
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT BY MR B. SHENTON (FORMER CHAIR OF THE JERSEY LIFEBOAT ASSOCIATION) AGAINST THE CHIEF MINISTER REGARDING THE ALLEGED ILLEGAL SUSPENSION OF A VOLUNTARY ORGANISATION (JERSEY LIFEBOAT ASSOCIATION)

STATES GREFFE

**Presented to the States on 25th June 2024
by the Privileges and Procedures Committee**

REPORT

Foreword

In accordance with Article 9(9) of the [Administrative Decisions \(Review\) \(Jersey\) Law 1982](#), the Privileges and Procedures Committee presents the findings of the Complaints Board constituted under the above Law to consider a complaint against the Chief Minister regarding the alleged illegal suspension of a voluntary organisation (Jersey Lifeboat Association).

Chairman, Privileges and Procedures Committee

STATES OF JERSEY COMPLAINTS BOARD

8th May 2024

**Complaint by Mr. B. Shenton (former Chair of the Jersey Lifeboat Association)
against the Chief Minister regarding the alleged illegal suspension of a voluntary
organisation (Jersey Lifeboat Association)**

**Hearing constituted under the
Administrative Decisions (Review) (Jersey) Law 1982**

Present

Board members –

G. Crill (Chair)
G. Fraser
A. Hunter

Complainant –

B. Shenton

Representatives of the Chief Minister –

T. Walker, Assistant Chief Executive, Government of Jersey
D. Scott, Chief of Staff, Ports of Jersey
D. Woodside, Senior Legal Adviser, Law Officers' Department
G. White, Legal Adviser, Law Officers' Department

States Greffe –

L.M. Hart, Greffier of the States
K.M. Larbalestier, Principal Secretariat Officer, Specialist Secretariat, States
Greffe

The Hearing was held in public at 10.30 a.m. on 8th May 2024, in the Le Capelain room,
States Building.

1. Opening

- 1.1 The Chair opened the Hearing by introducing the Board and setting out its remit. It was noted that the Board would only uphold a complaint if it felt that the decision which had given rise to the complaint was contrary to law, unjust, oppressive or improperly discriminatory, was based wholly or partly on a mistake of law or fact, could not have been made by a reasonable body of persons after proper consideration of all the facts, or was contrary to the generally accepted principles of natural justice (Article 9 of the Administrative Decisions (Review) (Jersey) Law 1982).

2. Complainant's case

- 2.1 The Board noted that the complaint had been made in the name of Mr. B. Shenton, the former Chair of the Jersey Lifeboat Association (JLA). The Greffier of the States had received written confirmation from the current Chair of the JLA, Mr. S. O'Donoghue that it had been agreed by the JLA Council that Mr. Shenton could progress the complaint in his name.
- The Board noted that a complaint had originally been made to the Council of Ministers on 21st March 2022, in connexion with the legality and proportionality of a decision made by Ports of Jersey to suspend the search and rescue activities performed by the charitable organisation known as the Jersey Lifeboat Association (JLA). This decision had been made following a collision involving the JLA vessel known as Sir Max Aitken III and it was alleged that Ports of Jersey had acted unlawfully and without the necessary statutory powers to carry out the investigation/suspend the JLA's license to operate. It was understood that the ability of the Coastguard to investigate such incidents relied upon the consent of the Minister with responsibility for Ports of Jersey, in accordance with the Shipping (Jersey) Law 2002, and the previous incumbent, Deputy L.J. Farnham of St. Mary, St. Ouen and St. Peter (now the Chief Minister) had confirmed in writing that he had not authorised the investigation. In spite of this, Ports of Jersey had commissioned an independent accident investigation and a draft report had been produced by Marico Marine (the JLA never received the final report). It was alleged that the draft report contained a number of inaccuracies and that it had been circulated to third parties, contrary to guidelines for maritime investigations, data protection legislation and without a right of reply. The JLA had been directed to submit comments on the draft

report to Ports of Jersey for consideration by the Board of Ports of Jersey, as opposed to Marico Marine, giving rise to questions around the independence of the Marico Marine report.

- 2.2 Concerns were also expressed regarding the absence of a drug and alcohol policy for mariners, which it was understood was now being addressed. Mr. Shenton highlighted the reputational damage which had been caused by media reports based on an inaccurate witness statement which had been appended to the draft report. Mr. A. Hibbs, who had been at the helm of the vessel at the time of the incident, and who was observing the hearing, interjected alleging that the Coastguard had contacted the media to report the accident and had indicated that alcohol was a factor.
- 2.3 It was further alleged that structural failures had arisen from the incorporation of Ports of Jersey in 2015, and that there was a direct correlation between problems with search and rescue assets and incorporation.
- 2.2 The Board noted that no response had been received to the official complaint made to the Council of Ministers in connexion with the above matter.
- 2.3 Mr. Shenton began by explaining that he had resigned from his position as Chair of the JLA as a direct result of the above events. He expressed significant concerns with regard to the relationship between Ports of Jersey and the Government of Jersey, the status of employees of Ports of Jersey and whether they were required to adhere to the Code of Practice for public service and the wider implications of the absence of compliance with the same. He noted the presence of representatives of the Law Officers' Department at the hearing and questioned whether they represented Ports of Jersey or the Government. The Board concluded that it was not unreasonable for Law Officers to represent the Chief Minister, against whom the complaint had been made.
- 2.4 Mr. Shenton set out the background to the formation of the JLA, which was directly related to the suspension of the RNLI St. Helier Coxswain, Mr. Hibbs in April 2017, after he was accused of breaking the RNLI's code of conduct (it was alleged that the decision to suspend Mr. Hibbs had been made as a result of a malicious and unfounded report by an employee of Ports of Jersey to the Coastguard) and the subsequent resignation of the crew in support of the Coxswain. The Coxswain and crew had later been re-instated.
- 2.5 It was noted that, subsequent to the above incident, the St. Helier crew had been invited to attend a meeting with officials at the former Cyril Le Marquand

House on 17th November 2017, to discuss future service provision arrangements, to include the establishment of an independent lifeboat service supported by the RNLI. However, following the meeting, the crew discovered that the RNLI all weather vessel had been relocated to the UK and the RNLI station closed and the locks changed. Whilst Ports of Jersey and the Government denied any prior knowledge of these events, Mr. Shenton stated the evidence suggested otherwise. He referenced a confidential press statement and accompanying email from Mr. D. Scott, in his capacity as an officer of the Economic Development Department, which had been produced ahead of the above events and which was to be issued after the meeting at Cyril Le Marquand House. Mr. Shenton likened the actions of Ports of Jersey to that of the British Post Office in response to the Horizon scandal.

- 2.6 The Board was advised that following a ‘sham enquiry’ commissioned by the Government of Jersey to investigate the breakdown in relations between the RNLI and the St. Helier crew, which was undertaken by the Guernsey Harbourmaster (who resigned from his post days after the publication of the report) the former Chief Minister, Senator J.A.N. Le Fondré, had commissioned Sir D. Calvert-Smith to investigate the matter. Mr. Shenton alleged that Ports of Jersey had refused to co-operate with the Calvert-Smith investigation and he believed the response of the former Ports of Jersey Chair had ‘verged on abusive’. Sir David had described ‘a wall of silence’ in response to questions and concluded that *‘Ports of Jersey appeared to enjoy a status unbefitting a body which supplied crucial services to the public of Jersey and has thus – with the limited exception of a draft letter from the Harbourmaster - been unwilling to explain its state of knowledge or its actions in connection with the events of 2016 – 2018. The almost complete silence from that quarter to my requests for assistance does not inspire confidence for the future’*. In his own recommendations arising from Sir David’s report, former Senator Le Fondré concluded that Ports of Jersey should be subject to Freedom of Information legislation (it was noted that the Marico Marine report had ultimately been released in accordance with this legislation on the back of legal advice dated 4th May 2022, on the basis that it could not be released under other legislation). Mr. Shenton considered the provision of this legal advice to be unethical and the actions of Ports of Jersey in releasing the draft report harmful to the JLA. Returning to the former Senator Le Fondré’s recommendations, it had been

suggested that the regulatory arrangements surrounding maritime search and rescue should be reviewed. Senator Le Fondré had believed that the Air and Sea Ports Incorporation (Jersey) Law 2015, appeared ambiguous in the context of Ports of Jersey's powers regarding the regulation of search and rescue, making specific reference to Article 6(1)a, which did not appear to explicitly reference regulation. It was also suggested that the practicalities of Ports of Jersey maintaining a regulatory and operational function should be considered as this could give rise to a conflict of interest. In this context, Mr. Shenton questioned what procedures would be put in place if a vessel which was operated by Ports of Jersey was involved in an accident.

2.7 Mr. Shenton advised that he remained of the view that Ports of Jersey had no regulatory powers. Similarly, the Harbours Administration (Jersey) Law 1961 stated that the States (and not Ports of Jersey) could make regulations for the policing, control, safety and administration of harbours and territorial waters.

2.8 Turning to the freezing of the JLA's assets, Mr. Shenton advised that even those crew members who had not been aboard the vessel at the time of the incident had not been permitted to undertake search and rescue duties and the use of the JLA's RIB was also disallowed. As the report prepared by Marico Marine appeared to conclude that the incident was largely attributable to human error, Mr. Shenton questioned whether a similar human error would have led to all assets of the RNLI or Condor being frozen. He believed that the decision to freeze the JLA's assets was disproportionate and noted that it had led to the loss of valued volunteers and search and rescue assets. Mr. Shenton also stated that the Coastguard continued to argue that the JLA should be codified in accordance with passenger craft legislation, whilst RNLI vessels were classified as lifeboats.

2.9 In concluding, Mr. Shenton confirmed that the operational freeze on the JLA had now been lifted but that many of the serious questions raised by the JLA remained unanswered and concerns existed that communications by Ports of Jersey with members of its Board had not been impartial.

3. Minister's case

3.1 The Board noted the contents of a letter dated 16th April 2023, from the Chief of Staff, Ports of Jersey, which included information relating to the status of the Jersey Coastguard in the context of Jersey's statutory responsibilities as a

Coastal State, to include the establishment, operation and maintenance of search and rescue facilities, in accordance with the International Convention for the Safety of Life at Sea (SOLAS) Convention, 1974. Reference had also been made to the International Aeronautical and Maritime Search and Rescue Manual, which permitted Governments to rely upon search and rescue assets provided by ‘other State authorities, non-Governmental or voluntary organisations’ subject to the delegated authority having the necessary training and equipment for proficient operations. Responsibility for co-ordinating maritime search and rescue within Jersey’s territorial waters was discharged by Ports of Jersey in accordance with the Harbours Administration (Jersey) Law 1961 and the Air and Sea Ports (Incorporation) (Jersey) Law 2015. Responsibility for co-ordinating search and rescue was discharged in accordance with an agreement between the Minister for Sustainable Economic Development (and not the Chief Minister) and Ports of Jersey. The key provisions of the agreement required Ports of Jersey to lead on all day-to-day operational Coastguard matters, including international liaison as required; recognised the Harbourmaster as the Chief Coastguard for Jersey and, as such, required the Coastguard to comply with obligations under the SOLAS convention and the Convention on Maritime Search and Rescue. Ports of Jersey also had a broader public service obligation in relation to the enforcement of shipping legislation in territorial waters (in accordance with Article 6(1)(d) of the Air and Sea Ports (Incorporation) (Jersey) Law 2015). Ports of Jersey did not operate dedicated maritime search and rescue assets but relied upon declared assets of authorities, to include the JLA. In order to address a recognised gap in the ability to determine whether search and rescue facilities met requirements, the UK had developed the Declared Facility Framework and a version of the same had been adopted by the Jersey Coastguard. The JLA had obtained Declared Facility status in accordance with the Jersey Framework in 2019, for the Sir Max Aitken III, the all-weather lifeboat and the Albert Pinel, a rigid inflatable boat (RIB). The ability to assess and have confidence in search and rescue organisations was critical to the co-ordination of maritime search and rescue and in the discharge of statutory obligations. Attention was also drawn to the procedures manual for emergency operations and the independent report prepared by Marico Marine in relation to the above incident.

- 3.2 The Board noted that, based on the findings set out in the accident investigation report, the Harbourmaster had determined that there were significant doubts as to the JLA's ability to perform to the standard required under the Jersey Framework and a temporary freeze on the JLA's operations had been imposed pending a full audit of procedures and working practices. This decision had been communicated to and accepted by the JLA. However, the legal authority of Ports of Jersey to impose such a freeze had subsequently been questioned by the JLA and, whilst a formally agreed outcome had not been reached following mediation talks held in December 2022, the JLA had consented to re-entering the redeclaration process, which had culminated in the entering into of a formal Declared Facility Agreement between the JLA and Ports of Jersey on 17th January 2024.
- 3.3 The Board had received various other documentation, some of which responded directly to requests for further information from the Board, and some of which had been considered relevant by Ports of Jersey. This information had been submitted to the States Greffe in the days leading up to the Hearing, after the distribution of papers and had been reviewed by the Board. The information was not considered to have a material bearing on the key substance of the report or the Findings.
- 3.4 The Board heard from Mr. T. Walker, Assistant Chief Executive, Government of Jersey, who advised that he had been made aware of the complaint in August 2022. Following the appointment of Deputy K.L. Moore of St. Mary, St. Ouen and St. Peter as Chief Minister she had considered the matter and supported informal resolution. A meeting with Mr. Shenton and others had been convened in September 2022, to clarify that the main objective was to restore the search and rescue services provided by the JLA. A professional mediator had been appointed and a further meeting with JLA members and Ministers had been convened in early December 2022. Mr. Walker described the mediation process as 'semi-successful' in that a positive resolution had 'almost been reached'. Following a further meeting in March 2023, which had been hosted by the former Minister for Economic Development, Tourism, Sport and Culture, which had been attended by the new Chair of the JLA, the assets of the JLA had been 'redeclared/re-accredited' and this had enabled the resumption of the search and rescue services provided by the JLA. Mr. Walker added that the current Chief Minister was keen to support the growing professional

relationship between the JLA and the Coastguard and welcomed any recommendations which would lead to further improvements. It was noted that the Chief Minister had requested representatives of Ports of Jersey and the Law Officers' Department to attend the hearing on his behalf and the Board had been provided with details of the legal context for the decisions made by Ports of Jersey and would also hear about the process which was followed. Importantly, Mr. Walker also confirmed that Deputy Moore had concluded that there was no evidence to suggest that any actions taken had been contrary to law.

- 3.5 The Board heard from Mr. G. White, Legal Adviser, Law Officers' Department, who discussed the legal framework which applied in the context of the decision to freeze the assets of the JLA. The legislation had been set up in a manner which required Ports of Jersey to discharge obligations on behalf of the relevant Government Minister. In response to a question from the Board regarding oversight in terms of compliance with international treaties etcetera, Mr. White confirmed that the Council of Ministers was responsible for oversight and that a group comprising officers and elected Members, known as the Territorial Seas Co-ordination Advisory Group, met quarterly to ensure that the public service function was being properly discharged. Mr. Walker added that all international treaties were periodically peer reviewed by other jurisdictions. In response to a further question from the Board, Mr. White confirmed that all search and rescue operators were measured against the same standards.
- 3.6. Mr. Hibbs interjected, stating that the JLA had been 'forced' to sign the Declared Facilities Agreement so that it could operate. Ports of Jersey had also undertaken to provide a Memorandum of Understanding (MOU) but this had not materialised, albeit that Mr. Scott had subsequently suggested that the Declared Facilities Agreement and the MOU were one in the same. Mr. Hibbs understood that the Jersey, Fire and Rescue Service, who also performed search and rescue operations, had not been required to sign such an Agreement and alleged that there was no political oversight of Ports of Jersey.
- 3.7 Mr. White continued, outlining the process which was followed, as prescribed by law, when a hazardous incident occurred. He acknowledged that the Shipping (Jersey) Law 2002, as currently drafted, did not permit the publication of accident investigation reports by the Coastguard, nor did it permit such reports to be widely circulated. Mr. White was unsure of the threshold for initiating an investigation but suggested that the severity of the accident and the

vessel operator could be relevant factors. Mr. White referenced Regulation 10 of the Shipping (MARPOL) (Jersey) Regulations 2012, which conveyed a duty to report incidents and added that the relevant Minister would subsequently make his/her decision under the Shipping Law. Mr. Hibbs interjected stating that he believed the JLA's operations had initially been suspended under the Shipping Law but this position had later been revised and reliance switched to a different legislative structure. Mr. Shenton also referenced a serious incident involving an RNLI vessel where the response from Ports of Jersey had been different to that adopted in respect of the JLA incident.

- 3.7 The Board heard from Mr. Scott, who began by confirming that the role of Chief Coastguard was a function of the statutory role of Harbourmaster. When accidents at sea occurred investigations could be carried out internally by Ports of Jersey or independently by Marico Marine, an international marine consultancy who were contracted by Ports of Jersey to undertake such investigations. In the case of more serious incidents or those involving larger vessels, investigations would be carried out by the Marine Accident Investigation Branch.
- 3.8 In terms of oversight, it was noted that the Minister with responsibility for Ports of Jersey met regularly with the Harbour Authority. With regard to the incident involving the JLA vessel, the Harbour Authority had endorsed the recommendation of the Harbourmaster to commission Marico Marine to investigate this 'serious maritime incident'. Mr. Scott advised that the Ports of Jersey Board did not require the authority of the Minister to approve the investigation and that the Shipping Law was not relevant in this context. The Harbourmaster was duty bound to investigate incidents, even in the absence of a statutory direction from the Minister.
- 3.9 In response to a question from the Board regarding the background to the decision to freeze the assets of the JLA (which the Board noted was not recommended within the Marico Marine report), Mr. Scott confirmed that Ports of Jersey had recommended this course of action and that this had been endorsed by the Harbour Authority and enacted. This was the lowest level of intervention available to the Harbourmaster under the Jersey Framework for managing search and rescue assets – more serious interventions being the suspension or revocation of the JLA's declared status. Mr. Scott advised that, having considered the content of the Marico Marine report, the Harbourmaster had

concluded that ‘a period of sanctuary’ whereby the assets were frozen was in the best interest of all parties and would allow for a full audit of practices and processes. The JLA had accepted this decision.

- 3.10 Mr. Hibbs interjected, stating that Marico Marine had initially advised the JLA that they would be operational by Christmas. Concerns had existed regarding the basis for the decision to freeze the JLA’s assets, which were ultimately frozen for a period of 18 months – Mr. Scott attributed this to Mr. Shenton’s refusal to engage in the process, a statement which was refuted by Messrs. Hibbs and Shenton. Mr. Shenton was also concerned about Ports of Jersey’s ‘influence’ over the content of the Marico Marine report and he advised that the JLA had decided not to make further comment on the report content when it became clear that this process was being ‘managed’ by the Coastguard. Some disagreement followed between Messrs. Shenton and Scott as to whether the asset freeze had been in place when there had been disagreement relating to a sea trial before the JLA vessel was sent for repair, with Mr. Scott stating that the freeze was already in place at this point. Mr. Hibbs expressed the view that every effort had been made by the Coastguard to prevent the vessel from being sent to the UK for repair, albeit that it was no longer a coded vessel at this point as the licence had been suspended following the incident at sea.
- 3.11 Mr. Scott confirmed that the RNLI and the Jersey Fire and Rescue Service were assessed against the same Framework as the JLA and had entered into Declared Framework Agreements. In response to a comment regarding an incident involving an RNLI vessel, it was noted that this related to a beach rescue asset and not a search and rescue asset (Mr. Hibbs refuted this). In response to a question regarding the sharing of information arising from incidents, Mr. Scott advised that representatives of all search and rescue organisations came together as the Jersey Water Safety Forum.
- 3.12 The Board was advised that H.M. Coastguard had reviewed the Jersey Framework and the manner in which the JLA had been assessed against it and Ports of Jersey had been praised for adopting a pragmatic approach to assessing independent lifeboats. Consideration was also being given to implementing the same approach in the UK.
- 3.12 In response to a question regarding direct engagement between Mr. Hibbs and the Coastguard, Mr. Scott offered to provide a transcript of telephone conversations between the 2 individuals and referenced the number and nature

of the calls made by Mr. Hibbs to the Coastguard, often out of hours. He added that each search and rescue operator had a dedicated named contact who provided information to the Coastguard.

- 3.13 Turning to operational matters, the Chair noted that only 7 per cent of emergency call-outs or ‘shouts’ had been allocated to the JLA and he asked whether the creation of the JLA was perceived as having caused ‘complications’. Mr. Scott stated that the JLA was a welcome additional resource which was subject to the same oversight and processes as other search and rescue operators. Mr. Hibbs interjected asking why the JLA was not called upon to deal with more emergency situations, particularly given that the JLA vessel was larger and faster than other search and rescue boats, the lifeboat crew were first responders and the vessel had a defibrillator on board. Frustrations in this regard had led to Mr. Hibbs contacting the Coastguard on a number of occasions. However, it was alleged that the Coastguard often failed to respond to him (this point was also made by Mr. Shenton). He stated that there appeared to be no mechanism for complaining about the Coastguard. Mr. Scott believed that these were serious allegations and he confirmed that complaints about the Harbourmaster/Coastguard should be directed to the Board of Ports of Jersey or the employer, the Government of Jersey.
- 3.14 Returning to the issue of the freezing of the JLA’s assets and, in particular, the length of time it had taken for the JLA to be permitted to resume operations, Mr. Walker referenced the sequence of events set out above, which ultimately led to the re-accreditation of the JLA assets. Mr. Scott stated that the turning point had been a recognition by the JLA of the role of Ports of Jersey as the authorised maritime regulator. He added that, at this point, a less antagonist approach had been adopted by the JLA with different personnel engaging on behalf of the charity. Mr. Scott stated that whilst there had been much discussion during the Hearing on the events of 2016 – 2018, the day-to-day relationship with the JLA was vastly improved now. It had only taken approximately 7 or 8 weeks until the freeze on the assets was lifted following constructive discussions in 2023. However, Mr. Shenton stated that the Declared Facilities Agreement had, in fact, been ‘watered down’. Mr. Scott pointed out that the Declared Facilities Agreement process was a collaborative one and he confirmed that other search and rescue operators had also entered into Declared Facilities Agreements. Mr. Hibbs interjected, making reference to historic

events, to include his suspension and, in this regard, the conduct of both the RNLI and Ports of Jersey. He alleged that the Government of Jersey had failed to 'stand up' to the RNLI, who had 'held a gun to the Government's head' and had threatened to withdraw search and rescue operations from the Island if there was any inquiry into the events which ultimately led to the formation of the JLA. Mr. Hibbs advised that volunteers with a total of 298 years' service had been lost and Jersey's lifeboats had been 'stolen' by the RNLI, causing a public outcry. He explained that Jersey people had historically donated the most money to the RNLI. The former St. Helier crew had been given a 6-month window to set up an independent search and rescue service and had achieved this, believing that there would be no full time RNLI crew. However, this was not to be the case and Mr. Hibbs lamented the way the crew had been treated by Civil Servants, including Messrs. Walker and Scott, with the latter being described as the 'henchman' who had 'overseen the sacking of the crew' prior to his move to Ports of Jersey, 'an organisation which lacked transparency'. Mr. Hibbs stated that this was the first time he had been able to publicly air his concerns and his comments related to one small part of the saga. He added that to have 4 lifeboats in one harbour in a small Island was unique to Jersey. Mr. Hibbs repeated that the JLA's assets were not fully utilised and he did not believe that Ports of Jersey should act in a regulatory capacity. Mr. Shenton stated that Ports of Jersey appeared to be self-regulating – a point which was refuted by Mr. Scott who highlighted the high degree of regulation which existed. Mr. Hibbs continued, alleging that there were occasions when the actions of the Coastguard had put the lives of the crew of the JLA at risk and he stated that following the incident at sea, crew members had not been permitted to attend a debrief in case they highlighted failings on the part of the Coastguard. Mr. Scott expressed significant concerns about the serious allegations which were being made and the Chair clarified that although members could consider the atmosphere/relationship element in the context of the impact on decision making and whether personal animosity had been a factor (and it was not being suggested this was the case), the Hearing had not been convened to consider such allegations. Mr. Hibbs further alleged that the Deputy Harbourmaster had made a complaint about him which was not based on fact. Mr. Scott repeated that the dynamic had now changed considerably and a much more positive and collegiate relationship between the parties existed. He reminded the Board of

the significance of the provision of search and rescue operations and the legal framework which existed and stated that many of the comments made were one-sided conspiracy theories, akin to the plot of a Tom Clancy novel. Mr. Walker commended Mr. Shenton for his role as the former Chair of the JLA and stated that he would have complete faith in Mr. Hibbs in an emergency situation and that his integrity remained intact as far as the content of the Marico Marine report was concerned. Whilst Messrs. Shenton and Hibbs believed that more Government oversight of Ports of Jersey was required, Mr. Scott advised that, from the perspective of Ports of Jersey, increased commercial freedom was desired. However, he reminded the meeting that the States had agreed to the incorporation of Ports of Jersey with clearly defined statutory functions. It was inevitable that in a small Island individuals would be required to wear a number of 'hats', as was the case with the Harbourmaster, who also acted as the Chief Coastguard. Mr. Walker added that legislative frameworks were evolutionary and improvements could always be made. Mr. Walker stated that recent amendments to legislation had arisen as a result of a review following unrelated serious accidents.

4. Closing remarks

- 4.1 The Chair thanked those present for attending and for their frankness and openness in discussing the issues raised. He highlighted the limited scope of the Board's considerations but also advised that it was within the gift of the Board to make recommendations where appropriate. The Chair indicated that a report of the hearing would be prepared in due course, which would be circulated to both parties for their input on the factual content.

5. Findings

- 5.1 The complaint before the board is not a complex one: in essence the complainant alleges that the Harbourmaster, acting in his capacity as the Jersey Coastguard and Ports of Jersey Limited as the Harbour Authority, did not have the power to suspend the declared status of the JLA following the incident on 11th November 2021. The context of the circumstances giving rise to the complaint are nevertheless complex, given that they involve international conventions to which Jersey is a signatory, the incorporated Harbours Authority, statutes and agreements by which various obligations of Government

are devolved to the Harbour Authority, together with a high level of mistrust and apathy between individuals which, in no small part, contributed to the establishment of the JLA in the first place.

- 5.2 The complaint has been made against the Chief Minister. The current incumbent is the third Chief Minister to have been involved with the broader context of the complaint and the Board does not seek to make any distinction between any of the former or current Chief Ministers as their individual roles have been largely peripheral in so far as the complaint is concerned.
- 5.3 The Board first reflected on whether it had jurisdiction to consider the complaint, given the incorporated status of Ports of Jersey Limited; a body corporate which was appointed as the Harbour Authority for the purposes of the Harbours (Administration) (Jersey) Law 1961, following incorporation in 2015.
- 5.4 Under the provisions of Article 2(5) of the 1961 Law as amended, the Harbour Authority is responsible for ‘co-ordinating, or providing resources for co-ordinating, maritime search and rescue within territorial waters’. Article 2(6) of the 1961 Law stipulates that the Harbour Authority shall carry out the responsibilities imposed (inter alia) by Article 2 (5) –
- (a) in accordance with any agreement made for the purpose between the Minister (for Sustainable Development) and the Harbour Authority, or
 - (b) in the absence of any such agreement, as the Minister may from time to time direct.

The Harbourmaster is appointed by the Harbour Authority (with the approval of the Minister) and is employed by the Harbour Authority (Ports of Jersey).

- 5.5 In 2015 an Agreement was entered into pursuant to Article 2 (6) of the 1961 Law between the Minister (then known as the Minister for Economic Development, Tourism, Sport and Culture) and Ports of Jersey, in respect of the Public Service Obligations (PSO) imposed on Ports of Jersey. That agreement states (inter alia) ‘the intent underpinning this Agreement is that Ports of Jersey is recognised as a competent authority and is entrusted to deliver its functions to recognised standards where they exist. There is no intention to provide constant supervision from Government’.
- 5.6 With regard to maritime search and rescue, the Agreement states: ‘Ports of Jersey will lead on all day-to-day operational Coastguard matters. The Harbourmaster is recognised as the Chief Coastguard for Jersey. Jersey

Coastguard will comply with the obligations under the SOLAS Convention and the Convention on Maritime Search and Rescue’.

- 5.7 Jersey Coastguard co-ordinates all Maritime Search and Rescue activity within Jersey's territorial waters.
- 5.8 Jersey Coastguard carries out certain reporting functions and will ensure that the Minister is immediately made aware of any marine accident relevant to his legal responsibilities.
- 5.9 The board is satisfied that Ports of Jersey is the duly appointed Harbour Authority and is responsible via the Harbourmaster (in his capacity as Chief Coastguard) for co-ordinating all maritime search and rescue activity within Jersey's territorial waters. That responsibility arises from the 2015 Agreement between Ports of Jersey and the Minister for Sustainable Economic Development and relates to the day-to-day discharge of the international obligations to which the Island is bound. In her letter dated 26th of August 2022, the former Chief Minister, Deputy Moore made it clear that she was responding in her capacity as Chair of the Council of Ministers. Many of the particular issues raised in the complaint do not fall within the remit of the Chief Minister. The Board considers that the Council of Ministers (and the Chief Minister as its Chair) has an overarching obligation to ensure compliance with the Island's commitments under the various international conventions. Whilst the day-to-day fulfilment of these obligations may be delegated to Ports of Jersey as the Harbour Authority, ultimate responsibility must remain with the Council of Ministers and the Chief Minister as its Chair. It is reasonable to assume that responsibility for the oversight of the day-to-day operation of the public service obligations delegated to Ports of Jersey was delegated to the former Minister for Economic Development, Tourism, Sport and Culture and the scope of the delegation was set out in the 2015 Agreement. The Board is satisfied that, by virtue of Ministerial oversight under the Agreement, it has jurisdiction over the complaint and considers the responsible Minister to be the Minister for Sustainable Economic Development for the purposes of this complaint.
- 5.10 The Agreement is clear in setting out the relationship between the Minister and Ports of Jersey in respect of the delegated powers and the fact that the provision of constant supervision from Government is not envisaged. However, the auditing of certain obligations placed on Government by International Convention which are undertaken by a commercial entity will be required. The

Agreement makes it clear that the Jersey Coastguard, as the first point of contact, carries out certain reporting functions and will ensure that the Minister is immediately made aware of any marine accident relevant to his legal responsibilities. This is not an obligation placed on the Harbour and Airport Authority Committee, other than to ensure compliance by the Harbourmaster.

- 5.11 The Board is satisfied that the provision of a Coastguard service is an obligation imposed on Government by International Convention, the day-to-day operation of which service was properly delegated to Ports of Jersey. The Board finds that under the terms of the PSO Agreement, the Harbourmaster as Chief Coastguard, has an express obligation to ‘ensure that the Minister is immediately made aware of any marine accident’. Nothing in the PSO Agreement suggests a specific role for Ports of Jersey or the Harbour and Airport Authority Committee in relation to a marine accident.
- 5.12 The purpose of the Minister being ‘immediately made aware of any marine accident’ is to enable him/her to consider whether to order an inquiry into the accident under the provisions of Article 166 of the Shipping (Jersey) Law 2002. The Board has not been directed to any power of either the Harbourmaster or the Harbour Authority to investigate an inquiry into a marine accident, other than under paragraph 10 of the Harbours (Inshore Safety) Regulations 2012, but this expressly excludes any accident which is required to be reported to the Minister under the Shipping (Jersey) Law 2002.
- 5.13 The Board finds that the decision of the Harbourmaster to commission the Marico Marine report was without appropriate statutory or delegated authority and thus upholds that element of the complaint under the provisions of Article 9(2)(a) of the Administrative Decisions (Review) (Jersey) Law 1982.
- 5.14 Had the provisions of Part II of the Shipping (Jersey) Law 2002 been adhered to, the Board is confident that the Minister would have considered that the circumstances surrounding the accident of 11th of November 2021, would have warranted the establishment of an independent inquiry. The Board is equally confident that the Minister would have sought the advice of the Harbourmaster as to who should carry out that enquiry and further that Marico Marine may well have been appointed by the Minister to carry out the investigation.
- 5.15 The Board noted that the complainant, in his capacity as the former Chair of the JLA, had no issue with the commissioning of an independent investigation into the accident, nor should he have had. The Board has no reason to suppose that

Marico Marine carried out its investigation and reached its conclusions as to the cause of the accident in anything other than an independent and professional manner.

- 5.16 While the Board has no reason to impugn the findings and recommendations of the Marico Marine report (save for as set out below), the Board was concerned with the manner in which the report was produced and ultimately published. The first draft of the report was sent to the Harbourmaster who had commissioned it. We find this unusual. It is more usual for the factual element (i.e. that part of the report which excludes the findings and recommendations) to be circulated by the author to all relevant parties simultaneously for the sole purpose of validating the accuracy of the factual content of the draft report. It would be for the author of the report to consider any comments received directly and amend the draft accordingly, or not, as the case may be. However, in this case the Harbourmaster stipulated that any comments on the draft report should be submitted to him, rather than Marico Marine. In his submission, the complainant stated ‘the independent report became the report of the Coastguard rather than the independent inspectors commissioned to undertake it’. The Board does not accept that allegation but understands how the close involvement of the Coastguard in the preparation of the report before its final publication could have suggested an inappropriate level of engagement or influence.
- 5.17 The Board was extremely concerned about the inclusion of witness statements as appendices to the draft (and final) report. The inclusion of the witness statements resulted in certain information arising from the same being ‘leaked’ to the media, notwithstanding the fact that the content had absolutely no bearing on the accident investigation. The allegation that the JLA Coxswain had refused a breathalyser test was irrelevant in the context of the report given that: (a) there was no obligation on any member of the lifeboat crew to take such a test, (b) there was no agreed procedure for doing so and (c) there was absolutely no suggestion in the draft report that the consumption of alcohol had been a factor to any extent whatsoever in the accident. The Board considers that had the investigation been instigated by the Minister, as it should have been, it is most unlikely that any reference to alcohol consumption would have found its way into the appendices attached to the report.

- 5.18 According to the Harbourmaster (Memorandum to Harbour and Airport Authorities Committee No HAA CO33-2021 dated 29th of November 2021) a ‘preliminary report’ was delivered to him on 28th of November 2021. This somewhat conflicts with the timeline included in the Marico Marine report, which states that “Draft A (prelim) for Client Review” was dated 6th December 2021. Be that as it may, the Harbourmaster's memorandum of 29th November 2021 stated that its purpose was to provide an overview of the regulatory framework for the declaration of search and rescue aspects by Jersey Coastguard, provide a timeline to the sequence of events (with supporting appendices) leading up to the current declaration of the JLA and to provide a set of recommendations to the Harbour Authority following the grounding of the Sir Max Aitken III.
- 5.19 It is appropriate at this point to introduce the Declared Facility Agreement Management Framework (the Framework). It is in effect a declared protocol of the Harbour Authority, the aim of which is to provide direction and guidance to the Coastguard in terms of the process required to assess and, where appropriate, award independent rescue boat organisations with Declared Facility Status, so that they can be called upon as recognised Declared Facilities to respond to search and rescue incidents in co-ordination with the Coastguard. It was put in place sometime before the JLA was registered and broadly mirrors a similar UK Framework. Section 8 of the Framework deals with Declared Facility Status, namely the suitability of a facility (e.g. the JLA) to be designated for civilian search and rescue under the direction of the Coastguard. At Section 8 the Framework provides 4 categories of assessment to be used by the Coastguard in considering the suitability of an independent rescue boat organisation for Declared Facility Status.
- 5.20 Pursuant to the Framework, the JLA became a Declared Facility in or around March 2019, with the Sir Max Aitken III becoming a Declared Asset the following month. That declaration was the culmination of many months of work between the JLA, the Coastguard and others to ensure suitability for marine search and rescue. However, the JLA was advised in writing by the Coastguard that Declaration was not the end of the process and that it was important that the JLA worked within the parameters of its own safety management system, seeking to continuously improve the same.

- 5.21 As mentioned previously, a preliminary draft of the Marico Marine report was delivered to the Harbourmaster on 28th of November 2021, less than 3 weeks after the accident. The final version of the report would not be delivered until February 2022. Be that as it may, the analysis and recommendations did not materially alter between the preliminary draft and the final report. Of the 12 recommendations made in the report, it was acknowledged that 10 could be addressed by the JLA internally and the remaining 2 - the review and audit of JLA Framework policies and procedures and Statement of Facts - to be written as soon as reasonably practical - fell within the joint authority of Ports of Jersey and the JLA. The concluding sentence of the report states: ‘the recommendations ... should be followed up and assigned appropriate ownerships and priority to ensure they can be closed out with due urgency’.
- 5.22 Nothing in the Marico Marine report suggests that until all or any of the recommendations have been implemented, JLA and its lifeboat should be considered as unsuitable for operational search and rescue duties. Indeed, the report makes the point that the Coxswain and the Navigator of the vessel ‘are both very highly experienced’. The report also confirmed that the Declaration of JLA as a search and rescue facility in April 2019 (some 20 months before the accident) meant that the boat, policies and crew had been assessed at a standard necessary to allow them to perform services as a Declared search and rescue asset within the existing Framework. There is nothing in the report to indicate that there was any doubt that this was not be the case immediately after the accident.
- 5.23 Therefore, it is surprising that within a day of receiving the preliminary draft of the Marico Marine report on 28th of November 2021, the Harbourmaster prepared an extensive memorandum addressed to the Harbours and Airport Authorities Committee, recommending a temporary suspension of JLA Declared Status. The memorandum referred to the procedure set out in the Framework for such suspension. The memorandum did not refer to the less draconian assessment step contained in the Framework - Category (3) which requires consultation between the Coastguard and the JLA ‘to decide if there is a requirement to temporarily freeze operation until matters are resolved or to continue as normal’.
- 5.24 The memorandum cites the potential for an offence to have been committed, referring presumably to the finding in the Marico Marine report relating to a

failure to keep a dedicated lookout as one of the contributory factors to the accident. The Board has seen no evidence to show that either the Harbourmaster or the States of Jersey Police carried out any investigation whatsoever into whether an offence may have been committed in relation to the accident, and the Board is therefore at a loss to understand why any mention of an offence - potential or otherwise - was made in the memorandum.

- 5.26 A meeting of the Harbour and Airport Authorities Committee was held on 1st December 2021, at which the Harbourmaster's recommendation that the JLA be temporarily suspended was accepted. The decision of the Committee was formally conveyed to the JLA by letter dated 10th of December 2021, (copied to the Minister for Economic Development, Tourism, Sport and Culture). The letter states that a recommendation arising from the Marico Marine report directs that there should be an immediate review and audit of the JLA's policies and procedures. The Board is unable to find such a recommendation in the draft report, which is hardly surprising given that all policies and procedures had been examined as part of the declaration process less than 2 years previously.
- 5.27 The letter of 10th December 2021, conveys the decision to temporarily freeze the JLA's operations in accordance with paragraph 8.4 of the Framework with immediate effect. This appears to the Board to be deliberately misleading. By referring to a temporary freeze of operations, the implication is that the decision is taken pursuant to Category 3 of paragraph 8.4 which, whilst expressly referring to the temporary freezing of operations, also necessitates prior consultation with the JLA. The decision of the Committee was unilateral and based on the Harbourmaster's recommendation in his memorandum.
- 5.28 The Board considers the suspension of the Declared Facility Status of JLA to have been excessive, unjust and oppressive, for the purposes of Article 9(2) of the Administrative Decisions (Review) (Jersey) Law 1982. Given that the suspension was based largely on a report commissioned without lawful authority, the Board also finds that the suspension was based wholly or partly on a mistake of Law, namely that the Harbour Authority had the power to investigate the accident rather than the Minister. The Board nevertheless confirms that it considers the Jersey Coastguard to hold responsibility for the day-to-day organisation of maritime search and rescue facilities in Jersey's territorial waters and for the appropriate application and modification as

necessary of the Framework, including the maintenance or otherwise of the Declared Facility Status of any independent rescue boat organisation.

6. Recommendations

- 6.1 While the incorporation of Ports of Jersey no doubt resulted in many benefits, it has created its own problems, some of which appear to have been unforeseen. The responsibility for the discharge of public service obligations by a commercial entity as harbour authority was addressed by the PSO Agreement between the Minister for Economic Development, Tourism, Sport and Culture and Ports of Jersey. Under that Agreement it is acknowledged that the Harbourmaster is the Chief Coastguard. As Harbourmaster he is appointed and employed by Ports of Jersey, yet he also has direct responsibilities to the Minister as Chief Coastguard, in particular to ‘ensure that the Minister is immediately made aware of any marine accident relevant to his legal responsibilities’. Jersey Coastguard is not of itself an entity or identifiable body but rather is a public service with the Harbourmaster as its Chief. It is therefore understandable that the Harbourmaster should occasionally lose sight of proper lines of communication and responsibility. The Board therefore recommends that the Minister and Ports of Jersey as harbour authority should prepare an amendment to the PSO Agreement to identify the circumstances in which the Harbourmaster, in his capacity as Chief Coastguard, should communicate directly with the Minister, with particular regard to the provisions of Part II of the Shipping (Jersey) Law 2002. It is strongly recommended that the Harbourmaster as Chief Coastguard should submit a regular report directly to the Minister in respect of the activities of the Jersey Coastguard.
- 6.2 The position of Harbourmaster /Chief Coastguard is an important and powerful one in an Island community, and considerable authority is vested in the individual. In many cases complaints or appeals against the decisions of the Harbourmaster would be made most appropriately to Ports of Jersey as the Harbourmaster's employer. Where a complaint or appeal relates to the discharge of the public service obligations delegated to the Harbour Authority and the Coastguard by the Minister, the Board considers that a more appropriate route for complaints or appeal against an action or decision of the Harbourmaster/Coastguard would be to the Minister, which would be in keeping with the Government's international convention obligations and would

form an appropriate level of oversight of the proper discharge of those delegated public service obligations.

- 6.3 In conclusion, the Board wishes to make clear that whilst it is critical of the shortcomings in relation to the aftermath of the incident involving the Sir Max Aitken III, it acknowledges the progress that has been made, despite obvious and inevitable personal antipathies, to ensure the JLA remains a core asset in local search and rescue operations.

Signed and dated by –

G. Crill, Chair Dated:

G. Fraser Dated:

A. Hunter Dated: