to continue training. The same is true in the world of dance, and particularly ballet, which is a sport. So it is kind of ridiculous that the funding was shut off to this young lady because she had already done the training. That needs to continue for years. Fortunately, the Parish of St. Helier Youth Community Trust has come to the rescue there just this week, but I just wanted to point that out. I do not know whether the Assistant Ministers might just take that on board and investigate.

#### **2.1.7 Senator L.J. Farnham:**

I just simply wanted to thank Deputy Norton and officers in the department, and indeed all stakeholders and partners in the lottery for the work they have done to restructure and rejuvenate the lottery, leading to this increase in financial revenue. I also want to align myself with the Constable of St. Brelade and Deputy Labey. I hope other Members will agree that one of the whole purposes of restructuring the lottery was not only just to increase the potential for financial monies to be raised and distributed, but so we can widen the distribution and it can be distributed fairly and appropriately across more parts of the community. Thank you to all involved, and I am sure Deputy Norton will deal adequately with all the questions.

#### **2.1.8 Deputy A.D. Lewis:**

I am glad that Deputy Labey mentioned the Youth Community Trust in St. Helier and I want to mention it to Members today, because there is an opportunity here for those that are concerned about how you can distribute funds from the Association of Jersey Charities and other charities in a relatively regulated way, because we are a finance centre and we have to be very careful as to what charities really are. So that is why we have the Association of Jersey Charities and that is why we have some regulation through the J.F.S.C. (Jersey Financial Services Commission) for charities. Now, there is a way to distribute further to your parishioners and to needy causes, and that is by setting up within your Parishes your own community trusts and then you can register with the

Association of Jersey Charities, access funds such as these and many other funds as well for the benefit of your communities. So I would urge Members in your Parishes to consider that, and if you want to know a little bit more as to how we have done it in St. Helier - and St. John has done this as well - I am very happy to talk to Members about how it can be achieved. Then you can distribute funds in a charitable way, in a slightly regulated way and access these types of funds as well, so I would urge Members to consider that in their Parishes if they feel it is appropriate. My only question to the Assistant Minister though is concerning the ongoing success of the lottery. Absolutely fantastic that it has got so far as it has. Is there opportunity to go further as a business proposition so it can have even greater effect on charities and needy causes in the Island, and what plans are there to develop it further and is it indeed possible to do so?

**2.1.9 Connétable M.P.S. Le Troquer of St. Martin:**

I was not going to speak. I just thought I would ask the Minister and Assistant Minister. I think this is not the place that we should be discussing this morning's debate or comments that have been made. It is quite unbecoming and maybe if the Minister and Assistant Minister could look at something different in the future. I know the law requires it to come back and distribute this money, but I do not think this is for a debate in this House.

**The Bailiff:**

Does any other Member wish to speak? Then I call on the Assistant Minister to reply.

**2.1.10 Deputy M.J. Norton:**

I will deal with the last question first, if I may, from the Connétable of St. Martin. I think it is vitally important that every Member of the States takes the responsibility for which direction the funds go to. The reason that I am doing that is not just for rubberstamping; it is very important that we bring this forward. This is not a discussion about where the money goes in individual charities whatsoever. This is about whether we, with States money - because this is a States-operated lottery - transfer this money to an arm's length organisation that is independent of any political influence to distribute it directly on the basis of need.

[11:15]

From my personal perspective, I think it is important that we do that. So I may disagree with you on that. I do not think that the department should just automatically be distributing the money. That is not what we should be doing, if I have understood your question correctly. If I have not, I am quite happy to give way.

**The Bailiff:**

Through the Chair.

**Deputy M.J. Norton:**

Through the Chair.

**The Connétable of St. Martin:**

It was just what happened this morning. There were people calling for individual sums of money, or not the figures, but doing it for their own charities and their own needs and I do not think that was correct, not the way it has been done. I do not think people should be asking in this Assembly that they be considered.

**The Bailiff:**

If that is a reference to Deputy Labey's speech, I did not understand it in that way, but still.

**Deputy M.J. Norton:**

Thank you for the clarification. I, in that case, do agree with you that I do not think we should be, because we will all have our favourite pet charities, I am sure, and we would all wish them to be put forward in front of any other, because we believe them to be more deserving, which is the very reason that we handed over to the Association of Jersey Charities. If I may, and I am not defending the Connétable of St. Brelade on this, but I think he was just asking about future direction. If I can answer that to others who were asking very much the same question, Deputy Brée as well, the very basis that we are baking a much bigger pie, if I can use that analogy, means that there will be more slices. If there are going to be more slices, then we can distribute them to a wider hungry population and that is exactly what we intend to do and that is exactly what the intention has been in reviving and rejuvenating the lottery, so that it can go to a wider base of the community, both inside and outside of the Association of Jersey Charities. That is part of the ongoing discussions we have had with the Association of Jersey Charities. They will continue. With regard to the S.L.A., I will say to Deputy Wickenden, we cannot negotiate a Service Level Agreement if I have not got the permission of the States in the first place to give them the money, so we have to put the horse before the cart, or the other way around, if you wish to put it that way. But we certainly have to make sure that we have an agreement from the States to transfer the money before we can negotiate a S.L.A. That S.L.A. at the moment is under discussion and it will be published and there will be an M.D. so everyone will be able to see that S.L.A. It is our intention to encourage the Association of Jersey Charities to be able to distribute outside of their membership, as I have already said. They are at the moment having a review of the mechanics of how they do that. Along with a review of the Association of Jersey Charities structure, they have a very high-level U.K. Charities Commissioner at the moment assisting them in that work and once they have that review and that report, they will then come back to us, we will then discuss with them the agreement of the S.L.A. which fits the purpose. In terms of manpower and holding them to that S.L.A., that is done inside the budget of E.D.T.S.C. (Economic Development, Tourism, Sport and Culture) and will continue to do so and there is no further manpower costs. They are already incorporated into what we do. I think I may have covered it all. Deputy Labey did of course mention the arts, but sport was also mentioned as well, and again, I think I have already covered that in widening what we want to do with what is an extremely successful lottery, as I have already indicated. How much further can we go? Deputy Lewis of St. Helier asked that. We have already instructed new branding for the Channel Islands Lottery. That branding is assisting the sales not only, but it is also making the link with the very, very good causes that have received grant funding already, that they will be able to identify via logos and via material that they can put on to minibuses or on to products or plaques that say that they have been funded by Channel Island Lottery money. I think it is very important that people see that, because then they get the reason why they are buying the tickets in the first place, because they are promoting local charities. I maintain the proposition. I hope I have answered everybody's questions, and if I have not, I am sure somebody will let me know. I call for the appel.

**The Bailiff:**

The appel is called for. I invite Members to return to their seats. The vote is on P.27/2017, Allocation of Proceeds of the Channel Islands Lottery, and I ask the Greffier to open the voting. If all Members have had the opportunity of voting, I ask the Greffier to close the voting.

**POUR: 38**

Senator P.F. Routier  
Senator A.J.H. Maclean  
Senator I.J. Gorst  
Senator L.J. Farnham  
Senator P.M. Bailhache  
Senator A.K.F. Green  
Senator S.C. Ferguson  
Connétable of St. Peter

**CONTRE: 0**

**ABSTAIN: 0**

Connétable of St. Lawrence  
Connétable of St. Mary  
Connétable of St. Ouen  
Connétable of St. Brelade  
Connétable of St. Martin  
Connétable of Grouville  
Connétable of St. John  
Deputy J.A. Hilton (H)  
Deputy J.A.N. Le Fondré (L)  
Deputy of Trinity  
Deputy K.C. Lewis (S)  
Deputy E.J. Noel (L)  
Deputy of St. John  
Deputy M.R. Higgins (H)  
Deputy J.M. Maçon (S)  
Deputy S.J. Pinel (C)  
Deputy of St. Martin  
Deputy R.G. Bryans (H)  
Deputy of St. Peter  
Deputy A.D. Lewis (H)  
Deputy of St. Ouen  
Deputy L.M.C. Doublet (S)  
Deputy R. Labey (H)  
Deputy S.M. Wickenden (H)  
Deputy S.M. Bree (C)  
Deputy M.J. Norton (B)  
Deputy T.A. McDonald (S)  
Deputy of St. Mary  
Deputy G.J. Truscott (B)  
Deputy P.D. McLinton (S)

### **3. Income Support Medical Appeal Tribunal: reappointment of members (P.35/2017)**

#### **The Bailiff:**

We now come to P.35/2017, the Income Support Medical Appeal Tribunal: reappointment of members, lodged by the Minister for Social Security. I ask the Greffier to read the proposition.

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

The States are asked to decide whether they are of opinion to reappoint in accordance with Article 9 of the Income Support (Jersey) Law 2007 further to a process overseen by the Jersey Appointments Commission the following persons as members of the Income Support Medical Appeal Tribunal for a 4-year period: Mr. Sam Le Breton, panel member, 4 years; Mr. John Moulin, panel member, 4 years; Dr. Mike Richardson, medical practitioner, 4 years.

#### **3.1 Deputy S.J. Pinel of St. Clement (The Minister for Social Security):**

I am pleased to propose the reappointment of 3 tribunal members, Dr. Mike Richard, a medical practitioner, and Mr. Sam Le Breton and Mr. John Moulin as side members to the Income Support Medical Appeal Tribunal. The tribunal deals with appeals regarding medical grounds affecting a claim to income support, the level of care being provided affecting the award of Home Carer's Allowance and care levels affecting the award of long-term care. A tribunal panel consists of a legally qualified chair or deputy chair, a medical practitioner and a layperson, being an individual who has an understanding of the impact of disability through their own experience. All 3 individuals have already served a 5-year term of office and are recommended for reappointment, as I am satisfied that they have the appropriate professional qualifications, knowledge and experience to continue fulfilling their roles. I ask Members to agree that the proposed candidates are appointed

to the Income Support Medical Appeal Tribunal for a 4-year term of office starting with immediate effect, 21st June 2017. I ask Members to support the proposition.

**The Bailiff:**

Is the proposition seconded? [**Seconded**] Does any Member wish to speak? All Members in favour of adopting the proposition, kindly show; those against. The proposition is adopted.

**4. Jersey Innovation Fund (R.3/2017 and R.45/2017) (Consideration “in Committee”)**

**The Bailiff:**

We now come to the proposed in-committee debate on the Jersey Innovation Fund. It has been called for by Deputy Higgins. I remind Members the rules for in-committee debates are essentially the same rules as apply to all debates, the Standing Orders apply, the rules of order, conduct and debate continue to apply, except that a Member of the States may speak more than once during the discussion. There are several which do not apply, but there is no matter to be voted upon and Presiding Officer decides when sufficient time has been allowed to bring the discussion to an end. Deputy Higgins.

**Deputy A.D. Lewis:**

I wonder if I could just clarify a point of order. I and my committee, the Public Accounts Committee, are currently investigating the Innovation Fund, so members of the committee and myself would like some guidance from the Chair as to whether you feel we should or should not participate in this debate, as we are in the middle of a live investigation into the ongoings at Jersey Innovation Fund.

**The Bailiff:**

Entirely up to you and your committee members, Deputy. There is no reason why you should not participate if you wish to. What no doubt you will be interested to ensure is that whatever contribution you make is not going to prejudice the independence of your conclusions at the end of the day.

**Deputy A.D. Lewis:**

Thank you for your guidance, Sir.

**4.1 Deputy M.R. Higgins of St. Helier:**

When I brought to the States, I think it was 2 weeks ago, the prospect of us having an in-camera debate, I did so for 2 reasons.

**The Bailiff:**

It is an in-committee debate.

**Deputy M.R. Higgins:**

In-committee debate, sorry, Sir. We have had too many of those in the past. Yes, the reason for wanting to have this debate was first of all that I was dissatisfied with the Chief Minister's statement to the States on the Innovation Fund report that he had commissioned from Jessica Simor Q.C. (Queen's Counsel) of Matrix Chambers. Now, this dissatisfaction was with a number of elements, first of all the timing of the statement. It came at the end of a long day and we were all sort of tired after what we had been through. If I remember correctly, it was a holiday weekend, so not only were we tired, I think some people felt rushed, with only 15 minutes allowed to question the Chief Minister on the report. I also make the point the report was given to some Members in the Assembly and not to others. Now, I did not have a copy of the report, colleagues nearby did not have a copy. Those that did were still faced with a super-human task, which was to read 72 pages of it and digest it - I must say in parts it is not as clear as I would like - but to digest it and ask reasonable, informed decisions of the Chief Minister. So I was unhappy with the way that the



statement and the follow-up was done. I also was annoyed by some things, because Senator Gorst talked about the exoneration of Senator Ozouf. I am going to come to this in a second, but the exoneration of Senator Ozouf and his criticism of Senators Farnham and Maclean, because by saying that he was sending them a letter, he was publicly admonishing them, he was telling them off and telling the public off, that he felt they had failed. Now, we did not know one way or another. Certainly the Comptroller and Auditor General's report which came before did not exonerate anybody. This statement - and I will just make this one point - I have not found anywhere in that document a statement saying: "Senator Ozouf was exonerated" and I would like the Chief Minister to address that when he does speak in this debate, because that was annoying. One, the criticism of 2 of the Ministers, saying another one was exonerated and none of us had a clue because we did not have the information to be able to decide. I also felt it was wrong because the Chief Minister did not address some of his own shortcomings in this. He did not have totally clean hands, let us say, with the Innovation Fund. He had been involved at various stages and he either did things or he did not do things and they were not really highlighted. I was particularly annoyed though because I felt it was news management at its best. You got a report that is critical of various aspects of operations, it talks about confusion in the ranks of Ministers and officers, people did not know what they were doing. It talks about things that the States thought had been agreed or done, were not done and so on. But the message that went out on the media that night was: "Senator Ozouf exonerated", some criticism of the other Ministers and that type of message, and also the other part of the message was his criticism of the States. It is our fault, because we did not challenge them enough or we believed what they told us. He also criticised, for example, things like the Troy Rule, which I do not see had any relevance to the actual report. He may believe that there should be changes, but it was not something that came out of the report. So it is those sort of criticisms and that did upset me. Now, the second reason I brought this proposition to the States so we could have this debate is because I want more information about the Innovation Fund and what happened. I want to know who did what, who did not do what and I also wanted to know in particular more information about the Logfiller loan. Now, although I have read and reread the Comptroller and Auditor General's report, Jessica Simor's report, the Economic Affairs Scrutiny Panel's report and some of the transcripts of the Public Accounts Committee, the investigation into the Innovation Fund report, I am still only partially informed. Now, we do not have any details of the Logfiller case, which is the one where the major failings appear to have occurred and the loan will probably end up being written off. We just do not know. The rest of the fund, it is not as bad as I think everybody believes, but this particular loan was what I wanted to understand. Anyway, so we do not have any details of the Logfiller case, as it is supposedly being investigated by the States of Jersey Police. We do not have, and will not have, according to the Chief Minister, the report of the actions of the civil servants involved with the fund, although I think we should, as without it we cannot fully understand the interaction between officers and Ministers. In other words, the policy operational nexus is something that particularly concerns me and it comes out in that report. I am also not sure how comprehensive that report will be - this is the report into the officers - as the Chief Officer of Economic Development was allowed to resign before the Comptroller and Auditor General's report came out. The States Economic Adviser, who was also involved with the fund, was for personal reasons allowed to resign, up stick and go to Scotland and work there during his notice period with the States. I sincerely hope he was interviewed before he left. Now, I must say that I am looking forward to the Public Accounts Committee report. The transcripts I have read so far have been interesting. It was interesting in how little some people knew when they were being questioned about the fund and how they believed some things had been done, but they were going to have to go back to the department and check. Now, before we get into an in-depth debate on the fund itself, let me state that I voted for the Innovation Fund. I thought it was a good idea. I still believe that the fund should be resurrected and we should try and do something with it, but proper checks and balances, procedures, et cetera, must be in place.

[11:30]

The second thing is - and this will probably come as a surprise to some of the people concerned - although I am very often criticising members of the Council of Ministers, I am not trying to criticise the Ministers concerned. I want to hear what they have got to say. I want to understand the process and understand how we got into the situation we were. I believe from what I have read that Ministers acted honourably. Sometimes maybe the interaction between some of them may be a bit fraught, but let us find out what happened. That is the purpose of this debate. So my purpose is to learn rather than criticise the individuals concerned. I may be asking some questions later, because that is the nice thing about an in-committee debate, I can come back, I do not have to say everything right here. I want to listen and hear from the Ministers involved, so the Chief Minister, Senator Farnham, Senator Maclean, about what happened. I would like to hear from their mouths and I hope that they can set our minds at ease as to maybe some parts of it were not as bad as were made out. Now, as far as the debate is concerned, I hope Members will agree with the order of the debate that I would like to see, because the report is basically in 2 parts. The first part is concerned with the defective ... the Comptroller and Auditor General said the Innovation Fund was defective from the very start, in other words, the operational terms of reference, financial directives and we had changes in risk rates which were not communicated to the States. Now, the people who were obviously involved with the setting up of this fund were Senators Maclean and Ozouf, because they were both in office at the time. Senator Ozouf was the Minister for Treasury and Resources and Senator Maclean the Minister for Economic Development. So they were involved, and even before then, obviously other members of the Council of Ministers were involved, probably the Chief Minister was involved in discussions and so on. I would like to see how we got to where we were. So I would like them to explain, for example, the operational terms of reference and the financial directive and why they were defective and why they were not even properly sorted out at the end. The second part is looking at what happened at the beginning and the other part that is important is the confusion. Now, Jessica Simor talks about confusion. I read it in one way and say I cannot see that confusion. It may have been between some of the officers, because the officers might have been playing off the Ministers, for all I know, but in terms of who was responsible, we know who was legally responsible. We also know who was working on the scheme and working on it anyway. Now, Senator Ozouf, you can read from the report ... sorry, I will just mention this first. If you look at the Simor report, paragraph 120, probably the first 4 gives a bit of information about the role of Economic Development and the Minister and his relationship with them. Senator Ozouf in the report comes out as saying he should have had full responsibility for it. There were mistakes made. Senator Farnham delegated most of his powers across, but when he came to the signing one, he could not do that at that point and it gets a bit muddled inbetween. So I would like to understand that and I would like to know if there was friction between the 2 Ministers, because it looks to me as if the one Minister was doing his job and the other Minister may have felt he was not doing a good enough job or he wanted it. Then whose fault was that? Was that the Chief Minister or what? I would just like to understand the process that went on. So I am not going to go on any further. I just want to sort of set the scene, in effect. The reason why I want to have more information - and remember, we are not discussing the loans, we are not going to get that information - at the moment we cannot do any in-depth thing about what officers did, because the Chief Minister has said they are not going to publish the report, which I think is stupid, because we need to understand the whole. But I would like the Ministers who were involved in this starting off with how the fund was set up and the problems that occurred that caused the fund not to function effectively. So as I say, that is Senator Maclean, Senator Ozouf and Senator Gorst, so perhaps they will inform us. I would ask Members to try to concentrate on that area, because that is one of the criticisms of the Comptroller and Auditor General, and then later let us deal with the confusion, so do it in 2 halves, otherwise we will be all over the place and we will not find a chronological order, we will be all over the place and we will not know what happened when. So I am going to sit down at that point. I will make comments later on, but I think the Ministers ... I would like to hear from the Ministers on this, and remember, we are seeking information, not necessarily to criticise.

**The Bailiff:**

Deputy, speaking for myself, I am already confused. You want 2 halves, but I was not entirely clear what the 2 halves were, so I would like to be sure about it.

**Deputy M.R. Higgins:**

Sorry, just to say again, Sir, the main criticisms within the Comptroller and Auditor General's report was the fact that the fund was not set up properly, in other words, there were defects in the operational terms of reference.

**The Bailiff:**

In the terms of reference, yes.

**Deputy M.R. Higgins:**

There were defects when it came to the financial direction, there had to be 2. Remember, we have 2 departments working on these things. As I see it, it was a joint effort between the Treasury Department and the Ministry of Economic Development. I would like to understand how those things came about and fully understand what happened. That is the first part and that is going back to what the Comptroller and Auditor General said. The second part that I think we should discuss - and I would hope Members will stick to this order - is her statements, that she pointed out about the confusion between Ministers and officers and so on, so we can fully understand. So I think it is a logical way of dealing with it, Sir, and I hope Members will go with that sort of order.

**The Bailiff:**

I have to say that I thought that would be quite a sensible of looking at the issues involved. So perhaps I can suggest that we deal with the first issue, the setting up of the fund in the first place, the terms of reference, Financial Directions. Does any Member wish to speak on that issue? Senator Ozouf.

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

First of all, can I say that I very much welcome the opportunity and I am pleased that Deputy Higgins has given and afforded the opportunity. We do not have a tradition in this Assembly of having a public debate; other Parliaments do. I hope that we can develop more of a tradition of that in future, because I think it is really important, without necessarily reaching a conclusion, because this is a matter of real importance. For my part, it is important that the facts and the questions are held. I think also later on in the debate we just need to deal with the issue of responsibility and what that means. Responsibility is really important, because it is at the very heart of who is responsible and what the consequences of that responsibility should be. There is one thing in this Assembly, I could address this Assembly in French and I accept Deputy Higgins does not want me to do that, but I just want to say one thing at the very start of this issue, that I have done my very best to try to understand all of the issues and answer the questions. At the heart of it, the responsibility, which is who was responsible for doing the original terms of reference and the whole work prior to that, that is the first question that Deputy Higgins has asked, but I just want to explain the word "responsibility". If I was speaking French, then I would use one word, I would basically be addressing the Assembly and saying that I was effectively *responsable, responsabilité*. Now, in English there are 4 words that are the same or sub-bits of responsibility. There is responsibility, accountability, answerability, in other words, answering questions to it, and blame, in other words, liability. The French language does not differentiate between those. We do in the English language and that is what is called the Westminster system. So it is going to be important for us to divorce and to separate and to put the things into different things. I was absolutely clear that in terms of the setting up of the fund, the responsible person, the responsible individual, the responsible department for the Innovation Fund was Economic Development. That must be the case. The only reason why the Minister for Treasury brought the matters to ... and Deputy Higgins is quite right, of course there is then a responsibility to ensure that the Economic Development

Department had done something that could be brought under ... the Minister for Treasury and Resources is the only person that could bring a special fund. So I was responsible in that function to bring it to the States, but the responsibility of drawing up the fund was Economic Development. That is absolutely clear from all of the significant amounts of Scrutiny, and when I addressed the Scrutiny Panel and I said in fact in presenting it, Members ... I think there was an issue where our much-esteemed ushers were struggling at the time with bringing a platform, and I made the point at that very debate, which Deputy Higgins said is: "Why is the platform for the Innovation Fund being put here versus not there?" which was effectively the Minister for Economic Development. That is just a legal issue, that effectively the Minister for Treasury and Resources is the only one to do the fund. The Minister for Treasury and Resources is the only one that can set up a fund and has to do from another department. That does not abrogate responsibility to the Treasury to make sure it was right, of course we had to. So what happened is that effectively the genesis was ... I am not going to speak for very much longer on this, but just to say the genesis was that it was part of the economic development and diversification strategy, which was effectively debated in the Assembly on 1st June 2012. That is where it started, then in July 2012 there was a debate proposed by the Council of Ministers on that. That was approved. Then later on September 2012, terms of reference were drafted by E.D. (Economic Development) and then they were eventually ... then there was a discussion about the funding of the fund itself. That was in the Medium Term Financial Plan, which was allocation of £5 million. I led that debate in November 2012, where I indicated where the money was going to come from. Then effectively a proposition was lodged by the Minister for Treasury on 20th November 2012, which was lodged and then referred to Scrutiny. I was recommended to lodge that proposition on 20th November 2012 by the Treasurer of the States upon the work of E.D. and effectively I was almost the administrative function that did that. I hope that that is clear. Nobody, I think, would doubt any of that. Now, what then happened, and it is clear, if it would have been the Treasury that was going to be scrutinised, it would be Corporate Services that would scrutinise that report. I think the fact that it was the Economic Affairs Scrutiny Panel shows that it was the Economic Affairs matter that was before it. If I may say, the Economic Affairs Scrutiny Panel did a very substantial and important job in reviewing that fund. As the Minister for Treasury and Resources, I then took that report. Officials within E.D. then amended the report that had been put to the Assembly, so E.D. did all the amendments, I then accepted it and basically put amendments. The Economic Affairs Scrutiny Panel, they were quite pleased at the time, I think, because all of their recommendations were accepted without hesitation, deviation or anything else. They were absolutely put in place. Now, what the C. and A.G. (Comptroller and Auditor General) said ... and I have spoken to the C. and A.G. and I have spoken to the Deputy C. and A.G. and I am clear that the C. and A.G. report, which of course then said that the terms of reference were inconsistent, incomplete and basically she says that the implementation of the terms of reference that were approved by the States in the spring of 2013 was not correct. So what the desire of the States was in approving the terms of reference was not implemented properly. That is what she says. Now, there was a comment yesterday, I think by Deputy Maçon, that it is the States Assembly that was responsible. Now, what happens is that a Minister brings forward a proposal and then the States approves it, so then the States Assembly are responsible for effectively their own decisions. Now, of course they will make their own mind up, but the responsibility of that final Innovation Fund is the responsibility of the Assembly as a whole, because it was just simply a Ministerial Decision, it was not an order to the States Assembly. But of course it was on the basis of the work of that and that would only be effectively a problem if effectively the States Assembly was misrepresented, then you could come back on the Minister to do that. The only thing I will say on that is that the Treasury was part of the overall organising group.

[11:45]

The Treasury had certain difficulties with the fund and that is why there was a very important issue about the ... that was a very important role that the Treasury had in terms of doing Financial

Directions. Now, Financial Directions are not a political issue, they are one for the Treasurer. Financial directions are the Treasurer's job. Everything is done in the name of the Minister as a corporation sole - we will come to my role later, because I was not a Minister; that does not mean to say that I did not act as a Minister - but Financial Directions are a matter for the Treasurer of the States. I have never signed a financial direction, or if I have signed one, I have only done it because the Treasurer told me that that was the situation. So the problem was that a report was done by E.D., terms of reference were sorted out by E.D. Scrutiny did not like that or thought that they were incomplete. They made recommendations, they were taken in full and then the States approved it and then what the C. and A.G. said is that ... the C. and A.G.'s report is not about politicians. She has been absolutely clear about that. I am going to repeat that: the C. and A.G.'s report did not apportion and would never apportion political blame, except in exceptional circumstances, so the C. and A.G. was commenting always on implementation and that is effectively an issue of administration. Now, I do not think at that stage ... I do not know whether or not I go on now to discuss what happened afterwards, from November 2014.

**The Bailiff:**

Senator, if I may, I think it would be much easier if we take the 2 bits separately.

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

Fine, no problem at all. So I hope I have answered all the questions in relation to the Minister for Treasury and Resources' role up to the lodging of that proposition. I hope I have explained that clearly. If any Member has got any questions on that, I am more than happy to answer them, but I am clear what the role of the Minister for Treasury and Resources was. The Jessica Simor report was clear that that was the situation. I do not think E.D. would ever say anything else, apart from it was their job, it was their responsibility and it was their project that had been effectively brought to this Assembly by the Minister for Treasury and Resources, because the Minister for Treasury and Resources is the only person that can do a special fund. I hope that is helpful.

**4.1.2 Senator I.J. Gorst:**

I am really not sure what I can add in the way that Deputy Higgins wants to address the questions that he has got. I have got a very formal speech. It does not seem to me to be appropriate to do or give that at this time. I think it is clear from looking at the reports and the appendices, and some of us have re-read the Hansard of appearances before Scrutiny of the former Minister for Treasury and resources and the former Minister for Economic Development, and I think their responses at the time made it very clear about where responsibility for the development of operational terms of reference came. Because of the use of the special fund legislation, it had to be the Minister for Treasury and Resources. The Minister for Economic Development developed them, but they may have been considered, I think, at the time by the Scrutiny Panel as wanting. The Minister for Economic Development wanted to engage Scrutiny and did so and that is why he accepted all of their recommendations and changes and that is why they were ultimately, I think, accepted by this Assembly. So there was the need for almost the rapporteur to be the Minister for Treasury and Resources. There was extensive work that the Minister for Economic Development of the day did, not only his department, but working with Scrutiny. The acceptance of the proposals of Scrutiny when those operating terms of reference and the creation of the fund was agreed by this Assembly, they became the responsibility of this Assembly. Then of course we move into the implementation phase, which again was implementation of the day-to-day operation, which was the responsibility of the Economic Development Department and maybe we will say more about that later. As Senator Ozouf said, the financial direction was the responsibility of the Treasurer. We very quickly then will get into the ... I will not say confusion. There was confusion about delegation of functions and the split between what the legal form was and what the practical application might have been, but we then very quickly get into the discussions about officers and their implementation of policy, as agreed by this Assembly, and the oversight of that implementation and the information that they

provide back to Ministers about how that is being implemented. If we are splitting the debate in this regard, I do not think there is anything that I can add at this stage.

#### **4.1.3 Deputy S.G. Luce of St. Martin:**

I was not going to say anything, but I just need to point out both Senator Ozouf and the Chief Minister have spoken about the Scrutiny work. While our report had all the recommendations accepted, I would point out that not all the recommendations were put in place, as Senator Ozouf implied.

#### **4.1.4 A.J.H. Maclean:**

Just very quickly, clearly I was the Minister for Economic Development during that initial period, certainly up until November 2014. I would agree with the comments made by Senator Ozouf. I think he laid out the way in which facts and details unfolded. Indeed, there was a very close collaboration between Treasury and the Minister for Treasury and Resources of the day, which was Senator Ozouf, and myself, as Minister for Economic Development, and the Economic Development Department. I do not think really there is very much else I can add at this stage, other than to confirm those points and indeed the involvement of Scrutiny, which has already been touched on.

#### **4.1.5 Deputy M.R. Higgins:**

I just hope that Senator Maclean can go a little bit further. On page 55 of the Simor report, it talks about ministerial responsibility and the involvement of Ministers. What comes out of paragraphs 120 sort of onward is that confusion between - this is something that really annoys me at times - the Minister's role and what he was doing and what the officers were doing and whether Ministers should be more engaged or less engaged. I see here it is saying, for example: "Oh, I thought it was operational. They were working on it" and I guess with that statement you are saying that all the policy work had been done, but I would like to know what Senator Maclean thinks about oversight of what the officers are doing.

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

It is turning into question time, I think. I am happy to give an overview to the Deputy if it is helpful to him. I think the point here is that after the process that has been described in terms of the development of the Innovation Fund, the Scrutiny process, the recommended changes that were endorsed, it then got on to the point that Senator Ozouf was talking about, which was down to implementation. That is passed to officers to deal with the implementation of what was approved by the States. From a ministerial point of view, as a Minister there are regular meetings and regular updates from officers. There was no information that was presented to me or my Assistant Ministers of the day to suggest that there were issues with the development of the Innovation Fund or that indeed the implementation process had not been undertaken appropriately. Indeed, I suspect many of the shortcomings which have ultimately come to light or some of the ones that have come to light came to light at a later stage as the fund went through its practical process of operation.

#### **4.1.7 Deputy A.D. Lewis:**

If I am right in saying, I believe we are concentrating on set-up at the moment, is that right, Deputy Higgins? There are a couple of things that I now have the opportunity to talk about that I might not have done in the course of my duties as P.A.C. (Public Accounts Committee) chair in that we, as you know, investigate officers, not Ministers. I am quite concerned or very interested in the Treasury function in this instance as to what Treasury did or could have done more of to allow perhaps things to run a little smoothly. There is no getting away from the fact that the Innovation Fund as a concept was a great concept and it should not hopefully be disbanded as a result long term. There is opportunity here for this type of activity to continue, but we need to get it right and we do not know whether we have it entirely wrong yet because we are in the middle of an investigation. So I do not want to pre-empt that finding. However, there is a significant amount of

observation and criticism in the C. and A.G.'s report, which is the subject of this in-committee debate. Largely, when it comes to set-up it centres around the operational terms of reference and there are a couple of things in there that I am slightly disturbed and concerned that were not implemented. In order to get the correct checks and balances so that Treasury have the opportunity to delve into the fund when necessary and ensure those checks and balances are in place, it is for the department that was managing it - in this case E.D.D. (Economic Development Department) - to consult with external advisers. There was a specific amount stated in the original proposition of amounts that could be used for exactly that. It was £100,000, for example. This charge was for company searches, background checks, market research and so on. To my knowledge, that money has never been used. It is still there. There was a further £50,000 allocated to E.D.D. which was used in terms of staff and resource costs, but the £100,000 was not. So what I am interested in finding out from the Treasury is what monitoring was going on to ensure that those funds were being used appropriately and that those checks and balances with external bodies were being used to their full because there was no doubt that within E.D.D. this had not been done before. Setting up a fund of this nature is a complex business, whether it is £5 million or £50 million. The concept is the same. The amount of diligence required and the expertise required is the same, whether you have £5 million or £50 million. So the operational terms of reference were fairly clear, but there were some gaps in it and there was a recognition among those at E.D.D. and the board of J.I.F. (Jersey Innovation Fund) that they were somewhat deficient. But some of this could have been easily resolved had external advisers been consulted in-depth. Because, like I say, there was not clearly the expertise inside Economic Development to fulfil all of what was required, but there was an element of expertise, of course, in the Treasury. I would have expected the Treasury to have more input here in the early days of J.I.F. being established and continually monitoring. My understanding is - and, in fact, it is a statement of fact - there was a Treasury rep involved and on the board, so that flow of information should have been substantial, should have been sufficient to assure the Treasury that they were well informed as to what was going on and identify issues as they arose in order to get this new concept running well, because it was new to Jersey and new to the department that was now managing it. One of the other issues that I have come to understand is perhaps a concern is that a number of people have said to me that were involved with J.I.F. in the early days, not least some people that put themselves forward for consideration to chair the board of J.I.F., it was stated by one such individual that he did not believe that the concept was oven ready. In other words, it was not quite ready to go, and I will give you some examples as to why perhaps it was not. There was some legislation that required some change. One in particular that is of great interest to many of you here is the ability to change the Public Finances Law to allow the States to take investment, and that I would hope was a Treasury-driven element that was essential to the set-up. So I am a bit surprised that Treasury did not follow that through and left it to E.D.D. to get that element through. Of course, without that change the fund simply became a sinking fund. There was no money coming back into it and no prospect of that happening either because there simply was not a mechanism to do it. That required a legislative change which never occurred and has still not occurred. I think that is a great shame because we had the opportunity to create our own almost little private equity fund that could have been very successful and it could have been topped up with the successes that we have seen in the Innovation Fund. I hope that Senator Ozouf speaks about those successes during this debate because there have been some. Having said that, there are concerns about all of the loans at the moment and that comes out in the C. and A.G.'s report. But it is a risky business. This is not a secure lending opportunity at all. That is not what this fund was about, so one had to accept an element of risk.

[12:00]

During the set-up process ... sorry, Sir, am I ... is it the quorum that you are concerned about?

**The Bailiff:**

Yes, I was counting. We are quorate.

**Deputy A.D. Lewis:**

That is okay, sorry, I thought you were concerned about what I was saying. During the establishment of the fund there were a number of things that needed to be done, not least I mentioned legislative change. The input from external advisers I do not think was necessarily adequate enough. In fact, it does not appear that any funds were spent on that. But there were other mechanisms that could have been used to secure an upside from the investments such as royalties. You did not have to have legislation change for that and that did not appear to have been used. I would have hoped that the Treasury could have with their oversight of it said: "Look, we know you do not have the legislative change in place but you could do it like this", in other words that bit of advice coming from the Treasury, which did not seem to be there. Another huge concern is the control of funds in terms of their distribution. Again, once Treasury had set this up, there is a process that one should go through to distribute funds, which was the responsibility of the board and the responsibility of the department that was then managing it. But there should have still been some checks and balances and I am curious to find out perhaps why some of those were not as strong as they could have been. One in particular is the issuing of funds in large tranches, and that has been particularly identified with one of the applicants and it has now become fairly infamous. There is no doubt in my mind that the presentation of continuous results from the investment that you have made is essential in the way that you then dish out or hand out the funds that have been applied for. In this particular case, that does not appear to have been the case. One large tranche was given in one go. Now, during the P.A.C. hearing, we questioned the board on this matter and it is now a matter of public record. It is on Hansard. It is on our website. One of the directors said that this was essential in order for that business to function adequately because it was for salaries. It was for directors' payments. Now, that is a concern of mine because the C. and A.G. identifies that that is not necessarily the way that these sorts of organisations that required funding should have been using that funding because that was an ongoing commitment for some period of time, which was the reason why they wanted the money upfront. But that does not mean you still have to do that, and I want to understand why the Treasury, knowing that was going on, accepted that as good practice when management accounts should have been provided on a monthly basis and that was not happening. The requirement for reporting, according to the C. and A.G.'s report, was only every 6 months despite the inherent high risk of the loans advanced. So, again, I would have thought that if E.D.D. did not have sufficient people or expertise to manage this process well, the Treasury certainly does and there was not that check and balance in place. Funds were being provided, approved by the board and handed out in one tranche ...

**The Bailiff:**

You are drifting into the second part of the question.

**Deputy A.D. Lewis:**

Okay. I am concerned as to why during the set-up that follow-up was not as robust as it could have been. On 4.4, during the set-up of the operational terms of reference on page 14, you will see that it referred to some risk being inherent in loans from the fund: "But no quantification of potential write-offs is contained in this section headed 'Financial and manpower risks', which instead focuses on the ongoing costs of the operating of the fund." I do not understand why that was in there at this stage in the process of setting up the fund. So, I think I will leave it there. At the moment, my committee is immersed in this, so I could stand here and talk for quite some time and I know I am going to stray into areas that we are not quite on to yet, but set-up, getting it oven-ready to go properly, was essential. My understanding is that it was somewhat rushed in the end because the department at the time was keen to get this ticked off as a part solution to some of the economic growth that we were all looking to achieve and it was perhaps rushed through before it was fully cooked to the Assembly. The Assembly was then asked to approve it without necessarily fully understanding all of the risks, and the risk profiles changed later on. So, setting this up, I think Members should have been fully advised of the inherent risks. That risk profile changed as things



progressed and it should not necessarily have progressed as much as it did. So, setting it up fully and correctly as much as we possibly could have done perhaps might have saved the day at a later stage. I will leave it at that.

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

First, I think it is really important that the actual legal situation is understood because there is in my mind ... and I know the Attorney General is around and about but he can say whether or not I am saying something wrong. The Public Finances Law is absolutely crystal clear. The new Public Finances Law was brought into being originally when I was vice-president at Finance and Economics. In fact, I brought a lot of the things to it, including the setting up of the C. and A.G. and all the rest of it. We revolutionised, effectively, checks and balances and put very clear arrangements in place. There is an expression: "You cannot have a dog and bark", and what the Treasury does is they cannot be the accountable department yesterday or today or in the future for all States administration. That is why you have the concept of accounting officer. That is why every fund, every department, has an accounting officer. That is normally the chief officer but certainly Article 38 of the Public Finances Law is clear: "The accounting officer of a States-funded body is personally accountable for the proper financial management of the resources of the body in accordance with the law." They are responsible, among other things, for making sure that money is properly paid, keeping proper records, providing information to the Treasurer of the States for the production of annual statements and accounts and, most importantly, that the body is administered in a prudent and economical manner. Now, that is the issue. The Treasury can always ask questions and that is why Treasury has internal audit. That is why there is a Comptroller and Auditor General that can look at things and the Public Accounts Committee can do that. I would refer, if I may, to the comments: "I do not think there is any doubt. Yes, Treasury is always involved in things to do with finance, but accountability is the thing that is really important." I would draw the attention of the Deputy to the evidence that I gave to the Scrutiny Panel. I am just going to quote it because I think it basically deals with this. I was asked who is actually responsible and my answer was: "Well, we are setting up the fund and it is over to the Minister for Economic Development and the Economic Development Chief Officer, who is legally responsible to ensure value for money, and that officer, the chief executives ..." I will not name him. Am I allowed to name a chief officer, Sir? No. So I named the Economic Development Chief Officer. I said: "His neck is on the block and ultimately in front of the Public Accounts Committee if he does not take all necessary prudent measures and steps to implement ministerial policy." Which is saying: "We do not mind you taking some risk, Chief Officer, but obviously you are going to need to do this properly and have a good governance structure." "So our job and the Treasury official's job [which I named] is to make sure that we forge good governance structures and we have questioned E.D. and we have had that constructive tension that effectively has just been explained. In addition, we have a governance structure that involves an independent chairman with non-execs and we are going to have a reporting line of who signs off and all the rest of it." So there is all the gubbins of rules but also what we have to be careful of is that we do not smother them with effectively too many rules that means they cannot do it. I say to the chairman: "Your panel has done some very good challenge on the T.D.F. (Tourism Development Fund) and you wrote a very good report." The Deputy of St. Martin asked me: "Well, we will come to that, Minister, but maybe I could just ask you who is responsible. Who is ultimately responsible for the fund? Whose head is on the block if it does not work?" he said. My answer was this: "The Minister for Economic Development and the Chief Officer, and that is the law." So the Treasury can provide advice, which they did, but it was absolutely clear, that is on the record evidence, it is the Minister for Economic Development and the Chief Officer whose head was on the block for the fund. We will come on to the issues later of whose neck is on the block, but I was absolutely clear as the Minister for Treasury and Resources. I will just answer that other thing. So, just to summarise, the Public Finances Law says about accounting officers. That is the accountable officer. It says it. You cannot share it. It is the accounting officer. It is set out in the law. I explained that to the

Scrutiny Panel. I explained it to the States and, effectively, that is how it must be and that is how it has continued to be. Just to answer the Deputy's other very good questions about the issues of changing the Public Finances Law, it was always a mystery to me as to why a department ... the Treasury will always under any Minister for Treasury and Resources ... Senator Le Sueur as was, myself, the current Minister for Treasury and Resources, we have to act effectively on the requests of a department. They were responsible for the fund. It was for them to come to us to say things if they wanted us to do so and we would do so immediately. In fact, I always had a joke with my friend the Minister for Economic Development at the time that effectively because I had done the job he could probably get more out of me than most people, and I think we did. We have to understand that this fund was set up in a time when credit markets were not working. There was absolutely a real problem with getting money to businesses and that is why we set it up and that is why they set it up and why I was willing to take that and to get on with it. I think that the issue about rushing, if something is rushed when it is originally conceived of 3 years before and eventually comes to the States 3 years later, I do not think that was rushed, if I may respectfully say. If I may lastly say as far as the royalties are concerned, for my part that was dealt with immediately when I took responsibility for that. We will deal with that later with the Tera Allas review. I did much more than just simply do that. I did the Tera Allas review, which was worlds change, what do we need to do to get funding, and that is what I did. I published it and published an action plan, so I think I did far more than even was envisaged with just royalties.

**The Bailiff:**

I wonder if Members think we have gone as far as we need to go on this first part and it is time to move on to the second part.

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

Could I just make one point? I know the former Assistant Chief Minister said before that all recommendations were agreed at that time. They were not all agreed. The first recommendation was not agreed. It was rejected, although it was agreed for phase 2. I do not know if that has already been mentioned. Phase 2, as it says in the comments from the department, was subject to: "Within 6 months of launching a new report and proposition will bring forward recommendations which will allow the J.I.F. to make equity investments." Now, I understand that, but clearly when somebody says all recommendations were accepted, there were not. The first one was rejected, just to clarify.

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

But that was the previous E.D. Minister, if I may just say.

**The Connétable of St. Brelade:**

Correct.

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

Yes, it was not the Treasury to do those things.

**The Connétable of St. Brelade:**

No, correct, yes.

**4.1.10 Deputy M.R. Higgins:**

I would hope that Senator Maclean will talk to us about his relationship with his officers and whether he felt that they were doing everything that they did but he was fully informed of that or whether ... and also this relationship between policy and operational matters.

**The Bailiff:**

Are you talking about the terms of reference then?

**Deputy M.R. Higgins:**

I am talking about after it went back, it was knocked back by Scrutiny, and they did the work, what followed that. Paragraph 120 and onward talks about Senator Maclean and his officers and so on and it is this relationship between the officers and what they were doing and what the Minister was doing and what he believed he knew.

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

Yes, just very briefly, and it ties in with a point that Deputy Andrew Lewis made about the fact that it appeared this was being rushed. I would just like to make the point that it was not being rushed. In fact, quite the opposite. The States approved the Innovation Fund in May 2013. In fact, it was 1st May 2013 when it was approved. Then the process started to implement what was approved by the States, including the terms of reference. Of course, the board needed to be established and, indeed, that recruitment process was undertaken to appoint, first of all, a chairman and then ultimately members of that particular board.

[12:15]

I should point out that it was an extremely accomplished board with professionals from the private sector, former bankers, lawyers, accountants and entrepreneurs who were on the board. Indeed, in November 2013 the board had its first meeting to consider the operational terms of reference to which the Deputy is referring. So, the department was developing and implementing what had been agreed by this Assembly. Ministers within the Economic Development Department were being kept updated with regular meetings, weekly meetings and so on and so forth, and the board then considered in November 2013 and approved those operational terms of reference on the understanding that they had been put in place as was intended. The reason that I said that matters did not progress particularly quickly is because it was not until May 2014 that the first recommendation came to the Minister. I was the Minister for Economic Development at the time. So from November when the board was first considering the operational terms of reference and then started the process of advertising for businesses that were interested in applying for funding to develop themselves, applications came in, quite a considerable number of applications in the first stages, but the first recommendation from the board to the Minister, which was the process that had to be taken on, did not happen until May 2014. In fact, the drawdown of those funds for that very first applicant that was approved was on 27th June 2014 and, in fact, interestingly, that very first drawdown and that very first business ended up being very successful and won a national award which, as an aside, is some good news on the basis there has been so much negativity around the fund. There are actually some successes there as well. The second drawdown, by the way, was on 4th August 2014. Those were the only 2 that I dealt with, but hopefully that gives some clarity to the timelines and the processes. As a Minister and as the ministerial team we are updated on a regular basis by officers within the department on all aspects of the operation of the department, but in this instance there was an extra layer because, of course, there was a board involved who had a very important job in terms of assessing the individual applications that came forward and all other aspects of the operation of the fund.

**The Bailiff:**

I am conscious of the time and I am just wondering whether we have not explored this part of the arrangements sufficiently.

**4.1.12 Deputy A.D. Lewis:**

This is about set-up, if I may. I just want to pick up on something that Senator Maclean just said. During the appointment process of the board, there was a normal appointment process, a very rigorous one, I believe, and one particular applicant made his thoughts very clear that he did not think it was oven-ready. Now, clearly, the department felt that that was worthy of further thought because when the chairman was ultimately appointed - who was not this particular gentleman, who

incidentally was an eminent local banker - the Economic Development Department suggested to the then appointed chairman that they talk to the failed applicant for chair, in other words disclosing that person's name, because he had some interesting things to say, one of which was he did not believe that it was oven-ready. Did the Minister for Treasury and Resources feel that what that eminent person had said was not worthy of further consideration? Because I believe that it was, and the fact that he was warning that it was not ready to go, despite it taking 3 years to get this far, should have flagged up certain issues that should have been considered before it came to this Chamber. I think that is very important. Then the department to recommend that that newly appointed chairman then speak to that failed applicant I think is a bit odd and I would like to understand how that occurred and why more consideration was not given to the remarks of this particular person that he did not believe it was ready to go, despite the department clearly spending considerable time - 3 years as the Minister has said - in getting this ready to go. It was not regarded as oven-ready by some person that was eminently qualified to make that kind of comment.

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

As I said a moment ago, this is like question time. Yes, the individual that the Deputy was referring to did indeed have some comments and did consider quite carefully whether he wanted to take on the role that was on offer. He had some views about the fund. Ultimately, he decided not to progress. There were a number of reasons, in fact, why he decided not to progress and it was not limited just to the point made by the Deputy. Ultimately, we went through a process, and as the Minister for Economic Development of the day the process that was followed was an appropriate one which was overseen in a way that was acceptable and a recommendation was made for a new chair and the process of offering, as officers within the department did, the opportunity for that chairman who was ultimately appointed to speak to other people, including the gentleman in question who had views on how the fund could be developed, was I think perfectly appropriate. I do not think that that was a problem at all and, in fact, it shows how open and transparent the whole process was. I think that could only have one benefit and that was to add to the development of the fund in an appropriate way, or that was the view at the time. Clearly, matters changed some time later. So I think that was not necessarily a negative but in fact a positive point going forward and there was a considerable amount of time between the initial potential appointment, the actual appointment of the person who then became the chairman and, as I have said, the appointment of the board, the final implementation of operational terms of reference and, indeed, the board setting up the fund and getting fully operational. As I have said, many, many months passed before the first recommendation was ready in May of 2014.

**4.1.14 Deputy A.D. Lewis:**

The chairman that you are talking about did not then speak to the failed applicant because he was so embarrassed that it had been disclosed to him who the failed applicant was. So, should the department not have taken more seriously the recommendations of the previous applicant that did not take it any further?

**The Bailiff:**

Deputy, you do not mean the failed applicant, you mean the applicant who withdrew, did you not? You mean the applicant who withdrew? Yes. I am not sure that we are going to get anywhere with this debate now. That is a matter for your inquiry in the Public Accounts Committee if you wish to. Shall we come on to the second part then?

**4.1.15 Deputy M.R. Higgins:**

In a moment, if I may, but there are one or 2 points I want to understand. The terms of reference and the Financial Directions were not fully adequate and the board expressed that view. I think the then Minister for Economic Development would agree with that. Then they went and had a meeting with the Chief Minister, which I believe you were not part of, and discussions about changing the way they operated, including the risk, happened. Why were you not included in ...

**The Bailiff:**

No, through the Chair. Standing Orders still apply.

**Deputy M.R. Higgins:**

Through the Chair, yes. Why was the Minister not involved in those meetings?

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

I cannot recall in absolute detail but all I can say to the Deputy is that during that period I was not always available. I would need to check my diary to find out why I was not at that particular meeting, but it may well have been that I was not on the Island.

**The Bailiff:**

Thank you. Deputy, we are going to come on to the second part of the discussion, which you were describing earlier relates to the asserted confusion as to ministerial responsibility and legal responsibility.

**4.1.17 Deputy M.R. Higgins:**

Yes. What I am hoping is that Senator Farnham and the Chief Minister and Senator Ozouf will enlighten us on the problems that occurred and the confusion that the Comptroller and Auditor General referred to. Now, my own understanding is, and in fact maybe the Attorney General can correct me if I am wrong, that the Minister can delegate ... in fact, let us just go back a second. Basically, what happened was the Chief Minister wanted Senator Ozouf to be responsible for innovation, competition, et cetera. He was talking about setting up a separate department for that to happen, and we know it never did happen and there was certainly confusion or problems for about 15 months. Now, the way he dealt with it was he made Senator Ozouf an Assistant Chief Minister with responsibility for those areas. As far as the Innovation Fund, which again he wanted Senator Ozouf to be responsible for, the only way he could do it without creating a separate department was to ask Senator Farnham to make him his Assistant Minister and give him responsibility for that role. Now, from what I have read, Senator Farnham was happy with that. He delegated, although there were defects as the lawyer mentioned in terms of the delegation and what was delegated and so on, which I personally see as a function of the officers to get it right and advise the Minister. Essentially, the Minister for Economic Development, Senator Farnham, delegated responsibility for the Jersey Innovation Fund to Senator Ozouf, but what he could not delegate was the signing power because the delegation did not include requirements under the 2005 Public Finances Law. Now, I am hoping that Senator Farnham will tell us about what he did and Senator Ozouf will tell us what he did. Even though he did not have the legal authority, he had operational control of the thing and so I want to understand that part of it. I want to understand the problems that occurred and I would also like the Chief Minister, if he would, to explain why he did not come through with a separate ministry and let the, let us say, unhappy relationship carry on as it did.

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

Yes, this is the really tricky stuff and the really, really difficult stuff that certainly I have had to deal with, so I am just going to explain a couple of key facts. In November 2014, after the general election and the Chief Minister was then Chief Minister Designate, there were discussions about who would do what and which portfolios would be allocated and what was in the best interests of effectively dividing up. A comment was made yesterday interestingly I think by the Deputy of St. Martin about E.D. being denuded. In fact, what I think the Chief Minister wanted is he thought that E.D. was so important that it should have effectively 2 Ministers for Economic Development, one with responsibility for competition, digital and financial services, and another Minister for Economic Development with responsibility for all the other really important areas. So, effectively you would have 2 heavyweight Ministers, such was the importance of economic growth. That is what effectively I was offered. I was offered it effectively in a letter of appointment by the Chief Minister, which was sent to all of his proposed candidates. The odd thing was that I was the only

one, apart from my good friend Senator Routier, because Assistant Chief Ministers are a little bit different. Not more special or anything, it is just a little bit more different because they are the Chief Minister's nominees. So that is why I had a letter. I had a letter saying: "Dear Senator Ozouf. I am wanting to give you responsibility for financial services, digital, competition and innovation." I hope the Chief Minister does not mind me saying that we had discussed the first 3 and innovation popped into the letter when I got it. I do not know the reason why, but I understood then that it was felt upon advice from officers that effectively innovation ... which is more than just the fund. Innovation is much more than just the fund. Deputy Andrew Lewis is nodding. I think he knows why. The Tera Allas review explains why innovation is much more important than just the fund. Effectively, I think I was told that there were issues with a number of the areas that were formerly within Economic Development. There were issues that maybe just needed more focus and more time because it is obviously an issue of commitment and prioritisation. But I know what I was asked to do. The Chief Minister said that he was asking Senator Farnham. Senator Farnham did not have innovation in his letter. I was going to be an Assistant Minister. There was going to be an interregnum which was designed to be a very short one, which was that I would be an Assistant Minister in Economic Development with responsibility for all the areas that were going to be put into this separate ministerial post, the sort of E.D.1 and E.D.2 if you want to call it. I suppose my role was described as being the sort of Minister for International Trade as opposed to the Minister for Economic Development, but both really massively important. That is the job that I was offered and that is the job that effectively I took. But what happened was obviously ... well, it just did not happen. So the job that I took did not effectively ... things happened. There was a conspiracy of events which meant that effectively the letter of instruction and the job that I was offered I effectively did not have. So from November 2014 to July 2015 - and I can understand why - the Economic Development officials, not the Minister, I think wanted to perhaps pull back from losing some of these areas of responsibility.

[12:30]

It was very clear that there were problems. I was told - because there was a Council of Ministers meeting on 14th December - that the regulations which were going to be set up to set up this ministry were prepared. They were given to the Council of Ministers and I was expecting this interregnum to effectively last for just a few weeks. In fact, the specific date of a States debate of 31st January was spoken about. So I am supposed to be this temporary ... and I think Senator Farnham and I both thought it was going to be temporary. He was taking all sorts of other things from Education, so he was losing some things, digital, the remaining grant for J.F.L. (Jersey Finance Limited), which had already been moved to the Chief Minister's Department, which was just a nonsense. J.F.L.'s grant sat in E.D. but the Chief Minister's Department was responsible for financial services. That was just odd. I do not know why that happened. It was just odd. Digital, I think the Chief Minister will say I was the sort of digital irritant, I was the digital promoter and had suggested that it was in the Strategic Plan beforehand, and I think that is why he wanted me to do it. The idea was that I was going to be given digital and I had had already discussions with Deputy Wickenden that he could have been the Assistant Minister for digital and I would work with him. I am known to work with people, despite some people saying that. I spoke to Deputy Wickenden and effectively I thought: "Fantastic, by February/March 2015 we are going to have this ministerial responsibility. You can be, subject to the Chief Minister, doing it" but I think I discussed it with the Chief Minister: "Got this new States Member, Deputy Wickenden, who knows a thing or 2 about digital, one plus one is greater than the sum of the parts" and we would have a great team responsible for financial services and digital and then we would get to break through the issue of competition as well, lowering barriers to entry, making sure that works, all the rest of it.

### **The Bailiff:**

Back to the Innovation Fund, Senator.

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

Back to the Innovation Fund, but it is all linked because then innovation was also going to be put in there. Now, the problem was that what should have happened and what was envisaged ... and I mentioned earlier accounting officer. So with the transfer of those responsibilities would have been the transfer of the political responsibilities, which would have been to me as a Minister subject to States approval, and then the accounting officer would have been effectively the accounting officer that was responsible for that. Now, what happened is it just did not happen. I have to say, and this is the first time I have probably said it in public, 2015 was a nightmare because I was in a situation where I had political responsibility, and I have never shirked from political responsibility, I hope. I hope Members know that and recognise it because I have said it. But what happened was the accounting officer for the areas that I was supposed to be politically responsible for sat in E.D. and that lasted for the whole of 2015. The whole of 2015 I had staff that I was politically responsible for sitting in the Coke can building, the old tourism office, that came under me that still sat in E.D. They did not know where they stood. They did not know who to report to. Was it me? Was it going to happen? Was it not going to happen? I lived this almost hand to mouth, month to month existence of not knowing what was happening, and the staff. I care about staff and they did not know, and it just needed to be sorted. I petitioned and I asked the Chief Minister to help, please, sort this out, and then there were arguments about budgets and then there were arguments about all sorts of things. Senator Farnham also I think was in a very unclear situation, and we were effectively in an impossible situation. But as usual I tried to always wake up in the morning and cope with it and do it, and you just get on with the job because that is what I think I do. I do not complain, I just get on with it and I tried to get on with it. Even though I had no staff, no administrative overhead, I had an accounting officer for some areas that sat somewhere, an accounting officer that sat in another department who I had no actual direct line to, and there were tensions because effectively I said that I did not think the accounting officer ... nothing against the individual, I did not think the skills of the accounting officer within E.D., who was not a financial services expert, should basically be in charge of the Innovation Fund, but they remained that. The final thing I will say is when the States eventually ... my understanding was that Corporate Services did not want to create - the Chief Minister was very clear with me all the way through - the separate ministerial role. That is what I was told. I was told that it was going to be blocked. The Chief Minister, as we discussed yesterday, is a man of consensus, did not want to lodge a regulation he was going to have an argument with, but effectively he could not get that through. So what I then said to the Chief Minister is I said: "Look, okay, let us solve this. I cannot carry on in this situation where this accounting officer is sitting in E.D. putting Senator Farnham in a very difficult position" because ultimately he had the legal responsibility. He was signing loans of which he was told that I had ... there were arguments about whether or not I was signing them or I was a consultee. I had to give Jessica Simor all of this difficult information. Senator Farnham signed a loan that I now know he was told I had looked at and I had not. Impossible. Then the final nail in the coffin that put my position just in an impossible situation: the States passed the regulations to move the stuff into the Chief Minister's Department on I think it was 13th or 14th December 2015, a year later. So there had been a year of this nightmare hand to mouth existence and uncertainty. There is the expression of dead man walking. I am not sure whether I was a dead man walking but I was supposed to be in charge but not really in charge. But I put a brave face on it, and then what happened is my accounting officer refused to take the accounting officer responsibility of the fund. So even when it was moved to the Chief Minister's Department I ended up having the accounting officer that was still in E.D., over which I could exert no actual real control. In fact, I am not going to say the things in public but I could not exercise any control over this individual. That is not being overly assertive, but if you are a Minister you have to be inquisitive. You have to be jolly inquisitive in our system. You have to know what is going on, and I tried and tried and tried and tried and tried and tried and tried some more to find out what was going on, and in the inquiry stage since January I have found out, reading the board minutes, that I was told half the story. That is on record. It is evidenced. It is clear that I was not told what was going on. I learnt more about the Innovation

Fund from reading the *J.E.P. (Jersey Evening Post)* or turning on ITV News. There were leaks. I found out about Logfiller from ITV News, and yet I was the Minister. Yet the board knew, Logfiller was told. The board had beseeched the ... I only knew this because I had not even seen the minutes, and Members will understand I am not the kind of shrinking violet that does not ask questions. I am jolly inquisitive, just as I was inquisitive, as I mentioned yesterday, in the J.M.M.B. (Jersey Milk Marketing Board) back in 1991. I am an inquisitive person. That is what gets me into a bit of trouble and I am sorry about that, but I am jolly inquisitive. I like to know what is going on because a Minister is responsible for the actions of their department whether they know them or do not know them. Now, I did not know. I will say this finally. I think that is why in the Jessica Simor report under paragraph 20, which has been the contention about whether I was exonerated or not ... and I take responsibility. I took responsibility. Perhaps I should not have done. I have been criticised by most of my friends who said: "You should not have said you were responsible." I thought people knew what responsibility meant. I thought people thought that responsibility is about taking responsibility for the actions of your predecessors and sorting them out. Then if you find problems you have to sort them out, but that does not necessarily mean you are to blame. Responsibility does not mean liability. Now, I took responsibility and basically if I draw Members' attention to the Simor report, which was a very difficult situation for me to deal with. I have had to give hundreds of hours and hundreds of emails, but the last line of the executive summary for me says it all, as far as I am concerned. I am not perfect, I am certainly not perfect, but I ask questions, lots of them. Jessica Simor said of the issues concerning me, and I quote: "Indeed, it is clear that Senator Ozouf understood, on the basis of what he was told, that the J.I.F. was functioning effectively and took action as soon as he discovered otherwise." That is what I did: I did what I could to find out what was going on in a failing fund. I knew it was failing; emails are very clear about what my concerns were. The tragedy is I predicted what was going to happen and then the nightmare unfolded under my own eyes. What I did eventually is demanded ... I must not raise my voice. I had to demand the removal of the accounting officer. I have never done that in my life, but I said: "This cannot go on any more." Then I did that, I started asking that, effectively, as soon as I got it in January 2016, and then it came to a head then I basically removed it. I suspended the fund in February 2016 and that is why no more loans were given. I took action as soon as I discovered otherwise, but I was given half information, half-truths, partial information, and you cannot do that as a Minister. If I am responsible and to blame for the Innovation Fund then I do not know whether that is fair.

**Deputy G.P. Southern:**

Sir, I notice your eyes are on the clock.

**The Bailiff:**

Well, I am wondering what the appetite of Members is to continue this in-committee debate and, if it is something that can be finished by 1.00 p.m., I was going to suggest that we continue it until 1.00 p.m. and don't return this afternoon, but I am in the hands of Members, really.

**Deputy M.R. Higgins:**

Sir, if I could just make a comment? I would hope Members would continue with this debate ... it is not so much of a debate, it is just we are finding out information. We are finding out things we never knew and putting flesh to the various reports. I think it is a very, very good exercise. I am not here to criticise Ministers, or whatever ...

**The Bailiff:**

No. So you think we ought to continue?

**Deputy M.R. Higgins:**

I do, Sir, and I hope other Members will, and I also hope the public find it interesting too, in how government works.



**The Bailiff:**

Fine, yes. [Aside]

## **LUNCHEON ADJOURNMENT PROPOSED**

**The Bailiff:**

Well, Deputy, does somebody wish to propose an adjournment? The adjournment is proposed. We will return at 2.15 p.m. this afternoon.

[12:43]

## **LUNCHEON ADJOURNMENT**

[14:14]

**The Bailiff:**

We should be resuming the in committee debate on the Innovation Fund, but we are not, as yet, quorate.

[14:15]

I am not sure if there are any Members in the coffee room. If there are, will you please return to the Assembly straightaway?

**Deputy M.R. Higgins:**

I hope they do return, Sir; we want to hear their evidence or their information.

**The Bailiff:**

We are now quorate. Now, Deputy Southern?

**Deputy G.P. Southern:**

It is difficult to know how to proceed in the absence of Senator Ozouf since 2 of my questions refer to him. Another ...

**The Bailiff:**

You can speak more than once, so you can sit down, if you would rather wait. It is entirely a matter for you. [Laughter] We will wait and see if anyone else wishes to speak in the absence of the Senator. Does any other Member wish to speak? Deputy Le Fondré?

**4.1.19 Deputy J.A.N. Le Fondré of St. Lawrence:**

I will say something, mainly from the point of view that there was allusion just before lunchtime to the time delays, and there have been allusions previously to the role of Scrutiny in delaying matters. What I just wanted to clarify, I was interested to hear that on 14th December 2014, according to Senator Ozouf, there was a draft ready of the legislation, because I asked our officers for a timeline of the work, of the review. We were very interested to look at the transfer of functions. It is my recollection we made no expression as a panel on whether a new Minister was appropriate or not, but we did want to look at what was being proposed. What I do know is that on approximately 24th April we were still writing to the Chief Minister asking for an update of his approach to the transfer of functions that he had previously presented to us at a quarterly meeting in March. In other words, from somewhere around the beginning of November 2014 until the end of April, we did not have a clear set of proposals in front of us that we could scrutinise. On 6th May, I believe, or on or around that date, the proposals for transfer of functions were lodged and, despite having written to the Chief Minister seeking clarification of what was being proposed, the way we found out it had been lodged was finding it in our pigeon holes. Now, the point about then receiving the information in May ... and we had had advisers ready to go in January and had to stand them down because we were not quite so readily available because we did not have anything that we could scrutinise at that

point on a public basis. Members will recall, of course, we were then into M.T.F.P. (Medium Term Financial Plan) territory, and so the issue from that perspective is that that delay then translated further on ... and, in fact, I think we agreed with the Chief Minister initially for the debate to be postponed, until, it was the date of the M.T.F.P. When we looked at one of the things that had been lodged, we suggested it should be put back, I think, in a further sitting until October. Really, what I was just wanting to clarify is that for our review we only got clarity at the beginning of May 2015, some 6 months after the proposals, as to what we could scrutinise. Therefore, any suggestions about delay from Scrutiny, I would hope, can be refuted on that basis. Obviously, the knock-on effect from then on is that it then collided with ... and I presume Members would appreciate that the M.T.F.P. was a pretty important piece of work and that had to be scrutinised appropriately, and the transfer of functions collided with that piece of work.

**4.1.20 Deputy G.P. Southern:**

My first question refers to paragraph 149 of the Simor review where it says: “In relation to one issue, the setting of interest rates on loans, the C. and A.G. noted that the operational terms of reference and the financial directive were not altogether clear, and potentially contradictory, as to the required process, but that the financial directive certainly provided for the interest rates for loans to be set by way of consultation between the J.I.F. Board, the Treasury and the Minister for Economic Development. Neither Senator Maclean nor Senator Ozouf, nor Senator Farnham was aware of that, and none of them became involved in determining the interest rates for the loans. Senator Ozouf stated in his written response following this interview that Ministers should not be expected to make decisions about interest rates. That does not, however answer the difficulty that that is what the financial directive provided for.” So the question for, I think, Senator Ozouf, is: why was he under that impression when the financial directive clearly said that was the way to set interest rates? Why did he not get involved?

**The Bailiff:**

Are you making a speech? It is not so much question time, as was rightly said on my left earlier today. If you would like to make a speech and raise any other questions you have got then you will be able to speak again later on if you need to.

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

Sir, could the Deputy just refer to the paragraph in the report, please?

**Deputy G.P. Southern:**

149.

**The Bailiff:**

You are making a speech rather than asking questions. You are, yes. So if you would like to put your microphone on so we can all hear you, you are making a speech.

**Deputy G.P. Southern:**

So that is the first question. The second question: “One of the key elements in the proposition”, and this is paragraphs 157 and 158: “and an essential part of the Minister’s response to Scrutiny, was the adoption of phase 2 of the Innovation Fund, which would require the amendment of the law to allow for the States to take equity in exchange for J.I.F. funding. It was said that this proposal would be brought forward within a few months.” This is dated 12th April 2013: “However, in the debate before the States on 1st May, the existence of phase 2 was referred to by the Minister for Treasury and Resources, Senator Ozouf, as ‘important’ and as: ‘Work that would be undertaken immediately’.” It then follows on to say: “However, the board minutes of 2nd April 2014 [a whole year later:] record recognition that progress to phase 2 had not occurred, as envisaged, noting that J.I.F. are still dealing with phase 1, and the chair anticipated that this would continue to be the case for the remainder of the year.” So the assurance from Senator Ozouf that the work would be

undertaken immediately was not done a year later and was unlikely, according to the chairman, to be done in the following year. Again, can Senator Ozouf account for his statement, his assurance, for immediate work and it never happened? There are 2 further questions for Chief Minister, Sir. Do you want me to deliver them now?

**The Bailiff:**

You are making a speech, so carry on going. Yes.

**Deputy G.P. Southern:**

I can carry on going. Right. In paragraphs 140 and 141 the C. and A.G.'s criticism was that: "When it was finally issued, the financial directive contained elements that were inconsistent with the operational terms of reference in relation to risk appetite. In this regard, she noted that the ministerial answer to the Scrutiny Panel report, which predated the proposition, quantified the risk as 20 per cent of loans not securing objectives and 10 per cent of loans not being repaid. Accordingly, she was concerned that the financial directive quantified the risk as a 50 per cent chance that a loan would not be repaid, and that this was provided without the financial implications being explicitly considered by the States Assembly that had endorsed the operational terms of reference. As explained in paragraphs 54 to 59 above that risk appetite appears to have been decided at the meeting attended by the Chief Minister, the chair of the J.I.F. Board, and the Treasurer, but not by the Minister for Economic Development, Senator Maclean, nor the Minister for Treasury and Resources, Senator Ozouf." Neither of them appears to have been consulted, so the question for the Chief Minister, why, in that subsequent meeting, where the risk was identified as 50 per cent, and which he attended with the Minister for Treasury and Resources and that the Minister for Economic Development did not, why was that information not passed on to them promptly? The third question, which follows on from Deputy Le Fondré's fourth question, is: can the Chief Minister account for the 13-month gap between his expressing a transfer of responsibilities from E.D. to the Assistant Minister, under him as Chief Minister? Why that 13-month gap, and what happened in that 13-month gap that stopped that transfer? Because I have certainly asked before; I have not received a satisfactory answer as to how that could have occurred. Because 13 months is an enormously long time to transfer a simple thing like responsibility.

**The Bailiff:**

Thank you. Does any other Member wish to speak, bearing in mind this is time for speeches and it is not question time, as such? Deputy Andrew Lewis.

**4.1.21 Deputy A.D. Lewis:**

I would like to refer Members to the Q.C.'s (Queen's Counsel) report. There are a number of contradictions here that I wanted to try and tease out, if I may, from some of what Senator Ozouf was saying earlier today. It is around the issue of delegation, and why is this important. It is not overly important for the P.A.C. that I represent, but it is quite important to Members and perhaps members of the public as well. I will not dwell on it too long, but I think it is important to draw Members' attention to it. If you have not had the report on your desks, it starts on page 38, and we are talking here about the delegation report: "It mistakenly stated that Senator Farnham had, by his earlier decision on 24th November 2014, delegated political responsibility for digital competition and innovation to Senator Ozouf. It is unclear whether the reference to that decision is simply a typographical error and it should in fact refer to a decision of 16th December", I would like to know the answer to that; which is it: "Which was a delegated decision or, alternatively, whether there was a mistaken belief that the earlier decision that concerned the appointment of Senator Ozouf as Assistant Minister was, in effect, also a delegation decision." It carries on into paragraph 78, where it appears that there was no express written delegation decision by Senator Farnham that delegated his function in relation to the J.I.F. to Assistant Minister Ozouf, albeit that the Minister appears to believe that he had made such a delegation: "This mistake may have arisen because

Senator Ozouf was only appointed Assistant Minister for Economic Development pending transfer of functions relating to digital competition and innovation to the Chief Minister, to whom he was also an Assistant Minister.” It was alleged in the report here that is where the confusion arose due to sitting across 2 departments. The report goes on and there are a couple of things here that caught my attention, and, I know, that of many other Members. On page 42 it talks about the Ministerial Decision. It states here: “I am satisfied from the material I have seen that Senator Farnham believed that a delegation decision had been made and, undoubtedly, intended to delegate the relevant functions. It can be said without equivocation, moreover, that there was, at very least, an oral delegation, as recorded in numerous emails.” The report continues with further evidence that points to Senator Ozouf having responsibility. At paragraph 97 it says: “Senator Ozouf, however, expressed surprise when informed by the officer that a Ministerial Decision in relation to a loan requires the signature of Senator Farnham, stating: ‘I thought this had been delegated to me.’ The response was that: ‘The decision making lies with you, but the M.D. still has to be signed by Lyndon.’ It appears, however, that the subsequent communications involving Ministers concerned only the questions of the extent of Senator Ozouf’s responsibility for the J.I.F., rather than whether he had delegated powers”, and this is considered further on in the report. It also reflects in the J.I.F. Board’s minutes of 3rd June 2015, and it says that: “The responsibility for approving J.I.F. recommendations has been delegated to Senator Ozouf, and it was noted that he would provide the board with a letter to confirm this, together with the scheme of delegation which was agreed in the States.” At the following meeting, on 29th July 2015, it was noted that: “No such confirmation had been received and it was stated that the chairman of the board proposes writing to those concerned if this was not forthcoming shortly.”

[14:30]

It appears that subsequently, as explained in the rest of the report: “The board accepted that not only did Senator Ozouf have delegated responsibility, but, indeed, that he had sole responsibility for J.I.F.” That was the opinion of the board at the time. So one can appreciate why, perhaps, there was some confusion. It goes on to say: “Senator Ozouf evidently considered that he was intended, therefore, to have sole responsibility for J.I.F., as evidenced by an email dated 30th January 2015.” Senator Ozouf earlier on was saying this did not happen until much later in that year, from the chairman of the board. It says: “Senator Ozouf stated that the Chief Minister had confirmed that, moving forward, Senator Ozouf is now the sole decision maker in relation to J.I.F.” That is what the minutes said. Continuing on, there was then the issue of authorisation. At paragraph (c) of 103, on page 47, it clearly says: “In relation to the decision, as explained in paragraph 94, it is clear that Senator Ozouf is, in effect, authorised by the signature by Senator Farnham.” So you can understand why people are getting a bit confused here now, including Senator Ozouf: “Senator Ozouf appears to have thought that, while he signed J.I.F. loans in his capacity as an Assistant Minister for Economic Development, his powers derived from his appointment as Assistant Chief Minister rather than by way of delegated power from Senator Farnham. Thus he considered that he reported to the Chief Minister in relation to the J.I.F. and considered that he had sole responsibility in relation to the J.I.F. rather than a delegated power for which Senator Farnham was ultimately responsible. As already mentioned, that understanding appears to have been derived from his reading of his appointment letter” which the Senator referred to earlier. “This was on 4th November 2014. He was appointed Assistant Chief Minister with responsibility in the following primary areas: promoting competition and innovation, as well as from the fact that the letter, by which Senator Farnham was nominated for the post of Minister for Economic Development, did not refer to those areas. It was not referred to in the letter of appointment of Senator Farnham.” So there is no reason for Senator Farnham to believe that he had responsibility for this area, other than for signing Ministerial Decisions. “Senator Farnham clearly has taken the same view”, and he said as much to the Q.C. Further on to the report, it also talks about a meeting, a conversation that was had with the Director of Corporate Policy, and the Q.C. says: “In my view, therefore, the difficulty

arose, not because of any lack of delegation but because Senator Ozouf believed, and was advised, that he should have been given full responsibility and that the officers should have been answerable only to him relating to J.I.F.” But the Director of Corporate Policy, when questioned about this said: “I am clear that you [Senator Ozouf] have responsibility for innovation, and, to me, that is exclusive responsibility, and that conclusion is supported by the nomination of statement letters, appointments of A.M.s (Assistant Ministers), delegation of functions and the code of conduct.” I do not see how much clearer that can be from the Policy Director. I fully understand the Chief Minister’s desire was to reorganise things so that it was much clearer, and I fully accept that it was muddy, and it would appear that Senator Ozouf perhaps felt that his powers as an Assistant Chief Minister in the Chief Minister’s Department had some bearing on his ability to make decisions within J.I.F.; further confusion for the Senator, and for us sitting here. I think it is all rather unsatisfactory, and the report goes on to say exactly that: that there was a muddying of the waters as to whose responsibility it was, but I think, and I have said this before, this report is a good report. The statement that the Chief Minister made in this Assembly a few weeks ago bore no resemblance to it, and that is something that Members were quite concerned about. I hope that what I have just read there clarifies the fact that there were things that should have been said in that statement that simply were not, and it is very clear to me that there was responsibility in 3 areas by 3 people, but the majority of it, quite rightly, fell on Senator Ozouf because he was doing the work. To do the work, it is very difficult to not have responsibility and the delegated responsibility, but legally he did not have it. That did not stop Senator Ozouf continuing to do the work, because he did; he was, to use a colloquialism, all over it, very enthusiastic about it, he wanted it to succeed and discovered that it was not. I hope that has clarified what is in this report and put to bed, finally, the questions about what was in the statement by the Chief Minister and what was in the report. Because it is clear to me that there is a large amount of responsibility here, in terms of actual doing, in the hands of Senator Ozouf, but actual responsibility legally, I fully accept, is with other Ministers. I perhaps also would suggest it was unwittingly realised by those Ministers they did not give enough attention to the fact that they had that responsibility because they were somewhat unaware of it. I think, going forward, policy directives should make it much clearer to Ministers exactly what their responsibilities are so that, when it comes to debates like this and questions being asked of Ministers, it is very clear exactly what their responsibilities are and that appropriate oversight is had and that officers advise their Ministers appropriately as to exactly what their responsibilities are. I would like to take one other issue with Senator Ozouf, and correct me if I am wrong here, but I think the former Assistant Minister said that he was responsible for removing the former accounting officer. My understanding is that the gentleman concerned resigned and was subject to a compromise agreement. If Members wish to contradict that in their speech, it is up to them, but my understanding is the officer resigned, a compromise agreement was agreed and I think we should be very careful as to how we discuss that officer in this Assembly by virtue of a compromise agreement being in existence. That is my understanding: I do not believe Senator Ozouf had the power to undertake that. He may have desired it but he did not have the power to execute it; that was a matter for the Employment Board, Chief Executive, and others, that had responsibility for those appointments. I will leave it at that, and I will be interested in comments from the Ministers.

#### **4.1.22 Senator I.J. Gorst:**

Could I just deal with that last question first: Senator Ozouf said that he was responsible for having the accounting officer function shifted, not for the removal of the individual; they are 2 very different things. The removal of the accounting officer function from one individual to another individual; very different things. That is what Senator Ozouf said. I am pleased to follow Deputy Lewis because, from time to time, he has spoken to me about this issue, because his reading out directly from the report highlights the confusion. Many Members have said to me that my statement was legally correct, and it was wrong. I find that quite difficult because that report shows quite clearly, because Deputy Lewis has just read it out, that it was confusing, for all those reasons, about where the legal delegation lay, who had day-to-day responsibility, where the accounting

officer function lay, who that accounting officer was reporting to and what the actual day-to-day responsibility and actions looked like. Deputy Lewis said that legally it was as I described, and as he has described, around the delegation of functions. But if we read the report it is clear that on the one hand the board said they thought an individual was responsible, but on the other hand another Minister was attending the board and suggesting something else, and that the accounting officer, or the chief officer, was not clarifying that situation, or at least saying the confusion had not been overcome. That carried on, sadly, for far too long. I come then to the matters that I initially put my light on for, and that is the matters that Deputy Le Fondré raised and Deputy Southern asked about as well. They are quite important and at the last States sitting I put my hands up and said: “Okay, I probably do bear some responsibility as the head of Government for not trying to ensure that those regulations were pushed through this Assembly faster than they were. But even today I hear the chairman of the Scrutiny Panel criticising me for lodging them when I did and not giving him what he said was appropriate notice. Now I see other Scrutiny members shaking their heads, but that is what the chairman just said. So, on 10th November 2014, Scrutiny emailed me requesting that they would be grateful if the Chief Minister could continue to hold off from lodging the regulations, that was 10th December, to enable, by the end of January 2015, outline conclusions of the panel to enable a discussion on proceeding or otherwise to lodge. So I was holding off lodging because that is what they had requested so that by February 2015 they could make a report or comment to the States of Jersey. On 23rd January 2015, the chairman wrote to me to complain about the Minister for Transport and Technical Services issuing a press release covering Property Holdings when the transfer had not yet taken place and saying the panel would be writing to me in the near future to update me on the position of their views. On 28th January 2015, I responded to the panel dealing with the T.T.S. (Transport and Technical Services) Property Holding issues only. On 30th January 2015, the Scrutiny Panel wrote to me or to my office confirming the panel had “identified a number of areas that it wished to look at during its review and that the panel’s initial priority is for advisers to set up meetings for them with key officers to better understand the revised structures and motives”. On 2nd February 2015, Scrutiny wrote again to my office to say, after a conversation between the panel and me: “This review has been placed on hold while the panel awaits an update from [myself] on the possible revisions to this plan.” That was to no longer locate the ministry within the Chief Minister’s Department for financial services, digital, innovation and competition, but to move those functions to my department with Senator Ozouf being responsible and continuing as an Assistant Chief Minister. Okay, so at this point it is absolutely right, there was shared responsibility, I was working with Scrutiny to get to a positive and good outcome. I then, having made that decision, with Senator Ozouf’s support, amended those regulations. That took longer than it ought to have done from February, March, and then in April, on 24th April, the panel wrote to me reminding me of a panel hearing on 9th May and that I would be writing to the panel with an update about the revised approach and saying they were waiting for that response. So this is when we are redrafting the regulations, so Members can rightly blame me for the length of this redrafting, I put my hands up, as I have done previously. On 11th May, I responded to the panel providing information to assist in the planning of their reviews, including a copy of the transfer regulations, which had been lodged on 6th May, and an explanation of why we no longer intended to create the ministerial post for financial services, digital, competition and innovation. So, lodged on 6th May and I wrote and confirmed on the 11th. On 17th June the panel wrote to me of their terms of reference for the review, so from 11th May to 17th June to develop the terms of reference, and asking for a delay in the debate from 14th July to 6th October.

[14:45]

This is where my consensual approach falls down because I wrote back to the panel and

is not hindsight a great thing, I wish I had never written this letter, but on 22nd June I confirmed to the panel that I would accept that deferral until 6th October. On 3rd August, the panel asked me again for a further extension until 20th October. That is why those regulations were delayed. Had

those regulations been considered by this Assembly in a more timely manner, then the passage that Deputy Lewis read out about the confusion, about the board not knowing quite who was responsible, about the legal responsibility resting in one place, but confusion about the operational responsibility, that could have been clarified and addressed much earlier. As it was, it only came into effect at the start of the budgetary year 2016 when the regulations gave effect to the responsibilities coming to my department and clarity being given. The report goes on to talk about all that happened during 2016 when there was a review into the loans and no more loans were given and when the accounting officer function shifted and, as the Q.C. said, when Senator Ozouf became aware of problems, action was taken. I think it was Deputy Southern that spoke about the 50 per cent Financial Directions. I have said, and Senator Ozouf said, Financial Directions are a matter for the Treasurer; a meeting was set up in my office on the date that the report shows. I had understood, and I remember being surprised about the people who were not in that meeting that I would have expected to be in that meeting. That meeting started out with the suggestion that things were too bureaucratic, too burdensome and not moving quickly enough, and that the risk profile that had been suggested was inappropriate. It seemed to me, as a personal observation, if I am allowed to have those, that with such start-up entities a 50 per cent failure rate was probably what would happen in practice. I cannot say why that was not communicated to this Assembly; it should have been. Officers have, in that report, acknowledged that it should have been communicated to this Assembly. But my personal view about the potential failure rates of such innovative products and loans I stand by. We are not at that stage today, lots of remedial work is being undertaken, and the cautious approach of making provision in the accounts, which was the right approach; that provision should have been made earlier in the accounts, in hindsight, is the right one. But at the end, when all those loans have gone into maturity, it would seem to me that the 50 per cent risk rate will be there or thereabouts. I remind Members that Senator Maclean, when he appeared before Scrutiny at one point, suggested even 70 per cent. But that 70 per cent of course was not a 70 per cent complete failure, it was a not 100 per cent optimal performance of those products.

**Deputy G.P. Southern:**

If I may, could I ask for some clarification from the Chief Minister, in that the question that I asked was why were those Ministers not informed of this decision or this change, not why was the Assembly not informed. The question was, why were the Minister for Treasury and Resources and the Minister for Economic Development, who were accountable for one or other aspects of these loans, not informed of this significant change in the risk?

**Senator I.J. Gorst:**

Because it was not my decision; the decision was the decision of the Treasurer. I was consulted about what I thought. I was quite clear in that meeting that I could not make that decision and this is one of the problems and we spoke about it yesterday in the vote of no confidence, people come and knock on my door, they arrange meetings with me, somebody arranges my diary, they ask me for an opinion. I give an opinion to the best of my ability. Maybe I should stop doing that and when outside people are invited in to meetings maybe I should say: "I am sorry, go away." But my opinion, I would argue, when these loans are finally dealt with and either succeed or not, of a 50 per cent failure rate, it may not be that far off the money. But it was not my decision. The law does not fall under my remit. I hold my hands up to the other bits that I just have done about the length of time it took to get the regulations through. But the decision was not made at that meeting; opinion was requested.

**Deputy G.P. Southern:**

If I may, I refer directly to the words in paragraph 141: "As explained in paragraphs 54 to 59 above, that risk appetite appears to have been decided [not consulted on, decided] at a meeting attended by the Chief Minister, the Chair of the J.I.F. Board and the Treasurer but not by the [other Ministers]." "Decided."

**The Bailiff:**

The Chief Minister has given his explanation for that. I have only Senator Farnham and now Senator Ozouf wishing to speak. I am thinking that come 3.15 p.m. we will have spent some 3 hours in total, 2 hours and 45 minutes, on this in-committee debate and unless something unusual turns up that I will draw a line under it then.

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

May I just say, this issue is at the heart of my political downfall, so I hope that I will be given an opportunity to say some concluding remarks at the end of what is effectively a public debate about something that has caused effectively all the events that have happened in the last few days, so that is why I welcome Deputy Higgins' view and I hope I would have an opportunity to make some concluding remarks.

**4.1.23 Senator L.J. Farnham:**

I think it is important that Senator Ozouf is given the appropriate time. I want to thank Deputy Higgins as well for bringing this, because I think it is an important topic to talk about in this ...

**The Bailiff:**

Senator, even with the microphone on, those at the far end of the Chamber probably will not hear you.

**Senator L.J. Farnham:**

I can resolve that quite comfortably. So I want to just start by saying that fortunately quite a few of the areas that I was going to refer to in the report have been referred to by other Members, but I was going to start by saying that I am slightly confused as to why there is so much confusion politically, because I thought that during that period between the States agreeing to the transfer of functions and the arrangement that we had in place, and it was not just for the Innovation Fund, but there were a number of appointments of Assistant Ministers across all of the ministries, for example I was an Assistant Minister at Education, Sport and Culture, and Deputy Bryans was an Assistant Minister also at Economic Development, and the Constable of St. Brelade was also, and there were quite a few appointments to deal with the period between Chief Minister's letters of instruction to Ministers and the eventual transfer of functions, which, after States debate, took place on 1st January, and it all seemed to work relatively smoothly. In fact, in most instances, not in all, but in most instances, the Assistant Ministers were acting as de facto Ministers for that period. But I am sure all other Ministers were mindful of that, while, for example, the Constable of St. Brelade was ably getting on with the sports remit during that time, the Minister for Education, I am sure he was aware, was legally responsible and retained an appropriate relationship with the relevant Assistant Minister. That was what was happening with Senator Ozouf and myself. So the arrangements between Ministers and Assistant Ministers are well rehearsed, so I cannot see why there was any confusion. I can only assume, when we look at paragraph 110, that the Q.C. said that in her view the difficulty arose, not because of any lack of delegation, but because Senator Ozouf believed that he should have been given full and sole responsibility and the officers should have been answerable only to him in relation to J.I.F. and I can understand that confusion. But I was always mindful that, while I was pleased to delegate this to Senator Ozouf, all the practical aspects of this, I was mindful, as I am with all areas, even the areas of my Assistant Ministers now, that I am legally responsible and the buck generally does stop with the Minister. But, notwithstanding that, I had no concern whatsoever in passing this over to Senator Ozouf, and I am not trying to patronise the Senator, but he is one of the most experienced, and arguably talented in certain areas, Members of this Assembly with probably the longest ministerial experience. He was a previous Minister for Economic Development and a 2-time Minister for Treasury and Resources and he arguably had a lot more experience than I did. So I was very comfortable at delegating this aspect of the role. I am not quite sure, given that, why officers were confused. I found the officers generally very helpful and very professional. Indeed, I did write to the chairman of the Innovation Fund Board



shortly after taking the office of Minister, I was appointed I believe on 12th November 2014. As far as I remember, I copied Senator Ozouf in, and vice versa with all of our correspondence on J.I.F. matters and if there was any missed out it was purely unintentional. I clarified the position and it is in the report that I said that, until the transfer of functions are approved by the States, I remain legally responsible as Minister, but the day-to-day running of J.I.F. from a political point of view had been delegated to Senator Ozouf. Although, in the spirit of good working practices, I would be more than happy to assist and Senator Ozouf and I would work together wherever possible to ensure that the officers and the Innovation Fund Board could get on with their work and feel they had political support and I think that worked when, on definitely one, possibly 2, of the occasions, Senator Ozouf was out of the Island or not available. But it was not just a case of Senator Ozouf not being available so I would sign something without looking at it, just as a delegated signatory, this was often discussed either in person or by correspondence with Senator Ozouf and myself and it was agreed that I could sign and would sign in Senator Ozouf's absence.

[15:00]

But I did not do that without fully, and sometimes I took a day, sometimes 2 days, on the paperwork, so the economic study, the officer recommendation, the Innovation Fund recommendation, was studied closely with officers and I was comfortable, I have to say, and I think as with Senator Ozouf, with the information with which we were presented, we were comfortable. We do not have crystal balls so we do not know what is going to happen in the future, but I was most certainly satisfied that the diligence and the work was done as well as it could have been at the time. Deputy Southern referred to a question about interest rates. I am slightly at odds with that paragraph and I agree with Senator Ozouf because, while Financial Directions mention consultation with the Ministers on interest rates, I think that I was very comfortable with the fact that the Innovation Fund Board, together with the Economics Unit, who produce the economic studies on these reviews, recommended the interest rates, and I think that was wholly appropriate and I was happy with the rationale of their recommendations, so I agree with Senator Ozouf. I do not think it should be politicians that should be making those calls, even though we would probably do it with the same advice with which the Innovation Fund Board made those recommendations. So I was always happy to do that in relation to the 2 Ministerial Decisions that I signed. In relation to another, I think Deputy Andrew Lewis raised this point, and that was referring to the delegation, the written delegation for the Assistant Ministers. I was firmly of the opinion that the appointment of the Assistant Ministers with the accompanying report, which in the case of Senator Ozouf referred to his new responsibilities, which was presented to the States Assembly, was the formalisation of that delegation, the appointment of the Assistant Ministers with their delegation listed, as happened with Deputy Norton with his delegations and the Constable of St. Brelade. I do acknowledge though that the Ministerial Code of Conduct and Practice for Ministers and Assistant Ministers was changed in early 2015 and that recommended that those delegations should no longer just be oral, but they should be underpinned with a written decision. I did not think that would have been retrospective and I do take responsibility and I am sorry that my officers did not flag that up because we would have rectified that of course, it would have been a formality, and upon production of that new code then we would have made that delegation in writing just to keep everything correct. But I might be wrong, but I am not sure, but I would imagine that there could well have been other delegations across the whole portfolio of States business that fell foul of that rule, but I am sure they have all been rectified now. But, also, I was also pleased that in the Q.C.'s view that the legality of any of the decisions taken by Senator Ozouf or myself were not impacted upon by that, it was really a technicality, but I have certainly learned from that. There is not an awful lot more I want to say at this stage. Of course, if any Members want to ask questions, I would be pleased to answer. I did not agree, I did not think that, following the Q.C.'s report, the Chief Minister should have rushed out a statement. I can understand his reasons. I would have preferred a bit more time for those Ministers involved to be able to soak up the report and then

make perhaps a joint statement because we all share responsibility, Senator Maclean, Senator Ozouf, myself, Senator Gorst, we all share responsibility for this, and I am quite happy to take my part of that responsibility; I am not happy to take on other people's parts of that responsibility, but I am happy to take my responsibility, for which I am answerable to this Assembly for that, and ultimately to the people of Jersey. Having said that, I do fully support the work we do to fund innovation and we must continue to do that for the sake of our economy. I will leave it there for now.

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

I thank Deputy Higgins for suggesting having the in-committee debate because I think it has been interesting, some of the information that has been stated today. Having had the opportunity to have read the Simor report, from experience of what I have seen from the Public Accounts Committee, I was, what is the easiest way to explain, extremely disappointed in what I read. That was following on after the C. and A.G. report. The main themes that came out of this report for me were the fact that Ministers were not being informed properly, the clarity over people's roles, the training that was supposed to be in place that was never put in place, and most importantly the accountability side of things. Implementation versus policy, who was responsible for what, that was not clear and was confused by some, and the timelines in terms of how things came to the abrupt end in which they did. So it brings me back to the oversight, so as a Member of the States and we invest power in Ministers to carry out their roles and we do so on the basis of trust and hoping that they will carry the values and beliefs that we all do, I hope. In this particular report, there are some serious concerns about how machinery of government is working in terms of the support that Ministers are receiving, with regard to the policy advice that they get, and then the person who is given the direction to deliver that policy, there is no separation there and I think this is a clear indication, more than ever, that something needs to be done with regards to that area. Whether it is only in the Chief Minister's Department, wherever it may be, but I am seriously concerned that, although this report has been established and we have seen all the problems, and I do not believe in trial by media and this is why I am grateful for the opportunity to be able to put my views out there, because I was questioned as to what I thought of this report and I did say I think Ministers, all Ministers involved in this were to blame, and the reason for that is because I expect Ministers, when they see this issue, to be able to come together and nip it in the bud, whatever the issue is, be able to nip it in the bud. There seems to have been, whatever it might have been behind the scenes, there seems to have been none of that, it seems to be: "I believe this, I believe that, I think I am doing this." I find it rather difficult to accept that there is so much confusion over roles, I really do find it difficult to accept that, because especially within this report where it refers to Article 30(a) of the Public Finances Law. That came out of the last machinery of government review where we, as a States Assembly, wanted to know who had been delegated the responsibility or authority to do certain things within ministerial posts. If that was the Assistant Minister, then at least we knew who it was. So that was agreed from the last term, and yet it has not been complied with. The information within this, in particular in the recommendations, page 10, where it refers to the rearranging of Government responsibilities and training and the scopes and means of what we are here to do, it raises the question again back to the accountability angle, is that it is easy to push around this word of responsibility, but the Minister ultimately has corporate soul, he has the legal responsibility for the Jersey Innovation Fund, and that is the Minister for Economic Development. So whoever is in that post, it does not matter to me, Minister for Economic Development has corporate soul, has legal responsibility for the Jersey Innovation Fund. There was delegation and there was a bit of confusion about the Assistant Minister roles, but in here it talks about: "I would also expect an organogram to exist for government, for each department and for each separate project, such as the J.I.F. It may be that such documents already exist." I am not aware of these documents, so if anybody knows of them then please share them, it would be interesting to see this: "With the assistance of his chief officer, I would recommend that each Minister use such documents to ensure effective oversight." Now, I would agree with that statement but from

experience I would go a step further, I would say that, in order to have the effective oversight, it is questionable whether a Minister, within their capacity and the amount of work that is expected of them to be done, whether they have the ability for that effective oversight. This is where I talk about the separation between policy advice and implementation of policy, because I think it is very easy to get those skewed. We have talked many times, since I came in the States Assembly in 2008, about the grey areas, about who is responsible for policy and who is responsible for delivery. It has been grey and it gets greyer the more the time goes on, no matter how many codes we put in, no matter how much legislation we change, for some reason it gets more confusing and it really does concern me because the Public Accounts Committee last term, while this Jersey Innovation Fund was being developed, were in the middle of doing a review of the film grant, the £200,000 film grant, and our review revealed almost exactly the same issues that have been identified in the Jersey Innovation Fund. P.A.C. were explained concerned at that time, the fact that Financial Directions had not been followed. Yet we are here again with the Jersey Innovation Fund, the same department who advised that they were going to do better, P.A.C. had written a letter to the States Employment Board at the end of the last term raising serious concerns about accountability. How were people held to account for implementing these policies? As far as I know, States Employment Board have never received that letter and as far as I know there has been no reply to the Public Accounts Committee. So I would like to hear, I would like hopefully at some point, whenever that may be, from the ministerial side, is how is the future going to be better? How can I have trust that any future Innovation Fund that comes to this Assembly and asks for my approval, because I do not want to be standing here and saying: "I want to add another set of regulation on." I do not want to add another set of codes of practices on, but I may have to because the processes are clearly not working as they currently stand. We have had a report, well we have had the C. and A.G. report, we have had this report. It worries me that there is so much confusion around responsibility in terms of ministerial roles. I would like to be reassured from somewhere, not just blaming it on machinery of government, but how the accountability structure works, not just with Ministers, but with Chief Officers as well, because there is a role within the Public Finances Law in terms of accounting officers. This is where the public get extremely infuriated because in their line of work, the slight hiccough, they are gone. It seems to be in the States you can get away with anything and that is what worries people. There is no ascertaining or giving them any reassurance that there is the accountability there. I would like, whether it is today or whether it is in the future, from a Minister to come forward to explain how we can have trust in that process going forward.

#### **4.1.25 Mr. R.J. MacRae, H.M. Attorney General:**

It is a short matter arising from the speech made by Senator Farnham shortly before. There is a very short letter from Jessica Simor supplemental to the report, which I thought had been published, but in any event it draws to our attention the fact that there was in place guidance in relation to recording Ministerial Decisions before the 2015 guidance referred to at paragraph 90 of the report.

[15:15]

We have seen that at paragraph 90 it is said in the third sentence that: "There was also no recorded Ministerial Decision delegating such functions, which from 10th February 2015 became a requirement under the Code." The inference being it was not prior to that date. But that was not the case because recording of Ministerial Decisions was required ever since 2005 when a presentation was made to the States, I have the paper here, and the report indicates expressly that the obligation to record Ministerial Decisions encompassed any decision to delegate functions to an Assistant Minister in accordance with Article 27 of the States of Jersey Law. So it was a requirement in 2014.

#### **The Bailiff:**

This is her letter of 8th May of this year, is it?

**The Attorney General:**

Indeed.

**The Bailiff:**

Yes, which is part of the addendum report.

**The Attorney General:**

I am grateful. It does not make any difference to her view that the delegation was valid in law, but nonetheless the requirement was present at the time of this delegation that it be recorded properly.

**The Bailiff:**

Thank you. I will ask Senator Ozouf if he would like to speak and then finally Deputy Higgins. Senator Ozouf.

**Deputy M.R. Higgins:**

Is it possible for me just to ask, I have some questions just on what has been said? If I say what they are and then just finish off?

**The Bailiff:**

Then I am sure the Senator would like to hear any questions that are relevant to him certainly.

**4.1.26 Deputy M.R. Higgins:**

In fact they are relevant to some of the others as well, but the things I have just written down, I wanted to know about the resourcing of the J.I.F. executive; I know there is reference to them being qualified people and so on, and I do wonder about the resources that were available. I am also concerned about due diligence and monitoring, who was doing it? The Chief Minister mentioned the meeting he had attended and he said no decision was made on the risk of 50 per cent. He mentioned the Treasurer. What I would like to know there is, who made the decision, was it the Treasurer? Whose responsibility was it to bring it to the States? I must say, I would very much like to know what the officers thought, where they were confused or where they thought there were problems. Of course we are being denied that because it is a separate court. I am urging the Chief Minister, we should have it, redact the names, let us find out what they said was going on and what they thought. In fact I will leave it at that.

**The Bailiff:**

It is not question time, no one is obliged to speak, but if Senator Ozouf wishes to speak and ...

**Deputy M.R. Higgins:**

I would also hope to just clarify the point before we finish.

**The Bailiff:**

It is up to the Chief Minister if he wants to speak.

**4.1.27 Senator I.J. Gorst:**

I am happy to do it and then hopefully we will shortly or quickly move on to Senator Ozouf. The Deputy asks some good questions there about due diligence, about the work of officials, and he rightly correlates those questions to the review into the role of officials. I have said right from the start, the normal process for reviews into officials, which may lead to disciplinary action, is that they would not be published. I think that in this instance it is such a matter of public interest that I have said that I want S.E.B. to consider whether it cannot be redacted in some form for it to then be put into the public domain, because I think it really is important. But it is that report is looking at, and hopefully answering, some of the questions that the Deputy rightly asks about the qualifications of the executive, who did the monitoring of the loans, what work did they do, and how was that

happening in practice. So I do not want to give him too much certainty, but I do understand what he is saying and I do think, if it is at all possible, it will be important to do that redacting and try to put it in the public domain, albeit probably not at this stage because its processes are set in train. I am sure the Deputy will understand what I am saying. They need to be allowed to reach their conclusion.

**Deputy A.D. Lewis:**

Maybe I could clarify something the Chief Minister just said. We have already made a request to the chief executive of the States of Jersey to do exactly that and we are meeting with him next week to discuss that. It is sensitive, it is an H.R. (human resources) issue, we understand that, but we are expecting to get a redacted version of it so we can join the dots up if you like.

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

There are a number of issues, I am going to try and be as brief as I can, but I would ask Members, I do not know how many Members have a copy of the Simor report with them, because I will refer to them. I think Deputy Southern asked questions about the issues to do with interest rates, or maybe it was Deputy Lewis. That is right, I am sorry, Deputy Southern asked issues about the write-offs issue and Deputy Lewis about the interest rates, I think I have that the right way around. Now, it is clear, the 50 per cent figure is a problem and is unclear as why this was applied without States approval. It was what I was advised that was agreed when I was taking over the issue, but I did not know anything about any of that, and I am very clear, and it must be right for the Chief Minister to say, and I have the benefit of looking at board minutes as well and a very detailed chronology. Because lots of people have done chronologies, including Jessica Simor Q.C., and effectively it was quite clear that it was not the Chief Minister that could make that decision, was making that decision, and he was being consulted. Now, certainly, I do not know why I was not at that meeting and I do not know why the Minister for Economic Development was not at that meeting, but I do know that, as Minister for Treasury and Resources, when I was there, I would be expected to have good relations and to be inquisitive of what was going on with the department, and I knew that there were issues of concern within my Treasury at the time in relation to the Financial Directions. That is why the Financial Directions were so tightly drawn. What I did not know was effectively the difficulty. Financial Directions, as we have said, are effectively a legislative instrument that are the responsibility of the Treasurer. They may be signed off by the Minister for Treasury and Resources, but they are simply an administrative ... they are effectively the responsibilities as discharged by the Treasurer of the States in order to enact and to require departments to undertake certain functions. I have dealt with lots of Treasurers and I knew my Treasurer was concerned about this function and that is why the Financial Directions were so tight. The board did not like that. The board did not like the Financial Directions and the candidate that was originally going to be chairman did not think the terms of reference were right, and I read with astonishment, because I was never given the board minutes of J.I.F., I only got them in the inquiry. So I learned with absolute astonishment that, prior to November 2014, there was all sorts of contradictory information being said. There was clearly a disconnect between the ministerial side and the executive and the board of J.I.F. Examples of it, the words "frustration" are being used. The chair of the J.I.F. board said to one of the officers they expressed frustration, the revised Financial Directions received the afternoon say it followed an incredibly long gestation period. It has been done at least half a dozen times in the intervening period. The Treasurer was trying to do the right thing clearly but the board did not like it. The chair said the Financial Directions on 1st July 2014, before I was the Minister for Treasury and Resources then, were deeply flawed, says the chair of J.I.F., deeply flawed, the Financial Directions. The Treasurer is trying to do the right thing and I knew the Treasurer was doing the right thing and the Financial Directions were, I think, good and proper and right. But, my goodness me, what I did not realise is quite how much the board was pushing back. Now, in relation to interest rates, so the issue of the write-offs, I cannot but agree with the conclusions that effectively I had no idea why, I was not responsible for that, I have no

idea why there was a miscommunication of that, and I can understand Members' concern about that issue. Deputy Maçon did not like this yesterday, but it is the law and if the Attorney General can say otherwise you can say that I am making an incorrect statement, but my understanding is, when the States Assembly make a vote on something after a debate, it is the whole of the States Assembly that take responsibility for that decision, and then they cannot basically say: "It is just one person." So the whole of the States Assembly was responsible for the Innovation Fund approved terms of reference and the errors, because you either vote or not, that is democracy. So the only person that has a get-out I suppose is the one person that voted against it, but even then the majority decision happens and so the States Assembly has. But then a Minister takes responsibility for implementing it or to ensure that their officers do. A Minister must be inquisitive. Deputy Vallois is absolutely right when she says about an organogram, there should not be a need for Jessica Simor Q.C. to have written a recommendation for an organogram. I have been a Minister for quite a few departments, I was the president of the committee, I am known to have invented something called the banana skin list of things that were problems that I wanted every week to discuss with my officials of things that could go wrong, asking questions, being persistent, being inquisitive. So asking what was going on about things; that is what a Minister needs to do. Because, if a Minister does not do that, then because a Minister that knows what they are doing, a Minister that knows that they are responsible and will be accountable and answerable, not necessarily to blame, but accountable, answerable and responsible, for all of the actions, whether they know them or do not know them, but the things that are done in their name. I will come to Deputy Lewis' questions about interest rates. They must get comfortable with what is going on in their department. The only thing you can do as a Minister, because it is the accounting officer that is right at the top of the tree, you cannot go to any of the officers, well you can, but it is the accounting officer that is at the top of the tree, Deputy Vallois, being chairman of the P.A.C, knows that and the current chairman of the P.A.C. knows that too. It is the accounting officer that is the top of the tree. So, if you have to accept, if you know as a Minister you are going to be held responsible, then you must be comfortable that that accounting officer is going to do that job appropriately in your name. So you have to be interested in that accounting officer to make an assessment about whether or not that accounting officer's skills are appropriate to be doing all those things and being responsible and doing things in your name. The only thing you can say, the only kind of ace card that a Minister can say ultimately in this jurisdiction, in any of the Westminster-style jurisdictions, is if you say: "The accounting officer, I just simply cannot accept that that happened", the decisions are made in my name because of that accounting officer. You cannot remove it, there are ways that you effectively do that, and that is what I did. I am just covering a number of issues in one go here. I did not remove the chief officer of E.D. but I did want, and I have the email that I sent, I do want to be, because my reputation has been on the line here, I am the one that is being held to be to blame. I am going to quote very briefly from an email that I sent to the chief executive of the States when I knew that then I was really responsible to the Chief Minister instead of the Minister for Economic Development. I said to the chief executive: "It is now clear that there are serious issues with the Innovation Fund. It is now urgent and action is required to avoid a political firestorm. The C.M. (Chief Minister) has delegated the legal and political responsibility for the fund to me. That means that, as of today, I am accountable for the decision making, past, present and future. The buck stops with me and I will be judged on how I handle matters as of today. If there are issues in the past, then I cannot change them, but I can recognise that there are issues and take appropriate internal action." In other words, you cannot change history and say I did not sign the decision, but I am responsible for the decision. So what I am saying, I said: "I stand in the shoes of the previous individual because that is the responsibility of being a corporation soul. I can do my best to defend the individuals previously involved and I will do so. That does not prevent me from internally requiring processes are commenced to ensure the findings that are of the report that I commissioned are not repeated."

[15:30]

I set out 3 issues and I just say this, I am not going to say it all, but I will just say these things: “(2) We need to work out an appropriate way of communicating, I need to be on the front foot in handling questions.” May I say publicly that I commend the *J.E.P.*, I do not think I have ever said anything nice about the *J.E.P.* in this Assembly before, but the *J.E.P.* have been doggedly persistent in answering questions and one journalist in particular who knows who that individual is, who smelled a rat I think, smelled some problems, and she has been doggedly persistent in answering questions about the Innovation Fund, and I said, my expression to the chief executive officer was: “I want to tackle these problems head on. Please remember my expression of not being wanting to be somebody that waits for a fly through a windscreen, I am not prepared to do this. The background is important, as it highlights the potential for a media problem, which will make the film grant and flight problems look like proverbial peanuts.” I say: “If the information is correct, the findings are so serious, then I want to consider whether I should ask for the Fund to be effectively suspended. The accounting officer responsibilities remain with the C.E.O. (chief executive officer) of E.D., this is uncomfortable for him as for me. I urgently want you to consider transferring administrative responsibility for the outstanding loans to individuals completely unconnected with those previously involved, perhaps at an outside firm of accountants.” I say: “This is a major issue, which I need to deal with and quickly. I am prepared to continue to take responsibility for the fund, but with that responsibility comes accountability and therefore must come with the ability to act.” There are dozens of emails of the same type of description where I basically say repeatedly that I am concerned. The very issue that I warned of ended up consuming me, ended up for me having a demonstration outside on 17th January where I was accused of squandering millions of pounds of taxpayers’ money.

**The Bailiff:**

Senator, I can ...

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

I know, I know, Sir.

**The Bailiff:**

Senator, I completely understand your position personally, but this is a debate, not about you, it is a debate about the Innovation Fund.

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

Sir, you say it is not a debate about me, but however ...

**The Bailiff:**

No, it is, that is the ruling, it is a debate about the Innovation Fund.

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

Right, fine, but it is about the Innovation Fund, Sir, and it is about the responsibility of the Innovation Fund and who was responsible, and I have to say in public, because I was not able to answer questions previously when I wanted to. I want to basically say what I did, because Members of this Assembly must know, and they must know, and the public must know, what Ministers do to try, and have done to try to deal with the issues, because I have been held responsible, which I was responsible. I have then been held accountable. I have then had to resign. I have then had an independent Q.C. report and then I have been, I thought, exonerated for the extent to which the Chief Minister said, not completely exonerated because of my actions. Because I think the Chief Minister knows the actions I did. Then I have had to resign and then I have effectively had the situation as there. So it is not only about me, it is about other people, but it is about responsibility and this is the first time ever, since ministerial government comes in, that we have tested this issue of responsibility and that is why it matters. Now, interest rates, back to the issue that Deputy Lewis said, I do not know why the previous Minister for Economic Development

is not here, he may have a family issue or something, but it is difficult to be the spokesman for something that I was not responsible for at the time. I can say in relation to interest rates it is very, very clear, the issue of interest rates is that they were effectively recommended by the advisory board to the Minister. That is an issue where there is a recommendation by an advisory board to do something and to make a recommendation, and that is what it is. So everything is done in the name of the Minister, but it is done upon advice, and so interest rates were just that. Now, the last 2 more things I need to deal with are the issues of why there was this confusion. It has already been effectively explained, but what I did not understand and I suppose, I do not know, I was given a letter to say that I was expected to discharge sole responsibilities for Innovation Fund and they were delegated to me. I just did not understand what happened. When I read, I acted as though I was, I would expect, and I think Members would understand why it was not wrong for me to expect that officers would report to me in relation to the Innovation Fund. But what I found by reading the J.I.F. minutes is that there was just simply months of confusion and I do not say anything wrong to the Minister for Economic Development because he was right with what he said, but there was then a disconnect it seems between what he was saying and his chief officer who was on the board. There was a complete inconsistency and this went on and on and on for months and I read the minutes of the J.I.F. Board and I was just astonished to see repeated requests to tell me things that I was supposed to be having sole responsibility, then the J.I.F. Board said it is not clear I was to be a consultee. Then it was to be shared. This is all evidenced in the board minutes. I inherited a situation, which I did not know that there was effectively absolutely a disconnect between the previous E.D. regime and the board itself, it was a very unhappy state of affairs with people saying that they were going to resign, and then the new E.D. regime that was supposed to come in November 2014 was just it was like a to-ing and fro-ing, it was like a swivel door. One minute I was supposed to have sole responsibility and they were told, next minute I was supposed to be a reviewer, next minute they had not been given the forms of what the decision making was, and it was absolute chaos. They understood it was chaos, they were not clear, so what was I supposed to do? I did not know any of this. If you are the Minister, or supposed to be discharging the ministerial responsibility, what are you supposed to do? Jessica Simor says that it was right that a Minister needs to act upon the information that they are given. Logfiller, I was not told about Logfiller. I am going to repeat that again. I was not told that Logfiller was a problem until 6 months after. The board knew; the chief executive knew. I will not say one thing, because it is not fair, but I did not know. I did not know. I did not know that the board was asking for administrative help and said that they were so unhappy with effectively the due diligence, I had no idea. I knew that there were problems, but I was told, and I have the emails to prove it, that effectively I have an email, which basically says that I ... Just on the issue of me clarifying, and let there be no doubt, I tried to clarify exactly what I was responsible for repeatedly, because Senator Farnham I do not think that we had some constructive discussions about innovation and all the rest of it, but I clarified what my responsibilities were, which is why Deputy Higgins said earlier about the fact that, or referred to the report, which said was I responsible. I clarified to the Director of Corporate ... the Chief Minister's person, I said: "Am I responsible for Innovation?" "Yes, you have sole responsibility." Well, who am I to believe? I wrote on 4th December to the Minister for Economic Development and to the Chief Officer: "I have seen the delegation for other Ministers for moving responsibilities, could you confirm what the status is and when it will be signed?" I was on people's backs all the time to say: "Can you please make sure that I have the necessary responsibilities?" but it never happens. It was not transferred. It did not transfer for months, and I do not accept what Deputy Le Fondré says about the transfer of functions. The transfer of functions regulations were before the Council of Ministers on 4th December, I think I am right in saying that Corporate Services has access to Council of Ministers' minutes ... they have access to Council of Ministers' minutes, so how can it be right that regulations - and I have the copy of them, it was sent out to Ministers and on the Council of Minister's agenda of 4th December 2014 Senator Maclean, Senator Farnham was there, everybody was there and it was clear that I was supposed to have a ministerial post. I would say, with respect, that if that would have happened I think I would



have been able to get on with the job that I was asked to do. The question has been asked about phase 2. Good question, forgive me, I cannot remember who asked it. I did phase 2. I did phase 2 ... thank you, Deputy Southern. Deputy Southern that asked the question: "Why did phase 2 not happen?" Yes, I did phase 2 because I commissioned the Tera Allas report. I did stage 2 plus. I went much, much further than what was originally envisaged on the stage 2 ... Deputy Southern has his mouth open, I am just not sure whether or not he is just ...

**The Bailiff:**

Do not encourage him, Senator.

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

I am not sure whether people are taking what I am saying seriously, which I deeply regret.

**Deputy A.D. Lewis:**

Sir, if I may, would the Senator give way. I am just concerned that the Senator may be digging a bigger and bigger hole for himself. We do appreciate that you have been so open with us, Senator, but I am slightly concerned here that the hole is getting bigger. The Senator did say that he acted as if he was responsible yet he did not demand and ask to see the minutes until months later.

**The Bailiff:**

Deputy, the ordinary rules of the debate apply, you are not asking for any point of clarification and the Senator is speaking. No doubt he will conclude what he wants to say and then we will ...

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

I have had to put up with so much in relation to this, I am not going to be told ... with the greatest of respect, I am addressing the Assembly very seriously and in detail on evidence minutes. Now, I said before, and I will repeat for the benefit of Deputy Lewis, Deputy Andrew Lewis, I know what responsibility is. Responsibility means that you are accountable for the actions of your officers. Now, the only problem was that the accounting officer for the Innovation Fund was not my chief officer and I never accepted that as must be clear. I did not accept - I am going to repeat that again - never accepted, could never have accepted the fact that it was a continuation because it was being transferred. So I could not accept the fact that it was accounting officer of another department, you cannot have that. You cannot have 2 accounting officers. So I am sorry, I know exactly how to be a Minister, with the greatest of respect, and I know what my responsibilities must be. I absolutely know that I did all of the issues that I was supposed to do. But what are you to do. What are you to do when you ask questions and you are not given all the information? When your questions are not taken seriously, when nothing is done about that. You know, I do say that there were clearly problems within that department that I was taking over various different responsibilities. There were clear issues with the department that was relinquishing control of the innovation fund. Everybody knows that. It is clear. I then dealt with a lot of those issues. When I had the alignment of executive responsibility, political responsibility and accounting officer responsibility everything worked. The one thing I have been criticised for, digging a hole apparently but I would say it was somewhat different, all the areas that were under my responsibility with an accounting officer who reported to me, I received I think quite a lot of successful results for. Financial services, resolving all the digital issues, the competition issues, et cetera. The one area that went wrong was there was a disconnect and a disconnect that went on for far too long. The Chief Minister, I think, will confirm that I offered ... and I said: "I cannot carry on with this, Chief Minister" and I considered resigning on 3 different occasions through 2015 but I did not because I knew the job needed to be done and I thought it was going to be solved. He gave me the assurances that Corporate Services were finally going to make that decision and Corporate Services would finally yield and pass on the responsibilities.

[15:45]

So that is why I put up with it. I knew about it but it went on and it went on and it went on and then when I finally got the transfer functions the accounting officer remained in place because mine would not take it because it was such a mess. I knew that and that is why I carried on asking all the questions which then bubbled up eventually in me ... after I had had enough of all the leaks, I said a particular individual should not have ... everything was leaked from the Innovation Fund, I learnt more about it from the press than from what the department that was supposed to be talking to me and telling me about it. I learnt more from the *J.E.P.* ...

**The Bailiff:**

You have said that already.

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

I know but I need to say it again so Members understand that.

**The Bailiff:**

I think most Members take things in the first time.

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

Okay, good. Excellent. Well, then they will understand the difficulty that I was under. An extremely impossible position. The Jessica Simor report said, under 20, that I understood the basis in which I was appointed. I was told everything was fine and as soon as I discovered otherwise I took action, and I did take action and I suspect that if I would not have taken the action that I did then the whole situation would have got far, far worse. In conclusion, I think there is another thing that has to be said about the Innovation Fund and the write-offs versus provisions. What the Treasury have done is they have provided for effectively the maximum write off of loans. The actions that have been taken means that there is obviously, I do not think, going to be the full extent of that and there is obviously criminal investigations which I was aware of. I mean, there are other issues that I learnt from the minutes of the board that frankly astonished me, that I had also drawn ... well, I mean I did ... I am not in the position now so I cannot even do that but I would sit down with officers and I would draw to their attention why certain people were given loans when they effectively had criminal records previously. I had no idea about all of that. I had no idea about one of the firms that was involved ... the loan had to be signed ... Senator Farnham signed off a loan, he was told that I had been consulted and that I knew about it and I had not. That apparently was a loan that had to be signed off because of a trip to the Middle East about an oil industry issue. It had to be signed off and I learnt all about that from the J.I.F. minutes. I had no idea about that. Deputy Lewis is asking again why did I not answer the ... if Deputy Lewis thinks that I am the kind of person that does not ask questions I do not think he knows me. If I ask questions and do not get the answers you cannot do more than that.

**The Bailiff:**

Senator, you have spoken for over an hour and you are now repeating yourself.

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

Fine, okay, but I am being questioned and doubted in what I am saying, I do not think Members are taking what I am saying seriously.

**The Bailiff:**

It does not help to repeat yourself.

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

Right, so anyway, in conclusion I was clear on the basis on which I was appointed, I was given partial information, I learnt a lot more from the inquiry than I knew from what I was told. You cannot ask a Minister to be responsible and to take the blame for an accounting officer that you do

not have the ability to hold to account. You cannot do it, it is impossible. I believe that Members should have ... I understand why Members are concerned about the Simor report, I have read the Simor report, I know all the things about the Simor report that she cast out, I will sit down with Members, any member of the public, and I will go through line by line the Simor report and explain all the things about it. If necessary I will publish the evidence I gave, the substantial evidence, the hours of evidence, the pages of evidence, the hundreds of emails of evidence that I gave to the Simor report, who is one of the most eminent Q.C.s in the country. To doubt that conclusion I find extremely difficult to understand and comprehend. I find it very, very difficult. I do not understand why Members do not accept the statement that was said in paragraph 20. To ask any Minister to do any more than that which is explained in paragraph 20 I simply just do not understand. I thank the Chief Minister for having understood that and I stood down in the wake of the C. and A.G.'s report which did not criticise Ministers. I stood down at an independent inquiry which I then think explained what I did, warts and all, and then he reappointed me. The rest played out yesterday and I simply do not understand. But certainly I have served this Assembly to the best of my ability and I tried my best in what was, I think, virtually an impossible situation. I would say to the Assembly to look at the conclusions and the recommendations of the Simor report and to never ever, ever allow a situation where an individual is put in that invidious position, because you cannot do it. You cannot give somebody responsibility and then not give them the ability to act and to take the corrective action that the public want because the public are right to be angry and they are right to be angry for every pound of taxpayers' money that is lost. I hope Members take this very seriously and it is depersonalised. It has become very personal against me. Incredibly personal against me and I have had to take people spitting at me in the street, shouting at me in the street, chasing me down roads and things, all sorts of things, and then I have had to deal with the issues of the last couple of days where Ministers have not accepted a report and then demanded that their loyalty to the Chief Minister is dependent on whether or not I come back. That is the fact, I have said it, it is difficult, it was an impossible position all the way along. Perhaps I should have not just simply accepted that. I probably should have not accepted that but I am not the kind of person who shirks from responsibility. I try and get in and sort things out. I think that is what political service is about and I just ask for some justice in relation to the way that we are judged. I am happy to be judged on my actions and I am happy to take responsibility, but responsibility does not necessarily mean that you are to blame and I do not think I was to blame for the majority of failings here. I did my best.

**Deputy G.P. Southern:**

Sir, without wishing to extend things too much further, may I ask for clarification on the question I asked which was, what comment has the Senator to make between his statement on 1st May 2013: "Work on stage 2 will be undertaken immediately" and the minutes of April 2014, a year later: "No progress has been made on stage 2." Stage 2 was the acquisition of equity in these companies.

**The Bailiff:**

Can you clarify quickly?

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

Yes, I will. The fact is that stage 2 was about taking equity. Now, I issued a press release on 7th April 2015 saying that an overall review, which was far greater than the equity issue, that the whole issue of the Innovation Fund was going to be reviewed by Tera Allas. That Tera Allas ...

**Deputy G.P. Southern:**

That is 2 years later.

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

I was not the Minister for Economic Development before 7th November 2014. It was the Minister for Economic Development and must have been the Minister for Economic Development in order

to take responsibility for stage 2. So that is nothing to do with me, I cannot answer that question. All I know is that basically the whole basis on which the Innovation Fund was created, where credit markets were not working, meant that the whole thing needed to be tipped upside down and reviewed and that is why the Tera Allas review was done, that is why I did it, that is why I commissioned a review in April and that is why I did it very quickly, notwithstanding all the other nightmares that we had. I did the Tera Allas review, the review was done, the action plan was done and everything was there and a new innovation fund was supposed to be put in place. It did not happen because of all the other problems and that is a matter of regret. Stage 2 was done as soon as I could do it. It is called the Tera Allas review, end of.

**The Bailiff:**

Deputy we are not taking any vote, if you wish to sum up very quickly. I am going to bring this to an end by 4.00 p.m.

**4.1.29 Deputy M. Tadier:**

Can I just say 30 seconds worth? It is just a quick observation. I do not need to add anything to the substantive report, I have read through the report and I think it speaks for itself, but just after Senator Ozouf's very long speech, when I went out for a bit and came back in and it was essentially the same speech, I heard: "I am not responsible, responsibility does not necessarily mean responsibility ... although I was responsible I was not necessarily responsible." It is just to say ...

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

Responsibility is I was responsible but not necessarily to blame. That is why I had to repeat it a couple of times.

**The Bailiff:**

This is really unhelpful.

**Deputy M. Tadier:**

It is just when I read through the report and when I listen to the reasons that we are given and explanations, I am just reminded of the old proverb which says: "Success has 1,000 fathers but failure is an orphan."

**The Bailiff:**

Now, Deputy Higgins?

**4.1.30 Deputy M.R. Higgins:**

Thank you, and we will not even get to 4.00 p.m. with what I have to say. It will be very brief. I would like to say thank you to all those who have spoken, the Ministers, because they have put some meat on a report which, in part, was confusing. To be perfectly honest, I did enjoy the question and answer part of this session, it may not be what a normal in-committee debate is like but it is effective to get some straight answers. What I would say is I wish the States did this more often in one sense because we have explored an area which has caused great concern to States Members and to the public. I have learnt more today than I have in many of the debates we have had. So I would just like to say I am pleased we have had it, I am a lot better informed and I hope the public are as well with what they have heard. With that I will just say thank you very much.

**The Bailiff:**

Thank you. Well, I give notice to Members that the Draft Commissioner for Standards (Jersey) Law 2017 (Appointed Day) Act, P.58/2017, has been lodged by the Privileges and Procedures Committee. Likewise P.59/2017 the Draft Amendment (No. 33) of the Standing Orders for the States of Jersey lodged by the Privileges and Procedures Committee. Chairman, do wish to propose the arrangements for public business?

## **ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

### **5. Connétable L. Norman of St. Clement:**

Yes, please. As per the Consolidated Order Paper under M, plus the 2 items that have just been lodged as you have just referred to for 18th July. The next meeting is on 4th July and looking at the items down there it is quite possible we could complete that business in a day but I suggest Members do allow for 2 days.

#### **5.1 Senator P.M. Bailhache:**

It is a hard life being a Chief Minister and the Chief Minister was very collegiate and consultative with Back-Benchers before suggesting that an in-committee debate should take place on 6th July but he did not consult the Council of Ministers and I should like to ask the Assembly to consider whether it is in fact appropriate to hold an in-committee debate so soon after the publication of the Independent Jersey Care Inquiry report. I think we can anticipate that the report will be a substantial one, perhaps running to many hundreds of pages. It will contain a number of recommendations and all those recommendations will deserve careful consideration. The report is going to be published at 3.00 p.m. on Monday, 3rd July. The Assembly is sitting on Tuesday, 4th July, it is possible - the Connétable may well be right - that it will run over to Wednesday, 5th July. It is suggested that we should have a debate on 6th July in relation to this report. I doubt that many Members will have had the opportunity to read the report, let alone the opportunity to give it serious consideration and to reflect. I am sure that the national and international media will be wanting immediate reaction from the Chief Minister and perhaps from other individuals, but this Assembly, it seems to me, is different. This Assembly is entitled to have time to consider serious matters seriously before it debates them. I think that the public who elect us would expect us to have read the report and to have given it some thought before we started debating it. So I just want to give the Assembly or Members the opportunity and to test the feeling of the Assembly as to whether there is any sympathy for that point of view. I would like to propose that we at least give ourselves a weekend to read and to reflect and that this in-committee debate should take place on Monday, 10th July.

#### **The Bailiff:**

That is the proposition. Is it seconded? **[Seconded]** Chairman, in accordance with Standing Orders I consulted you with the question of fixing a date having received the requisition notice from Members. Do you wish to ...?

[16:00]

#### **5.1.1 The Connétable of St. Clement:**

Yes, I will say a couple of words. Certainly, as you say, as per Standing Orders, you consulted me and we discussed the issue and before you made your decision to call a meeting on the 6th I consulted with a large number of States Members about when we should have this in-committee debate as requisitioned by those who signed the paper, the letter to you. The vast majority that I spoke to felt that it was quite right that this Assembly should meet as early as possible to discuss this vital and important issue. If we do not take the initiative others will. The media, the national media, the local media will set the agenda. I think we have to take this most seriously to consider it as soon as we possibly ... we are meeting that week. I think we could be criticised heavily, heavily, by local people by people who are interested in this issue elsewhere if we do not immediately, as soon as reasonably practical, meet as an Assembly, meet as the representatives of this Island to at least discuss the issue. We are not going to reach conclusions, we know that but there is going to be so much information available that it is important that the Council of Ministers, we as States Members responsible for representing the people of this Island show a proper interest and start the agenda about how we are going to progress this report, whatever the recommendations of it might be. I think we could be heavily criticised if we delay even for the week or so that

Senator Bailhache suggests. I would strongly urge Members to maintain the decision that the Bailiff has already made to have this sitting, in-committee debate on 6th July.

#### **5.1.2 Senator I.J. Gorst:**

Thank you. I have just reminded the mover of this proposition that he has very graciously accepted an invitation from myself to the Jersey London Day, perhaps he is withdrawing that acceptance, I am not sure. Relevance, Sir. Many Members stand up in this Assembly and say we are irrelevant. They say the things that we discuss are irrelevant, we are obsessed with ourselves. They say that they need parishioners, constituents, who say the States seems irrelevant to their everyday lives. I understand that. Sometimes we do have to do technical detailed things which sometimes seem irrelevant. I am not looking forward to that week. I have said it before but this is the first time we will have completed such a truly independent inquiry. This will be, possibly, the first opportunity for some of those people who have suffered in our community over decades to have their voice heard and recognised by an independent inquiry. The chairman of P.P.C. (Privileges and Procedures Committee) is absolutely right, we will not have all the answers, we will not understand all the implications of the recommendations but you can guarantee that outside of this Assembly it is what people will be talking about. What people will be talking about up and down this Island. It is what people may be, depending on what the recommendations are and the findings are, talking about in the international media. Can we really for a minute suggest that the only appropriate consideration that this Assembly will give to such a report is a statement by me and 15 minutes of questions by Members of this Assembly? Absolutely not. We have an opportunity to show, from time to time, how relevant we are to the big issues of the day. This will be the big issue of the day for that week. I think we have no choice but to show that respect to those people. To talk about their stories, to hear of their experiences and to commit to improving services into the future. I really ask Members to consider very, very carefully before they decide to change the date from the week that the report will be published to the following week. I cannot be party to it. I implore Members to show that they can be relevant to the community they serve and to those that have suffered in this community.

#### **5.1.3 Deputy M.J. Norton:**

I did second this proposition because no one likes to see a proposition being brought and then not even seconded was my thought. On checking and on reflection in the diary I am reminded by the Chief Minister, apart from the excellent words of not only the Connétable of St. Clement but the Chief Minister himself, of the good reasons for having it early. I have noticed that very important date in the diary for Jersey which is in London and note not only will the Chief Minister will be there but the Minister for Economic Development will be there and I believe the Assistant Minister for Economic Development, or at least one of them, will be there as well and I think this is probably an inappropriate date, the 10th. That said, I also think that, as the Chief Minister has said, this is extremely important and to be on the front foot as the Connétable of St. Clement has said is also very important. So although seconding this proposition, I will be voting against it, unusually.

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

Just briefly, I think we have the opportunity to show that we can be light on our feet and we are not some sort of lumbering dinosaur. I think we should take that and get on with it.

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

Just a quick note. Yes, we have it on 4th or 5th July, that is the first date given but we can always have a second one if it is necessary. You know, life is very much more flexible.

#### **5.1.6 Senator P.F. Routier:**

I would just ask that perhaps the mover of this proposition might reconsider and withdraw the proposition to have it on a different day because I think it will show that if we do have a vote on it

that shows us as being divided and not thinking of this as an important matter. I would just ask the proposer to withdraw the proposition.

#### **5.1.7 Deputy M. Tadier:**

I have been quite circumspect when it comes to the inquiry before it is published for deliberate reasons. This really will mark the culmination of a 9-year period from when the allegations first broke and we were all shocked by them, to the long campaign to get an inquiry together for them to then publish the work. I think it is a balance. Of course we anticipate it will be a sizeable document, presumably, and we will have to be very quick in our reading of that. I think that is doable. The balance, of course, is to make sure that we have sufficient time to read it but that we are fleet of foot because this is one of the most important reports that has come out, perhaps ever but certainly in recent times and it is out of respect for the care leavers and the victims and survivors themselves and their families that we do not let this drag on, as the Chief Minister said, with speculation in the media. The Chief Minister has consistently taken a consensual approach when it comes to the issue of child abuse and of the Committee of Inquiry. It was decided around the table, when should we do this? Should we have it the following week? Should we do it at this point? Should we have one day for the in-committee debate? The Chief Minister said: "No, rather than having it on the Friday, let us have the Thursday and Friday in case we need those 2 days." It will be a challenge. I have certainly had to move things around in my diary to make sure that week is effectively as free as possible because I think I am going to be - apart from the States meetings - sitting down, up until late, with cups of teas, reading through the document. There will be reading teams all ready around the Jersey Care Leavers who will be pitching in to different chapters. I would suggest, if anything, that Members consider perhaps how they might break up different chapters in pooling the resources and whether or not there is any work on 4th July that is not urgent that could be moved off the agenda to free up time for us to all read and get to grips with that report. But I do support the Chief Minister in this. I think it is vital that we have the in-committee debate as soon as possible and an informed debate. It does not mean, as Senator Ferguson has suggested, that debate and interest will not go on. Of course it will, it will go on for weeks, months and possibly years in this area for us to get it absolutely right, but we have to be responsive.

#### **The Bailiff:**

Do you wish to reply, Senator Bailhache?

#### **5.1.8 Senator P.M. Bailhache:**

I respect, of course, the different views that have been expressed this afternoon. It is because I think this is such an important matter that I think that the States should give itself time to consider the matter properly. So I maintain the proposition.

#### **The Bailiff:**

The appel is called for. The proposition is to defer the debate on the report of the independent Jersey Care Inquiry from 6th July until 10th July. I ask Members to return to their seats and ask the Greffier to open the voting.

#### **POUR: 3**

Senator P.M. Bailhache  
Connétable of Grouville  
Deputy S.J. Pinel (C)

#### **CONTRE: 27**

Senator P.F. Routier  
Senator P.F.C. Ozouf  
Senator I.J. Gorst  
Senator L.J. Farnham  
Senator A.K.F. Green  
Senator S.C. Ferguson  
Connétable of St. Clement  
Connétable of St. Lawrence  
Connétable of St. Mary  
Connétable of St. Ouen

#### **ABSTAIN: 0**

Connétable of St. Brelade  
Connétable of St. Martin  
Deputy G.P. Southern (H)  
Deputy of Trinity  
Deputy M. Tadier (B)  
Deputy of St. John  
Deputy M.R. Higgins (H)  
Deputy of St. Martin  
Deputy R.G. Bryans (H)  
Deputy of St. Peter  
Deputy S.Y. Mézec (H)  
Deputy of St. Ouen  
Deputy L.M.C. Doublet (S)  
Deputy S.M. Bree (C)  
Deputy M.J. Norton (B)  
Deputy T.A. McDonald (S)  
Deputy G.J. Truscott (B)

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

Sir, if I may, could I just refer briefly to my proposition P.48/2017 which is down for 4th July and ask the Chief Minister and the Minister for Health, who have suggested that they are in principle in favour of an ethical charter that it is so constructed that it can be amended, all parts of it can be amended. I would be grateful if they were going to amend that I receive fairly early notice of it so that we can adjust things accordingly.

## **Senator A.K.F. Green:**

Just to help the Deputy and to inform Members, we are very close to finishing the amendment we wish to suggest to the Assembly and hopefully that will be lodged by the end of the week.

## **The Bailiff:**

Very good, the States now stands adjourned until 9.30 a.m. on 4th July.

## **ADJOURNMENT**

[16:12]