

States of Jersey
States Assembly



États de Jersey
Assemblée des États

Public Accounts Committee



£200,000 GRANT TO FILM COMPANY SUPPLEMENTARY REPORT

Presented to the States on 4th March 2014

P.A.C. 1/2014

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n.b. The electronic copy of this report contains hyperlinks to other relevant States documents.

Chairman's Foreword

'In a world that's changing really quickly, the only strategy that is guaranteed to fail is not taking risks.' - Mark Zuckerberg

'Risk comes from not knowing what you're doing.' – Warren Buffett

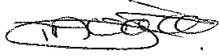
My Committee's first report on the £200,000 film grant to Canbedone Productions was criticised by some. There were suggestions that our conclusions were not borne out by the evidence and that our findings might cause the public sector to become excessively risk averse at the very time some innovation was called for.

That our first report touched a corporate nerve is evidenced by an extraordinary and improper instruction to the Chief Internal Auditor, who was charged with assessing the factual accuracy of our work. In the event, the Chief Internal Auditor's conclusions were not dissimilar to those of PAC.

Film and television projects carry significant and complex risk. There is nevertheless an important distinction to draw between risks directly associated with a film project and those to be managed during a grant or loan process in support of that project. PAC has always been clear that a properly administered process is no guarantee of a successful outcome for a high risk project. What is probable, however, is that a flawed public sector grant process exposes the taxpayer to additional, avoidable risk. That additional, avoidable risk is precisely what we found last year.

None of this means that the States of Jersey should be inherently afraid to nurture a film industry or that the Economic Development Department need shy away from future grant applications for any other higher risk projects. They should simply concentrate on getting the basics right. That means expending greater effort on defining and understanding precisely what they are trying to deliver with the public money they are spending. Cost – benefit analyses underpinned by sound methodology and evaluations of alternative uses of money should be the norm. Standards of contract drafting must improve. As for record keeping, my Committee expresses the hope that the ongoing implementation of the new Freedom of Information Law will be treated as an opportunity, finally, to bring the standard of record keeping across States departments up to scratch.

In closing, I would like to thank all those who have contributed to this review and, on behalf of my Committee, wish the new Crystal Island film project every success.



Deputy Tracey Vallois

Chairman

Public Accounts Committee

Recommendations

Recommendation 1: The Chief Internal Auditor should conduct regular internal audits on EDD's grant expenditure for the foreseeable future with a view to ensuring that the standard of internal controls is improved and maintained over the long term.

Recommendation 2: The Council of Ministers should seek legal advice regarding Article 26(1)(c) of the States of Jersey Law 2005 and clarify whether formal delegations of power are needed to authorise Chief Officers to enter into contracts on behalf of their departments.

Recommendation 3: The Council of Ministers should, within 8 weeks, present to the States revised and suitably updated guidance on ministerial decision recording together with an action plan to enhance the integrity of the decision recording process.

Recommendation 4: The Council of Ministers should, within 12 weeks, present a report to the States confirming that the list of delegated powers on the [States of Jersey website](#) is complete, up-to-date and suitably accessible to the public and to all States Members.

1. Further Developments

1.1 Our first report concerning the £200,000 grant to film production company Canbedone Productions was published on 25th April 2013.¹ Four notable developments occurred subsequently.

1.2 The first development was the commissioning of a review by the Chief Internal Auditor. Terms of reference for this review were finalised by the Chief Executive, States of Jersey, the Treasurer of the States and the Chief Officer, Economic Development Department (EDD).

1.3 The second was the decision of the Minister for Economic Development to defend the actions of his department by way of a formal response to the States Assembly.² Some 14 of our 21 findings were refuted by the Minister, notably those concerning the quality of EDD's due diligence, the extent of relevant financial information obtained by the Department and the timing of payments made.³

1.4 Third was the absence of pre-production activity in the Island by 30th September, as per the final recommendation in our first report. This silence was eventually broken on 4th November 2013, when we learned that the film project had been reworked and renamed 'The Crystal Island' and that the entire film would reportedly be shot in Jersey, commencing on 27th January 2014.

1.5 Fourth came our discovery that changes to the film production project extended beyond the renaming of the film itself. Whereas the £200,000 grant had been awarded to UK company Canbedone Productions Ltd, The Crystal Island was understood to be the property of a Jersey registered company known as Ship of Light Ltd.

1.6 We obtained a copy of the confidential Chief Internal Auditor's report several days after learning of the fourth development above. Section 3 of that report revealed the terms of reference

¹ [PAC.2/2013](#)

² [PAC.2/2013 – Response of the Minister for Economic Development](#)

³ The Minister either overtly challenged, or stopped short of accepting, the findings recorded at paragraphs 9.3, 9.9, 9.13, 9.15, 9.21, 9.30, 9.33, 10.9, 10.15, 10.19, 10.22, 10.30, 10.38 and 11.5 of PAC's report.

given to the Chief Internal Auditor. Whereas we had anticipated that the internal audit would have reviewed EDD's due diligence processes, the actual terms of reference included an instruction to *'review the findings and recommendations raised in the PAC report to ascertain if reasonable and based on fact.'* This instruction was wholly improper. Committees of the States are accountable to the public through the States Assembly – not to civil servants. We could perhaps be forgiven for regarding this action as evidence that the executive took an overly defensive approach to our findings and recommendations.

1.7 Reports by the Chief Internal Auditor are, amongst other things, a key management tool to verify the integrity of internal controls. They should be factual, detached and remain confidential by default. We have respected confidentiality by not appending a copy of this report to our own, notwithstanding its improper genesis. We nevertheless have 2 observations to make on its contents. First, the Chief Internal Auditor's findings are not dissimilar to those listed in our earlier report PAC.2/2013. Secondly, and notwithstanding these findings, one of the most notable characteristics of the report is the conciliatory and diplomatic tone adopted throughout. Whatever the rationale for this approach might have been, we hope that it encourages EDD to raise its game. In this regard, we can at least draw comfort from the management comments to the internal audit recommendations. They indicate that EDD's approach to governance may be moving in the right direction.

1.8 In an attempt to draw this review to a constructive close, we resolved to call the Chief Executive, States of Jersey and the Treasurer of the States to a further public hearing on 16th December 2013. Our intention was to confirm that the Committee's key findings were accepted and to confirm that remedial action was being taken by executive departments.

1.9 During the course of our December hearing, both the Chief Executive, States of Jersey and the Treasurer of the States acknowledged a need for EDD *'to tighten things up'* in respect of the approval of grant monies. They acknowledged that EDD had attempted to pay 25 per cent of the grant monies several weeks before the Minister had signed a formal decision on the matter and before a formal contract with the company had been agreed and signed.⁴

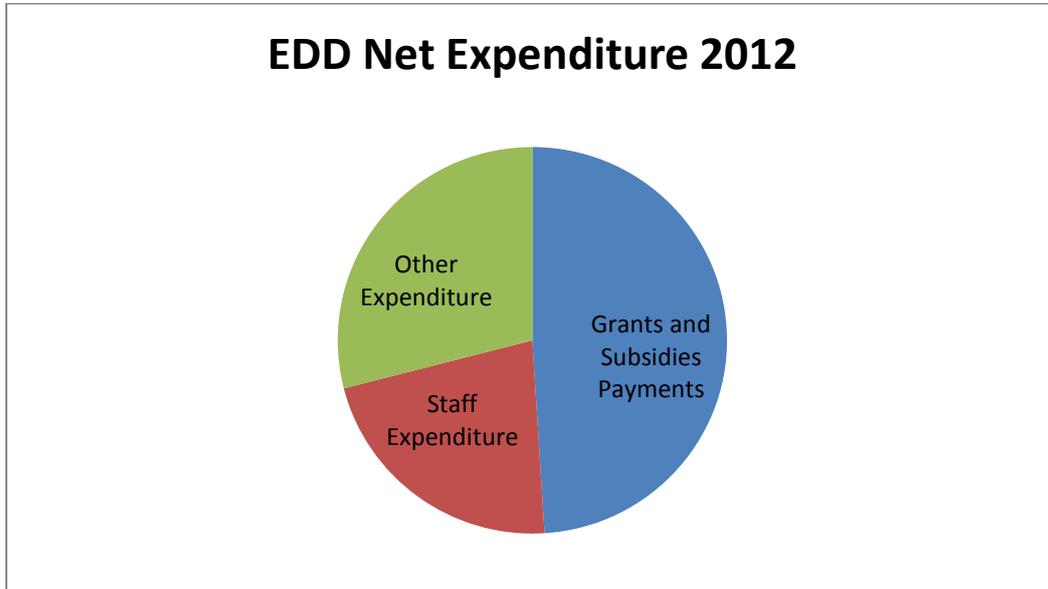
⁴ [Transcript of public hearing with Chief Executive 16th Dec 2013](#) – page 2 and [transcript of public hearing with Treasurer of the States](#) – page 9

1.10 In fairness, both the Chief Executive and the Treasurer were satisfied that EDD's corporate intentions had at all times been entirely honourable. Although there had been issues with process, both maintained that procedural revisions within EDD should deliver better risk mitigation in future. Similar grant applications would, henceforth, be progressed by way of a contract drafted with the benefit of appropriate legal advice. General issues with the clarity of Financial Directions that had caused EDD difficulty during consideration of the film grant application had since been addressed. Revisions to certain Financial Directions had reportedly mitigated the risk that similar issues were unlikely to occur again.

1.11 The above statements and admissions indicate that our first report has prompted some remedial action. There nevertheless remains a series of issues that warrant the attention of both EDD and the Treasury. We have also found related problems with ministerial decision recording and reporting of delegated authority that should be tackled by the Chief Minister's Department. These related problems have been identified before but have yet to be properly addressed.

2. The Economic Development Department

2.1 The chart below provides a breakdown of the £17.3 million net revenue expenditure incurred by EDD in 2012.



2.2 Grants paid by EDD are awarded in accordance with an established policy or on their individual merits (e.g. the Canbedone application). Added together, these grants accounted for 49 per cent of the department's total net revenue expenditure (just under £8.5 million). This is, by States of Jersey standards, a significant sum and a large percentage of net revenue expenditure.

2.3 In order to demonstrate the appropriateness of that spend, EDD has to be clear as to the policy that mandates each grant payment. The department needs procedures for determining applications that are underpinned by sound governance and which provide for a suitably thorough evaluation. In this regard, there were difficulties with the policy, the evaluation, the resulting contract and the supporting due diligence when the Canbedone grant was considered.

Policy

2.4 In section 6 of our first report, we observed that the policy position in 2011 concerning grants in support of the creative media industry was vague. Neither the Annual Business Plan 2011 nor the arguably obsolete Economic Growth Strategy 2005-2009 offered specific and relevant guidance. There was no standalone approved policy on the provision of creative media industry support. This policy gap was filled in August 2011 by way of a ministerial decision made by the Minister for Treasury and Resources. EDD had applied successfully to the Minister for

Treasury and Resources for additional income in the sum of over £700,000 to be added to its own budget. This unbudgeted income had been received in part from UK regulator Ofcom, with the remainder sourced from the digital television switchover programme surplus. EDD's application had made clear the intention to use the new money for the purposes of providing matched or seed-corn funding for key priority initiatives in the new Economic Growth Strategy.⁵

2.5 Technically, the above funding decision was entirely in accordance with the Public Finances (Jersey) Law 2005. In political terms, however, it put the cart before the horse. The new Economic Growth Strategy would include overt proposals to target the media / creative industries and secure related marketing opportunities. As at August 2011, however, that strategy was a year away from receiving the formal backing of both the Council of Ministers and the States Assembly. These funds were to be spent in accordance with a policy that did not formally exist.

Evaluation

- 2.6 When we originally reviewed the Canbedone grant application, we looked for evidence of –
- (a) a proportionate assessment against policy and / or consideration of the departmental business objectives that might be advanced by making the grant,
 - (b) a determination of how success was to be measured,
 - (c) consideration as to whether the Minister or the department should determine the application.

2.7 We found clear evidence of (c) only. EDD's practice is to secure a formal ministerial decision when the policy position is less than clear. The Chief Officer, Economic Development Department explains -

*'In almost all cases where the grant is not covered by one of our... umbrella schemes like single area payment, for instance, it is subject to a ministerial decision.'*⁶

2.8 Having received the grant application, EDD concluded that the Minister should determine it on account of the quantum of expenditure and the relative lack of certainty as to the policy

⁵ Decision [MD-TR-2011-0105](#) refers.

⁶ [Transcript of public hearing with Chief Officer, EDD 11th February 2013](#) – page 8

position. The Chief Executive, States of Jersey agrees that this course of action was the right one in the circumstances, as do we.⁷

2.9 Given that the Minister was making the decision, it was he who needed the assessment against policy and the recommended success measurements we refer to at (a) and (b) above. That which he received on paper was, however, insufficient to show what the department was trying to deliver for the public by awarding the grant money or how success was going to be measured.

2.10 That EDD planned to provide financial backing for a film project is clear. The Minister was asked to approve a *'grant of £200,000 to be used to assist in the filming of a Jersey based movie.'*⁸ What was missing was some clarity as to whether the grant would fund substantive filming or pre-production activity. The report submitted to the Minister before he made his decision claimed that filming would start in *'autumn 2011'* and that the film would *'star, subject to contract, Bill Nighy and Malcolm McDowell.'* The report stopped materially short of confirming the degree of departmental confidence in the first two claims. It stated that the film was being part funded by Tesco but it failed to differentiate between the risks carried by Tesco relative to those affecting the States. Indeed, there was no summary description of the department's evaluation process at all.

2.11 As to what might practically be delivered for the public in the way of value, the film was not the ultimate goal. The report proposed that EDD would leverage the filming activity to –

(a) 'help develop a media industry', and

(b) 'promot[e] Jersey as a destination.'

2.12 The documented action plan to deliver the above was but a heading and one sentence –

'Action Plan

'1. EDD will work closely with Canbedone to ensure that Jersey obtains maximum benefit and coverage from this movie.'

⁷ [Transcript of public hearing with Chief Executive 16th Dec 2013](#) – page 6

⁸ Ministerial Decision [MD-E-2011-0104](#)

2.13 There was a marked absence of SMART objectives. For example, no reference was made to any professional third party advice received as to the viability of a creative media industry in Jersey, although we understand that EDD may have had relevant material on file.⁹ Neither was a time limit on delivery recommended. This lack of clarity and rigour makes it difficult to state with any meaningful degree of precision precisely what action the Minister was being asked to authorise. Moreover, it may have limited the Minister's scope to hold his department to account for delivery.

2.14 E-mail correspondence and other documentation held by the department indicates that from time to time during the months leading up to this decision, the Minister had been aware of certain additional details concerning the grant application. The Minister was nevertheless addressing a broad range of other matters across his portfolio throughout that period. What matters is that the key material presented to him at the time and as the basis for his formal decision was not fit for purpose.

The Contract

2.15 On 4th November 2013, the Chief Officer, EDD notified the Committee that a new film project, to be known as 'The Crystal Island,' was being pursued in the Island. A commencement date for filming was given (27th January 2014) and location schedules were provided to corroborate the new date. This new film would reportedly be shot entirely in Jersey. In his e-mail, the Chief Officer submitted –

'Apart from this representing a good outcome for Jersey it does satisfy the purpose of the EDD grant to Canbedone.'

2.16 The assertions regarding the quality of the outcome and the purpose of the grant are both worthy of scrutiny. Our conclusion, having scrutinised both, is that three issues remain regarding the contract between EDD and Canbedone. First, the terms of the contract are materially different from those stipulated by the Minister for Economic Development in his ministerial decision. This raises questions regarding the quality of governance within EDD and makes the purpose of the grant less clear than it should be. Secondly, we remain to be convinced that the terms of the

⁹ [Transcript of public hearing with the Chief Officer, EDD 11th February 2013](#) – page 4

contract have been fulfilled. Thirdly, the company behind 'The Crystal Island' is not the company that EDD supported with a grant on behalf of the public.

2.17 The ministerial decision should have aligned with and set parameters for the contract. In reality, the ministerial decision fell short in both respects. It stipulated that the contractual relationship should be with 'Canbedone Ltd. (Jersey).' In fact the contract was signed by a UK registered company, which gave rise to the contractual implications discussed in section 12 of our first report. Whereas the Minister's signed decision confirmed that the monies to be awarded were to be spent 'on Island',¹⁰ the contract stopped short of demanding on-Island expenditure. It simply described the grant as a contribution –

'... towards approved expenditure incurred in connection with the filming costs arising from the logistical planning, re-writing and general re-organising of the location schedule in order that the film may be undertaken significantly in Jersey, Channel Islands.'

2.18 In terms of what had been delivered by 4th November 2013, there was a promise of a movie to be shot exclusively in Jersey – but there had been no substantive filming by Canbedone. The movie to be shot in 2014 was not the movie specified in the ministerial decision and the contract. The company with rights to the new screenplay was a materially different entity to the one that had received the grant. Neither was EDD able to confirm to the satisfaction of PAC or the Chief Internal Auditor that all of those monies were spent on-Island.

2.19 The contract had placed specific obligations on Canbedone, including requirements to –

- (a) furnish EDD with copies of progress reports and financial statements supplied to the firm's completion guarantors,
- (b) grant the Comptroller and Auditor General and the States' internal auditors corporate rights of access to the company's financial systems,
- (c) agree to the placement of advertising to publicise the financial assistance provided by the States of Jersey, and
- (d) supply to EDD a final project report complete with specific financial information and an evaluation against performance indicators.

¹⁰ See ministerial decision [MD-E-2011-0104](#)

2.20 Requirement (d) above is linked to the contractual definition of ‘the project,’ which is set out in appendix 2 to the contract document. Given that appendix 2 to the contract is a synopsis of ‘Knights of Impossingworth,’ complete with a cast list and a funding summary, it is difficult to see how (d) could be satisfied in the absence of either the completion of Knights of Impossingworth or the receipt of a project report confirming that the Knights of Impossingworth project funded by EDD has ended unsuccessfully.

2.21 We are advised that clause 5 of the contract was intended to place additional obligations on Canbedone in the form of monthly progress report provision. It appears to us that clause 5 was compromised by a drafting error - whereby EDD was cited instead of Canbedone. This apparent error may have relieved the film company of these obligations.

2.22 It is understood that all work in Jersey on Knights of Impossingworth has ceased. In short, the £200,000 went to a company that is no longer active in Jersey and which has not produced the intended film.

2.23 As acknowledged above, the film to be shot in Jersey in 2014 is ‘The Crystal Island.’ The company understood to be behind that project is Jersey registered company Ship of Light Limited. At the time of writing, EDD does not have a contractual relationship with this new company. Neither, we understand, is Ship of Light Limited a party to the existing contract, notwithstanding that both companies have been represented by the same person when in negotiations with EDD. In turn, this suggests that EDD cannot require the new company to fulfil any of the outstanding obligations set out in the contract with Canbedone.

2.24 Technically, then, neither the terms of the ministerial decision nor those of the contract have been satisfied. In the circumstances, it seems reasonable to conclude that they never will be.

Due Diligence

2.25 Both our first report and our subsequent public hearing held on 16th December prompted discussion as to what a satisfactory standard of due diligence should be for a £200,000 grant to a film production company. Our view is that the bar for public investment should be a little higher than that set by a rational private investor. Quite apart from the ethical and reputational considerations that government faces, public money can involve rather more stakeholders. Moreover, those stakeholders are inherently more detached from the decision making process

than a private investor, particularly in cases such as this where the policy applied by a government department is not as clear as it might be.

2.26 We do not expect public servants to shy away from all risk. What we expect to see is a well-developed culture across all departments where digging deep and obtaining the necessary knowledge to make informed decisions about grant applications involving over £100,000 of public money is the norm. That is not what we found in this case.

2.27 Public interest in the news stories published by professional media organisations and by members of the public in the week beginning 27th January 2014 underline the damage that can be done by shortfalls in due diligence on a publicly funded grant. While we have no particular comment to make on those individual articles, we note that they made similar points to those recorded in section 10 of our first report.

2.28 The Canbedone grant was not so much a failure to dig deep as an example of a department getting the basics wrong, such that potentially relevant information in the public domain was either not found or not properly evaluated.

3. The Treasury

3.1 Treasury has acknowledged the problems uncovered by PAC by modifying Financial Directions and commissioning an internal audit. We nevertheless see a need for regular audits of EDD grant expenditure in the longer term. While the content of the confidential internal audit report indicates that EDD has been taking positive action to improve governance standards, it would seem sensible for the internal audit function to commit to monitoring the rate of improvement at EDD well beyond the period 2014 - 15 given the quantum of grant funding paid out by that department.

Recommendation 1: The Chief Internal Auditor should conduct regular internal audits on EDD's grant expenditure for the foreseeable future with a view to ensuring that the standard of internal controls is improved and maintained over the long term.

4. Decision Recording

4.1 Ministers are corporations sole and, as such, wield significant power. With that power comes responsibility to maintain '*efficient, effective, equitable and proportionate public administration*'.¹¹ In this case, the administration fell short of the mark. There were clear flaws in the key decision signed off by the Minister for Economic Development. The fact that those flaws were not dissimilar to those cited in various reports presented to the States since ministerial government began indicates that the decision recording process requires urgent attention.

4.2 Guidelines for the recording of ministerial decisions (MD's) were originally issued by the then Policy and Resources Committee in 2005, shortly before the commencement of ministerial government. In 2006 they were supplemented by way of a report from the Council of Ministers, which responded to the findings of the then Comptroller and Auditor General on a controversial Battle of Flowers grant actioned by EDD.¹²

4.3 Notwithstanding this supplementary guidance, concerns regarding the MD recording process were expressed in numerous other reports presented to the States since 2006. Those reports include –

- (a) the PPC's Machinery of Government Review ([R.105/2007](#));
- (b) our predecessor Committee's review entitled: Energy from Waste Plant: Management of Foreign Currency Exchange Risks ([PAC.1/2009](#));
- (c) the States Assembly Annual Report 2009 ([R.51/2010](#))
- (d) the Committee of Inquiry Reg's Skips Limited: First Report ([R.118/2010](#));
- (e) Asset disposals by the States of Jersey during 2009: Report by the Comptroller and Auditor General ([R.140/2010](#)) and,
- (f) the interim PAC report on the Jersey Homebuy scheme ([PAC.1/2011](#)).

4.4 The reports cited at (a) to (f) above indicate that some decisions had not been recorded, that some had been compromised by ambiguity and that others had simply not been processed in accordance with the existing rules. They suggest that the Canbedone grant might not have been

¹¹ Minute No. [A4 of the Council of Ministers' meeting held on 15th January 2009](#)

¹² See [R.C.80/2005](#) and [R.93/2006](#)

the first instance of departmental action being less than fully aligned with the authorising ministerial decision.

4.5 The key MD in this case was signed by the Minister for Economic Development on 19th August 2011. We have already explained that it was an imprecise decision backed by insufficient supporting documentation and that the terms of the decision were not replicated in the subsequent contract. In fact there were more issues.

4.6 The Minister instructed officers to '*prepare*' a contract between the Department and the film production company. In plain English, this was not an instruction to conclude negotiations and proceed to a signed contract without formally referring the matter back for a final ministerial decision. If the latter was the intention then that is what should have been written down. The resulting contract was in fact signed by the Chief Officer, EDD on behalf of the department and by the principal of the film production company.

4.7 Reconciling the terms of the August 2011 ministerial decision with the action taken by EDD might be easier if departmental chief officers had sufficient authority – either by default or by way of a delegation of authority – to enter into such contracts on behalf of their Minister. In this regard, we see a need to clarify the legal position.

4.8 Article 26(1) of the States of Jersey Law 2005 grants Ministers the status of corporations sole, while Article 26(1)(c) specifically grants a Minister the necessary authority to enter into agreements for any purpose of his or her office. Ministers may delegate this power to an Assistant Minister or officer, but they must notify the States of any such delegations in accordance with Article 30 of the States of Jersey Law. The current Financial Direction 5.1 seems to align with Article 26 by stipulating that in the absence of delegation, '*only a Minister can enter into a contract (in respect of a department).*'

4.9 Given the operational realities at EDD and other States departments, it seems reasonable to anticipate that a Minister would delegate a proportion of their power to enter into such agreements. In this case, however, we are unclear as to whether a relevant formal delegation of power had been executed. The most relevant delegation we have found dates back to 2006, when the then Minister for Economic Development made the Chief Officer, EDD, an authorised

signatory for all financial purposes relating to the now defunct Treasury Code of Direction No.10.¹³ It is not clear that this delegation would have been relevant for the film production grant.

Recommendation 2: The Council of Ministers should seek legal advice regarding Article 26(1)(c) of the States of Jersey Law 2005 and clarify whether formal delegations of power are needed to authorise Chief Officers to enter into contracts on behalf of their departments.

4.10 Given that this case provides yet more evidence of a need to improve ministerial decision recording, the Committee has considered where accountability lies for the integrity of the process. The Chief Executive indicates that the States Greffe may be accountable –

***Deputy T.A. Vallois:** ‘I understand that the Chief Minister’s Department is in charge of the ministerial decision process in terms of Livelink, et cetera, checks and balances, is that not correct?’*

***Chief Executive, States of Jersey:** ‘No, we do not administer the ministerial decisions. It was established initially by the Greffe.’*

4.11 Guidelines published internally by the Chief Minister’s Department in January 2009 suggest otherwise. They record that the Chief Minister’s Department is ‘responsible for the overall process and ensuring the provision of training and information’ The States Greffe has responsibility ‘... for the quality assurance of ministerial decisions as well as the formal recording and publishing of decisions made.’

4.12 The position set out in the 2009 guidance seems appropriate. Whereas under the committee system the States Greffe was generally accountable for the integrity of the decision making process, it seems clear to us that the executive must be accountable for the integrity of its own administration in the ministerial system – particularly given the corporation sole status of individual Ministers.

4.13 Retaining the services of the States Greffe to provide a quality assurance check of key decisions before they are signed is not unreasonable. The Greffe retains a body of decision recording expertise and it benefits from being forewarned of matters that need to be put before the

¹³ [R.3/2006](#) refers

States Assembly. At the present time there is, however, no obligation on departments to accept any advice given by the States Greffe and the Greffe is not empowered to veto ministerial decisions. Neither does the Greffe have authority to require, or a mechanism to ensure, that its advice is even shown to a Minister before a decision is made. Ministerial decision workflow is administered by the Chief Minister's Department's Livelink IT system.

4.14 We conclude that the Chief Executive should acknowledge responsibility for the integrity of ministerial decision recording as Head of the Public Service and set about raising standards without delay.

Recommendation 3: The Council of Ministers should, within 8 weeks, present to the States revised and suitably updated guidance on ministerial decision recording together with an action plan to enhance the integrity of the decision recording process.

4.15 Our enquiries have also revealed that establishing precisely which powers individual ministers have delegated to their officers is an onerous task, notwithstanding that the requirement to publish delegations is considered important enough to be prescribed in primary legislation.

4.16 There were essentially 2 reasons why we found this task so difficult. First, it has been difficult for the public to find any information about delegated powers on the [States of Jersey website](#). Prior to February 2014, only a specific phrase entered into the site's search engine would reveal the page listing all the functions delegated to departments by their respective Ministers. Following our intervention, the site now provides a navigable path to that page. This new-found visibility does, however, highlight the second problem; that the page is incomplete and can be difficult to interpret. Seven Ministers, including the Minister for Economic Development, do not offer a single consolidated list of powers delegated. Neither are all the records kept up to date. At the time of writing, the list of powers delegated by the Minister for Economic Development has yet to acknowledge the existence of R.143/2012, which recorded an updated series of delegations concerning Jersey Airport and Jersey Harbours. The 2006 delegation under which the Chief Officer, EDD was given broad authorised signatory rights is not cited.

4.17 More experienced researchers can utilise www.statesassembly.gov.je to trace all delegations of functions that have been reported to the States Assembly; however, the site does not, and is not legally obliged to, offer a single collated list covering all departments.

Recommendation 4: The Council of Ministers should, within 12 weeks, present a report to the States confirming that the list of delegated powers on the [States of Jersey website](#) is complete, up-to-date and suitably accessible to the public and to all States Members.

5. Implications for the Innovation Fund

5.1 We had not anticipated that our first report would prompt both the Chief Executive and the Treasurer of the States to express concerns regarding the operation of the new Jersey Innovation Fund, as they did during the course of our 16th December hearing. Our first report had made no mention of the Innovation Fund. Neither were any recommendations therein drafted with the Innovation Fund in mind.

5.2 The Treasurer believed that our first report highlighted a need for both States Members and officers to be further educated regarding the risks associated with the kind of activity to be undertaken by the Innovation Fund.¹⁴ The Chief Executive went further -

*'...we cannot be in a position again where officers are sitting in front of yourselves and accountability is there for administration of funds when it is what it says, an Innovation Fund and it is high risk... when those failures do occur, and I think they will occur in the Innovation Fund, then it is not right for people to be held to account, as long as all the governance has been administered properly.'*¹⁵

5.3 Our view is that the circumstances of the Canbedone grant application and the anticipated operation of the Innovation Fund are materially different. The Canbedone application was considered reactively by EDD. Decisions were taken in the absence of a clear, dedicated and targeted policy. Administration was not of the highest standard. The Innovation Fund, however, is a proactive initiative. It is backed by States' endorsed policy, the development of which pre-dates the decision of the States in July 2012 to endorse the Economic Growth and Diversification Strategy.

5.4 When the States established the Innovation Fund last year, they had considered 2 reports from the Minister for Treasury and Resources¹⁶ and a thorough report produced by the Economic Affairs Scrutiny Panel.¹⁷ Scrutiny's report drew particular attention to the question of risk

¹⁴ [Transcript of public hearing with Treasurer of the States 16th Dec 2013](#) – page 3

¹⁵ [Transcript of public hearing with Chief Executive 16th Dec 2013](#) – page 3

¹⁶ [P.124/2012](#) and [P.124/2012 Amd.](#) refer

¹⁷ [S.R.4/2013](#) refers

management and due diligence. It is therefore appropriate to conclude that the States understood full well the nature of the fund that they established. In turn, the States had every reason to expect that officers concerned with the Innovation Fund were clear as to the objectives of the Fund and the standards of administration that must apply.

5.5 Returning to the Chief Executive's quote above, we contend that there is a material difference between being held to account and being reprimanded. Whereas the Chief Executive referred to the former, we might be forgiven for concluding that he meant the latter. If such a concern exists, we see no reason for it. The States have accepted that individual projects backed by the Innovation Fund in full accordance with appropriate governance standards could, ultimately, fail. Their expectations are, we believe, that the Fund will be used for the approved purposes, that sound financial practice will be applied, that the Fund will deliver value for money over the longer term and, finally, that the PAC will hold relevant officers to account for delivering the above in accordance with the Committee's terms of reference – as per Standing Order 132.

5.6 We also admit to being surprised that the Treasurer of the States appeared to express doubts as to whether the more senior civil servants in States departments possess sufficient skills and expertise to conduct proportionate due diligence on grant applications such as that submitted by Canbedone or those that the Innovation Fund might receive. The Treasurer submitted -

*'... if we want the skills and expertise of a private equity house... then that is who we should employ to undertake the work.'*¹⁸

5.7 In this regard, we make 2 observations. First, the Innovation Fund proposition indicates the degree of specialist private sector involvement in the Fund may increase in subsequent years. Secondly, we see no reason to underestimate the capabilities of or to demand too little from our public servants. Officers in the Social Security Department already conduct significant due diligence on clients of that department in return for comparatively modest income support payments.

5.8 The Treasurer also made the case for a harder look at States grants policies in general -

¹⁸ [Transcript of public hearing with Treasurer of the States 16th Dec 2013](#) – page 14

'... we have a framework for the payment and administration of grants which has been set up for an express purpose, and it has served that purpose for a long time and it has served it very well. We now seem to be overlaying that grant process on to a completely different level of activity, carrying a completely different level of risk and I don't believe that that's well understood. I think we need to pause and rethink.'

5.9 If Financial Directions need further refinement then so be it. We would, however, be both disappointed and concerned if our review of the film grant was used by public servants as an excuse to chart a course away from all risk. The inherent risks associated with a film production or other higher risk project should not be confused with the risks that should be managed by those contemplating a grant or loan in furtherance of such a venture. The problem with the Canbedone grant was not that industry-specific aspects of the proposal generated a requirement for specialist expertise of the kind found in private equity houses. It was that EDD failed to do the basics properly.

6. Conclusion

6.1 PAC's review of the grant to Canbedone Productions is now closed, not least because it appears that the Knights of Impossingworth film project has ended. Public interest in the Crystal Island film project that succeeded it may, however, continue for some time yet. We sincerely hope that this interest is fuelled by further positive developments in the coming weeks. Early confirmation of the lead actors and commencement of substantive filming would perhaps dampen any residual scepticism generated by the apparent demise of the earlier project.

6.2 The lessons to be learned from this case are quite simple. States departments need to be clear from the outset what they are trying to achieve. They need suitably robust action plans to take them to the required destination. They also need a considered and proportionate approach to risk management, supported by adequate record keeping. Finally, and perhaps most importantly of all, they need to learn constructively from their mistakes.

7. Committee Membership

The current membership of the Public Accounts Committee (as at the date of the presentation of this report) comprises:

States Members

Deputy Tracey Vallois (Chairman)

Senator Sarah Ferguson

Deputy Richard Rondel

Deputy Gerard Baudains

Independent Members

John Mills CBE

Ian Ridgway

Robert Parker