

**WRITTEN QUESTION TO THE
CHAIRMAN OF THE CORPORATE SERVICES SCRUTINY PANEL
BY DEPUTY J.A. HILTON OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 6th OCTOBER 2015**

Question

“Will the Chair advise when he proposes to present to States Members and the public his Panel’s completed report into the Esplanade car-park site and, in the event of further delay, the reasons why?”

Answer

The Panel’s advisers Ernst and Young are presently finalising their report to us, which we anticipate receiving within a matter of days. Once this process has been completed, the Panel intends to publish the adviser’s report, along with our own interim report on the matters it raises, without delay.

It should be noted that the Panel, along with its advisers, have encountered significant delays in accessing important relevant information, from the States of Jersey Development Company (SoJDC) in particular, during the course of our Jersey International Finance Centre Review.

On 12th March 2015 the Panel made a specific request for a copy (in confidence) of the un-redacted BNP Paribas valuation letter, a redacted version of which had been forwarded by SOJDC in its submission to the Panel.

This was pursued on various occasions subsequently, and on 17th April 2015 the Panel set a deadline and made direct reference to its ability to use the powers and processes available to it under the Code of Practice for Scrutiny Panels and PAC (this being the power to summons information).

On 28th April the Minister stated to the States Assembly “...With regard to the projected return, this has been independently verified by BNP Paribas and although this is being supplied to the Corporate Services Scrutiny Panel as part of their current review it will not be made public due to highly sensitive commercial data...”

On that same day a letter was sent from the Minister stating the following : “...I have included with this letter a second redacted version with more information made available. Having spoken with JDC, before sending the CSSP the un-redacted version, JDC asks for written confirmation from the CSSP that the content of the document will be kept confidential to its members (Deputies Le Fondre, Bree and K. Lewis and Constable Taylor) and its officer...and will not be disclosed by any of those individuals under any circumstance and to any party either by sight, verbally, in writing or by copy.”

This was communicated to the Panel on 29th April and the condition agreed on 30th April. Verbal agreement to this was communicated that same day, and formalised in writing on 1st May.

Despite the undertaking by the Minister, and despite the Panel having agreed to the specific condition (bearing in mind it had always stated it would treat the information in confidence), the requested

information did not arrive. Therefore the BNP letter was again, subsequently, pursued by officers and the Panel.

On 18th May, a requirement was received from the States of Jersey Development Company for the Panel Members and relevant Scrutiny Officers to individually sign a highly restrictive Non-Disclosure Agreement that was entirely disproportionate to the usual trust based process for receipt of confidential documentation by Panels. It was not in accordance with the proportionate terms of confidentiality offered by the Minister for Treasury and Resources and already agreed to by the Panel at the end of April.

This agreement had postponed the Panel's agreed need, in the absence of reasonable co-operation, to pursue summoning the States of Jersey Development Company to provide the documentation. The requested documentation was eventually received on a confidential basis but without the requirement of a Non-Disclosure Agreement (NDA) on 29th May 2015 (ie a further delay of one month from the date of the Minister's correspondence with the Panel and indeed his response made to the States Assembly).

During June, the Panel became further frustrated at being denied access to the following documentation that was crucial to its ability to properly fulfil its role in undertaking the Review:

- 1) The pre-let agreement between SoJDC and UBS
- 2) The funding agreement between SoJDC and HSBC
- 3) The construction contract between SoJDC and Camerons

The Panel requested the documentation from the States of Jersey Development Company (SOJDC) on 8th June, who refused to provide it on the grounds that they had entered into a confidentiality agreement with the respective third parties. It was also relayed to the Panel that the third parties had also refused to forward their respective documents on the same grounds regarding commercially sensitive information. This was despite the Panel's confirmation to the Chief Minister, Minister for Treasury and Resources and SoJDC of its offer to receive the information on the same terms of confidentiality as it had agreed to in order to receive the BNP Paribas Real Estate documentation on 1st May 2015.

It had been confirmed, however, by SoJDC that there was again a requirement for the Panel to individually sign a high personal liability Non-Disclosure Agreement (NDA). A similar NDA would be required for its advisers Ernst and Young LLP to receive the information. Whilst such NDAs were noted as being common in commercial activity, and as such were acceptable to Ernst and Young LLP, it had been agreed by the Panel, discussed with its advisers and relayed to the Chief Minister and Minister for Treasury and Resources that as a matter of principle the information must be received by the Panel and its advisers on the basis that they could have free and unfettered discussions between them about the content.

Due to the impasse, on 29th June, the Panel agreed that in the first instance the Panel's adviser, Ernst Young, should proceed to sign a non-disclosure agreement to allow them to receive the outstanding confidential information from the States of Jersey Development Company in order to be able complete their report. It should be noted that this was an attempt to unblock the 'log-jam' of failure to be provided with the requisite information, and that the Panel remained concerned that this might impede the flow of information between it and its adviser.

Once that report, redacted as necessary within the terms of the non-disclosure agreement, was received by the Panel it would consider own requirement to obtain the confidential documentation as outlined.

On 12th August 2015, the Panel issued a Summons requiring the States of Jersey Development Company (SoJDC) to provide it with the pre-let agreement between SoJDC and UBS, the funding agreement between SoJDC and HSBC and the construction contract between SoJDC and Camerons, together with any side letters and other documentation pertaining to these agreements. The Summons has been formally challenged by SoJDC and the matter is presently subject to due process through the Privileges and Procedures Committee.