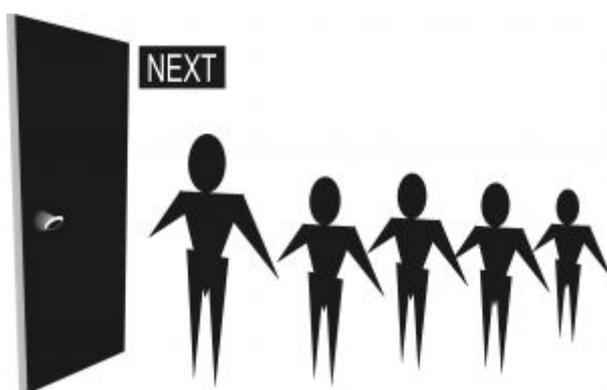




# Corporate Services Scrutiny Panel



## States of Jersey Development Company: Selection Process

Presented to the States on 3rd June 2011



## **KEY TO ABBREVIATIONS**

For the purposes of this report:

- The Jersey Appointments Commission shall be known as JAC
- The States of Jersey Development Company shall be known as SoJDC
- The Transition Advisory Panel shall be known as TAP
- Non-Executive Director shall be known as NED
- The Waterfront Enterprise Board shall be known as WEB
- The Corporate Services Scrutiny Panel shall be known as CSSP

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## 1. EXECUTIVE SUMMARY

The Sub-Panel has considered the recruitment process for the selection of Chairman and Non-Executive Directors for the new SoJDC. In doing so, the Sub-Panel has investigated the concerns raised by some States Members during the debate (P.32/2011) to approve the selected candidates for the Company on 17th March 2011.

The proposition (P.32/2011) lodged by the Minister for Treasury and Resources was referred to the Corporate Services Scrutiny Panel after the Deputy of St John lost his proposal to continue with the debate in camera.

The Sub-Panel met with the Jersey Appointments Commission, Members of the Recruitment Panel, Transition Advisory Panel and Technical Panel and have identified a number of administrative errors.

Whilst these administrative errors would have been perceived as unprofessional, the Sub-Panel are of the view that such errors were not of a magnitude that meant they would have rendered the overall appointments recommendations defective.

The findings of the Sub-Panel would have been more complete if the Treasury and Resources Department had engaged with the Sub-Panel in an open and transparent manner and if the Deputy of St John had given his evidence in public. The Sub-Panel were only provided with a handful of documents from the Department and had to rely on information provided by the Jersey Appointments Commission and witnesses.

All of this proved to be of significant frustration to the Sub-Panel, and restricted the review from an early stage.

## 2. CHAIRMAN'S FOREWORD

### Introduction

The question facing this Sub-Panel is whether any of the apparent shortcomings identified were of such magnitude as to render the overall appointment recommendations defective.

The JAC are of the view that this is not the case. Whilst the Sub-Panel is of the view that the administrative errors, by the Human Resources/Chief Minister's Department, were unprofessional, we concur with the overall conclusions of the JAC.

In our review we have identified some areas which we think could be improved. Based on our findings to date, I do wish to make it very clear that the Sub-Panel have no criticism to make of the JAC or any of the individuals within it. In contrast to the Treasury and Resources Department they have been very accommodating.

A far more complete report could have been produced had the Treasury and Resources Department engaged with us in an open and transparent manner. Their failure to do so has left us with unanswered questions, particularly when there have been inconsistencies between various pieces of evidence provided.

In a climate where there is political suspicion surrounding SoJDC and its predecessor, this would seem unwise. SoJDC was partially designed to leave behind the political taint that (rightly or wrongly) does surround WEB. To start matters in this way is therefore not likely to engender the political support which this initiative requires to succeed.

### The Role of the Assembly

Criticism has been levied at the behaviour of States Members in expressing concerns. This depends upon one's view of the role of the States Assembly. Is the States actually 'a confirmation body'? Is it 'rubber stamping' the recommended candidate(s)? In fact it is clearly the body that makes the final decision to appoint. To act in any lesser capacity would be a clear dilution of the ultimate responsibility of the States Assembly.

It is indeed possible that if the debate in question had gone "in camera", and Members allowed to express the concerns they wished to express, the debate may well have proceeded and the proposition might have been approved in its original form. That is obviously speculation. It is also understood that the proposed Chairman did not resign as a result of the referral to Scrutiny or the comments of States Members during the debate, but this has not formed part of our review.

What is clear is that it would seem appropriate for the Privileges and Procedures Committee (PPC) to review the issue of the approval by the Assembly of individuals to various States posts and perhaps also the wider role of the Assembly in this area. Some posts, as a matter of Law, have to be debated in camera, others do not, and the matter is then in the hands of the Assembly whether to debate the attributes of any individual in public or privately.

### Primacy of the States

It is undeniable that during the debate (and in the report and proposition – P.73/2010) on the creation of SoJDC, it was made very clear that the primacy of the States was paramount, and that duties would be much more clearly defined, particularly as regards the difference in responsibilities between the States, Planning, and SoJDC. The latter was to be a deliverer of projects. It was not to be involved in Masterplanning or similar matters. In essence, the States or bodies within the States would be responsible for defining what was required in respect of each development area. The Planning Department would deliver masterplans, and a sub group

(effectively of the States Assembly) would define a clear project specification for SoJDC, as a developer, to implement.

Thus SoJDC was to have a fundamentally different role from the organisation it replaced. It was no longer to be a *“sort of a Docklands Agency, 1980s model, which ...thought they had planning powers...”* It was confirmed that *“WEB should never have been involved in master planning....it was a completely confused unclear responsibility....”*

### **Technical Panel**

It was of some interest to hear that not everyone was united on the choice for Chairman. In no way should this be taken as a slight on ability - all of the candidates were described to us as *“pretty powerful and capable”*.

The Technical Panel recommended someone who they felt was likely to adopt a more collaborative approach. (*“...essentially take it on board as opposed to want to sort of tear it up and start again”*) because they felt that *“it might... be more constructive to have somebody that could be a bit more of a moderator”*.<sup>2</sup> This was also referred to in other hearings and would appear to be consistent with the original objectives of P.73/2010 in creating SoJDC.

It is not the role of the Sub-Panel to challenge the individual merits of candidates. However, is it worth asking whether the States were about to embark down the line of setting something up, with a high powered, independent board that might, over time, have morphed back into what they were originally trying to distance themselves from? All of this is obviously speculative, but appears to be worthy of mention, in the light of some of the representations received during the review.

### **Conflicts of Interest**

As noted in the report, certain declarations were made by various interviewers on the Panels, (including by the Treasury and Resources Minister). Whilst we have made recommendations on how these are communicated, procedurally we have found nothing untoward in this area (i.e. declarations were made, and the JAC consider that everything was in order).

However, there are perhaps matters of perception to consider. The Minister for Treasury and Resources declared knowing, in some shape or form, two of the candidates, one of whom was ultimately recommended to the States. This declaration was made early on in the process, and he subsequently took part in shortlisting and interviewing for all candidates. However, such declarations of interest were not disseminated to the other interview Panels, hence Members of other Panels would not have been aware of them.

The question that arises is what would have been the perception of a Member, involved in the process, who became aware after the process was complete, that the Minister knew one of the recommended candidates, but was unaware either of the declarations of interest or of the apparently limited extent of the connection to that candidate? It was unfortunate that the Minister was not present for the debate itself, when perhaps this matter could have been easily resolved.

### **Administrative shortcomings**

These should not be taken as a criticism of the JAC, or of impacting on the final outcome. However, the errors by Human Resources/Chief Minister's Department would have been perceived in certain instances as unprofessional and/or unacceptable, or simply just as 'rushed'.

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<sup>1</sup> Debate on P.73/2010 “Infrastructure and Regeneration: The States of Jersey Development Company Limited” (October 2010)

<sup>2</sup> Public Hearing with Mr M. Waddington, Member of the Technical Panel: 10th May 2011

For example, the error in advertising prematurely (i.e. before the recruitment consultants were actually prepared to deal with enquiries from applicants) did give rise to a formal complaint by a member of the public.

Furthermore, a civil servant neglected to give 2 candidates (one on each day) the required prior notice (just before their interview) that they would have to give a short presentation as the first part of the interview process. Although an easy mistake to make, it would certainly have appeared unprofessional. The two times this occurred was in respect of the interview panel of which the Deputy of St John was a member, and on the two occasions that he was present.

There appears to have been a lack of clear communication regarding the role of the States Members on the TAP. Some documentation implied that their role was wider than was actually the case. In reality, it was purely to advise the main Recruitment Panel and not to have any direct say in the selection process. Could the resulting frustration have fuelled a perception that they were there just to ease the process through the States, rather than properly contribute to the selection process?

Additionally was it appropriate for the designated Chairman to be involved in the shortlisting process before she had been approved by the States? In particular, given that the non-ministerial States Members were not. Although this process had been agreed, how would this have been viewed by States Members?

One can therefore see how certain Members, not having the full picture, might have had concerns. It is important to note that these concerns had been dealt with elsewhere, but Members were probably not aware of this.

### **The Deputy of St John**

Whilst it was the Deputy of St John who was the first to express concerns in the Assembly regarding this matter, (followed by other Members), it should be noted that the Deputy did not vote to refer this matter to Scrutiny but abstained. The majority of the Sub-Panel were critical of the fact that the Deputy was only prepared to give his evidence in private session, and on that basis, were unwilling to engage with him on this.

They were of the view that, as a Scrutiny Chairman himself, he should have been aware that a witness cannot set the terms under which they can appear in front of a Scrutiny Panel. I have to say that my personal view (although bound by the majority view of the Sub-Panel) was that the Deputy of St John felt that he had been part of a confidential process, and was therefore unwilling to risk breaching such confidentiality in a Public Hearing. It is therefore regrettable that Scrutiny has been unable to fully investigate the concerns of the Deputy of St. John. Accordingly, our investigations proceeded on the basis of what was in the public domain in conjunction with information we received in confidence.

### **Political Responsibility**

The political responsibility for the overall process, and the proposition presented to the Assembly lay with the Treasury and Resources Minister. With hindsight, taking account of all of the matters expressed earlier, it might well have been better for the proposition to have been dealt with by the Treasury Minister himself (rather than the Assistant Minister). This would have meant a delay of approximately 2 weeks.

The question for Members is whether the perceived 'haste' also contributed to the overall unease over this issue.

## **Conclusion**

This review has been valuable in identifying specific areas that could warrant some improvement, and also in testing Ministerial assurances as to whether something is open to Scrutiny or not.

To me, it is clear that there were shortcomings in the administration of the wider process. As such these gave rise to a perception that the appointment recommendations were not as robust as should have been expected for such important roles.

It is more than unfortunate that the Treasury and Resources Department failed to engage with this review in an open and transparent manner. This has left the Sub-Panel in a very unsatisfactory position, as almost certainly we have not been able to fully address the concerns of States Members or to provide satisfactory answers to their questions.

Finally I would like to express my thanks to the Members of the Sub-Panel, and the Scrutiny Officer. Whilst we have not always agreed on everything, we have challenged each others' view quite strongly in certain instances, and I think we have met our objectives within the context of the limited information which has been provided to us.

**Deputy John A. N. Le Fondré**

Chairman, Sub-Panel, Corporate Services Scrutiny Panel

### 3. KEY FINDINGS AND RECOMMENDATIONS

#### *Key Findings*

##### KEY FINDING 1

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By not providing access to information such as general correspondence, the Treasury and Resources Department failed to engage with the Sub-Panel in an open and transparent process. It is therefore difficult to see how any conclusion can be reached other than the process referred to is not “*open and responsive to Scrutiny*”.

##### KEY FINDING 2

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Relevant documentation including the procedures and guidelines for the JAC was not readily available to the wider public. Furthermore, little information could be found electronically on the internet and documents were not present at the States Greffe Information Centre. It therefore appears that this is not in keeping with Article 24(3) Employment of States of Jersey Employees (Jersey) Law 2005.

##### KEY FINDING 3

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The Law does not provide clarity, for example, whereby the JAC may find itself in the position of having concerns over an appointments process, having reported it to the States Employment Board, but the appointment is then maintained and possibly even presented to the States.

##### KEY FINDING 4

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The relationship between the JAC and the States of Jersey is unclear. The JAC’s budget falls under the States Human Resources (HR) Department. However, this implies that the JAC report to the HR Department, which is incorrect.

##### KEY FINDING 5

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Some meetings and interviews were not chaired by representatives of the JAC, which could have led to a negative perception as to the independence of the process.

##### KEY FINDING 6

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During the advertising stage of the process, an advert was submitted to the Jersey Evening Post by the States Human Resources (HR) Department before the recruitment consultant “Odgers Berndtson” was sufficiently prepared. This resulted in a failure to provide individuals, interested in the Chairman and NED posts, with the appropriate information and also resulted in a formal complaint being made. Although a relatively minor error, the Sub-Panel is of the view that this was unprofessional.

KEY FINDING 7

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It is not appropriate that any persons (in this case States Members) who have been asked to participate in a recruitment process for an important position are not given the requisite paperwork (and/or Terms of Reference) sufficiently in advance of meetings. This is not only unprofessional, it is also unacceptable as it does not allow such persons to be adequately prepared for such meetings.

KEY FINDING 8

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The Sub-Panel consider it unacceptable to give any persons (in this case States Members) short notice of very important meetings, such as those relating to this particular recruitment process.

KEY FINDING 9

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The timetabling of interviews was inconsistent for the NED candidates.

KEY FINDING 10

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The Sub-Panel found that the Candidate Brief was inconsistent with the actual interview process.

KEY FINDING 11

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Members of the TAP had reason to believe that they would be involved in the shortlisting and in “signing off” the candidates for NEDs and Chairman.

KEY FINDING 12

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As it is noted elsewhere, Baroness Ford firstly took part in the shortlisting process for NEDs and in addition, chaired the second Recruitment Panel interview. The Sub-Panel considers that the States Assembly should have been given the opportunity to approve the successful candidate as Chairman before allowing that individual to engage in the shortlisting process for NEDs.

KEY FINDING 13

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The Sub-Panel highlights the administrative failure to notify two interviewees of the requirement to give a 5 minute presentation to the TAP. This was unprofessional and could have placed those candidates at an unfair disadvantage.

KEY FINDING 14

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Personal data was not properly controlled at the end of the process.

KEY FINDING 15

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The Sub-Panel has found that there were some shortcomings with regards to the administration concerning the wider process. The Sub-Panel stresses that these do not appear to have been the responsibility of the JAC, but originated from either the Human Resources Department or the Chief Minister's Department.

KEY FINDING 16

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The purpose of the TAP was not only to see how candidates would react in a political environment, but also to give candidates the opportunity to question States Members. Provided it was clearly defined, the Sub-Panel concurs that this was a worthwhile approach. However, it is paramount that the way in which results of such a Panel are fed into and discussed with the main Recruitment Panel is clear from the outset.

KEY FINDING 17

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There were inconsistencies between how the role of the TAP was defined in documentation, and what was provided to States Members regarding the interviews for the NEDs.

KEY FINDING 18

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The role of the TAP, as envisaged by the JAC and the Recruitment Panel, was clearly that of a subsidiary Panel offering a political perspective on candidates and also answering questions from the candidates on political issues.

KEY FINDING 19

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The results of the TAP process were then to form a part of the deliberation of the Recruitment Panel in arriving at its decision.

KEY FINDING 20

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It is clear that there were a number of factors which were not properly understood which could have given rise to the initial misinterpretation by TAP Members that their role was somewhat wider.

KEY FINDING 21

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It was unclear from the documentation the Sub-Panel received whether there was a formal list of declarations of conflicts of interest.

KEY FINDING 22

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It appears that declarations of conflict were known about by the individual Panels to which they were made, but not to any other Panels involved in the selection. Therefore, this could give rise to the perception (to any party interested in the process) that such issues were not properly dealt with, when in fact they had been.

KEY FINDING 23

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All of the shortlisted candidates were considered to have significant achievements in their previous roles.

KEY FINDING 24

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As a result of questions by the interview panels, some candidates raised the issue of where master planning and planning powers should sit.

KEY FINDING 25

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The Recruitment Panel Members were of the view that it was made very clear to candidates that it was not envisaged that SoJDC would possess planning powers.

KEY FINDING 26

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The preferred candidate of the Technical Panel was considered by them to be likely to “work in a more collaborative way”, but was not the candidate ultimately recommended for approval by the States.

KEY FINDING 27

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The initial proposed composition of the Technical Panel did not originally include a senior member of the Planning Department, and this was only revised 4 working days before the interviews for the Chairman.

**Recommendations**

RECOMMENDATION 1

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The Sub-Panel recommends that the JAC should have its own page linked to a States of Jersey website, which should provide electronic links to all relevant JAC documentation.

RECOMMENDATION 2

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A website would enable more up-to-date information about the JAC to be provided in a timely manner, including, for example, the recruitment roles in which it has been involved.

RECOMMENDATION 3

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The Chief Minister or the States Employment Board must review the relationship between the JAC and States of Jersey to provide clarification with regards to Key Findings 3 and 4.

RECOMMENDATION 4

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The JAC should consider chairing every part of the process, to ensure that their independence is preserved and that there is no risk of a perception that it might have been compromised.

RECOMMENDATION 5

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When different interview panels are involved, interviews must be scheduled in such a manner that candidates are interviewed by those Panels in the same order.

RECOMMENDATION 6

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Given the increasing use of internet based processes, protocols are required for the distribution, use and destruction of personal details and other relevant material. Where personal data is provided in hard copy to interviewers, it should be formally retrieved at the end of every recruitment process.

RECOMMENDATION 7

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The way in which the results of an advisory Panel are fed into and discussed with a main Recruitment Panel must be clearly defined from the outset.

RECOMMENDATION 8

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The method for declaring conflicts of interests should be reviewed in order for absolute clarity and transparency. This would ensure that the integrity of the independence of the process is maintained.

RECOMMENDATION 9

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A comprehensive list or register of declarations of conflicts of interest must be maintained (or a statement to the negative) for each recruitment process.

RECOMMENDATION 10

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A list of declarations of conflicts of interest should be circulated to all recruitment personnel (including States Members) involved in the process, and in advance of any interviews.

## 4. INTRODUCTION

- 4.1 The establishment of the States of Jersey Development Company (SoJDC) was developed by a proposition from the Council of Ministers, P.73/2010, which was approved by the States on 13th October 2010.
- 4.2 Following its approval, the Treasury and Resources and Chief Minister's Departments worked in conjunction with the Jersey Appointments Commission (JAC) to recruit a new Board of Directors. Subsequent to the recruitment process, the Minister for Treasury and Resources lodged P.32/2011 on 2nd March 2011. The terms of that proposition were for the States to decide to appoint the following individuals as Non-Executive Directors (NEDs) of SoJDC:

Baroness Margaret Ford (Non-Executive Chairman)  
Roger Lewis (Non-Executive Director)  
Nicola Palios (Non-Executive Director)  
David Pretty (Non-Executive Director)

A number of issues were raised by States Members during the debate and this matter was, therefore, referred to Scrutiny.

- 4.3 The majority of the Sub-Panel's work occurred through the months of April and May and the Sub-Panel would like to extend its gratitude to all of those involved with its review at that time.

### ***Terms of Reference***

- 4.4 This review has been undertaken by the Corporate Services Scrutiny Panel to consider States Members' concerns regarding the selection process of the Non-Executive Chairman and Directors of the States of Jersey Development Company.
- 4.5 The following Terms of Reference were established for the review:
1. To investigate concerns expressed by Members relating to P.32/2011 "States of Jersey Development Company: Appointment of Chairman and Non-Executive Directors".
  2. To examine whether the necessary checks and balances were in place in relation to the selection process.
  3. To examine any further issues relating to the topic that may arise in the course of the Scrutiny review that the Sub-Panel considers relevant.

### ***Panel Membership***

4.6 For the purpose of this review, the Corporate Services Scrutiny Panel established the following Sub-Panel:

Deputy J.A.N. Le Fondré, Chairman;  
Senator F. Le Gresley;  
Deputy R.G. Le Hérissier;  
Senator J.L. Perchard;  
Senator A. Breckon



The Corporate Services Scrutiny Panel itself constitutes the following members:

Senator S.C. Ferguson, Chairman;  
Deputy J.A.N. Le Fondré, Vice-Chairman;  
Senator J.L. Perchard;  
Deputy D.J. De Sousa

Senator Ferguson participated as a witness in a Public Hearing as a Member of the Transition Advisory Panel. Deputy De Sousa was also a Member of the Transition Advisory Panel. They, therefore, withdrew from all proceedings as Scrutiny Members, having declared a conflict of interest in this matter.

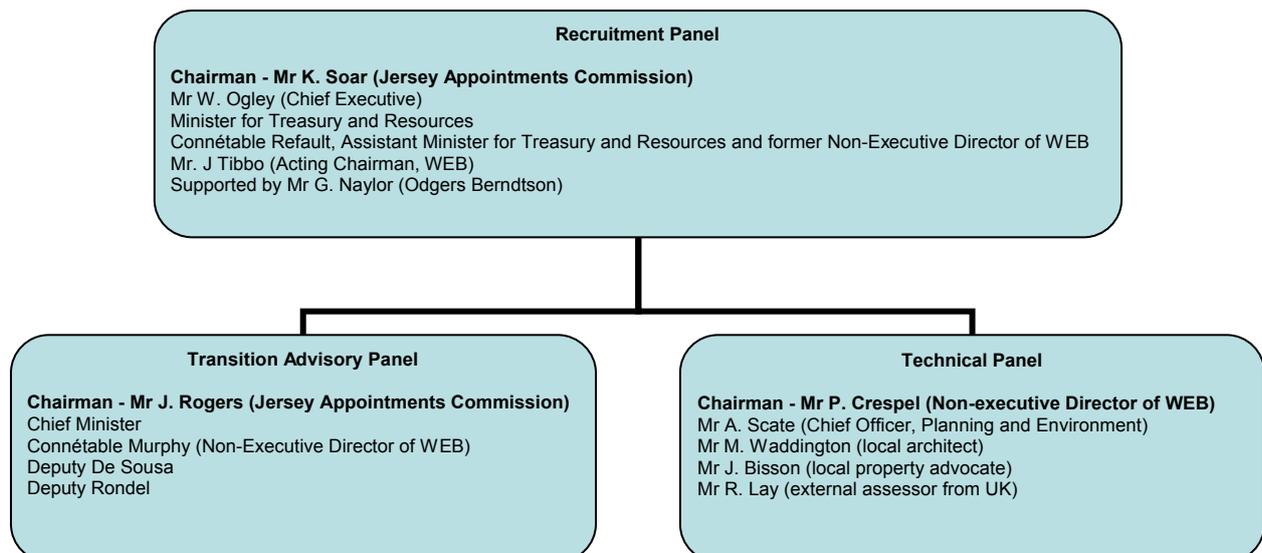
## 5. BACKGROUND INFORMATION

- 5.1 This is the fifth review of the Corporate Services Scrutiny Panel which has been undertaken relating to WEB and the establishment of a new SoJDC. There have been a number of debates on this matter with various referrals to Scrutiny. However, the final proposition (P.73/2010) was approved on 13th October 2010 by 25 “pour” to 22 “contre”. The key principles can be found in Appendix A.
- 5.2 Given the contentious background relating to this matter and future impact the SoJDC will have on the Island, the Sub-Panel considers that any significant matter concerning WEB or SoJDC should be dealt with in as open and transparent manner as possible.
- 5.3 The Sub-Panel wishes to emphasise that this is not a review on the establishment of WEB or SoJDC. It is confined to the examination of concerns raised by States Members in the debate on P.32/2011 (States of Jersey Development Company Limited: Appointment of Chairman and Non-Executive Directors).

### ***Brief summary of recruitment structure***

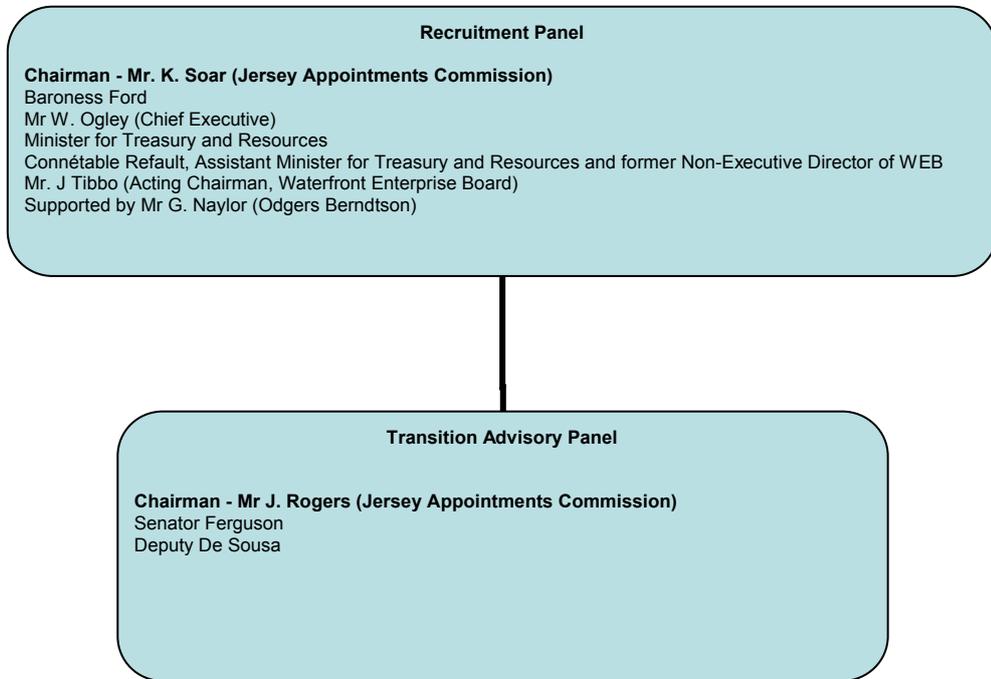
- 5.4 The recruitment process involved three panels: The Recruitment Panel, had sole responsibility of making the final selection decisions, based on the outcomes of its own interviews as well as the input from two additional Panels (depending on NED/Chairman). The other two Panels were the TAP and the Technical Panel. The whole process was overseen by the JAC. An external recruitment agency (Odgers Berndtson) was employed. A number of States Members were involved in this process.

### **5.5 Structure of interview Panels for Non-Executive Chairman:**

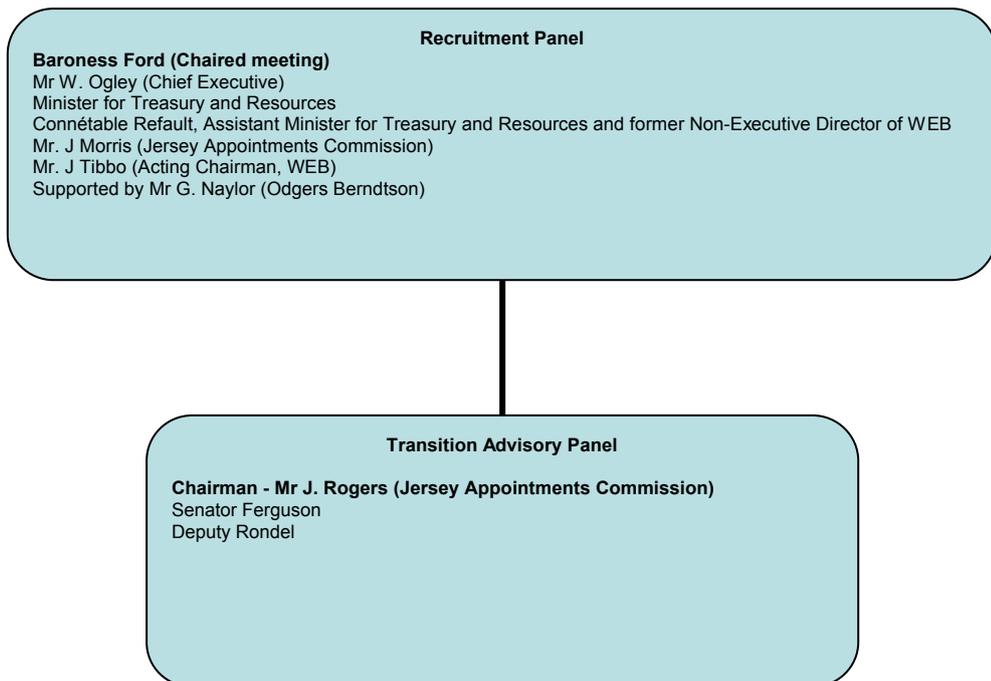


**5.6 Structure for interview Panels for Non-Executive Directors:**

**21st February 2011**



**28th February 2011**



***What happened in the debate on P.32/2011?***

- 5.7 The “States of Jersey Development Company Limited: Appointment of Chairman and Non-Executive Directors” (P.32/2011) was lodged on 2nd March 2011. The Sub-Panel notes that it could not be debated before Wednesday 16th March 2011, this being the minimum lodging period for the proposition. The rapporteur during the debate was Connétable Refault (Assistant Minister for Treasury and Resources), as the Minister for Treasury and Resources was out of the Island on States business.
- 5.8 The Deputy of St John proposed that the debate on P.32/2011 should continue in camera: *“Having been part and parcel of this, I have to inform the Assembly obviously of certain things and it would be totally unfair to any person that they may be identified by what I have to say.”*<sup>3</sup>

After a lengthy discussion, the Deputy of St John lost his proposition for the debate to be held in camera with 9 votes “pour” and 33 votes “contre”. A number of States Members expressed concerns, and a second proposition was proposed by Deputy Martin to defer the debate until 29th March 2011, which would allow the Treasury and Resources Department to organise a States Members’ briefing so that Members could air their views. However, this was also lost with 17 “pour” and 25 “contre”.

- 5.9 After further discussions, Deputy Le Claire proposed that the matter was referred to the Corporate Services Scrutiny Panel (CSSP) under Standing Order 79, which states that any Member of the States can propose to request the relevant Scrutiny Panel to consider having the proposition referred to it.

The proposal was narrowly approved by the States Assembly with 20 votes “pour” and 19 votes “contre”. Therefore, the CSSP agreed that a Sub-Panel was to be formed and chaired by Deputy Le Fondré, and this was formally announced in the States Assembly on 29th March 2011. It was also decided that the debate on P.32/2011 would resume on 7th June 2011.

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<sup>3</sup> Hansard from P.32/2011 debate (17th March 2011) reference 4.1.1

## 6. ACCESS TO INFORMATION

- 6.1 One area which proved to be of particular frustration in this review was the approach that was taken by the Treasury and Resources Department towards the provision of information to the Sub-Panel.
- 6.2 The Sub-Panel recalled the last debate on October 13th 2010, when the main proposition to establish SoJDC (P.73/2010) was approved by 25 votes to 22. One of the elements that characterised the debate was the late receipt of information that had been persistently requested by the Corporate Services Scrutiny Sub-Panel for a number of weeks leading up to the debate. The previous Sub-Panel had requested sight, in confidence, of an employment contract to further assist in its review.
- 6.3 During the debate, some Members expressed concern over whether this apparent lack of engagement with the Scrutiny Panel was a sign that Scrutiny was not treated with respect by certain Ministers and Members of the Executive.
- 6.4 P.73/2010 expressly includes that the role of the Assembly is to:
- Hold the Ministers to account for the delivery of effective regeneration in line with the States' agreed strategy.
  - Ensure that all elements of the process are open and responsive to scrutiny<sup>4</sup>.

The Sub-Panel was therefore frustrated at the unwillingness to provide access to information.

- 6.5 The Minister indicated his awareness of the decision to scrutinise this matter on 17th March 2011. A formal request for information was sent to the Treasury and Resources Department on 1st April 2011 and the Sub-Panel notes that some 2 weeks later, requests were still being made.
- 6.6 The response from the Department was to issue partial information only, claiming that there were Data Protection issues and citing advice that they had received from the Data Protection Commissioner. The Sub-Panel has therefore, had to rely on a "pot-pourri" of information, some provided by witnesses, some provided by Treasury.
- 6.7 The Data Protection issue was discussed with the Data Protection Commissioner who agreed (as did the Sub-Panel) that it was inappropriate for personal data to be provided to the Sub-Panel (for example candidates' CV's), but also stated that she was not concerned about general correspondence.
- 6.8 To ensure that what the Sub-Panel had asked for was not unreasonable, a further email was sent on the 8th April 2011, which had previously been agreed with the Data Protection Commissioner. The Sub-Panel made clear three points in particular:
1. *It does not appear that there is any reason to delay the release of any general documentation/correspondence relating to this matter where there is no personal data involved.*
  2. *Such items as question plans and score sheets (if they contain personal data such as names) will need to be redacted first to remove the personal data relating to candidates.*

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<sup>4</sup> P.73/2010 "Property and Infrastructure Regeneration: The States of Jersey Development Company Limited" lodged 7th June 2010, page 10

3. *The Sub-Panel agrees that specific items such as CV's, long/shortlists etc... should not be provided.*

- 6.9 The Sub-Panel received the response from the Treasury and Resources Department on 12th April 2011 which included five documents illustrating the interview questions for the Chairman and NED posts. The Department explained that *“to provide any further detail would, we feel, begin to lead towards identification of individuals”*. It also said *“.....at this point in time we are not proposing to begin work on redacting general emails and correspondence, due to the onerous resource implications involved. If the Sub-Panel can be significantly more specific in its request we will reconsider this approach.”*
- 6.10 The difficulty that the Sub-Panel has with this approach is that if the Sub-Panel is unaware of the existence of a particular letter or e-mail which might be relevant to its review, it is very difficult to see how it can know what it needs to ask for.
- 6.11 The Sub-Panel asked if it could view the hard copy folder relating to the process in a strictly private and confidential meeting. It also made clear that no copies of any documents would be made, as it agreed that the documents were of a private and sensitive nature. However, this request was also refused by the Treasury and Resources Department, citing advice from the Data Protection Commissioner.
- 6.12 The Sub-Panel was very grateful to the JAC, who allowed confidential access to the hard copy file in a private meeting on 6th May 2011. The Sub-Panel highlights that during the evidence-gathering stage and in particular, the private meeting to view the files, Commissioners of the JAC were very open and accommodating.
- 6.13 The Sub-Panel notes the political suspicion that surrounds WEB and the establishment of SoJDC, as evidenced during recent debates. The Sub-Panel therefore agrees that the approach towards unreasonable secrecy regarding SoJDC is unwise and liable to further compound such political suspicion.

KEY FINDING 1

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By not providing access to information such as general correspondence, the Treasury and Resources Department failed to engage with the Sub-Panel in an open and transparent process. It is therefore difficult to see how any conclusion can be reached other than the process referred to is not *“open and responsive to Scrutiny”*.

## 7. THE JERSEY APPOINTMENTS COMMISSION

7.1 To assist in understanding the process, the Sub-Panel has considered the structure of the JAC.

### **Background**

7.2 The JAC was established by an Act of the States in 2002 to “ensure that Senior Appointments to the Public Sector and to Autonomous and Quasi-Autonomous Public Bodies (Quangos) are properly made and to keep the appointments processes as a whole, under review”<sup>5</sup>. It was re-established in 2005 under new legislation<sup>6</sup>. Within the legislation, Articles 23 and 24 relate directly to the JAC which can be found in Appendix B.

7.3 The Commission’s constitution provides for a Chairman and not more than four other Commissioners. The membership is refreshed periodically, and presently comprises the following Commissioners:

- Mr Alan Merry (Chairman)
- Mr Julian Rogers
- Mr Ken Soar
- Mr Brian Curtis
- Mr James Morris

7.4 The JAC Annual report for 2009 shows that the JAC met formally on 4 occasions in 2009 (the minimum times prescribed by the Law)<sup>7</sup> and that Commissioners collectively spent 76 “duty days” on their duties. The Commissioners are paid a “daily rate” of approximately £340<sup>8</sup> and the JAC’s total costs including day-rate fees were £29,737<sup>9</sup>.

7.5 The JAC Commissioners appeared before the Sub-Panel on the 7th April 2011 and 12th May 2011.

### **Statutory**

7.6 Within the Employment of States of Jersey Employees (Jersey) Law 2005 (Article 24(3)) it stipulates that “...The Commission shall ensure that guidelines produced ... are available for viewing by any person....”

7.7 At the start of the review the Sub-Panel requested the various procedures and guidelines that were applicable to the process. During this stage it became evident that such documentation did not appear to be readily available to the wider public. The Sub-Panel also noted that the JAC was not identifiable through the “gov.je” website or elsewhere. Relevant documentation could not be found electronically on the internet, and hard copies were not present at the States Greffe Information Centre. The Sub-Panel noted however, that electronic copies of the documentation were available on the States internal network.

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<sup>5</sup> Jersey Appointments Commission – Annual Report 2009, page 4

<sup>6</sup> Employment of States of Jersey Employees (Jersey) Law 2005 – Part 4

<sup>7</sup> Employment of States of Jersey Employees (Jersey) Law 2005 – Article 21

<sup>8</sup> Public Hearing with Mr. K Soar and Mr J. Morris, Jersey Appointments Commission: 7th April 2011, page 13

<sup>9</sup> Jersey Appointments Commission – Annual Report 2009, page 7

KEY FINDING 2

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Relevant documentation including the procedures and guidelines for the JAC was not readily available to the wider public. Furthermore, little information could be found electronically on the internet and documents were not present at the States Greffe Information Centre. It therefore, appears that this is not in keeping with Article 24(3) Employment of States of Jersey Employees (Jersey) Law 2005.

RECOMMENDATION 1

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The Sub-Panel recommends that the JAC should have its own page linked to a States of Jersey website, which should provide electronic links to all relevant JAC documentation.

RECOMMENDATION 2

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A website would enable more up-to-date information about the JAC to be provided in a timely manner, including, for example, the recruitment roles in which it has been involved.

## 8. LINES OF COMMUNICATION

### *What is the relationship between the JAC and the States of Jersey?*

- 8.1 As previously noted the JAC is governed by the Employment of States of Jersey Employees (Jersey) Law 2005, however it appears that the JAC considers that there are some anomalies in respect of some matters connected with the Law:

**Deputy J.A.N. Le Fondré:**

*"Who do you report to?"*

**Mr. K. Soar:**

*"That is an interesting question. It is something which I hope the scrutiny will pick up on in terms of some of the things that have happened of late. I do not know. I do not think we really understand. The law says that we will go back to the S.E.B. (States Employment Board) with any issues that we may have. Nothing is really in there if we say ... how do we say, for instance, that the process that is being followed is unacceptable but they proceed with nominating the individual? We have no recourse except to say: "We withhold our signature." That, in itself, is perhaps not the best way of doing something. The best we can do is go to, I think, the S.E.B. and say to them: "Blow the whistle and say 'foul'." What happens from there on is beyond us."*

**Deputy J.A.N. Le Fondré:**

*"The only other place to go political, if it is an appointment, is going to the States, presumably."*

**Mr. K. Soar:**

*"Well, that is the problem because the whole remit of the Appointments Commission is to make sure that it is not political. If we have done all this work to make sure it is not political and all of a sudden it goes into being political, what is the point of having the Appointments Commission?"<sup>10</sup>*

- 8.2 If the JAC is not satisfied with the process of an appointment, it is obliged to submit a report to the States Employment Board (SEB). It is not clear from the Law that if the appointment continues, regardless of the concerns of the JAC, what further recourse is available to them.
- 8.3 It is worthwhile noting that Article 28(1) of the Law enables the States to direct the JAC *"(a) to prepare a report in relation to a matter specified in the direction within the period specified in the direction..."*<sup>11</sup> In that instance the resulting report must be delivered to the SEB. The Chief Minister is then obliged to present that report to the States within 30 days.
- 8.4 Therefore, whilst one reporting line has been clearly defined, another appears to have some gaps in it.

**KEY FINDING 3**

The Law does not provide clarity, for example, whereby the JAC may find itself in the position of having concerns over an appointments process, having reported it to the States Employment Board, but the appointment is then maintained and possibly even presented to the States.

<sup>10</sup> Public Hearing with Mr. K Soar and Mr J. Morris, Jersey Appointments Commission: 7th April 2011, page 11

<sup>11</sup> Employment of States of Jersey Employees (Jersey) Law 2005

### **Administrative resources**

- 8.5 The Sub-Panel established that the JAC has no office premises and no dedicated administration staff. Commissioners work from home (via e-mail), and receive secretarial support from the HR department of the States of Jersey. Indeed, a Senior HR Manager is Secretary to the JAC. The budget for the JAC forms part of the budget for the HR department, which is now part of Treasury and Resources. When questioned about whether a budget is allocated to a certain appointment, the JAC said:

*"No, we do not. It is a quite contentious issue and if you read the Chairman's report last year or the year before there is an Appointment Commission budget which is held by the H.R. Department, the central H.R. Department. It is a lined item in their budget. We have said that is inappropriate because it implies that we are in some way reporting to the H.R. Department. It is an administrative thing that is in there but we have been at some pains to point out that is not the case and we would like that taken out and put into a separate budget so it does not look like that."<sup>12</sup>*

- 8.6 The JAC is careful to protect its independence and ideally aims to avoid being caught up in political matters. However, it appears that the interconnection with HR, whilst understandable, should be refined.
- 8.7 As identified later in this report, certain administrative issues did arise however, these were not the responsibility of the JAC. The question that arises is whether individuals (including States Members) in perceiving such administrative errors, attributed any of these to the JAC, due to its relationship with HR.

#### **KEY FINDING 4**

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The relationship between the JAC and the States of Jersey is unclear. The JAC's budget falls under the States Human Resources (HR) Department. However, this implies that the JAC report to the HR Department, which is incorrect.

#### **RECOMMENDATION 3**

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The Chief Minister or the States Employment Board must review the relationship between the JAC and States of Jersey to provide clarification with regards to Key Findings 3 and 4.

### **Role of Commissioners of JAC**

- 8.8 Part of the role of the Commissioners is to oversee the process to ensure its integrity and independence and accordingly to chair<sup>13</sup> meetings that are part of the decision making process. Three Commissioners were involved in various parts of the process and also with different Panels on different days:

*"our whole remit throughout is to stop political interference, which you might say is a bit of a challenge ... and I have to say, quite categorically, we were very, very successful"<sup>14</sup>*

- 8.9 However, it became evident during the review, that meetings or interview panels were not always chaired by the relevant Commissioner, for example:

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<sup>12</sup> Public Hearing with Mr. K Soar and Mr J. Morris, Jersey Appointments Commission: 7th April 2011, page 48

<sup>13</sup> Public Hearing with Mr. K Soar and Mr J. Morris, Jersey Appointments Commission: 7th April 2011, page 4

<sup>14</sup> Public Hearing with Mr. K Soar and Mr J. Morris, Jersey Appointments Commission: 7th April 2011, page 20

- At a meeting on the 17th January 2011 the meeting was chaired by the Chief Minister.
- For the NED process, the Recruitment Panel was chaired by Baroness Ford<sup>15</sup> for the interviews held on the 28th February 2011.

The Sub-Panel note that these meetings were not all chaired by the JAC. Whilst the Sub-Panel accepts that the JAC always chairs the decision making aspects of the process<sup>16</sup>, the use of other chairs in other parts of the process may give rise to misperception.

8.10 In addition, due to the change in date that occurred for the second day of interviews for NEDs (28th February 2011) the JAC representative changed from being Mr K. Soar to Mr J. Morris. Mr Morris took over from Baroness Ford, as Chair, to discuss the candidates in the meeting immediately after the interviews.

#### KEY FINDING 5

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Some meetings and interviews were not chaired by representatives of the JAC, which could have lead to a negative perception as to the independence of the process.

#### RECOMMENDATION 4

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The JAC should consider chairing every part of the process, to ensure that their independence is preserved and that there is no risk of a perception that it might have been compromised.

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<sup>15</sup> Public Hearing with the Minister for Treasury and Resources, Member of the Recruitment Panel: 10th May 2011, page 18

<sup>16</sup> As per comments received from the Jersey Appointments Commission, 27th May 2011

## 9. ADMINISTRATIVE SUPPORT SUPPLIED BY STATES OF JERSEY DEPARTMENTS

### *Advertising*

- 9.1 On the 19th November 2010 the recruitment consultant “Odgers Berndtson” was appointed and a briefing was held on the 25th November 2010 with Odgers Berndtson and the Recruitment Panel.
- 9.2 An advert appeared in the Jersey Evening Post (JEP) on the 9th December 2010 and the Sub-Panel was also informed that it appeared on the Odgers Berndtson website on 10th December 2010.
- 9.3 At a meeting on the 17th January 2011, concerns were expressed by some political Members of TAP that there were too few local candidates to be interviewed for the position of the NEDs. Accordingly the advert was re-run in the JEP on 27th January 2011 and on the Odgers Berndtson website from 31st January 2011. Both adverts can be found in Appendix C.
- 9.4 It is noted that Odgers Berndtson developed the advert; it was approved by the Recruitment Panel, and submitted by the Human Resources Department to the JEP.
- 9.5 During the advertising stage of the process, the Human Resources Department submitted the advert to the JEP before Odgers Berndtson was sufficiently prepared<sup>17</sup>. The adverts can be found in Appendix C which clearly state: “*Please reply in confidence, with full career and current salary details at [www.odgers.com/34274](http://www.odgers.com/34274) for the Chair role, or [www.odgers.com/34275](http://www.odgers.com/34275) for the NED role.*”
- 9.6 The JAC explained that Odgers Berndtson had not got their software in place nor their teams ready to receive phone calls. An individual, who was interested in the posts, tried to contact Odgers Berndtson and “*effectively was not handled very well by Odgers. That was highlighted, it was dealt with, we have gone back to the individual, Odgers themselves have gone back to the individual and explained.*”<sup>18</sup> This issue was also raised with the Sub-Panel during the course of the review from other sources.
- 9.7 It is, therefore, understandable that the JAC received a complaint from the individual about this issue. In this instance, there was a lack of communication between the States Human Resources Department and Odgers Berndtson.

### KEY FINDING 6

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During the advertising stage of the process, an advert was submitted to the Jersey Evening Post by the States Human Resources (HR) Department before the recruitment consultant “Odgers Berndtson” was sufficiently prepared. This resulted in a failure to provide individuals interested in the Chairman and NED posts with the appropriate information and also resulted in a formal complaint being made. Although a relatively minor error, the Sub-Panel is of the view that this was unprofessional.

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<sup>17</sup> Public Hearing with Mr. K Soar and Mr J. Morris, Jersey Appointments Commission: 7th April 2011, page 45

<sup>18</sup> Public Hearing with Mr. K Soar and Mr J. Morris, Jersey Appointments Commission: 7th April 2011, page 47

### **Extent of advertising**

- 9.8 The only advertising that was carried out in the UK was on the Odgers Berndtson website. Locally, an advert was placed twice in the JEP:

**Chief Executive:**

*"We discussed at the outset the appropriate method, but in discussion with Odgers Berndtson, and relying on [the Assistant Director of HR] and the H.R. team decided that there was nothing to be gained by going for national adverts in the U.K."*

**Deputy J.A.N. Le Fondré:**

*"Right, and whose kind of decision was that in the end?"*

**Chief Executive:**

*"That was ... it was the recruitment panel when we first met. We agreed that. But if I am very clear, it was a recommendation that I made to them and I supported".<sup>19</sup>*

- 9.9 It is a matter of judgement whether the advert should have been placed in a national newspaper in the interest of transparency.

### **Provision of documentation**

- 9.10 The first meeting of the TAP was held on the 17th January 2011. Paperwork for that meeting was supplied at unacceptably short notice to Members of the Panel.<sup>20</sup>

Senator Ferguson explained that the lack of information before that meeting was raised by some Members of the TAP: *"There certainly was not any paperwork supplied to us before the meeting and this was a bone of contention which was raised at the meeting."*<sup>21</sup>

When asked whether this complaint had been followed up, the Sub-Panel heard that this was subsequently improved upon.

- 9.11 The Sub-Panel also note that whilst it has been provided with meeting notes regarding the discussions held on 17th January 2011, these do not appear to have been provided to any of the non-ministerial Members of the TAP.

### **Terms of Reference**

- 9.12 Members of the TAP were not supplied with any written Terms of Reference:

*"It would have been good to have had the terms of reference set out more clearly so that everybody knew what we were meant to be doing and with what effect, or to what effect. I think this is the big lesson to learn..."<sup>22</sup>*

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<sup>19</sup> Public Hearing with the Minister for Treasury and Resources, Member of the Recruitment Panel: 10th May 2011, page 86

<sup>20</sup> A full timeline of the process can be found in Appendix D

<sup>21</sup> Public Hearing with Senator Ferguson, Member of the Technical Panel: 31st March 2011, page 14

<sup>22</sup> Public Hearing with Senator Ferguson, Member of the Technical Panel: 31st March 2011, page 50

KEY FINDING 7

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It is not appropriate that any persons (in this case States Members) who have been asked to participate in a recruitment process for an important position are not given the requisite paperwork (and/or Terms of Reference) sufficiently in advance of meetings. This is not only unprofessional, it is also unacceptable as it does not allow such persons to be adequately prepared for such meetings.

***Scheduling of Interviews***

- 9.13 The dates for the interviews for the NEDs were originally scheduled to take place on the 21st and 22nd February 2011. Members of the TAP were notified of this on the 25th January 2011 (approximately 18 working days).

However, on Thursday 17th February 2011, the second interview day was cancelled due to half-term holidays which had prevented two candidates from attending. The Sub-Panel is concerned as to why half-term dates had not previously been identified in the planning process.

- 9.14 The Sub-Panel noted that Members of the TAP were given very short notice of the reschedule, as they were notified on Wednesday 23rd February 2011 (approximately 2 working days) that the second date for interviews was going to be on Monday 28th February 2011. Only two States Members of the TAP were able to attend. The Commissioner leading the process on the Recruitment Panel was also unable to attend, and was replaced by another Commissioner<sup>23</sup>.

KEY FINDING 8

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The Sub-Panel consider it unacceptable to give any persons (in this case States Members) short notice of very important meetings, such as those relating to this particular recruitment process.

***Timetabling of Interviews***

- 9.15 The Sub-Panel noted that the timetabling of interviews for NEDs was inconsistent as not all candidates visited each Panel in the same order. The Sub-Panel question whether this could have impacted on the performance or have given an advantage to any particular candidate. It is noted, however, that the JAC was completely satisfied that the process was not unfair to any candidate.

KEY FINDING 9

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The timetabling of interviews was inconsistent for the NED candidates.

RECOMMENDATION 5

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When different interview panels are involved, interviews must be scheduled in such a manner that candidates are interviewed by those Panels in the same order.

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<sup>23</sup> Public Hearing with Mr. K Soar and Mr J. Morris, Jersey Appointments Commission: 7th April 2011, page 28

### **Candidate Brief**

- 9.16 The Candidate Brief (dated December 2010) was written by Odgers Berndtson. The Brief was then reviewed and agreed by the Recruitment Panel before being signed off by States of Jersey Officers.
- 9.17 Within the Candidate Brief (which was circulated to the candidates and States Members), it states: *“There will be a single panel interview for the NEDs and it is anticipated that the newly selected Chair should be in attendance”*.<sup>24</sup> The Sub-Panel noted that there were in fact two Panel interviews, one carried out by the Recruitment Panel and the other carried out by the TAP.

#### KEY FINDING 10

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The Sub-Panel found that the Candidate Brief was inconsistent with the actual interview process.

### **Shortlisting**

- 9.18 The applicants were “sifted”<sup>25</sup> by Odgers Berndtson, which was then shared with the Recruitment Panel and consensus was achieved on who should and should not be interviewed. The TAP was not involved with the shortlisting process. The Sub-Panel received an “Implementation Plan” document dated 12th November 2010. Within the plan, it provides a detailed breakdown, and clearly states under heading “Recruitment Process for Chairman and Directors” that the shortlist for Chairman and NEDs would be signed off by the Recruitment Panel and the TAP. Consequently evidence suggests that originally, the TAP was envisaged to sign off the shortlist, along with the Recruitment Panel.

It is clear from our Public Hearings that Members of TAP would have liked to have been involved in the shortlisting process:

*“Now, if I have any complaint at all about the process, it was that I felt that we should have been shown the long list as opposed to the shortlist because I had my own opinions regards the balance of the board in that I considered it would be better to have a majority of local people on the board”*.<sup>26</sup>

- 9.19 Despite a meeting on the 17th January 2011 which purportedly explained the context of the TAP and its role in the recruitment process, there was a further exchange of emails between Members regarding shortlisting. It was only on the 25th January 2011 (a day after shortlisting for the Chairman) that an email from the Chairman of the JAC more fully clarified the roles of the respective interview Panels.

#### KEY FINDING 11

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Members of the TAP had reason to believe that they would be involved in the shortlisting and in “signing off” the candidates for NEDs and Chairman.

- 9.20 The Sub-Panel note that Baroness Ford had not been formally appointed by the States but regardless of this took part in the shortlisting and final selection process through chairing the

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<sup>24</sup> Candidate Brief, Odgers Berndtson, December 2010, page 11

<sup>25</sup> As referred to in correspondence received from Odgers Berndtson dated 16th May 2011

<sup>26</sup> Public Hearing with Connétable Murphy, Member of the Transition Advisory Panel (Chairman): 6th April 2011, page 5

interviews for NEDs. This was demonstrated in the following correspondence received from Odgers Berndston:

*“The selection of NED candidates followed a slightly different process, agreed by the Panel and the Appointments Commissioner. Due to time constraints and the desire for the newly appointed Chair to be involved in the selection process (an entirely appropriate use of the new Chair’s skill and expertise), Odgers Berndtson met with [the Chair designate] to put forward recommendations on candidates for final panel interview. These recommendations were circulated to the rest of the Panel for discussion. The Panel, again through consensus, made a collective decision as to the candidates to be invited for final panel interview, in fact accepting the recommendations provided by Odgers Berndtson and [the Chair designate].”*

#### KEY FINDING 12

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As it is noted elsewhere, Baroness Ford firstly took part in the shortlisting process for NEDs and in addition, chaired the second Recruitment Panel interview. The Sub-Panel considers that the States Assembly should have been given the opportunity to approve the successful candidate as Chairman before allowing that individual to engage in the shortlisting process for NEDs.

#### **Interview questions**

9.21 Although it was the plan to forewarn all candidates that they would be required to give a 5 minute presentation to the TAP at the beginning of their interview, two candidates, one for Chairman and one for NED<sup>27</sup>, were not forewarned.

When questioned about this issue, the JAC said: *“but the calibre of the individuals was so good that they just launched straight into it and delivered a good response.”*<sup>28</sup> The Assistant Director of Human Resources was also questioned regarding this issue and said: *“For some reason, I had completely neglected to tell her on the day that this is what she was going to be asked and she was the successful candidate, notwithstanding.”*<sup>29</sup>

Whilst accepting the remarks made by the JAC and the Assistant Director of Human Resources, the Sub-Panel are of the view that this must have appeared unprofessional to the candidates who were not informed, as well as to the Members of the TAP.

#### KEY FINDING 13

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The Sub-Panel highlights the administrative failure to notify two interviewees of the requirement to give a 5 minute presentation to the TAP. This was unprofessional and could have placed those candidates at an unfair disadvantage.

#### **Handling of data at the end of the process**

9.22 During the Public Hearings, the Sub-Panel became increasingly concerned about the way personal information on the candidates had been treated. Members of both the Technical and Transitional Panels had been able to arrive in Hearings with files with information on candidates and curricula vitae (CVs).

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<sup>27</sup> Public Hearing with Mr J. Rogers, Jersey Appointments Commission: 12th May 2011, page 17

<sup>28</sup> Public Hearing with Mr. K Soar and Mr J. Morris, Jersey Appointments Commission: 7th April 2011, page 30

<sup>29</sup> Public Hearing with the Minister for Treasury and Resources, Member of the Recruitment Panel: 10th May 2011, page 75

9.23 At a Public Hearing with a Member of the Technical Panel, it became apparent that information about candidates had been sent from the Chief Minister's Department.<sup>30</sup> After further questioning it was confirmed that the paperwork was not collected once the process had concluded:

**Senator J.L. Perchard:**

*"Did they ask for the paperwork back?"*

**Mr. M. Waddington:**

*"No, no"<sup>31</sup>*

The Sub-Panel questioned the JAC regarding this matter and heard that Members of the Panels were told whether documents were confidential, and that they were to dispose of them. The JAC also confirmed that they did not collect all the information from them as it presumed that Members would be "*conscious of the laws*".<sup>32</sup>

The issue was again raised at the Public Hearing with the Minister for Treasury and Resources, in which the Chief Executive replied:

*"Yes, but I think [Assistant Director, Human Resources] makes the point that it is incumbent on the individuals to not mistreat that information and to destroy it at the appropriate time. Now, I have to say the decision to appoint had not been made. You have demonstrated through the Scrutiny process that people would be called back and it does seem appropriate that people have held that information for that purpose. I have no evidence that anyone has mistreated any of that information and it has not been used inappropriately".<sup>33</sup>*

9.24 The Sub-Panel respectfully point out that, whilst disposing of personal information might be viewed as obvious, checks and balances must be in place to ensure that there would not be any risk in personal information being divulged. Furthermore, during a Public Hearing with a Commissioner of the JAC, the Sub-Panel explained that Members of the Panels had, on occasion, received information electronically rather than in hard copy:

**Senator A. Breckon:**

*"So are you telling us that they would not have received any information on candidates on email?"*

**Mr. J. Rogers:**

*"I cannot think why they should have. Did they?"*

[.....]

**Mr. J. Rogers:**

*"But not personal details about the candidates, surely?"*

[.....]

**Senator J.L. Perchard:**

*"Is that poor practice?"*

[.....]

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<sup>30</sup> Public Hearing with Mr M. Waddington, Member of the Technical panel: 10th May 2011, page 19

<sup>31</sup> Public Hearing with Mr M. Waddington, Member of the Technical panel: 10th May 2011, page 20

<sup>32</sup> Public Hearing with Mr. K Soar and Mr J. Morris, Jersey Appointments Commission: 7th April 2011, page 40

<sup>33</sup> Public Hearing with the Minister for Treasury and Resources, Member of the Recruitment Panel: 10th May 2011, page 88

**Mr. J. Rogers:**

*"Well, I would not have thought it would be normal".<sup>34</sup>*

9.25 The Sub-Panel highlights the inconsistency with how the personal information was distributed, handled by Members, and the failure to collect the information back at the conclusion of the process.

KEY FINDING 14

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Personal data was not properly controlled at the end of the process.

RECOMMENDATION 6

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Given the increasing use of internet based processes, protocols are required for the distribution, use and destruction of personal details and other relevant material. Where personal data is provided in hard copy to interviewers, it should be formally retrieved at the end of every recruitment process.

KEY FINDING 15

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The Sub-Panel has found that there were some shortcomings with regards to the administration concerning the wider process. The Sub-Panel stresses that these do not appear to have been the responsibility of the JAC, but originated from either the Human Resources Department or the Chief Minister's Department.

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<sup>34</sup> Public Hearing with Mr J. Rogers, Jersey Appointments Commission: 12th May 2011, page 74

## 10. THE TRANSITION ADVISORY PANEL

### **Background**

10.1 The formation of the Transition Advisory Panel (TAP) originated during the debate on P.73/2010. The Minister for Treasury and Resources welcomed working with States Members to progress the SoJDC matter further:

*“...I am more than willing to set up a W.E.B. to S.O.J.D.C. Transfer Working Group in order to work with me in dealing with all the issues that I am going to have to deal with in the next few months in order that S.O.J.D.C can commence in the manner in which Members want, and so that is an ongoing piece of work that needs to happen. I would welcome the involvement of members of the Scrutiny Panel and, indeed, maybe another non-executive member in that so that we can get S.O.J.D.C. on to that right footing...”<sup>35</sup>*

The Sub-Panel understands that this is what eventually led to the creation of the TAP which comprised certain States Members being involved in part of the selection process of the proposed Chairman and NEDs.

### **The actual role**

10.2 The purpose of TAP, as explained to the Sub-Panel, was two fold:

1. To work subordinate to the main Recruitment Panel and form a separate opinion on the candidates. The reason for a Panel made up entirely of States Members was “to see [...] how the individuals can react in a political environment.”<sup>36</sup> Members of TAP were there as a subsidiary<sup>37</sup> panel to advise the Recruitment Panel whose role was to make the final selection. Furthermore, the TAP’s role was to form an opinion, score it, discuss it with the Chairman, and then engage with the Recruitment Panel to deliver their views<sup>38</sup>. The Minister for Treasury and Resources said “....they had a specific remit and a remit of focus and of real use to the overall recruitment panel.”<sup>39</sup>
2. A secondary purpose was also to enable the candidates themselves to have an opportunity to question States Members: “I certainly made it clear that I expected this to be used by the candidates as an opportunity to question them.”<sup>40</sup>

#### KEY FINDING 16

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The purpose of the TAP was not only to see how candidates would react in a political environment, but also to give candidates the opportunity to question States Members. Provided it was clearly defined, the Sub-Panel concurs that this was a worthwhile approach. However, it is paramount that the way in which results of such a Panel are fed into and discussed with the main Recruitment Panel is clear from the outset.

<sup>35</sup> Minister for Treasury and Resources: Debate on P.73/2010 “Infrastructure and Regeneration Limited: the States of Jersey Development Company Limited” (October 2010) extract 1.1.11

<sup>36</sup> Public Hearing with Mr. K Soar and Mr J. Morris, Jersey Appointments Commission: 7th April 2011, page 17

<sup>37</sup> Public Hearing with Mr. K Soar and Mr J. Morris, Jersey Appointments Commission: 7th April 2011, page 32

<sup>38</sup> Public Hearing with Mr. K Soar and Mr J. Morris, Jersey Appointments Commission: 7th April 2011, page 32

<sup>39</sup> Public Hearing with the Minister for Treasury and Resources, Member of the Recruitment Panel: 10th May 2011, page 14

<sup>40</sup> Public Hearing with Mr J. Rogers, Jersey Appointments Commission: 12th May 2011, page 74

RECOMMENDATION 7

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The way in which the results of an advisory Panel are fed into and discussed with a main Recruitment Panel must be clearly defined from the outset.

***The perceived role***

- 10.3 From exchanges of email that occurred after the shortlisting day (for Chairman) it is clear that the Members of the TAP thought their role was wider than was actually the case and that they were an integral part of the recruitment process, rather than advisory.

**Chief Executive:**

*"In terms of this I cannot speak obviously for the panel but I can say that at the first meeting it was very clear that the panel were not clear about their role."<sup>41</sup>*

***What grounds were there for confusion?***

**Documentation**

- 10.4 As previously noted, there were inconsistencies with how the TAP was defined in documentation provided to States Members.

In an invitation letter, dated 15th December 2010, the Chief Minister referred to the proposal to establish a transition group of States Members to assist with the implementation of SoJDC and invited them to become a Member of the TAP which would *"provide support to the appointments process and be consulted on matters related to the transition"*.

This is consistent with actions agreed at a Recruitment Panel meeting on the 25th November 2010, whereby the TAP would only be involved in interviews for Chairman and not NEDs. This would explain the apparent inconsistency in the Candidate Brief referred to in paragraph 9.17.

This is however, inconsistent with how the role of the TAP was explained to the Sub-Panel:

**Deputy J.A.N. Le Fondré:**

*".....when was it decided that the T.A.P. would be involved with the N.E.D.s?"*

**Chief Executive:**

*"It had been from the outset"<sup>42</sup>.*

KEY FINDING 17

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There were inconsistencies between how the role of the TAP was defined in documentation, and what was provided to States Members regarding the interviews for the NEDs.

**Scoring**

- 10.5 The Sub-Panel remains unclear as to what briefing the TAP was given in respect of the purpose of their scoring. It has been explained that the Recruitment Panel used a scoring system

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<sup>41</sup> Public Hearing with the Minister for Treasury and Resources, Member of the Recruitment Panel: 10th May 2011, page 8

<sup>42</sup> Public Hearing with the Minister for Treasury and Resources, Member of the Recruitment Panel: 10th May 2011, page 19

whereby candidates were marked out of 5 on each of a number of questions that were put to them. The Technical Panel and the TAP used a similar system. However, in this instance the precise scores were less critical as they were used to arrive at a ranking of interviewees by each Panel which was then passed on to the Recruitment Panel:

*“.....what the main panel is looking for from a subsidiary panel is more a ranking than necessarily a score. I think it is right to score panels, I am in favour of it, not everybody is, but they will want confirmation that a subsidiary panel, even though it is not interviewing the candidate for the job, has come to roughly the same conclusion...”<sup>43</sup>*

It is however unclear how well this was understood by the TAP: *“...I do not know what happened to our summaries and how they were used.”<sup>44</sup>*

10.6 The scores of the first interview day were passed onto the JAC Commissioners assisting with the Recruitment Panel on 23rd February 2011<sup>45</sup>. A Commissioner of the JAC confirmed that the scores should have all been passed on together at the end of the interview process<sup>46</sup>. He also confirmed that the Recruitment Panel was aware who had scored high on the first day.

The Sub-Panel believe that an inconsistent approach was being applied. The results of the interviews conducted on the first day should have been received at the end of the second day of interviews, once all candidates had been interviewed.

10.7 Despite the earlier comments by the Chief Executive, there were still some question marks in the minds of some Members of the TAP at the very end of the process. Senator Ferguson explained that she felt the TAP had not been *part* of the selection<sup>47</sup>. She also said, when questioned about the “weighting” the Recruitment Panel gave the TAP, *“I do not really know why we were there, frankly”<sup>48</sup>*.

KEY FINDING 18

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The role of the TAP, as envisaged by the JAC and the Recruitment Panel, was clearly that of a subsidiary Panel offering a political perspective on candidates and also answering questions from the candidates on political issues.

KEY FINDING 19

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The results of the TAP process were then to form a part of the deliberation of the Recruitment Panel in arriving at its decision.

KEY FINDING 20

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It is clear that there were a number of factors which were not properly understood which could have given rise to the initial misinterpretation by TAP Members that their role was somewhat wider.

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<sup>43</sup> Public Hearing with Mr J. Rogers, Jersey Appointments Commission: 12th May 2011, page 14

<sup>44</sup> Public Hearing with Senator Ferguson, Member of the Technical Panel: 31st March 2011, page 66

<sup>45</sup> As explained in an email from Mr J. Rogers, Jersey Appointments Commission, 17th May 2011

<sup>46</sup> Public Hearing with Mr J. Rogers, Jersey Appointments Commission: 12th May 2011, page 44

<sup>47</sup> Public Hearing with Senator Ferguson, Member of the Technical Panel: 31st March 2011, page 71

<sup>48</sup> Public Hearing with Senator Ferguson, Member of the Technical Panel: 31st March 2011, page 46

## 11. STATES MEMBERS CONDUCT

### *Attendance at Meetings/Interviews*

11.1 The Sub-Panel noted that attendance by States Members on the TAP as well as the Commissioner from the JAC was not consistent. For example, during the interviews for the NEDs, only Senator Ferguson was present consistently from the TAP. For the interviews by the Recruitment Panel for the second group of NED applicants, the Commissioners of the JAC changed from Mr Soar to Mr Morris. Whilst the Sub-Panel recognises that all of this was unfortunate, it also accepts that this was due to unforeseen circumstances and short notice of scheduling.

### *Information*

11.2 It is noted that during the debate, the Deputy of St. John maintained that he would only give evidence in confidence: *"I will give evidence in confidence in a Scrutiny Panel but I am not going to go further into it unless it is an in camera debate"*.<sup>49</sup>

The Sub-Panel was clearly of the view that it was not possible to set the terms in which witnesses give evidence to a Scrutiny Panel. In order for Scrutiny to maintain its openness and transparency, an invitation was sent to the Deputy of St John on the 1st April 2011, inviting him to give evidence in a Public Hearing, with the opportunity to go into private session at the end. Unfortunately, the Deputy declined the invitation of a Public Hearing, and agreed only to an all Private Hearing.

11.3 The issue of a Public/Private or all Private Hearing caused a divide within the Sub-Panel, but it was eventually agreed that the Deputy of St. John would meet the Chairman of the Sub-Panel only, for a private meeting to air his views. This took place on 13th April 2011. The Deputy of St. John also provided, in confidence, some documents to the Sub-Panel.

11.4 As the Deputy of St John refused to give evidence in a Public Hearing, the Sub-Panel were obliged to rely upon the statements made by the Deputy during the debate which are in the public domain in conjunction with the confidential information received and it proceeded with its investigations on that basis.

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<sup>49</sup> Hansard from P.32/2011 debate (17th March 2011) reference 4.1.1

## 12. CONFLICTS OF INTEREST

12.1 The Sub-Panel notes that within the JAC's Code of Practice for appointments to autonomous and quasi-autonomous public bodies and tribunals, it is a requirement that candidates are fully aware of the standards of probity required of public appointees and questions of conflict of interest have been explained to, and explored with, the applicant.<sup>50</sup>

12.2 During the Public Hearing with the JAC, the Sub-Panel heard *"We were quite clear from the beginning that any conflict of interest had to be declared. There was no declaration of conflicts of interest."*<sup>51</sup> As a minor point, this then became unclear further on in the hearing:

**Senator J.L. Perchard:**

*"Just to reiterate something that you implied. I am not sure if you confirmed it, Ken, did you ask, or were all the political representatives on the Transitional Advisory Panel, asked categorically if they were conflicted in any way when interviewing any of these candidates?"*

**Mr. K. Soar:**

*"It is a good question and I would have to say I probably do not think we asked that question specifically. I think we would have just expected people of this calibre to understand that if you are conflicted you say so."*

**Deputy J.A.N. Le Fondré:**

*"That would apply to all of the panels."*

**Mr. K. Soar:**

*"Absolutely. I declared a conflict at one stage through it as well. So, there were examples of conflicts being declared. I mean, I did one. It is back to the Janet and John, is it not? I would expect people of that calibre to be able to understand it."<sup>52</sup>*

12.3 For the avoidance of doubt the only conflicts of interest being referred to were in respect of interviewers knowing, in some shape or form, applicants. A number of Members of Panels declared an interest in knowing individuals to varying degrees. Declarations of interests made included the Chief Executive, Mr K. Soar (JAC), Senator Ferguson and the Minister for Treasury and Resources.

12.4 In a separate Public Hearing, the JAC commissioner who chaired the TAP was asked whether any of the Members of the TAP had declared whether they knew any of the candidates. The Sub-Panel heard: *"Yes, they did, and I am glad you asked that question, because Ken Soar obviously did not see out panel members and did not know...."*<sup>53</sup>

### KEY FINDING 21

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It was unclear from the documentation the Sub-Panel received whether there was a formal list of declarations of conflicts of interest.

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<sup>50</sup> Jersey Appointments Commission, Code of Practice for Appointments to Autonomous and Quasi-Autonomous Public Bodies and Tribunals, page 15

<sup>51</sup> Public Hearing with Mr. K Soar and Mr J. Morris, Jersey Appointments Commission: 7th April 2011, page 21

<sup>52</sup> Public Hearing with Mr. K Soar and Mr J. Morris, Jersey Appointments Commission: 7th April 2011, pages 30 and 31

<sup>53</sup> Public Hearing with Mr. Rogers, Jersey Appointments Commission: 12th May 2011, page 33

KEY FINDING 22

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It appears that declarations of conflict were known about by the individual Panels to which they were made, but not to any other Panels involved in the selection. Therefore, this could give rise to the perception (to any party interested in the process) that such issues were not properly dealt with, when in fact they had been.

RECOMMENDATION 8

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The method for declaring conflicts of interests should be reviewed in order for absolute clarity and transparency. This would ensure that the integrity of the independence of the process is maintained.

RECOMMENDATION 9

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A comprehensive list or register of declarations of conflicts of interest must be maintained (or a statement to the negative) for each recruitment process.

RECOMMENDATION 10

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A list of declarations of conflicts of interest should be circulated to all recruitment personnel (including States Members) involved in the process, and in advance of any interviews.

## 13. TECHNICAL PANEL

- 13.1 The Sub-Panel held a Public Hearing with a representative of the Technical Panel, which was involved in the process concerning the Chairman. The role of the Technical Panel was to test the technical competence of the candidates, all of whom were described as very capable.
- 13.2 Ultimately the Technical Panel had to rank the candidates they interviewed, and it emerged that its preferred candidate was not the one who was ultimately selected by the Recruitment Panel (and who was then proposed to the States).

**Deputy J.A.N. Le Fondré:**

*"...your preferred candidate was ruled out I think you said on a recruitment technicality."*

**Mr. M. Waddington:**

*"Yes.....There was no discussion other than he had been discounted and that was that. I assume there was some filter that was operating outside of our understanding that had meant that was the case."<sup>54</sup>*

- 13.3 When asked what the view of the Technical Panel had been in considering candidates for Chairman, the response was as follows:

**Mr. M. Waddington:**

*"...I suppose we all asked ourselves was, is Jersey the right environment to have somebody come in, in a slightly confrontational way and say: "Right, we are starting again", or is it more an environment where you need a chairman that accepts that there may be differences of opinions but prepared to work in a more collaborative way.*

*[...]*

*Ultimately our opinion was a collaborative approach was better.... particularly, I think when you look at the slightly bumpy history W.E.B. has had, one can see that it might be perhaps more constructive to have somebody that could be a bit more of a moderator....*

*[...]*

*.....essentially take it on board as opposed to want to sort of tear it up and start from scratch."*

**Deputy J.A.N. Le Fondré:**

*"You have used that expression a couple of times. Was that effectively what one of the candidates was saying, was it?"*

**Mr. M. Waddington:**

*"That was a direct quote virtually, yes."<sup>55</sup>*

This was later raised with the Minister for Treasury and Resources who considered that it had been made very clear that SoJDC did not have planning powers:

*"All candidates that were interviewed were well challenged on their views of what S.o.J.D.C. was going to do and what it was not going to do. Some candidates had different interpretations; of course that is natural. Some candidates interviewed us in terms of what we thought were the responsibilities of S.o.J.D.C, Baroness Ford being pretty well in that league, if I may say. She wanted a very clear understanding of what the remit of S.o.J.D.C. was, whether or not there was any sense that it was a docklands agency on the spectrum of regeneration bodies, which of course it is not. It does not have planning powers. We discussed the importance of master planning, where the responsibility of master planning*

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<sup>54</sup> Public Hearing with Mr M. Waddington, Member of the Technical Panel: 10th May 2011, page 6

<sup>55</sup> Public Hearing with Mr M. Waddington, Member of the Technical Panel: 10th May 2011, page 8

*was, clearly a planning issue but obviously an engaging issue for the development agency.*<sup>56</sup>

KEY FINDING 23

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All of the shortlisted candidates were considered, by those involved in the interview process, to have made significant achievements in their previous roles.

KEY FINDING 24

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As a result of questions by the interview panels, some candidates raised the issue of where master planning and planning powers should sit.

KEY FINDING 25

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The Recruitment Panel Members were of the view that it was made very clear to candidates that it was not envisaged that SoJDC would possess planning powers.

KEY FINDING 26

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The preferred candidate of the Technical Panel was considered by them to be likely to “work in a more collaborative way”, but was not the candidate ultimately recommended for approval by the States.

13.4 One of the points that emerged during the Public Hearing with Mr Waddington was the fact that the inclusion of the Head of Planning as part of the Technical Panel arose as the result of a suggestion of Mr Waddington during one of the pre-planning meetings. Mr Scate was subsequently asked to join the interview process on Monday 31st January 2011, some 4 working days before the interviews.

This seemed to be a very worthwhile suggestion, and the Sub-Panel questions why this was not identified previously, given that the intention of the Technical Panel was to test the technical competencies of candidates.

KEY FINDING 27

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The initial proposed composition of the Technical Panel did not originally include a senior member of the Planning Department, and this was only revised 4 working days before the interviews for the Chairman.

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<sup>56</sup> Public Hearing with the Minister for Treasury and Resources, Member of the Recruitment Panel: 10th May 2011, page 15

## 14. CONCLUSION

Whilst we are satisfied that members of the Jersey Appointments Commission acted with the integrity and professionalism that one would expect of their role, we cannot ignore the fact that there were shortcomings in the process and in the expectations held by States Members concerning their roles. It must also be highlighted that the administrative failures identified in this report, were the responsibility of the States Human Resources Department/Chief Minister's Department and not the Jersey Appointments Commission.

Some Members of the Transition Advisory Panel were unavailable to attend meetings and interviews on a number of occasions. Consequently, whilst they initially understood their role to be advisory, they were not fully aware their role was *purely* advisory and to "meet" the candidates only. It is therefore understandable why some Members of the Transition Advisory Panel felt aggrieved about the process and the way in which their feedback was dealt with by the Recruitment Panel. If written Terms of Reference had been made available, this would have ensured that roles were not misinterpreted.

Whilst there is no evidence to indicate any significant matters that might indicate any bias towards any individual candidate, it must remain very clear that we have not received all of the information or explanations we have requested.

The Sub-Panel was therefore unable to conclude on this matter because the Treasury and Resources Department did not provide comprehensive information and because the Deputy of St John was not prepared to give evidence in public.

## 15. METHODOLOGY AND EVIDENCE CONSIDERED

The following documents are available to read on the Scrutiny website ([www.scrutiny.gov.je](http://www.scrutiny.gov.je)). Those received under a confidential agreement will not be uploaded.

### **Documents**

- Hansard – debate on P.73/2010 “Infrastructure and Regeneration: The States of Jersey Development Company Limited” (October 2010)
- P.73/2010 “Property and Infrastructure Regeneration: The States of Jersey Development Company Limited” lodged 7th June 2010
- “Review into the Proposed Establishment of the Jersey Enterprise Board” (S.R.9/2010) June 2008
- “Waterfront Enterprise Board” (S.R.1/2009) March 2009
- Candidate Brief, Odgers Berndtson (December 2010)
- Jersey Appointment Commission – Annual Report 2009
- Employment of States of Jersey Employees (Jersey) Law 2005
- Human Resources Policy Manual
- Hansard – debate on P.32/2011 “States of Jersey Development Company Limited: Appointment of Chairman and Non-Executive Directors” (March 2011)
- Jersey Appointments Commission, Code of Practice for Appointment to Autonomous and Quasi-Autonomous Public Bodies and Tribunals

### **Websites**

- [www.gov.je](http://www.gov.je)
- [www.jerseywaterfront.je/webhistory](http://www.jerseywaterfront.je/webhistory)
- [www.statesassembly.gov.je](http://www.statesassembly.gov.je)

**Public Hearings**

<b>Date</b>	<b>Witnesses</b>
31st March 2011	Senator S.C. Ferguson, Member of the Transition Advisory Panel
6th April 2011	Connétable D.J. Murphy, Member of the Transition Advisory Panel
7th April 2011	Mr K. Soar, Jersey Appointments Commission Mr J. Morris, Jersey Appointments Commission
10th May 2011	Mr M. Waddington, Technical Panel
10th May 2011	Senator P.F.C Ozouf, Minister for Treasury and Resources Connétable J.M Refault, Assistant Minister for Treasury and Resources Mr W. Ogle, Chief Executive Mrs J. Pollard, Assistant Director, Human Resources
12th May 2011	Mr. J Rogers, Jersey Appointments Commission

## 16. APPENDIX A

### *Key Principles of the States of Jersey Development Company (P.73/2010)*

#### **3. Proposals for Property and Infrastructure Regeneration – Objectives for the States of Jersey**

- The Council of Ministers believes that in terms of a desired regeneration strategy there are 6 primary objectives for the States of Jersey. These are –
- To ensure the primacy of the States of Jersey in the governance of regeneration policy in Jersey and any associated property development agency.
- To ensure the effective participation of the appropriate Scrutiny Panel in effective oversight of such governance.
- To enable a consistent and co-ordinated Island-wide approach to regeneration which aligns with the current and future requirements of the Island
- To deliver a structure which is able to work with the private sector whilst protecting the States of Jersey's interests.
- To ensure a clear division of responsibilities between strategic planning, policy, project management and delivery.
- To ensure that the Parish within which regeneration occurs is fully involved in the planning of the project.

#### **5. Structure**

- The structure proposed to satisfy the primary objects of the States of Jersey is designed to –
- Ensure that the regeneration strategy is set by the Minister for Planning and Environment and Regeneration Zones are adopted by the States of Jersey via the Island Plan process, in consultation with the relevant Parish(es).
- Maintain the independence of the Minister for Planning and Environment and his Department from property development.
- Enable the Regeneration Steering Group (a sub-group of the Council of Ministers accountable to the States of Jersey) to provide a political steer and/or guidance to the development of economically viable Development Plans for regeneration.
- Ensure the activities of The States of Jersey Development Company Limited are reviewed and reported on regularly to the Minister for Treasury and Resources, who is politically accountable for the operation of the company
- Integrate the strategic planning and development of States' property assets with Island-wide regeneration projects.
- Minimise development and delivery risks.

It is important to note that all bodies involved in the proposed regeneration process will also be open to scrutiny by –

- The Public Accounts Committee
- The Corporate Services Scrutiny Panel.

All scrutinising authorities will remain independent of the Regeneration Steering Group and The States of Jersey Development Company Limited in order that their respective positions will not be compromised.

## **6. The Role of the States Assembly**

The role of the States Assembly, *inter alia*, is to:

- Determine the Island Plan and any amendments thereto on the recommendation of the Minister for Planning and Environment – this sets the framework for the regeneration strategy and designates the initial Regeneration Zones.
- Appoint the non-executive directors of The States of Jersey Development Company Limited.
- Hold the Ministers to account for the delivery of effective regeneration in line with the States' agreed strategy.
- Ensure that all elements of the process are open and responsive to scrutiny.

## 17. APPENDIX B

### ***Articles 23 and 24 of the Employment of States of Jersey Employees (Jersey) Law 2005***

Articles 23 and 24 of the Employment of States of Jersey Employees (Jersey) Law 2005 cover the functions of the JAC and Guidelines issued by the Commission:

#### **23 Function of Commission**

The function of the Commission is to oversee the recruitment of States' employees or States' appointees so as to ensure that, as far as practicable –

- (a) the recruitment of persons as States' employees or States' appointees is fair, efficient and conducted in accordance with best practice principles and procedures;
- (b) States' employees or States' appointees are appointed on merit; and
- (c) members of the States are only involved in the recruitment of States' employees or States' appointees in accordance with guidelines made under Article 24 or otherwise in circumstances where, in the opinion of the Commission, it is appropriate that they be involved.

#### **24 Guidelines**

- (1) The Commission shall from time to time produce and review guidelines that are to apply in relation to the recruitment of States' employees or States' appointees.<sup>16</sup>
- (2) Guidelines produced under paragraph (1) shall contain details as to –
  - (a) how recruitment of States' employees or States' appointees is to be performed;
  - (b) the grounds on which States' employees or States' appointees are to be selected; and
  - (c) the circumstances in which a member of the States may be involved in the recruitment of States' employees or States' appointees.
- (3) The Commission shall ensure that guidelines produced under paragraph (1) are available for viewing by any person.
- (4) The Commission shall take all reasonable steps to ensure that guidelines produced under paragraph (1) are followed in relation to the recruitment of States' employees or States' appointees.

## 18. APPENDIX C

**Advert placed in the Jersey Evening Post and on Odgers Berndtson website on 9th December 2010:**

### Chair and Non Executive Directors



States of Jersey Development Company

The Waterfront Enterprise Board (WEB) is in the process of re-constitution to become the States of Jersey Development Company (SoJDC). SoJDC will be central to new arrangements for structuring the planning, development and implementation of major property and associated infrastructure regeneration projects in Jersey. SoJDC will act as the delivery vehicle for property development for the States of Jersey.

#### Chair role:

The Chair's role is to provide leadership, direction, focus and shape the Board for the future. The Chair will use their experience to unlock the knowledge of the other board members and already have chairing experience. Candidates will require:

- Experience of operating in highly complex, politically sensitive environments where public financing is under significant scrutiny;
- The ability to analyse complex technical information, demonstrate independence of mind and provide stewardship for delivery of the Islands property development and regeneration activities;
- Advanced stakeholder management skills, an understanding of the public sector framework and experience of property development and related fields.

#### Three Non Executive Director roles:

The NEDs will uphold the independence of the organisation and use their professional expertise for the benefit of SoJDC. They will have excellent communication skills, the ability to act with tact and diplomacy and to deal with potentially sensitive issues when presenting the board's views. The board will have a mix of experience both from the Island and from elsewhere. The technical mix required from the three NEDs will include expertise in the following disciplines:

- Property project financing
- Banking
- Legal aspects of property development
- Development
- Planning
- Regeneration

Please reply in confidence, with full career and current salary details at: [www.odgers.com/34274](http://www.odgers.com/34274) for the Chair role, or [www.odgers.com/34275](http://www.odgers.com/34275) for the NED role. Closing date for applications is midnight, Monday 3rd January 2011.

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States of Jersey Development Company

The Waterfront Enterprise Board (WEB) is in the process of re-constitution to become the States of Jersey Development Company (SoJDC). SoJDC will be central to new arrangements for structuring the planning, development and implementation of major property and associated infrastructure regeneration projects in Jersey. SoJDC will act as the delivery vehicle for property development for the States of Jersey.

#### Non Executive Director roles:

The NEDs will uphold the independence of the organisation and use their professional expertise for the benefit of SoJDC. They will have excellent communication skills, the ability to act with tact and diplomacy and to deal with potentially sensitive issues when presenting the board's views. The board will have a mix of experience both from the Island and from elsewhere. The technical mix required from the three NEDs will include expertise in the following disciplines:

- Property project financing
- Banking
- Legal aspects of property development
- Development
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## 19. APPENDIX D

### *TIMELINE*

#### 2010

- 20 October 2010 Appointments Commission approached
- Around the 1st November 2010 the Chairman of the Jersey Appointments Commission (JAC), confirmed that he was dealing with the recruitment
- On the 5th November 2010 a meeting regarding the process took place with the Chairman of the JAC and Assistant Chief Executive. It was established at the meeting that a Chairman and three Non-Executive Directors (NEDs) were required. It was also noted that one NED was to be appointed by the Minister for Treasury and Resources.
- From 5th November – 15th November it was determined that an agent would be appointed for this process. A tendering and selection process was undertaken under the scrutiny of the Jersey Appointments Commission.
- On the 19th November 2010 the recruitment consultant “Odgers Berndtson” was appointed.
- On 25th November 2010 the first meeting of the Recruitment Panel was held and attended by:
  - Chief Executive;
  - Minister for Treasury and Resources;
  - Assistant Minister for Treasury and Resources;
  - Chairman of JAC;
  - Assistant Chief Executive;
  - Mr. G Naylor, Odgers Berndtson;
  - Deputy Treasurer of the States;
  - Assistant Director of Human Resources and;
  - Policy and Research Officer
- On 9th December an advert for the Chairman and Non-Executive Directors appeared in the Jersey Evening Post (JEP) and on the Odgers Berndtson website (see Appendix C).
- On 15th December 2010, certain States Members were sent a letter by the Chief Minister inviting them to become Members of a Transition Advisory Panel.
- On 22nd December 2010, meeting request was sent for the first meeting of TAP for the 17th January 2011.

#### 2011

- On 12th January 2011 the Chairman of JAC advised that he had a diary clash and would be passing the assignment to Mr. K Soar (Commissioner).
- On 17th January 2011 the first meeting of the Transition Advisory Panel was held. Attendees present are as follows:
  - Chief Minister (Chair)

- Deputy of St John
  - Deputy de Sousa
  - Senator Ferguson (for part of the meeting)
  - Connétable Murphy
  - Chief Executive
  - Assistant Chief Executive
  - Assistant Director of Human Resources
  - Policy and Research Manager
  - Policy and Research Officer
  - Mr K. Soar (JAC)
  - Mr J. Rogers (JAC)
- On 18th January 2011, meeting request was sent for a further meeting of the TAP on 26th January 2011.
  - On 20th January 2011, apologies received from Senator Ferguson due to a pre-arranged Scrutiny meeting.
  - On 24th January 2011 shortlisting for the Chairman took place. All members of the Recruitment Panel were present Mr. J Tibbo (Acting Chairman, WEB). There were 14 applicants for the Chairman post, 5 of which were shortlisted. One candidate withdrew, and 4 were interviewed.
  - On 25th January 2011, Members of TAP were provided with details of the shortlisting for Chairman and were also advised of the interview dates (21st and 22nd February 2011).
  - On 26th January 2011 a meeting was held with the Transition Advisory Panel (TAP) in the Chief Minister's Office. Attendees included:
    - Chief Minister
    - Deputy of St John
    - Connétable Murphy
    - Deputy de Sousa
    - Assistant Director of Human Resources
    - Policy and Research Officer

Senator Ferguson was unable to attend (had previously given her apologies)

- On 27th January 2011 a second advert for the NEDs only appeared in the JEP (see Appendix C), in order to try and attract further local candidates.
- On 31st January 2011 a meeting of the Technical Panel was held.
- On 4th February 2011 interviews for Chairman of the SoJDC were held, which included the 3 panels, Recruitment, Technical and Transition Advisory. The Recruitment Panel and TAP were under the Chairmanship of the Appointments Commission. The Technical Panel, chaired by Mr P. Crespel included Mr Richard Lay, an external assessor from the UK with property experience. The Technical Panel's recommendations were passed to the Recruitment Panel.
- On 5th February 2011 shortlisting for NEDs took place. Attendees included:
  - Chief Executive
  - Minister for Treasury and Resources
  - Assistant Minister for Treasury and Resources

- Mr K. Soar
- Assistant Director of Human Resources
- Policy and Research Officer
- Mr G. Naylor via phone

There were 47 applicants for the NED post (including 17 from Jersey), 7 were shortlisted, which included 3 Jersey candidates, and 1 candidate, who had been unsuccessful for the role of the Chairman. It is noted that this candidate was not interviewed again, as he was interviewed for the role of the Chairman.

- On Tuesday 8th February 2011, a letter was sent from the Chief Minister advising of the decision to appoint Baroness Ford to become Chairman of the States of Jersey Development Company.
- On Monday 14th February 2011, e-mail sent from Chief Minister's Department giving dates of interview days for NED candidates (Monday 21st and Tuesday 22nd February).
- On 15th February 2011 shortlisting was carried out for the NEDs.
- On Thursday 17th February 2011, further email received from Chief Minister's Department stating that recruitment would only take place on Monday 21st February and advising that due to half term holidays it would be necessary for a date to be arranged for the remaining candidates. On the same day, the Deputy of St John gave his apologies for the 21st and 22nd February 2011.
- On Monday 21st February 2011 was the first day of interviews for four of the NED candidates.
- On Wednesday 23rd February 2011 email from Chief Ministers Department inviting Members of TAP to continue interview on Monday 28th February for the remaining NED candidates.
- On Monday 28th February 2011 was the second day of interviews for the remaining NED candidates.
- Following the selection process, the Minister for Treasury and Resources recommended the successful candidates for a period of 3 years in accordance with the New Memorandum and Articles in P.32/2011 which was lodged on the 2nd March 2011.