

STATES OF JERSEY



FULFILMENT INDUSTRY POLICY

**Lodged au Greffe on 17th November 2006
by the Economic Affairs Scrutiny Panel**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to request the Minister for Economic Development –
 - (i) to centralise policy regarding the fulfilment industry under a dedicated post for e-commerce to offer more direct political support for the industry and promote diversification through the growing e-commerce sector;
 - (ii) to undertake a further review of the fulfilment industry, in order to obtain a fuller and more comprehensive understanding of its current and potential rôle in the Island's economy;
 - (iii) to direct the Jersey Competition Regulatory Authority, in accordance with the provisions of Article 9 of the Postal Services (Jersey) Law 2004, to investigate cross-subsidy between Jersey Post International Limited and Offshore Solutions Limited, and to report its findings to the Minister for onward transmission to the States;
- (b) to request the Chief Minister, following consultation as appropriate with other Ministers and the Attorney General, to review the current mechanisms across all ministerial departments for appeals against ministerial decisions under statutory powers, and the mechanisms to deal with requests for reconsideration of such decisions, and to establish a code of practice in respect of such appeals and requests for reconsideration to ensure that they are just and fair, and to bring the code to the Assembly for approval by 30th April 2007.

ECONOMIC AFFAIRS SCRUTINY PANEL

REPORT

The Report entitled ‘The impact of the fulfilment industry on the local economy’ (S.R.7/2006) of the Economic Affairs Scrutiny Panel, presented to the States on 30th October 2006 contained some 18 key findings, many of which were critical of the actions of the Minister for Economic Development in his development of policy and its impact upon the fulfilment industry. Indeed, we may see further knock-on effects on Jersey Post, the level of which we cannot gauge at the time of lodging.

Given the response of the Minister for Economic Development in his statement to the states on 7th November, the Economic Affairs Scrutiny Panel is concerned that its 4 recommendations are given proper consideration and are acted upon by the Ministers concerned. Hence this proposition has been brought before the Assembly.

- (a) (i) The Panel has found that there had been a lack of real political support for, and commitment to properly manage the growth of, the industry on the part of successive ED committees and the current minister. Much had been made of this new 4th arm of a diversified economy, but it had been largely left to its own devices.

Opportunities to go out and pro-actively promote the industry as the way ahead in the global supply of cheaper consumer products had been largely ignored. As a result, when the industry came under attack from U.K. small business organisations, the Economic Development Minister was forced into an untenable defensive position.

In addition, there had been a history of misinterpretation and confusion over the policies that have been applied to the fulfilment industry.

Nonetheless the Panel believes that the Island can still benefit from the massive potential growth in e-commerce and should maximise its efforts in this direction. The Economic Development Department should centralise policy regarding the fulfilment industry under an e-commerce ‘Tsar’ to offer more direct political support for the industry and promote diversification through the growing e-commerce sector.

- (a) (ii) The Panel discovered that prior to 2005 no organisation had a clear idea of how large the fulfilment industry actually was. The Jersey Financial Services Commission (JFSC), which holds information on all companies operating in Jersey, does not record fulfilment companies as a separate category, but includes them as ‘retailers’, and so cannot determine how many there are. The information held by the [Economic Development](#) Department prior to 2005 was based on applications for staff under the RUD legislation, and thus only counted 3PS and WCC operations but did not count the number of customers of each 3PS.

As a result of the growth of the industry, the Economic Development Committee, in late 2004 commissioned a study of the industry by the Statistics Unit. These figures formed the basis of a report from a consultant group, Oxera, in 2005. The Oxera analysis of costs and benefit of the fulfilment industry to the Island was produced in 2005.

The panel found that the 2005 Oxera report had seriously underestimated the actual and potential benefits to the island of much of the industry, and that given the rapid development of this sector a fuller and more comprehensive study to inform future initiatives should be undertaken.

- (a) (iii) Prior to the introduction of the February 2006 policy, OSL’s business model was heavily geared towards encouraging ‘branded retailers’ to operate through Jersey, and therefore through itself and Jersey Post. Almost 20% of its business was from large U.K. retailers, and this was set to grow. OSL’s planning in 2005 is illustrated in the report to the proposition ‘Units 1 and 2, L’Avenue Le Bas, La Rue des Près Trading Estate – re-assignment of leases’ (P.104/2005), attached as an annex.

It assumed that many new start-ups would fail, and that the large U.K. retailers would be best

placed to rapidly develop a fulfilment operation. It concentrated on companies operating into the U.K. market, selling DVDs and CDs which at that time had the largest growth potential. This was seen as the easiest method to obtain more pick and pack custom for OSL, thereby driving up overseas postings through Jersey Post, and increasing stamp revenue.

The Panel's understanding is that the company will lose the majority of its customers, producing a significant loss of revenue in 2007. Since it has yet to contribute a profit from its fulfilment activities to its parent company, Jersey Post, but does contribute through its mailing volumes to Jersey Post's profits, it has effectively been the recipient of a cross subsidy. It is almost certain that it will again not be profitable in 2007. Now that Jersey Post is incorporated and subject to regulation by the JCRA the Panel believes that such cross-subsidy is liable to be declared anti-competitive and stopped by the JCRA. Jersey Post has informed the Panel that OSL has reviewed its pricing structures to ensure cross subsidies do not occur in the future.

The Panel believes that Offshore Solutions Limited cannot survive the Minister's policy of February 2006 without further cross-subsidy, which it believes to be anti-competitive.

It therefore calls on the Minister's powers to direct the JCRA to investigate and report on the cross-subsidy of OSL.

- (b) The Panel became aware of several specific incidents in which companies and individuals appealing to the [Economic Development](#) Department in respect of Regulation of Undertakings and Development decisions have met with difficulty and frustration. Initially there appeared to some confusion as to what appeal mechanisms were in place, and who could or should be operating them.

The Minister has now described the appeal process within the Department as being an appeal to the Minister against the Minister's decision, based on new evidence submitted, followed by the opportunity to take the matter to the Royal Court as detailed in Article 6(7) of the Regulation of Undertakings and Development (Jersey) Law 1973.

The Panel does not feel that a situation in which the Minister reviews his own decision is entirely reasonable. When the only further recourse is to take the matter through a potentially difficult and expensive court process, then there is no effective internal appeal mechanism, and this is against the operation of natural justice.

The Panel is also concerned that the letters accompanying the granting of time limited licences or licence refusals made no mention of the appeal process, including that it was a time-limited process. Companies in receipt of time-limited licences would have been out of time within 2 months. The omission of any reference to the appeal mechanism by the Department is, the Panel believes, unreasonable.

The Panel was also aware of issues which had previously arisen regarding appeals to the Housing Minister, and is concerned that sufficient consideration has not been given to appeal processes that are simple to access across ministries. The role of the Administrative Appeals process also requires consideration.

The Panel considers that it would be appropriate, in the new era of joined-up government, to apply a standard method of appeals that will specify the procedure to be followed, ensure transparency, and ensure that the people affected by decision are made clearly aware of the existence of an appeals mechanism and how to use it.

The Panel is unsure about the reasonableness, or even the legality, of Ministers both taking and reviewing decisions. The Attorney General should be asked to rule on this matter.

Financial and manpower implications

If the dedicated post required in this proposition were to be an entirely new additional post, this might result in

additional annual costs of £120,000. However, the Panel envisages that this responsibility could be covered by the additional 8.5 staff and £1.4 million already allocated for the new Enterprise and Business Development Strategy and associated schemes.

UNITS 1 AND 2, L'AVENUE LE BAS, LA RUE DES PRES TRADING ESTATE: REASSIGNMENT OF LEASES (P.104/2004)

**Lodged au Greffe on 7th June 2005
by the Committee for Postal Administration**

THE STATES are asked to decide whether they are of opinion –

- (a) to approve the assignment of a 21 year lease, expiring on 30th June 2016, currently between Mrs P. Parrington-Jackson as lessor and Jackson's Garage Limited as lessee to the Committee for Postal Administration, in respect of Unit 1, 46 L'Avenue Le Bas, Rue des Pres Trading Estate, St. Saviour, Jersey of approximately 21,539 square feet at a passing rent of £199,144 per annum (provided that the assignor has agreed to providing 2 months rent free immediately following assignment of the lease) and with rent reviews every 3 years to the greater of market value or the Jersey Cost of Living and with the next review being due on 1st July 2007;
- (b) to approve the assignment of a 21 year lease, expiring on 31st December 2009, currently between Mrs. P. Parrington-Jackson as lessor and St. Helier Garages Limited as lessee to the Committee for Postal Administration, in respect of Unit 2, 46 L'Avenue Le Bas, Rue des Pres Trading Estate, St. Saviour, Jersey of approximately 18,232 square feet at a passing rent of £150,000 per annum (provided that the assignor has agreed to providing 2 months rent free immediately following assignment of the lease) and with rent reviews every 3 years to the greater of open market value or the Jersey Cost of Living and with the next review being due on 1st January 2006;
- (c) to authorise Jersey the Committee for Postal Administration, to pay –
 - (i) the rents as they become due;
 - (ii) stamp duty amounting to approximately £18,000 relating to the registration with the Royal Court of the assignment of the lease in respect of Unit 1, 46 L'Avenue Le Bas, Rue des Pres Trading Estate, St. Saviour, Jersey; and
 - (iii) stamp duty amounting to approximately £4,500 relating to the registration with the Royal Court of the assignment of the lease in respect of Unit 2, 46 L'Avenue Le Bas, Rue des Pres Trading Estate, St. Saviour, Jersey; and
- (d) to authorise the Attorney General and the Greffier of the States to pass the necessary contracts on behalf of the Public.

COMMITTEE FOR POSTAL ADMINISTRATION

Note: The Finance and Economics Committee's comments are to follow.

REPORT

Jersey Post is currently experiencing rapid growth of its fulfilment operations, and it has a requirement to take on up to 40,000 square feet of warehousing accommodation to meet contracts which have been secured (subject to contract).

This significant business diversification is also seen as the key driver of profitability over the next few years as a producing other benefits to the Island's economy as a whole in terms of –

- new employment opportunities including some high value jobs;
- north/south sea transport links; and
- new tax revenues.

In particular, Jersey Post has secured its largest fulfilment contract to date subject to suitable premises being sourced. The potential benefit to Jersey Post is significant with the volume of items processed for this customer forecast to reach 5 million items for 2005 and up 8 million items for 2006 (based on the client's projected forecasts for United Kingdom sales only). In addition, this particular client offers the opportunity for Jersey Post's fulfilment business to expand into new markets within Europe which could see up to double the number of items processed (again based on the client's projected sales).

Warehouse accommodation has already been taken on at Rue du Port Elizabeth. This accommodation is being used to its full capacity and, whilst there are long-term opportunities for expansion in this location, they will not meet the shorter term requirements brought about by the imminent new business which Jersey Post's fulfilment business has secured. However, it is likely that Jersey Post would still require additional space at this location for its growing logistics operation.

In addition, Jersey Post has investigated the possibility of further developing its premises at Postal Headquarters, Rue des Pres. However, this option is not viable given both the impact such development would have on existing operations and the lack of space available at the site.

It is Jersey Post's view that, at this time, there are no other large-scale individual industrial buildings of sufficient size within the Island of Jersey which meet the immediate requirements of Jersey Post's fulfilment business. Whilst Jersey Post has been working with Sarre & Co. to identify suitable sites, the only alternative options are agricultural sheds which require permission for change of use and which are too small or poorly located for Jersey Post's requirements.

There are significant advantages of securing the site represented by Units 1 and 2, 4-6 L'Avenue Le Bas. These include: its availability, the close proximity to Postal Headquarters, suitable access for large vehicles, the provision of car parking, and the securing of Jersey Post's fulfilment business expansion needs for 2005 on one site.

The details of the leases for each of Units 1 and 2, 4-6 L'Avenue Le Bas, Rue des Pres Trading Estate, St. Saviour, Jersey are in summary as follows –

Unit 1, 4-6 L'Avenue Le Bas, Rue des Pres Trading Estate, St. Saviour, Jersey:

- (a) a 21 year fully repairing and insuring lease from 1st July 1995 to expire on 30th June 2016
- (b) the property consists of –
 - (i) a ground-floor internal workshop of approximately 11,063 square feet;
 - (ii) a ground-floor showroom and offices of approximately 7,274 square feet;
 - (iii) first-floor offices of approximately 549 square feet;
 - (iv) first-floor storage of approximately 2,653 square feet; and
 - (v) an external yard area providing parking.

Unit 2, 4-6 L'Avenue Le Bas, Rue des Pres Trading Estate, St. Saviour, Jersey:

- (a) a 21 year fully repairing and insuring lease from 1st January 1988 to expire on 31st December 2009
- (b) the property consists of –
 - (i) two large bays of open plan warehousing with ancillary offices and extensive, fully fitted out showrooms to the front of the premises being an approximate gross internal area of 18,232 square feet; and
 - (ii) an external yard area providing parking and access to the site.

Notes:

- (a) In order to secure the current leases, Jersey Post has been required by the existing lease-holder to enter into a licence agreement in respect of the premises. This allows limited occupancy and prevents the leaseholder from offering either property to any other party for a period of 15 weeks. If the leases are not assigned to Jersey Post by 3rd July 2005, then Jersey Post is obliged to reimburse the lease holder £100,000, representing 15 weeks' rent, together with a fee of £30,000 for the exclusive negotiating period. It is Jersey Post's expectation that the revenue from business conducted from the premises during the period of the Licence Agreement, regardless of the States' decision on this Report and Proposition, will cover these costs.
- (b) Whilst the terms of the leases are that they are fully insuring and repairing leases, a survey was undertaken on the premises in June 2004 by Reynolds Chartered Surveyors and Jersey Post has required that all significant matters identified in that survey will have been rectified by the existing lessees prior to any assignment of the respective leases.
- (c) When the land on which the premises have been built were sold to the owner in 1974, a restriction on the use of the land was imposed. The consent of the Environment and Public Services Committee will therefore be required for the premises to be used by Jersey Post for the fulfilment business.
- (d) The consent of the owner shall also be sought to ensure that no grounds exist for it to object to the proposed use.
- (e) Jersey Post has been advised that consent under the Island Planning (Jersey) Law 1964 for change of use is not required.