

STATES OF JERSEY

SCRUTINY COMMITTEE BLAMPIED ROOM, STATES BUILDING

TRUST PORT REVIEW

Present: Deputy Gerard Baudains (Acting Chairman)
Senator Ted Vibert
Senator Jean Le Maistre
Deputy Rob Duhamel
Deputy Phil Rondel
Deputy Bob Hill

EVIDENCE FROM:

SENATOR L. NORMAN
CAPTAIN H. LE CORNU
MR P. BAKER
(Harbours & Airport Committee)

on

Thursday, 23rd September 2004

(09:29:39 to 10:51:28)

(Digital Transcription by Marten Walsh Cherer Limited,
Midway House, 27/29 Cursitor St., London, EC4A 1LT.
Telephone: 020 7405 5010. Fax: 020 7405 5026)

DEPUTY BAUDAINS: Can I welcome you to Senator Vibert's Scrutiny Panel and, to avoid

confusion -- I think there was some confusion when I was interviewed yesterday -- whilst Senator Vibert is the Chairman of the Scrutiny Panel, the hearings rotate chairman according to the subject, basically for two reasons: mainly in order to avoid any conflicts of interest, but also to share experience. So it happens that I am chairing this particular subject.

I start by reading you the notice, and I will be glad when the shadow part of the Scrutiny Panel is over so that we don't have to read this three times a day.

It is important that you fully understand the conditions which you are appearing at this hearing. You will find a printed copy of the statement I am about to read to you on the table in front of you.

Shadow Scrutiny Panels have been established by the States to create opportunities for training States Members and officers in developing new skills in advance of the proposed changes to government. During the shadow period, the Panel has no statutory powers and the proceedings at public hearings are not covered by Parliamentary privilege. This means that anyone participating, whether a Panel Member or a person giving evidence, is not protected from being sued or prosecuted for anything said during hearings. The Panel would like you to bear this in mind when answering questions and to ensure that you understand that you are fully responsible for any comments you make.

Having got that out of the way, I think we all know who we are but, as this is obviously being recorded, perhaps we could go round the table and announce who we are.

(Recorded as present were Senator Ted Vibert, Deputy Phil Rondel, Deputy Gerard Baudains, Deputy Duhamel, Deputy Bob Hill, Piers Baker, Senator Len Norman and Howard Le Cornu)

The terms of reference have been published. Written submissions have been received and obviously what we are now seeking this morning is further clarification and explanation. Hopefully, by the time we have finished the hearings, we will have a clearer picture of what exactly is going on, because I have to say that the public perception is that someone somewhere decided that a trust port was obviously the way forward. It seems that, under workforce pressure, the wheels came off that and now we have an abandoned vehicle somewhere and nobody quite knows if it is repairable or if it is to be scrapped. So I hope you will illuminate

either the garage or the scrap yard as we go along. It would appear that the present structure, or the future structure, of the Harbours & Airport, the movement of Harbours to a trust port was instigated by possibly P&R, according to my study of the papers, in '97 or '98. I have come across several references in the paperwork throughout the various submissions to "*knitting in*" this change to the ministerial government. There was a high level review initiated by Finance & Economics. Deloitte's introduction states that their report was addressed to F&E, P&R and EDC, but no mention of Harbours, I note. Their terms of reference were to undertake a high level review of the ownership, operation and regulation of Jersey Harbours with a view to recommending a structure that could be put in place with the demise of the committee system of government in Jersey.

So my first question would be was this exercise, this move towards a trust port, a commercial decision, which seems to be the way it has been promoted, or was it simply a way of getting rid of Harbours because it doesn't fit into the ministerial system of government?

SENATOR NORMAN: Speculating to a degree, but I suspect it was something of both. Clearly with the move to ministerial government, the removal of the ... well, the non-existence of the Harbours & Airport Committee, when that comes into effect, means that whatever happens there will have to be some change in the governance of Jersey Harbours.

From the commercial side, it is not a matter of being more commercial, although clearly one wants to have commercial aims, attitudes and the way the thing is operated. It is really to provide the most efficient and effective way of running the port to the benefit of the users, the staff and the Island as a whole. Really, I think it is a combination of the two. It is not one particular driver.

DEPUTY BAUDAINS: Right. The reason why I ask that (and it is actually not part of our remit) is I thought it was curious that Harbours were being found a new slot, if you like, but the Airport apparently isn't, as far as I am aware, so ----

SENATOR NORMAN: No, no, that is not the case. We are working almost in parallel, that is the Harbours & Airport Committee, with both of the operators, because change will have to occur there at the same time when ministerial government comes into place.

DEPUTY BAUDAINS: Thank you. Could you tell me the current position? Where are we now? As I understand it, a limited company is the current preferred option, or is the matter still undecided, options still being considered?

SENATOR NORMAN: No decision has been made. As I say, the last major piece of work was the Deloitte's high level option review, which you have referred to. That was commissioned at the request, I think it was, of the Finance & Economics Committee, quite rightly, because if we are going to make such a major move, we have to be as sure as we possibly can that we are creating the right structure. That came down with the preferred option of a States owned company. Subsequent to that, there were presentations, obviously to all the Committees involved, to the staff of Jersey Harbours, the port users and other stakeholders, and the Harbours & Airport Committee charged the executives of Jersey Harbours to work on a cost/benefit analysis of the recommendations and produce a plan which could fit in with the sort of structure that Deloitte were recommending. That work is currently ongoing and is expected to be presented to the Harbours & Airport Committee within the next four to six weeks.

DEPUTY BAUDAINS: Because, if I remember correctly, their original recommendation was a corporation and a trust port made it about fourth, didn't it? Or is that the Fischer ----

SENATOR VIBERT: It was Deloitte's.

SENATOR NORMAN: Yes. Deloitte's looked at about six different options from where we are now to total privatisation. Their view, having ----

DEPUTY BAUDAINS: There were originally eight options and then they were cut down and they re-reviewed the top five and I thought the trust port made about four out of the top five.

SENATOR NORMAN: Yes. They gave points to them and it came out about that. I haven't got the exact league table, but I could work it out. But they looked at government department, government agency, statutory body, States' owned company, part-States' owned company, franchise arrangements, trust ports and privately owned. So there are about eight there, I think.

DEPUTY BAUDAINS: Basically, the privately owned were skimmed off the bottom and the others were reviewed. But, as I say, I thought the trust port made about four. It was a little curious to understand that the trust port, as I understand it, made about fourth position but the

Committee considered that their best option at the time. I'm not criticising, I'm just ----

SENATOR NORMAN: No, no, the Deloitte's report is the latest report. That was the high level options review.

DEPUTY BAUDAINS: Yes, that is what I was talking about.

SENATOR NORMAN: And their favourite option was the States' owned company. The Committee are not promoting at this present moment any particular option. What they are saying is that the favourite option, as recommended originally by Fischers and more recently by Deloitte, both of those favourite options are a States' owned company.

DEPUTY BAUDAINS: Yes. That I appreciate. What I was saying is that the fact that the Committee had not chosen to follow that course but to choose the trust port, which made about fourth on the list, as opposed to the ----

SENATOR NORMAN: No, no. We have at the moment expressed ... the only view that we have expressed is that of Deloitte, that their preferred option, or their suggested preferred option, is a States' owned company.

DEPUTY BAUDAINS: Senator Vibert?

SENATOR VIBERT: Yes, if I can just ask, on the trust port situation, my understanding, reading all the documentation, is that the Committee decided not to go ahead with it because they couldn't sell the concept to the staff. Is that an accurate reading of it?

SENATOR NORMAN: It is not something that I am aware of.

SENATOR VIBERT: You have read the report that came about why, or can anybody else help us on that?

CAPTAIN LE CORNU: I would say that that is one of the factors that staff, along with other factors, including what came out of the Deloitte Touche Report, where there were two main factors why a trust port was not favoured. One of those things was about the asset transfer, the fact that assets would be transferred, and the second was about the asset transfer and -- just let me get my head around the other one -- the competitiveness basically.

DEPUTY BAUDAINS: And the problems with the staff.

CAPTAIN LE CORNU: Well, there were other ancillary factors, because, of course, if some key

fundamental issues have not been resolved in any option, no staff member, including management as staff, would necessarily favour that option. So there is a certain logic to that, yes.

SENATOR VIBERT: Looking at your implementation program, it is pretty clear that the management were 100% in favour of the trust port option. That is back in the early days. That was the option you were pushing, because it included in it that you had a seven hour training for your staff on what the trust port would mean. If I could put the question to you, had it not been for Deloitte's second report that was done and you had gone ahead with the trust port concept, in fact you would have ended up with the fourth choice of Deloitte's.

SENATOR NORMAN: I don't think that is necessarily true. The previous Harbours & Airport Committee did lodge a proposition, which recommended the trust port option. I think it is fair to say there was a certain amount of discomfort about that among the Committee, among the Finance Committee and the Policy & Resources Committee. That is one of the reasons why the high levels option review was commissioned.

SENATOR VIBERT: Could I just ask why a high level report wasn't done before the proposition was taken to the States, because the decision and proposition was taken to the States on a trust port?

SENATOR NORMAN: It was. Well, it wasn't taken to the States. It was eventually withdrawn.

SENATOR VIBERT: It was withdrawn, but it was taken to the States.

SENATOR NORMAN: Yes.

SENATOR VIBERT: For the reason of having it accepted.

SENATOR NORMAN: Yes. I would accept that. As I say, that was the previous Committee, but, nevertheless, I think that probably was a little premature.

SENATOR VIBERT: Right. I mean, I appreciate your difficulty in this because you were not President at the time.

SENATOR NORMAN: No, but I was a Member of the Committee.

SENATOR VIBERT: You were a Member of the Committee, fine.

SENATOR NORMAN: Yes.

DEPUTY BAUDAINS: Deputy Rondel?

DEPUTY RONDEL: Have the Port Users been fully appraised of the trust port concept and were they in agreement with the concept?

SENATOR NORMAN: Well, you would have to ask them whether they are in agreement, but certainly all stakeholders have been fully involved in all the consultation process since the very beginning, since the service review was carried out in the late 1990s -- 1999, I think it was. They have had their input into Fischers' report, into Deloitte's report and have received all the presentations the same as the States Members on the F&E, P&R, EDC and so on.

DEPUTY BAUDAINS: Could I come in on the back of that? Do you believe that sufficient is being done to keep people informed of progress, because I get the impression from conversations I have had with various people, that they are not quite sure where everybody is at and this is causing some level of anxiety? What about updates, or is that not always possible?

SENATOR NORMAN: Well, certainly updates are with our own staff. Our own staff are kept totally up to date. Regular meetings take place with the port users in different forums. Everyone is totally up to speed as to where we are and are aware of the work we are doing as far as the costs/benefit analysis is concerned and the business plan and are aware that, as soon as that has been received and approved by the Harbours & Airport Committee, all of the stakeholders, including States Members and in particular the Committees who have a particular responsibility - port users, staff and everyone involved -- will have their input into that. But, until that work is done ... I mean, there has been full consultation up to now and there will be more consultation once that work that I have described has been completed.

DEPUTY BAUDAINS: Before we actually move away from the original line of questioning that I was pursuing, clearly a number of Committees were involved in trying to get Harbours into another entity before ministerial government arrives and we are working to a timetable (and we have seen the chronology and timetable it involved), but, given the slippage that has taken place, is the time available now too short to arrange a move to trust port or incorporation before ministerial government, in which case Harbours apparently would ... if that does not happen, Harbours is supposed to be subsumed into EDC.

SENATOR NORMAN: Well, if there isn't ... Firstly, a decision will have to be made by the

States. When that decision is made, if there is insufficient time before the end of next year when ministerial government comes into effect, clearly some transitional arrangements will have to be made, as there were with the Postal Committee, I think, and Telecoms.

DEPUTY BAUDAINS: But there is no cause for alarm at the present time?

SENATOR NORMAN: Absolutely no cause for alarm, no.

DEPUTY BAUDAINS: Senator Vibert?

SENATOR VIBERT: I wonder if you could indicate to us your timetable, because it would seem to me that what the Committee will be processing now (and correct me if I am wrong) is that the first thing they have to do is to make a decision about whether they are going to go ahead with a trust port or with a company.

SENATOR NORMAN: Yes.

SENATOR VIBERT: Right. Now, can you give any indication as to when you think that decision is likely to be made?

SENATOR NORMAN: Well, the decision could be wider than that. It could be trust port, company, stay as we are ----

SENATOR VIBERT: Or some other.

SENATOR NORMAN: Or some other. As I say, I am hopeful that we can, my Committee, can make a decision, my hope would be -- my hope would be -- by the end of next month.

SENATOR VIBERT: Hmm hmm.

SENATOR NORMAN: If that is possible, then obviously it would go out to consultation with the other Committees and the stakeholders.

SENATOR VIBERT: And when would you anticipate bringing a proposition to the States with your preferred option?

SENATOR NORMAN: I think it would ... our preferred option would be this year, but I think that could be a bit ambitious, so I would imagine it would be early next year.

DEPUTY BAUDAINS: Deputy Rondel?

DEPUTY RONDEL: Yes. Do you believe the current working practice at the harbours are too cumbersome and bureaucratic and, if a change is agreed to the structure of the port management,

what benefits will it achieve for the taxpayer and would additional money be put back into the Exchequer and, if so, how much would you expect to be able to put back into the Exchequer?

SENATOR NORMAN: Well, until the cost/benefit analysis and the business plan is produced and refined, that is an impossible question to answer. The States will actually have to make a decision as to what sort of structure they actually want. There are so many variables. At present, the Harbours & Airport Committee and Jersey Harbours in particular have a number of community responsibilities, and the question will have to be asked how should those be funded under whatever structure -- I am thinking about things like St Catherine's and the outlying harbours and so on, which has no commercial benefit whatsoever to Jersey Harbours but the maintenance and looking after of those are paid for by harbour users and commercial income from the harbours -- is that is still appropriate.

Now, whether you have a trust port or a limited company, if that is the route that is chosen, that company could and should have public service obligations regarding these sort of things. Therefore, that might affect the dividend policy and, therefore, the return to the States. So this is a policy decision which is going to have to be made by the States as to how these sort of things are going to work. It is a personal view that there should be a reasonable return on the capital employed by the taxpayer, but that has got to be balanced against the needs of the Island as far as the harbours as a strategic asset and the public service obligations that could and should be imposed on Jersey Harbours.

DEPUTY RONDEL: If I can continue?

DEPUTY BAUDAINS: Yes.

DEPUTY RONDEL: As no return is currently being given to the States because it is all being ploughed back into Harbours, under any new system do you believe the public will benefit?

SENATOR NORMAN: It is a personal view, which cannot be confirmed or otherwise until the cross/benefit analysis and the business plan is produced, but I don't think there is any doubt about that at all. Jersey Harbours has been treated in the same way as Jersey Airport over the years, in the sense that every bit of profit -- and it is cashflow profit rather than real profit -- has been put back into the Treasury until recent years and then, whenever there is a capital project

needed, whatever it might be, Jersey Harbours has had to borrow that money back from the Treasury and then repay that with interest. So the reality is both that the harbour and the airport, the capital infrastructure, has to be paid for by the users twice and once with interest. So I have now forgotten what your question was, but I think I have got a political point across.

DEPUTY BAUDAINS: I think you are possibly refreshing your memory from the recent publication we have seen comparing the airport at Guernsey.

SENATOR NORMAN: In *Jersey* Briefing?

DEPUTY BAUDAINS: The funding situation is practically as you described it.

SENATOR NORMAN: Well, I mean, this is what I have been saying for quite some time. Phil, I am sorry, I have forgotten where I was actually going to.

DEPUTY RONDEL: Well, I was asking about the return to the States.

SENATOR NORMAN: Well, yes, this is the point. If it is a company, no company ever returns 100% of its profits to its shareholders. It retains its income for future identified investment that is needed to maintain the States, to improve the States, for the benefit of the users. So there will be a return. There should be a return to the States -- there is no question about that -- but I do not think it will be anywhere close to 100% of the profit.

DEPUTY BAUDAINS: Senator Vibert?

SENATOR VIBERT: You certainly won't find any disagreement from me on anything you have said, but I want to turn to the way in which the harbours are treated compared to the airport in recent years. The Harbours & Airport Committee have rationalised the position whereby the airport users had been previously paying for things like Med Services, which has now been transferred, and security, which has now been transferred.

SENATOR NORMAN: No, security still remains.

SENATOR VIBERT: It still remains, does it? I thought you had transferred that.

SENATOR NORMAN: We wished to.

SENATOR VIBERT: Right, okay. Do you think that commercial port users should subsidise the Bonne Nuit Bay harbours and all the other harbours, that that should come out of the port users' costs?

Senator Le Maistre entered the room

SENATOR NORMAN: Well, this is a personal view, you understand.

SENATOR VIBERT: I am really asking you as President of the Committee.

SENATOR NORMAN: Well, as President of the Committee, I do not believe that they should.

SENATOR VIBERT: Do you have the support of your Committee on that and will it be part of your recommendations?

SENATOR NORMAN: It will be part of our cost/benefit analysis and business plan as to how the heritage areas (as I put it) will be treated. As I said earlier, that can be done in a number of ways. Either it can be done directly and we can carry out the work, or Public Services can carry out the work, on behalf of the States and be paid for by central revenues, or it can remain with Jersey Harbours, whether it is Jersey Harbours Trust or Jersey Harbours Limited or Jersey Harbours anything else, and reflected in any dividend policy. That can't happen with the trust actually, because if it is a non-profit making trust, then that would have to come from general revenues. If it was Jersey Harbours Limited, the costs of those heritage responsibilities and any other responsibilities of that nature could be paid for through a reduced dividend policy.

SENATOR VIBERT: Would that be one of the reasons why the port users would favour the trust as opposed to the company?

SENATOR NORMAN: I'm not aware of the port users having expressed a preference one way or another. I don't know.

CAPTAIN LE CORNU: I think there is an element of ... that the business plan needs to expose that to make sure that, from a port user perspective, cross subsidy isn't going on. Indeed, even looking for a commercial return, the fear is, from a port user perspective, a fair fear that pricing would go up out of kilter. I think what we are aiming for in the business plan, it is fair to say, to summarise what Senator Norman has said, is that we are looking both for sustainability for the port, indeed a self-sustained port, but with competitive pricing so that it is meeting the needs of competitive Jersey effectively, but balanced against the need to provide a return. So there is a balance which we have defined in the business plan to make sure that both a return is made, but not at the expense of the Island's competitive needs.

DEPUTY BAUDAINS: Just staying on ----

SENATOR VIBERT: Sorry, can I just say on this particular issue, you keep telling us about the cost/benefit plan and that would appear to be obviously the area that is going to affect your decision as to which way you are going to go. Could you give us some idea of when that cost/benefit plan is going to be available? Would it be available, for instance, for us to look at? What timescale are we talking about?

SENATOR NORMAN: No. We are expecting it to be available to the Harbours & Airport Committee by the end of next month.

SENATOR VIBERT: Right, okay. Thank you.

DEPUTY BAUDAINS: Staying on the financial issue, as Deputy Rondel has said, Harbours (and we all know Harbours is a trading committee whose profits go to the States), what I am trying to understand is how the trust port or incorporation/limited liability company might affect Jersey financially, because we noticed that a trust port would allegedly not pay a tax or rates, so would each of the options have the same or different effects? Are they quantifiable? The second part of my question is what is the current annual operating profit as a percentage of the so-called asset value? Would that rise or fall under the alternatives?

SENATOR NORMAN: I am sorry to repeat myself, Chairman, but the cost/benefit analysis will tell you about the future. We can tell you about the current situation. For the first part of your question, clearly if it is a trust port, a not for profit trust port, there would be no return to the States. That would be the whole objective of it.

DEPUTY BAUDAINS: Hmm.

SENATOR NORMAN: In fact, there would be a cost to the States because the community and heritage parts I described would need to be paid from central funds. With a States' owned company, there would be a return. Clearly there would be taxation until we go to zero-10. The parish would benefit, or benefit to a degree, because there would be rates payable, although we do pay a significant amount of rates already, and there would be a dividend policy which would have to be agreed with the Finance & Economics Committee.

DEPUTY BAUDAINS: Which leads on to another matter which I need some clarification on. Is

there not a benefit in retaining at least some degree of political control over our only major harbour, because I notice some of the options do not?

SENATOR NORMAN: Yes.

DEPUTY BAUDAINS: I am thinking of, for argument's sake, we might wish to assist the economy by running the harbours at a loss. I don't think a trust or a company would be able to do that.

SENATOR NORMAN: I absolutely speak for myself and my Committee here. There is no doubt that we have one port. It is a major, vital, life-giving, strategic asset and must remain totally in public ownership and public control. We are talking here about the governance of the port, not, in my view, the ownership.

DEPUTY BAUDAINS: Right. How do all the other harbours fit into the plan, Rozel, La Rocque, Bonne Nuit and all that? Will the small boat owners and that have a problem when all the focus is on one major harbour via a board?

CAPTAIN LE CORNU: No. I mean, again, it is part of the business plan, but clearly the overall strategy for the business plan is to try and make sure that cross subsidy issues are addressed in a way that the corporate entity can meet the obligations that it has. So one of the most important things which we are ensuring we work out with the Economic Development Committee, who have got the policy oversight, or will have the policy oversight, is what that obligation to the Island is so that our aim is that, as I said, we would be self-sustaining. Now, the shareholder will always be, as Senator Norman says, in a limited company, the States of Jersey effectively, the Treasury. So, therefore, the dividend, the return, can be adjusted according to the needs of the Island.

DEPUTY BAUDAINS: I was thinking actually more so of accountability, because the small person is the one that is going to have the grievance and he may not find that he gets satisfaction from a body the same as he would from a politically run organisation, as it is at the moment, albeit not terribly well run as the previous President said. Do you foresee problems with these smaller ports under a different administration?

CAPTAIN LE CORNU: I don't. I believe a business well run will respect the needs of its

different users and it needs to ensure that the full spectrum of its users are accounted for.

DEPUTY BAUDAINS: Deputy Hill?

DEPUTY HILL: Yes. Just getting back to control and accountability etc, just by coincidence I can see Senator Norman, myself, Deputy Duhamel and in fact Deputy Baudains as well, we are all former Members of the Telecoms Board.

SENATOR NORMAN: Indeed.

DEPUTY HILL: I think, had we had a decision that has been made in this past week as Members of the Telecoms Board, we probably would not have ever given our support to it. I would not have given my support to it, I do not know about the rest of you, but I think it might be difficult for the Board, as it was, to give consent, and I am talking about the reduction or the increase in the telephone calls or the charges for the pensioners. How much control do you think should be handed over to the new control or trust or body, etc? Do you think at the end of the day, the States being the major shareholder, should still have some say in the management or the financial dealings of the new trust port or whatever system is implemented?

SENATOR NORMAN: By retaining ownership and control, the States will always have a major influence on the direction of the company that it wishes to take. As the shareholders, they will be responsible for endorsing the policies that are promoted by the directors or the trustees. It will be easier for them to do that with a limited company apparently than it would trustees. Clearly legislation will need to be in place which will describe the responsibilities of both shareholders and directors. There would need to be a memorandum of understanding entered into with the shareholders, the owners and the company. So there needs to be an absolute commitment on both sides to operate it at the highest levels of the best practice of corporate governance -- transparency and openness -- there is no question about that.

DEPUTY HILL: And also meeting the needs of the general public. After all, at the end of the day, the States will still own the harbour, as indeed it still owned the Telecoms.

SENATOR NORMAN: That is a given. There is no way I would promote any other way.

DEPUTY HILL: Thank you.

DEPUTY BAUDAINS: Senator Vibert?

SENATOR VIBERT: Thank you, yes. Has the Committee actually considered how it would be possible at all under a limited company to actually control that it does not lose its equity holding, because it is always going to be an easy option to dispose of shares when the States say, or a decision of the States may be “We need some money. Therefore, one of the ways to do this is to sell a company that we own.” We have already seen that there are pressures on Telecoms and, if the stock market was in the right frame of mind, I think there would be a lot of support to raise money that Telecoms ought to be sold. It is a highly profitable company and the States would get a lot of money. How does the Committee feel that it would overcome what seems to be something that would be insurmountable if the States decided they wished to sell the company, whereas you don’t have that with a trust port?

SENATOR NORMAN: The States are the decision makers of the Island. They are the government of the Island. Clearly, if the States made such a decision, that would be a matter for the States as a whole. Certainly I do believe -- and, again, this is not something I have discussed with my Committee, but as a matter of principle, I do believe -- that our major utilities should remain, if at all possible, in local ownership and control.

SENATOR VIBERT: But you can’t do that with a trust port. Once the trust port is set up, you couldn’t sell it as a business. So would that not be considered as a huge advantage in terms of the stability of the port and the fact that it could never ever go out of public hands if it was in fact in the hands of a trust port and properly controlled?

SENATOR NORMAN: It might be. I don’t ... I mean, I’m not legally ... I don’t have enough knowledge to know whether a trust port could be dismantled and changed in structure and form of governance, so I imagine there must be a way. So if the States were absolutely determined to sell the port, I imagine they would always find a way, particularly as they are the law makers as well as the owners in this particular case. But, of course, while there might be that actual level of protection (if that is the word) from selling the asset, as is pointed out in the various reports and papers you have, there would be less day to day control available to the States. So there would be something of a trade-off there, I imagine.

DEPUTY BAUDAINS: Could I just ----

SENATOR NORMAN: But, again, you know, to sell an asset like that would have to take a decision of the States and I can't ----

DEPUTY BAUDAINS: Could I just come in there? Would there be any parallel with what the Senator is asking and perhaps a Jersey Heritage Trust, where there is a provision to actually take back the jobs that they do to the States under certain circumstances? Would such a provision be included in anything that the Committee may be considering?

SENATOR NORMAN: I imagine the States would want such a safeguard. I mean, they would not wish the port to ... if things went really badly and the company was unable to continue to operate, the States would want to be able to step in to make sure there was continuity of service, yes.

SENATOR VIBERT: If I can just continue on this subject, because when the port of Tyne actually made a presentation to the States at the request of the Harbours and the Airport, when at the time it was supporting the trust port concept, one of the powerful arguments that was put forward was this very situation, that once the trust port was set up, and it was set up in a particular way, it could not be dismantled.

SENATOR NORMAN: Do you know any more about that, Piers?

MR BAKER: Yes, I can fill that in. It was one of the strong elements in favour of the trust port. It doesn't have shareholders, so you can't have a foot in the door by beginning to sell shares privately. That does give a degree of comfort, of course, to a lot of people. But the trust port is somewhat more removed from the political control that obviously shareholders have if the shareholders are actually the States Members. So there is a balance to be had. It took the United Kingdom Government prior to 1997, you know, major legislation to try and force some trust ports to actually be sold and some people felt that that was unfair, and in fact Tyne was one of the ports that showed that it was doing a good job and it did not need to be privatised. But the argument there was between trust port and privatisation.

SENATOR VIBERT: But the argument was also between the fact that the way in which the trust was set up there was satisfactory to all the stakeholders involved and indeed to the Government.

MR BAKER: That is correct, but it has to be said that it does remove the trust one step further

than a shareholder company.

SENATOR VIBERT: Yes.

CAPTAIN LE CORNU: Can I maybe just add one more thing on that, which is that the other reason that that one step further removal is seen as a disadvantage, especially in the Deloitte & Touche Report, was that assets, i.e., all the land and property, would have to be transferred to that trust. That is one of the biggest dangers that was spotted, that that land would fall outside the States' ability to influence what the trust did with that land. Whereas in a limited company the land is still owned through a limited company by the shareholder, which is the States, so it has much more control over the actual infrastructure of the port itself.

SENATOR VIBERT: Are you suggesting that the Harbours & Airport Committee, or the Cabinet, would be able to say to a company about their land "We don't wish you to do such and such with it?" How on earth could it exercise that kind of control?

CAPTAIN LE CORNU: I am sorry, I don't quite ...

SENATOR VIBERT: How can a government exercise control over the land, right, which is part of the harbour, because it just happens to be the shareholder in the company? I mean, we had the situation with Telecoms as an example, right? We don't actually have any control over what they do and the same is true with the Postal. We don't have any control. They run their show. So I just can't see how this asset transfer is a valid argument. I mean, how could they possibly exercise control if the ... I can put it this way. If the government was unhappy with the limited liability company and the way they were using the land, what could they actually do about it?

SENATOR NORMAN: One of the sanctions, and one of the ultimate sanctions, of course, is to remove the directors and to appoint directors who are sympathetic to the way that the shareholders wish to carry out the whatever it is.

SENATOR VIBERT: But it is pretty destabilising, isn't it?

SENATOR NORMAN: Absolutely, but if the disagreement is that deep, that might be a sanction. But what you try and do is to avoid that situation arising by the memorandum of understanding that would be signed before the company is actually operating as a limited company. By including in the memorandum and articles of association the sort of clause which

is included, I believe, in the Waterfront Enterprise Board Limited articles and, I think, Jersey Telecoms as well, a minister (as it will be at that time, whoever has political responsibility for Jersey Harbours Limited, if that is the way it goes) would have the power to give directions to the company in certain areas. So I think that can be reasonably covered.

SENATOR VIBERT: Would you not accept the fact that the experience so far with the quangos - - Postal, Telecoms, Jersey Financial Services Commission, the Competition Regulatory Authority -- is in fact that it is almost impossible for the States to exercise any control at all?

SENATOR NORMAN: No, I don't accept that at all. I think that, if the States wish to exercise control, or the committees responsible for those particular bodies wish to exercise control, they do have the authority to do it. Whether there is the will to do it of course is another matter, but the authority is certainly there.

DEPUTY BAUDAINS: Deputy Rondel has had his hand up for so long he is risking gangrene, but I would just like to come in first on the same matter, because two years ago P&R, as I have already said, stated that one advantage of a trust was that its activities would not be liable to tax or rates, but they also made some other observations. They expressed concern that very careful detailed consideration was required if the public's long term liabilities are not to be put potentially at risk, a matter I think you just raised. They also went on to say "*Sufficient convincing evidence is yet to be put forward as to why the States should agree to pass its own assets out of its direct control.*" Is anyone aware of those concerns, because they are clearly major issues?

SENATOR NORMAN: Yes, and we share them. **(Pause)**

DEPUTY BAUDAINS: Well, I thought you ... sorry, I was waiting for you to ...

SENATOR NORMAN: Well, no. We share them and that is why I said whatever structure is chosen -- limited company, trust port or whatever, any of the eight options or any others that we might think of -- ownership and control, ultimate control, must remain with the States. There is no question about that at all.

DEPUTY BAUDAINS: Deputy Rondel?

DEPUTY RONDEL: What was the view of the workforce in probably not adopting a port

status, but in moving to a limited liability company? I presume you have discussed it with the workforce?

CAPTAIN LE CORNU: We have. We have gone through ... if I may?

SENATOR NORMAN: Yes.

CAPTAIN LE CORNU: We have gone through various exercises in talking with staff. I think it is true to say that, until any staff is given a choice, where you literally have something tangible to be able to say “Yes, I can see what that means”, you would not opt to go somewhere where you don’t know. So until the business plan is fully formed and is able to be communicated in its fullest sense, I wouldn’t expect staff to be able to say “Yes, this is something we want.” So staff have been ... we have talked with staff. We have had a least a quarter of our staff, for example, on a day together looking at the business opportunities that would come as a result of this. So we are working with staff and we are working out those options and looking at what the choices are.

SENATOR VIBERT: Sorry, is this on the trust or is on the company?

CAPTAIN LE CORNU: This is on the Jersey Harbours Limited company approach.

SENATOR VIBERT: Right.

DEPUTY BAUDAINS: Deputy Duhamel.

DEPUTY DUHAMEL: Thank you. I have three questions. I will try and get them all in in one go, if I may. They are all to do with the Deloitte Report and essentially chapter 5, page 13. The first question is under “*Perceptions of Stakeholders*”, it actually indicates that there were also a number of observations in the stakeholder reviews and discussions that were undertaken about the current ownership and governance structures, where the underlying message seemed to be that business and politics do not mix well, particularly in the case of Jersey Harbours.

Now, the first question is, under the third bullet point, it actually itemises a concern, saying that “*There is poor geographical definition of the harbour estate.*” Could perhaps Senator Norman actually outline to us exactly what was behind this particular statement, because it does say “*geographical definition*” and what the new proposed organisation structures would do in order to overcome this particular perception?

SENATOR NORMAN: Well, Piers has offered to answer that question and I will, if you allow, Mr Chairman, welcome his comments. But I think what that means, what the comment in **here** means, is that it is difficult to establish exactly where Jersey Harbours' administration finishes, WEB starts, Public Services starts, Planning starts and so on. So with any new structure, the responsibilities for the estate will have to be clearly defined boundaries, agreed and so on. And, of course, we do have the Island Plan and indeed Jersey Harbours' own capital plan for the next 20 years, where it has been agreed that certain land alongside the port, particularly in the La Collette area, as it becomes available should be transferred to Harbours for marine use. So all these sort of things will have to be incorporated in any changes. I think that is ... and there was an example pretty recently, where the States transferred some land between ourselves, which was near the power station, inland as it were, for some land that was alongside the port or alongside the La Collette Marina. Piers, would you like to comment?

MR BAKER: I think the Senator has really said exactly what I was going to say. We had very effective communication consultation during both the Port Master Plan and the Island Plan development, which led to a very much clearer definition of what one would call the port operational area. But historically that area is a real mishmash of different committees controlling different bits. Within that port operational area, which has now been presented to the States in the Island Plan, within that there remains different controls by different committees. This is where that comment comes from. Both the Strategic Review in 1999 and again this one in 2004 repeated the problem that a port has if, within its operational area, it doesn't have effective control.

DEPUTY DUHAMEL: Right, okay. So there is no indication then that it was actually referring to the other smaller ports at Bonne Nuit and places like that?

CAPTAIN LE CORNU: No.

DEPUTY DUHAMEL: Right, okay, thank you. The second question, if I may, under the fifth bullet point it says that "*The Port Master Plan has been adopted by the States, but Jersey Harbours is not being allowed to follow it.*" In what way and by whom?

CAPTAIN LE CORNU: It is the same answer actually.

SENATOR NORMAN: It is.

MR BAKER: The Port Master Plan was never taken to the States. It is a committee policy. So, again, if we have to look at the top of the page, it says "*It is the perception of stakeholders that these are not statements of fact.*"

DEPUTY DUHAMEL: Hmm hmm.

MR BAKER: These are perceptions of different people who were interviewed, so the Port Master Plan didn't go to the States. The Island Plan, of course, did and we have actually got a very strong development with the Waterfront Enterprise Board in pursuing Jersey Harbours' needs as well as WEB's and the Island's.

DEPUTY DUHAMEL: So would it be the intention to actually bring the Port Master Plan before any move was made to reorganise the structures?

MR BAKER: It is a commercial plan. It wouldn't perhaps normally be endorsed by politicians. I don't know.

SENATOR NORMAN: No. It is a 20 year strategic plan, but it is also a moveable feast. As demands change, opportunities arise. It is flexible, the same as the airport 20 year plan, 2020, the original plan. That is being redone every three years and, of course, there will be changes. As I say, demands change, fashions change and opportunities change. You have got to be flexible.

CAPTAIN LE CORNU: Can I just add one point there? I think the underlying issue there is the ports, a port, i.e., bringing ships in, discharging cargo and sending ships out again and allowing marinas to operate, so to conduct this business, must protect the land, especially in close proximity to the port, to the water basically, the quayside areas. One of the dangers that has happened and there have been some examples in reasonably small waterways at this point is what this is, I think, probably alluding to, which is areas of land which, under the overall agreement, were designated for return to the Harbours & Airport Committee for administration as being right alongside weren't directly returned and other Committees have, you know, taken responsibility for them, tried to take responsibility for them. There is a real danger in that, in the sense that we have got some plans where cargo operations are planned to move because of

changes, or increases in some ways, of their business and we must earmark some quayside land to enable that to happen. Otherwise the port will lose its ability to operate as a port. That is probably the underlying danger that has been highlighted.

DEPUTY DUHAMEL: Okay. Thank you. The penultimate bullet point on the same page: “*It indicates that employment practices and union relations are considered to be some way behind the UK.*” In what ways and what would need to be amended by way of legislation in order to bring those practices in line with the UK and whatever organisational changes you are putting forward?

SENATOR NORMAN: I think, Chairman, the Panel should note that these comments on the page that Deputy Duhamel is referring to are not comments of the Harbours & Airport Committee, nor of the executives from Jersey Harbours, nor are they comments of Deloitte.

SENATOR VIBERT: They are the stakeholders’ comments.

SENATOR NORMAN: They are comments, reported comments, of those who have been consulted by Deloitte. The employment practices and union relations of Jersey Harbours are exactly the same as for any other States department. So if there is a failing there, there is a failing throughout.

DEPUTY DUHAMEL: Okay.

DEPUTY BAUDAINS: Senator Vibert?

SENATOR VIBERT: I wonder if I could just deal on the question of property on the harbour. Does the Committee perceive any difficulty from the fact that Property Services have now moved to Environment & Public Services and they are preparing a register of States buildings of all types and certainly the harbours; and they have a particular view, which is that all of the property owned by the States should come under them, come under their control? Do you see a political difficulty likely to arise in this?

SENATOR NORMAN: I don’t know about a political difficulty. If the States decided that they did not wish to transfer the property assets, the land acquired, to Jersey Harbours Limited or the trust port or whichever way it goes, there would be severe difficulty in Jersey Harbours in meeting its responsibilities, but that would be a matter for the States. I can’t believe that that

would be a major issue if the States are retaining ownership as 100% shareholders of the company. It certainly wasn't with Jersey Telecom and isn't with Postal, so I don't see why there should be any difference here, but that would be a political decision.

SENATOR VIBERT: The difference is that Property Services have now been transferred under another department, which has a totally different view that has previously been expressed; and the view that has certainly been expressed among the Committee is that Property Services are going to be the people who are going to decide what happens to the way in which States' properties operate.

SENATOR NORMAN: Okay. But at the end of the day, any Committee's policy has to be endorsed by the States or can be challenged by the States and I'm sure that ----

SENATOR VIBERT: Except planning.

SENATOR NORMAN: Sorry?

SENATOR VIBERT: Except planning.

SENATOR NORMAN: That is planning decisions. What you are talking about is not planning decisions. We are talking about administration of property. The States will undoubtedly make whatever decision is in the best interests of the Island.

SENATOR VIBERT: Finally, if I could just ask one point. It is slightly off the subject, but it is something that does concern me, which is that the harbour is now becoming a strong residential area as a result of the waterfront development that has taken place. Is the Harbours & Airport Committee seeking to provide protection against actions likely to be taken by residents ultimately complaining about the fact that port activities are taking place, which is going to create noise and it will create dust and is going to create a certain amount of discomfort. People are suddenly living in a port. I wondered if the Committee has given any thought to whether sections should be inserted in leases making it clear.

CAPTAIN LE CORNU: Yes. If I can answer. I know before I actually took over the position I am in now that each of the developments that have been undertaken, the flats and indeed the new flats for the Albert & Victoria and then the Harbour Reach flats, have both been represented to by Harbours & Airports Department, asking for very strong -- what is the way to put this --

information and part of the lease to ensure that that topic is kind of covered. I do not know what is the right way of saying it.

SENATOR VIBERT: I understand.

CAPTAIN LE CORNU: Into leases. Also, in our operational centre at the moment we are working very hard both in the development, particularly in our close operational area, to look at noise and sort of constricting the operation to as tight an area as possible -- it is very key for us to segregate it as much as possible between passengers and cargo -- and even right now we are looking at reconfiguring the design of a new warehouse which will significantly change the noise levels, so it is a bit of both that is going on.

SENATOR VIBERT: But do you accept that port-wise it is an unusual mix to have residential not on marinas but in a working port?

CAPTAIN LE CORNU: Not desperately no. I can think of many UK ports. All who depend on their estate management to give them sustainability by generating asset generating income, where waterfront developments are very close to water operations is not completely uncommon.

DEPUTY BAUDAINS: Deputy Rondel?

DEPUTY RONDEL: Yes. Earlier on I put the question have the port users been fully appraised of the trust ports concept and were they in agreement with that concept. I have to put it again, because I have correspondence here in my file -- in fact, this particular one is from St Helier Boat Owners' -- and in fact they state "*We do not believe that the Association were involved in any formal consultation prior to this decision to become a trust port.*" How does that stand with what you have already told us about consultation?

SENATOR NORMAN: All I can repeat is what I have said. We have kept the port users as up to date as we possibly can with the thinking of the Committee. All of the stakeholders have had the opportunity to have input with the various consultants -- Fischers on a couple of occasions and Deloitte -- and it is sometimes, although I am not saying in this case, but sometimes people will complain about not having been consulted because a committee hasn't taken their particular line. There is a difference between being consulted and actually agreeing with the presentation made.

DEPUTY RONDEL: Right, okay. So, therefore, as an organisation a trust port has been examined and now a limited company is being considered.

SENATOR NORMAN: Yes.

DEPUTY RONDEL: What is the cost to date in all the various concepts that have been examined, not only in pounds and pence but also in manpower, since the original idea in 1997/98 that came out of P&R/F&E?

SENATOR NORMAN: Yes. Sure, we were warned yesterday that such a question may come up.

SENATOR VIBERT: Yes, sorry about that, it is a bit late.

SENATOR NORMAN: So ----

SENATOR VIBERT: We are quite happy for you not to give the answer today because obviously ----

SENATOR NORMAN: I am quite happy to give you a ball park figure and give you some more detailed figures later, but we calculate that the actual cost to Jersey Harbours is somewhere in the region of just over £100,000 so far.

DEPUTY RONDEL: On that figure, that £100,000, given that you have had officers, I would say, in place for a number of years specifically working at least 50% of their time on a trust port or now limited liability, are you sure that £100,000 is a correct figure?

SENATOR NORMAN: Chairman, if you would allow me to say, those figures were put together very quickly yesterday. If you would allow us or give us time, we will be quite happy to give you as much detail as we possibly can.

SENATOR VIBERT: We really didn't expect you to be able to come up with it today. We just wanted the flag that it was going to be asked because, if I look at the Strategy for a Sustainable Future with all the tasks that you have carried out, which are enormous, an enormous amount of work, and you include the Fischers, Deloittes, OXERA reports in that, which is what we would like to know, that really is the kind of figure. Obviously it is going to take some time to put it all together, but we are quite happy to get that in writing from you.

SENATOR NORMAN: Yes. Would the Chief Executive like to make a comment on that?

CAPTAIN LE CORNU: Well, a couple of comments on it. We have got the costs for those direct

reports, although OXERA, as far as I am aware, haven't been involved.

SENATOR NORMAN: OXERA haven't been involved, no.

CAPTAIN LE CORNU: No, not at all.

SENATOR VIBERT: No, but OXERA was done by Policy & Resources. I am sorry, it wasn't OXERA, it was Deloittes & Touche.

CAPTAIN LE CORNU: Yes. Those costs are relatively straightforward and we have them here. The one thing I would challenge a little bit is that officers in an organisation are tasked with business planning and strategic management and, to my knowledge, we haven't got any staff member currently or in the past working solely on this as a project, where you can allocate their time accordingly. My job and my predecessor's job ... it is very hard to differentiate what specifically is trust port or whatever because that is our job, to plan the future strategy of the organisation. So I have a little bit of difficulty seeing how you can split management time out from that.

DEPUTY BAUDAINS: Isn't it the case -- I may have this the wrong way round -- that the Fischer review was done at the request of P&R and the Deloitte was paid for by Harbours?

SENATOR NORMAN: The original service review carried out by Fischers was part of the States-wide service review program.

DEPUTY BAUDAINS: I am thinking there may be some difficulty apportioning costs to this particular exercise from that.

SENATOR NORMAN: Well, the service review document or process, I think it is questionable whether it should be put under the heading of this particular subject, because it was done as part of the Service reviews carried out by or for every States committee. It was not specific to this task. It obviously touched on it clearly, and, you know, that was around about £50,000, but the work was going to be done whether this item was on the agenda or not.

DEPUTY BAUDAINS: Yes, understood.

DEPUTY RONDEL: Can I just come back in on what the Harbour Master actually said about staffing etc? Was not in fact Piers Baker -- I better use your name here -- taken on specifically to bring in or to work on the trust port, the trust port status and now obviously on limited liability?

CAPTAIN LE CORNU: Again, I answer in the same way, in the sense that I wasn't there at that time and I don't want to shrug my shoulders, but, again, in the same way, you take on business planning/strategic development people to work out the strategic development whichever way that may be. Now, that is a cost which a company will choose to make whichever the direction. So an organisation decides whether it needs to have strategic planning and to what extent that needs to be. So I still wouldn't be able to apportion the costs directly in my own head to either trust or incorporation, because we need to work out a future continually. Every five years you review it and every ten years you will do a fundamental strategic review and every year you do business planning processes. How you choose to do that is a matter for the executive to work out. I hope that makes sense.

SENATOR VIBERT: Can I just ask you about the public perception there is about things like trust ports and the States moving into areas like companies? The public perception is that when it happens, the executives immediately get quite large pay rises on the basis that, when they are working for the States they are confined to a certain pay structure, but once they go into private enterprise, which is what becomes, then the opportunity is there for them to actually receive quite substantial increases in their pay. That is exactly what has happened with Postal, and it is exactly what has happened with Telecommunications. Do you understand the feelings that the public have that this is what this is all about?

SENATOR NORMAN: I can understand the public perception of the first part. I do not believe there is a public perception that "*this is what this is all about*". As President of the Committee, I do believe that staff at all levels should be rewarded/remunerated appropriately for the tasks they carry out and the manner in which they carry out those tasks. Just to give you one example, as part of our operations at the airport, we introduced a suggestion box-type arrangement for staff to suggest any changes or improvements they can make to working practices. For any that were reasonable and worked and were put into operation, a small cash reward was given as a sort of "thank you". It was not unreasonable. It might have been £20, £50, £100. We were told to stop it by central Human Resources because it wasn't part of their pay package. Do you believe that? Incredible.

SENATOR VIBERT: I can believe it.

SENATOR NORMAN: That is absolute madness, but that is what actually happened. We still do it, but we pay it out of petty cash now.

SENATOR VIBERT: Mr Chairman, if you will excuse me. I am not being rude, but I have to go to the Licensing Assembly to speak on behalf of the residents of St Helier on an application, but I will be back in about ten minutes.

Senator Vibert left the hearing room

SENATOR NORMAN: I am not sure how much longer we are allowed.

SENATOR VIBERT: We are here until eleven.

DEPUTY RONDEL: Do you perceive that there is low morale within the Department because of the continual uncertainty of corporatisation, then a port trust and now we are looking at limited liability company? Would you agree that there is low morale within certain parts of the Department?

CAPTAIN LE CORNU: I believe that, until we can present a business plan that makes sense, gives staff and the organisation a hope for the future, in terms of very positive and defined, which is sustainable and growing and developing and meeting the needs of the Island, then there is going to be a certain amount of confusion and uncertainty, which isn't obviously good for morale, to put it in those terms. That is the thing I am trying to address through my own relationship with staff and my management team's relationship with staff and their involvement in putting that business plan together. But it is a process which takes a little bit of time and, until we have got that in front of us, we can't really give that a much more precise future, which will hopefully change that situation.

DEPUTY RONDEL: As considerable time has been spent obviously not only by your Department but also by the Shadow Scrutiny Office etc and ourselves, the Panel here, would it not be useful if all States Members and the Department staff were kept abreast by an RC on a regular basis so that at least ... in fact, it may not have been necessary to have these hearings if an RC had been presented to the States that you were moving forward in a certain direction, thereby not only the States Members would know what was actually being proposed by

Harbours, but also the staff would know that this was a policy that was actually happening?

CAPTAIN LE CORNU: I'm not sure what an RC is in clear terms.

DEPUTY HILL: A report.

SENATOR NORMAN: It is a report to the States.

CAPTAIN LE CORNU: Okay. But, as far as staff are concerned, I have regular staff meetings. I put across as much as I possibly can -- and I mean regular -- and also with union representatives and all sorts of staff groups. So I think we are doing the best I can at the moment, the best we can at the moment, in terms of communicating what is still an undeveloped and not finalised business plan.

DEPUTY RONDEL: On the political side, could Senator Norman also come in on that, please, because of the RC?

SENATOR NORMAN: I think it is very difficult to put an RC or any major form of document to the States unless you have got something meaningful to say. But certainly we are a very small jurisdiction. If anybody wants to know anything at all, any States Member wants to know, they can ask formally or informally, but it is not something ... because we are progressing it, because Policy & Resources, EDC and the Finance & Economics Committee were aware of our business planning process and the cost/benefit analysis, there didn't seem to me to be any need to go any further at that time.

DEPUTY RONDEL: So you are telling the Panel that it is appropriate that three Committees are fully aware of what is going on and you are moving direction from a proposed move from a port trust to a limited liability company is quite all right for part of the States Members or a number of States Members to be aware, but not the remainder to be fully informed?

SENATOR NORMAN: When you say "*fully aware*", they are aware that we are producing a business plan, draft business plan, and cost/benefit analysis. They don't know what is going to be in there and they don't know what the end result is going to be and, in reality, of course, until it is finally produced, neither do we. But there has been no secret about the high level options review and the withdrawal of the trust port proposal. There has been no secret about that at all. The announcement of the withdrawal of the trust port proposal was made in the States because

that was withdrawn and there has been publicity in the media regarding the high level options review and the favoured recommendations. So there have been no secrets.

DEPUTY BAUDAINS: Could I refer to the Deloitte high level review perception of stakeholders at page 12? I would like your comment on a couple of these issues. "*The Jersey Harbours appears to be over-manned at all levels.*" Your comments on that would be appreciated. And, more importantly perhaps, "*No attempt to evaluate or relate the tariffs to the actual cost of the services and they may be open to challenge by EU Law.*" This occurs also under the submission from Mr Clifford. Indeed, in his presentation to States Members in October 2002 he said it is or was "*necessary to change status to satisfy EU regulations.*" Why is that?

SENATOR NORMAN: Well, our advice is -- our advice is -- that on freight -- we are only talking freight here -- that dues applied by a government are in fact a tax and, therefore, a barrier to trade and, therefore, could be considered ultra vires. We are surprised, if you like, about that, because the way we levy our harbour dues is exactly the same as the vast majority ports certainly in the United Kingdom and probably in Europe as well. But, nevertheless, that is the advice that we have been given and, while we have had to change the way we actually amend our harbour dues, we have had to do that for the last two or three years.

DEPUTY BAUDAINS: What I was really trying to get an understanding of is the mechanism by which EU law applies to Jersey, or would appear to apply to Jersey, in this circumstance.

MR BAKER: It is to do with the Island's relationships with the EU. There is a protocol which was part of the Treaty of Accession for the United Kingdom, as you all will know, which makes it absolutely clear there must be no Customs tariff between ourselves and the EU. For various reasons, there are legal arguments that might make it look as if charging per tonne of freight by law set in the States, paid over to the Treasurer of the States looks as if it is in fact a tax or a Customs tariff. It is a perception and you will never know the answer unless you take it to court, because the other perception is "Well, these tariffs are set on the recommendation of a commercial board for the running of the port. The money actually goes to the States, but it comes back to be spent on the port. It isn't actually spent as a tax for something else." Nevertheless, you take legal advice and that is the reason why there is a connection with the EU,

although the Island isn't part of the EU.

DEPUTY BAUDAINS: Yes. I hadn't realised it was tied in with the Customs agreement, which I didn't know existed. I thought it was simply a matter of straightforward taxation and running of the port as you have just suggested. What are your comments about the "*Jersey Harbours appears to be over-manned at all levels?*"

CAPTAIN LE CORNU: Well, yes. That wasn't an answer in the positive by the way.

SENATOR NORMAN: Particularly with States Members here.

CAPTAIN LE CORNU: Part of the business plan is obviously to review staff and the way we manage our organisation, and we are continually looking at efficiencies and have made efficiencies this last year, about 3% to 4% in 2000 and -- which year are we now -- 2004 and we continue to look to ensure that we become more efficient and more effective. Interestingly, some of the feedback that we have had as a result this year of some of our reductions from our port users has been a little bit negative and so we are actually going to slightly ... it is a bit of a balance sometimes in terms of the quality of service expected versus the cost to provide that service.

DEPUTY BAUDAINS: I also appreciate that it is a business where in some areas you simply cannot afford to be short staffed.

CAPTAIN LE CORNU: That is right and probably the Coast Guard Service and various other areas, where we have got to make sure we meet stringent requirements. Moving on slightly but as a part of that, you are talking about the tariffs and the costs. With staff as well as all of the other costs, we are making sure that we split our organisation up into the operating divisions with profit and loss accounts with activity based accounting processes so that we can look at the true cost that services, the true service cost to the organisation, so we can make sure we are passing competitive tariffs on at an appropriate and efficient cost. So that is very much under review at the moment, because I am aware of the competitive requirements both of the organisation and also for the Island. So the business plan is uncovering those kind of issues at the moment.

DEPUTY BAUDAINS: The other matter which you may be able to help me with is what is the specific difference between a government agency and the present situation -- I didn't think there

was a lot in it -- and also between incorporation and a limited liability company, or is it possible that there could be hybrids that blend them together?

CAPTAIN LE CORNU: The answer to your first question I am not sure of. Piers, do you want to

DEPUTY BAUDAINS: What occurred to me is, when I was looking through Deloitte's original eight options, some of them were almost the same thing under a different name.

MR BAKER: They are indeed, Deputy. You can, you know, cut an organisation in dozens of different ways. At least they settled on only eight options for us to consider. In that spectrum, from being totally government controlled to being totally privatised, there are hundreds of variants, partnerships and arrangements, and some government agencies are not governed in exactly the same way as other government agencies. It actually becomes increasingly less important to actually say what type of organisation one has got, but has it got the degree of freedom it needs to be efficient and effective. The answer has always been in the last five years "No, it hasn't at the moment" and the other extreme of being private is totally unacceptable to the Island. So there has to be a middle way. Whether it is actually incorporation, trust port, Jersey limited company or what, is actually not the nub of the issue because you can write into law, you can write, as the Senator has said, into the memorandum of articles the degree of control the States want, whether it is a trust port or not. Being technical about this ----

DEPUTY BAUDAINS: Or it could be a hybrid somewhere between the two, taking parts of each.

MR BAKER: A trust port would have been incorporated, in the sense that it would be a body corporate. So we start playing with words, you know.

SENATOR NORMAN: If you have got a copy of the Deloitte's high level review, there is a brief definition of each of these titles on page 20. As you say, some of them are very fine differences.

CAPTAIN LE CORNU: It does say a government agency is a trading organisation.

DEPUTY BAUDAINS: Leading down from total political control to no control, yes.

SENATOR NORMAN: Government departments to privately owned.

DEPUTY BAUDAINS: Trying my best, I think it was towards the end where actually they gave some indication of the difference between the two, which is why, as I said, I was looking for an

explanation because the possibility of a hybrid occurred to me where these actual definitions may actually become superfluous. As Piers has said, we could be mixing and matching between them to choose a model which is specifically suitable for Jersey.

SENATOR NORMAN: Yes.

DEPUTY BAUDAINS: Do you have a question?

DEPUTY RONDEL: Yes, after you.

DEPUTY BAUDAINS: No, over to you.

DEPUTY RONDEL: Right, okay. By adopting a limited liability company status, will there be a user participation on any new board within your proposed model and was it envisaged that you would also have members of the workforce participating on the board?

SENATOR NORMAN: No decision has been made on that and no consideration has been given to that as yet.

DEPUTY RONDEL: A slightly different tack. You obviously had negotiations with the unions in moving forward to a new direction. Are they supportive or are they not?

SENATOR NORMAN: I think it is fair to say that no negotiations have taken place, but certainly all of the workforce and the representatives of the unions have been kept informed of what we are doing. I think that is right.

CAPTAIN LE CORNU: I would come back to the comment that certainly no negotiations, but I meet every couple of weeks internally with our own union reps to discuss, to just chat basically, and talk over the different ways we are going forward. It is fair to say that, at the moment, they hold very strongly to their understandable stance of saying "We have nowhere to move to. We would like to stay as we are." I think that is fair to say, but we have agreed together that we want to work out what the option would be and make sure we develop that business plan as much as possible together so that they are fully aware of what that would be as it becomes available.

DEPUTY RONDEL: And, moving away from that to another area, the port users, are they fully au fait that you are moving on from the trust port status and looking at a limited liability company, and are they within the negotiating framework? I say the port users, but I am also talking about everybody, because the comments you made earlier about ... I mentioned the boat

owners, but I am talking about everybody who are port users.

CAPTAIN LE CORNU: In the last year, a user group has been set up for every single, every collection of users around in the ports industry. So we now have a user group for every different flavour of port user. We have been, so far as possible, communicating where we are in the business plan. One of the issues and the problems with that is, until you have a good, mature or mature enough, business plan, to communicate that is quite hard, so we are in a slightly Catch 22 of saying “Well, we need to develop so we can communicate it and communicate it and consult as we develop it.” But port users of most of those groups have been involved and I have been talking with them regularly or in some form about ... for example, last week I briefed the Boat Owners Associations on the new cancelling systems we are looking at as part of the business plan, to see what their feedback would be about allocation of costs and direct costs of services. You can't always communicate the whole business plan all the time, but I am trying to discover bits of the business plan with the different port users as we go along.

DEPUTY RONDEL: For the moment, my final question is in your own mind and that of the President, are you happy that the staff are in agreement and also port users that the trust port status is now dead in the water?

SENATOR NORMAN (after a pause): At this moment in time nothing is dead in the water. No decision has been made. The favoured option recommended by Deloitte is the state owned company and our cost/benefit analysis will indicate to us when that is produced ... will prove that, validate that and, if it does that, we will move on from there.

DEPUTY BAUDAINS: Any other Panel Member have any questions?

DEPUTY HILL: No, I don't think so.

DEPUTY BAUDAINS: In that case, Mr President, do you have any closing comments you would like to make or add anything?

SENATOR NORMAN: I don't think so, Chairman, because we are coming back to see you on October 6th, I think it is.

DEPUTY HILL: The 6th.

SENATOR NORMAN: Clearly anything that arises in the meanwhile, we hope to try to address

for you, but can I thank you for your courtesy in the way you have conducted this Panel?

DEPUTY BAUDAINS: And I thank you for attending and your forthright answers.

SENATOR NORMAN: I always try to be honest with you, Sir.

SENATOR LE MAISTRE: Do you mean to say you are not critical of any of us who have an interest as a user in the port?

SENATOR NORMAN: Are we still being recorded?

DEPUTY BAUDAINS: Yes.
