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Economic and International Affairs Scrutiny Panel
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4th October 2019

Dear Chairman,

Thank you for your letter of the 20th September. In your letter, you ask a number of questions which I will answer below:

Brexit

1. *What is the base budget for 2019?*

The base budget for 2019 is £74,000.

2. *Please can you provide a breakdown of how you intend to spend the requested additional investment over the 4 years?*

The funding will support the employment of one policy officer at Grade 12 for the next four years.

3. *Why does the investment increase by £4,000 each year?*

This represents a 5% increase each year. This is to ensure that the funding can cover any increases in salary (resulting from increments or pay rises) and pension contributions that might arise during the four years.

4. *What impact, if any, has the extension to Brexit had on this project?*

The extension to Brexit has had an impact. The constitutional implications of Brexit are ongoing, and consequentially there continue to be known and unknown challenges and opportunities in this respect.

There is, however, a broader context to this work. Jersey has long made efforts to enhance and protect its constitutional autonomy. This work has been significantly enhanced in the past 15 years, and notably since the signing of a framework agreement with the UK in 2007. This

led, in time, to the appointment of a dedicated Assistant Chief Minister with responsibility for external affairs in 2011 and the establishment of a Minister for External Relations in 2013. The protection of Jersey's constitutional status has always been at the heart of efforts to promote the Island's international image and reputation, such is its importance for our economic success.

Brexit, and some of the consequential impacts it has had on politics in the UK, has created the circumstances in which Jersey's constitutional position has, and will likely continue to, come under threat. These challenges must be combatted, both in the immediate term and by seeking to develop processes and arrangements that enhance Jersey's constitution and autonomy as part of the British family.

Not continuing to make moves in this respect will leave Jersey more open and vulnerable than it might otherwise be to potential threats to our constitutional privileges. These may result directly from the Brexit process, or from developments in the UK that are a consequence of Brexit.

5. Is this project broadly a continuation of what is already being provided?

It is a continuation of what is being provided by the funding made available through initial Brexit contingencies. This funding comes to an end in December 2019. The work that would be undertaken through this funding is not otherwise provided for. If this funding is not now secured as part of regular departmental budgets, it will leave a potentially significant and high-risk resource deficit during a period of significant change.

Competition Policy and Jersey Competition and Regulatory Authority

1. Please can you provide a breakdown of how you intend to spend the requested additional investment over the 4 years?

2020		
Base budget	£300,000	
Court and case costs reserve held by States	£100,000	To meet Oxera recommendation
	£100,000	Improve the capability and capacity of the JCRA to supervise markets
2021		
Base budget	£300,000	
Court and case costs reserve held by the States	£100,000	To meet Oxera recommendation
	£150,000	Improve the capability and capacity of the JCRA to supervise markets
2022		
Base budget	£300,000	
Court and case costs reserve held by the States	£100,000	To meet Oxera recommendation

	£170,000	Improve the capability and capacity of the JCRA to supervise markets
2023		
Base budget	£300,000	
Court and case costs reserve held by the States	£100,000	To meet Oxera recommendation
	£170,000	Improve the capability and capacity of the JCRA to supervise markets

£100,000 for Court and Case Costs Reserve

Oxera's review of the Jersey regulatory and competition framework recommendation 18: "The government should consult with Treasury and provide an explicit commitment that it will fund the JCRA as necessary if the Authority faces a legal challenge. If the government does not want to provide the resources to defend an appeal (under competition law), it should give a reasoned decision explaining why it is not in the Island's interest to do so."

Kassie Smith QC in the review of the ATF case published to the States last December came to similar conclusions.

"I have highlighted above various concerns raised by Oxera in its report to the Government of Jersey of November 2015 as to the funding of the JCRA and the appeals process in Jersey. These concerns have been highlighted again by the process in the present case. As a result, the Government may wish to revisit the recommendations made in the Oxera report, particularly, Recommendations 7, 8 and 18..."

2. Is each year's investment the full total being granted to the JCRA ?

The JCRA has been consulted in establishing this funding request and has advised in the following terms:

- Competition law investigations - Under the current JCRA competition funding model the level of grant each year has meant that in practice competition law enforcement has been significantly less proactive and more passive than the ambitions of the States policy in this area suggest.

By way of background, the Jersey grant has been reduced since 2009 (£449,290) in absolute terms and in real terms from the 2015 level of £300K, at which it remains today. While in 2009 the JCRA had a staff complement of nine, as a direct result of the financial constraints described above, the combined headcount of the Jersey and Guernsey Authorities has been kept at 7/8 staff. These staff also handle the CICRA's economic regulatory functions in the multiple sectors for which it has responsibility across both islands. Clearly, the speed and the extent, to which cases can be assessed and taken on, is significantly influenced by the resources available to the Authority. In short, the JCRA at the present time does not have the capacity to run more than a very small number of significant cases or reviews. While the JCRA has developed sophisticated arrangements to access external support and has done so for some time, it is important to note that the JCRA currently shares a single in-house competition law specialist with Guernsey. The capacity of that single individual to manage multiple market reviews, several competition cases and/or a number of mergers concurrently, even on the basis of an outsourcing model, is obviously and necessarily limited. The States of Jersey has also legislated for decisions of the Authority to be subjected to a full appeal on the merits, which further stretches the resources of the JCRA.

In order to be able to investigate competition law issues that are significant for Jersey in a way that is comprehensive and legally sound, the JCRA requires a level of expertise and capacity that is significantly higher than the present budget allows for. These limitations impact on the way competition law enforcement is presently approached, where in reality the Authority is currently forced to run enquiries serially wherever possible. It is also forced to be less proactive as a result. To address the immediate shortfall requires at least one additional competition law specialist at a senior level, estimated at an additional £100k per annum¹.

- **Merger control** - A key priority in the JCRA's merger work is to reduce the percentage of mergers notified that have no material risk to competition in Jersey. Its KPI is to reduce the current number of such mergers notified, by half, through a fast track mechanism (with potentially significantly reduced fees as a consequence). The level of M&A fees received by the JCRA in 2018 was in the order of £95k implying a reduction in the level of M&A fees in the medium term to about half of that. While this would enhance the competition law framework significantly in the JCRA's view, this initiative represents a further reduction in the level of grant by around £50k per annum over the medium term.
- **Market reviews** – A conservative estimate of the cost of market reviews is in the order of £50k and closer to £100k for larger reviews (with a 3:2 split between external and internal absorption of those costs given the specialist areas of the economy these reviews sometimes assess). The degree to which analysis and research is needed to fully bottom-out and diagnose what are in most cases deeper structural or multi agent factors is in the JCRA's experience significant. The present lower level of grant funding has in effect led to a situation where market reviews carried out by the JCRA only go as far as 'low hanging fruit' after which the review will cease. That there is in some cases more that could be uncovered is undoubtedly the case but the level or stages that market reviews can be conducted at is constrained by the current level of funding. At present JCRA can probably carry out one full market review a year, notwithstanding the budget limitations noted above. To cover the additional external costs of say a further two market reviews in sectors such as construction and alcohol may well exceed £200k if substantive issues are uncovered. While that is a large number, given the intricacies of the construction industry, the retail environment and the supply chain that serves the building industry and factoring in the multiple agency strands of any market review in those sectors, it is evident that the scope and therefore resourcing of what is involved is not trivial.
- The JCRA has operational challenges given what we understand to be the limitations in its legal powers to require information when conducting market reviews. A consequence is that the JCRA's ability to undertake substantive enquiry into sectors where concerns have been voiced by consumers and States members is impacted negatively. This negative impact can be observed in terms of the number of reviews the JCRA can initiate, the scope of issues those reviews can consider and the validation of evidence provided to it by parties subject to such enquiries.

3. How much investment is being matched by the Guernsey strand of CICRA?

Jersey and Guernsey set budgets for competition based on their own domestic priorities and so at any point budgets may be different. However, it is important that the budget that Jersey allocates is spent on Jersey competition law activity.

¹ (£60,000 of the bid has been requested against this because the JCRA has been able to apply efficiencies resulting from a staff reorganisation).

The JCRA (and GCRA) annual accounts recognise that the Members of the Authorities are required to exercise their judgment in determining the split of general expenses incurred for work undertaken under the aegis of the Channel Islands Competition and Regulatory Authorities. Part of that includes an assessment of resource allocation, including that of staff time. The notes to the Accounts further set out that where resources are shared between the islands there is a recharge system in place and states that expenses incurred are met on a no gain / no loss basis. Board costs and the costs of the Chief Executive are shared equally between the islands.

There is an expectation that the JCRA will spend the Jersey competition law grant only on Jersey activity and this is reflected in the language of the service level agreement and the grant assurance statement that the Authority submits. It is also reflected in the separation of accounts of the two Authorities that remain separate legal entities.

The JCRA internal audit (September 2017), in the past, has identified the risk that fees generated from the JCRA might be used to pay the costs of the GCRA and vice versa. The auditors therefore looked for errors of commission during their work on income and expenditure. There were no errors of commission findings reported for that year.

The JCRA has advised:

Competition law funding in Guernsey is different in approach following concerns identified in the course of previous investigations where unavailability of funds meant cases were not pursued. To remedy past issues an expedited procedure was made available giving access to funding for investigations through the Treasurer until the systemic issue is resolved (which is in train through the current government budget round). More recently, this process gave access to additional funding over and above the current £140k grant to fund specified investigations, doubling the 2019 grant. In addition, the Committee for Economic Development has sought an additional £160k of funding in its latest budget submission.

To reassure the Scrutiny Committee, at all times there is an explicit division between Guernsey and Jersey competition law grant funding and there is absolutely no cross-subsidisation between the JCRA and GCRA's competition law activities. JCRA has in the past and may in future engage in joint market studies for example but these are shared on a 50:50 basis. If the Committee would benefit from approaching the Authority's internal and external auditors, the JCRA is happy to assist in that.²

Financial Stability Board

1. What is the base budget for 2019?

² The JCRA has highlighted some issues with the competition framework. The Department has been developing legislative proposals in consultation with the JCRA. A consultation on Block Exemptions is due to be issued in the next few weeks. A further consultation on a broader package of reform is planned for early next year once policy work has been completed. This covers, amongst other things, changes to the merger system, market study powers, and appeals threshold.

There is no formal base budget for 2019. Preliminary work is being conducted within departmental YTD underspend.

2. Why is there no growth in the budget over the 4 years?

It is intended that the department will deliver ongoing efficiency of budget utilisation to allow for any incremental spend.

3. The Business Case mentions that the project is for the establishment of a Jersey Financial Stability Shadow Board (FSB).

a. In 2012 an interim FSB was established. What actions has the iFSB taken since 2012?

Due to a lack of definition and funding the iFSB faded away.

4. The Business Case mentions that Lord Tyrie and Bill Allen have expressed an interest in sitting on the FSB.

a. Why is the government already accepting expressions of interest before the Government Plan is approved?

Lord Tyrie has been appointed as Shadow Chair by Ministerial Decision, allowing for continuity in the Shadow Board phase. Bill Allen has been similarly 'grand-fathered' into a shadow position and we will look to appoint one further member that is locally-based.

b. Will local expertise be sought?

A local member – yet to be identified - will be appointed to the Shadow Board.

c. How will members be appointed? Will the Jersey Appointments Commission be involved?

The Jersey Appointments Commission will be asked to engage on all appointments to the statutory board that follows the development and States Assembly approval of enabling legislation.

5. What are the Terms of Reference for the iFSB and the FSB?

The Shadow Board will be formalising terms of reference in the coming months. A Proposition will be lodged with the States Assembly in the second half of 2020 detailing terms of reference and legislative enablers for a statutory board.

6. We note that there are similar bodies in operation, namely the Fiscal Policy Panel and Government Economic Advisors. What will the FSB be bringing which is not already being provided by others?

There are no similar bodies in operation.

The Fiscal Policy Panel was established to provide Jersey's Treasury and Resources Minister and States members with independent economic advice on matters relating to tax and spending policy, and the use of the Stabilisation Fund.

The Government Economic Advisors are a highly capable element of the civil service and bound by the Code of Conduct. They are closely involved in the preparation of assumptions in relations to the public finances, support the work of the Fiscal Policy Panel and will provide

economic support and secretariat to the Financial Stability Board.

The Financial Stability Board will adopt a macro view of the health and robustness of public finances and the major external risks that might disrupt or diminish those finances. The Board will consider appropriate mitigating action and make relevant recommendations to the Chief Minister.

Guernsey-Jersey Joint Working Programme

What is the base budget for 2019?

We sought £80,000 as a growth request for 2019; however, the administrative support proved to be less than anticipated, so this cost has been revised downwards for 2020-23. As with other funding, this budget represents 50% of the cost, with Guernsey meeting the additional 50%.

1. What are the main aims of this project?

This project aims to drive and support joint working between Guernsey and Jersey in order to deliver more effective public services across both islands. Two oversight boards, the Political Oversight Board and the Channel Islands Public Service Board, meet regularly to examine progress and resolve issues. The project funding supports these boards, and funds a programme manager and administrative support to facilitate joint working projects based within departments.

2. Please can you provide a breakdown of how you intend to spend the requested additional investment over the 4 years?

The budget covers the salary of the programme manager, some administrative support, and travel and expenses. The cost is shared 50/50 with Guernsey. Any costs of implementing individual joint working projects are absorbed by the responsible departments, and these departments will of course then realise efficiencies once projects are up and running.

a. Will efficiencies be made by working more collaboratively with Guernsey?

Most joint working projects, embedded into departments, are at an early stage, but we expect efficiencies to be realised over the period of the Government Plan. This will include reduced operating and staff costs, joint procurement which will drive down costs, shared expertise to reduce recruitment costs, and, potentially, shared services in some areas which will deliver significant efficiencies. The first year of the programme has been spent in developing a pipeline of projects, identifying joint working possibilities, and building pan-island relationships which will drive joint working over the next 3-4 years and beyond.

3. Has any consultation been had with Guernsey Officials?

Yes. The Programme Manager is jointly employed by both islands and works in both. The two oversight boards are jointly chaired at Chief Minister level (Political Oversight Board) and Chief Officer level (Channel Islands Public Service Board). Any commitment is agreed between the islands through the programme manager and boards.

4. Is Guernsey matching this level of funding?

Yes – costs are split 50/50 between the islands.

Action – Take forward the work of the independent charity commission

I should point out at this stage for the benefit of the Panel that responsibility for the independent Charity Commission sits with the Minister for External Relations, however in the interests of answering your letter, please see as follows;

1. How much funding is required for this action?

The current estimated level of funding for the Commissioner's office is between £200,000 - £250,000 per annum consisting of salary costs for the Commissioner and staff and the costs of premises and equipment.

2. Please could you provide an explanation of the Jersey Reclaim Fund?

The Jersey Reclaim Fund is the fund established under the Dormant Bank Accounts (Jersey) Law 2017 to receive dormant account moneys. The banks are required to transfer moneys in accounts which have fallen dormant (essentially no contact from customer for 15 years) to the Fund. A customer can seek repayment of their funds at any time. The Law provides that after due allowance for potential reclaims, distributions can be made from the Fund to cover the costs of the Charity Commissioner and for various charitable purposes listed in the Law.

3. What distributions have been made to date from the Jersey Reclaim Fund?

To date, no distributions have been made from the Jersey Reclaim Fund. The Minister (the Minister for External Relations), as he is required to do under the Law, will shortly be making an Order appointing an independent organisation to make distributions from the Fund for charitable purposes. In order to streamline the process for charities and to avoid duplication in the tendering process, certainly as an initial arrangement, it was intended to utilise whichever organisation for distribution was appointed to distribute Channel Islands Lottery funds. That appointment has been postponed. Other arrangements are thus being put in place.

I hope these responses answer your questions.

Yours sincerely



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Chief Minister

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