

STATES OF JERSEY

Public Accounts Committee

MONDAY, 16th APRIL 2012

Panel:

Deputy T.A. Vallois of St. Saviour (Chairman)

Senator S.C. Ferguson

Deputy R.J. Rondel of St. Helier

Deputy S. Pitman of St. Helier

Mr. Chris Evans

Mr. M. Robin(?)

Mr. C. Swinson

Witnesses:

Mr. M. F. Dubras

[10:00]

Deputy T.A. Vallois of St. Saviour (Chairman):

Firstly, I would just like to make the public aware of our code of behaviour for members of the public, which is situated behind them and outside the doors. I would just like to say good morning and thank Mr. Dubras for coming for Public Accounts Committee today. It is in relation to compromise agreements reports which were issued by the Comptroller and Auditor General. I would just like to make everybody aware that those reports were based on documentation that is held in possession of the States of Jersey, and nobody else has had input into that report. I would like to make Mr. Dubras aware of the notice of privilege that is in front of him.

Mr. M. Dubras:

I am familiar with it.

Deputy T.A. Vallois:

You are familiar with it. Wonderful. For the purposes of the tape, I would just ask everybody around the table if they could just state who they are and their role, please.

Deputy S. Pitman of St. Helier:

Deputy Shona Pitman.

Deputy R.J. Rondel of St. Helier:

Deputy Richard Rondel, St. Helier 3 and 4.

Senator S.C. Ferguson:

Senator Sarah Ferguson.

Deputy T.A. Vallois:

Deputy Tracey Vallois, Chairman of the Public Accounts Committee.

Mr M. Robin:

Mick Robin, Scrutiny Officer.

Mr. C. Evans:

Chris Evans, Independent Member.

Deputy T.A. Vallois:

Mr. Dubras, if you could just state ...

Mr. M. Dubras:

Yes. Former Deputy Maurice Dubras, St. Lawrence.

Mr C. Swinson:

Chris Swinson, Comptroller and Auditor General.

Mr. M. Dubras:

Good morning.

Deputy T.A. Vallois:

Today's hearing is based on the *Former Chief Executive - Compromise Agreement Report*. We would just like to understand exactly what, in your view, the political environment was like in 2005.

Mr. M. Dubras:

What was the political environment like?

Deputy T.A. Vallois:

Yes.

Mr. M. Dubras:

I would say it is markedly different from 2002/2003. Obviously, in the bigger picture, the imminent transition to ministerial government and all of what was associated with that was very much in people's minds, and all the work that we were doing on Policy and Resources (Committee) and within the Human Resources Subcommittee, of which I was Chairman at the time, was very much focused on making sure that everything was in place for a smooth transition from committees and presidents to Ministers and the Council.

Deputy T.A. Vallois:

You are saying that when it was moving from the committee system and moving it forward to the machinery of government system, that was the reason for the political environment that is stated in the report, which the former Chief Executive states: "There was a political instability and vitriolic attacks on senior officials." You would say that the reason ...

Mr. M. Dubras:

No, you have to separate out.

Deputy T.A. Vallois:

Okay.

Mr. M. Dubras:

I was talking about the big picture in terms of what everybody had in their mind, and certainly from the Policy and Resources Committee and from the Human Resources Subcommittee perspective, that is what our primary objective and role was: to ensure that there was a smooth transition from the one to the other. What you are talking about there is in terms of how individual Members, or some individual Members, of States of Jersey at the time were deeming the appropriate approach to addressing other Members or dealing with issues. That is something quite separate and I am trying not to mix the two up. I think we have to accept that there were some Members whose motivation and whose attitude to other Members was quite unacceptable, and their criticism of officials, be they non-elected Members of the States or be they supporting staff, I think was known generally to be unacceptable, and some of the criticism that was attempted and some of the management that was attempted by Privileges and Procedures at the time worked and some did not.

Deputy T.A. Vallois:

As the former Chair of the Human Resources Subcommittee, were you approached by any of the employees of the States with regards to conduct of States Members at that time?

Mr. M. Dubras:

Yes. It was part of my responsibility to work with all of the different unions and to work with individual members of the officials, and this is something that I took on seriously. In my papers there is a reference in a meeting that I attended, and I can come to that. There are 2 documents which are related and which the Comptroller and Auditor General made reference to. One is the Standing Orders of the States and the other is the subsequent Code of Conduct for Ministers. The Standing Orders of the States has a section in it [separate] called Article 155, Code of Conduct for Elected Members, and related to that is schedule 3, which is the 3 or 4 pages of the Code of Conduct for Elected Members generally, which is in current usage. In 2004 on 23rd April, I sought to attend the Privileges and Procedures Committee of the day, and it is minuted under the agenda that I put forward personal views and also views as the Chairman of the (HR) Subcommittee that the manner in which some States Members were dealing with officials, both within the debating chamber but also generally, was wholly unacceptable. I encouraged (badgered but not bullied) the committee to ensure that the Standing Orders would contain an appropriate section, which it now does. If my memory serves me right, and we are going back a little way, I think I also probably brought an amendment to the Standing Orders to ensure that the concerns and views of the unions of the day, particularly the Civil Service Association, were very much in support what I was trying to do. We were reflecting on the feedback that we had had during negotiating times, because when you meet with the unions on a fairly regular basis you do not just deal with their remuneration packages and benefits and so on, you deal with other issues. Complaints from the staff were taken seriously by the union and while I was aware of some individual situations, I was also responsible for responding to and listening to the concerns of the union representatives. I believe I read at the time (it is probably on the (States)

minutes somewhere) a letter from the spokesperson for the Civil Service Association, encouraging States Members to pay attention to this issue.

Deputy T.A. Vallois:

In those minutes, you asked the committee to: “Apply and make Members aware of good practice and proper procedures, which should be jointly governed by officers of departments, potentially implemented jointly by the Policy and Resources Committee and the Privileges and Procedures Committee.” Looking at the way things have been conducted over the years and from the implementation of the Code of Conduct that you mentioned, do you think that has been adhered to?

Mr. M. Dubras:

I think in terms of what went on within the States Chamber, and it was very much within the role of the President of the Chamber of the States, the extent to which any discipline was applied improved, but there were at least 2 or 3 Members who chose to disregard this, notwithstanding any slaps on the wrist that they might have received during debates. It is very difficult in a Chamber of that nature to absolutely control people’s behaviour if they are intent on breaking the rules and breaking the ethos and the ethical approach that most States Members (and I would say the vast majority of States Members), in my experience, were prepared to follow.

Deputy T.A. Vallois:

Just lastly on that point, the amendment that was brought to the Standing Orders was brought by the Policy and Resources Committee because of the withdrawal of Article 51 of the States of Jersey law in 2005. I think it took about 18 months for this, from your first conception of going to the committee to actually having a Code of Conduct put together. Do you believe that that Code of Conduct that was agreed and put forward was sufficient, or could more have been done in that Code of Conduct?

Mr. M. Dubras:

You are talking about the Code of Conduct for Elected Members generally?

Deputy T.A. Vallois:

Yes.

Mr. M. Dubras:

I think, and I am talking about the end of 2005, to the best of my recollections it was deemed to be satisfactory because the States adopted what we were putting forward as a minimum requirement. I think we have to reflect that any time something is written down, it should not have to deal with the worst possible scenario. It should reflect the general spirit. If I can use another arena, the spirit of the game of cricket is very clearly in the hands of the captain of the team and the players, and the umpires will oversee it and apply it, but you expect everyone who plays the game of cricket or the game of rugby to know what the spirit is as well as the rules. I think the States of Jersey at times failed to reflect the spirit of what was intended in the Standing Orders. But these things evolve and they do have to be modified from time to time, and you cannot always anticipate situations arising. I think those are, if you like, some of concerns that the Comptroller and Auditor General has raised in his report vis-à-vis the Code of Conduct for Ministers, which is really extracting some of what is in the Standing Orders for the States and adding procedural things reflecting the type of

body that it is, working collectively et cetera. Now, I would not have expected this Code of Conduct to have to have a section explicitly dealing with relationships between Ministers and Chief Officers, or any other member of the officials, because one assumes that everybody knows what is good organisational behaviour. I have worked in organisations since 1957 and I have never seen within business organisations, both public and private sector, the need to have anti-abusive and anti-bullying procedures until the last ten to fifteen years or so. We introduced them into the States in my time in 2003 to 2005 because it was an issue that was being raised. It is not that people did not behave that way before, it was just that it was being addressed because people started to realise it was unacceptable. Things do evolve in that regard.

Deputy T.A. Vallois:

Moving on to the next area of questioning, looking at the actual coming about of the changing contract for the former Chief Executive of the States of Jersey, could you explain how the committee viewed the Chief Executive's importance to the States and the Island at that point in time?

Mr. M. Dubras:

You are talking about the Policy and Resources Committee?

Deputy T.A. Vallois:

Yes.

Mr. M. Dubras:

I think you need to go back to, again, a big, broader issue. If I may, we have to remember (some of the Members around this table are perhaps not as familiar as others) that we came from a time when the States did not have a Chief Executive. It had an Economic Advisor who became the Chief Advisor for a period of time. For most of the time we are talking about, the States was very much a series of committees with the president of the committee, if you like, as the Minister, and a department, and most of the departments employed their own staff in terms of certainly the manual workers and some of the technical staff.

Deputy T.A. Vallois:

It was not coming from a centre area.

[10:15]

Mr. M. Dubras:

That is right. The common element was the Civil Service Association but nevertheless you had a series of committees, at one time I think 23-25, of various sizes and influence, but the principle was there was no collective. When the Policy and Resources Committee was first created out of something previous (I can get the exact nomenclature) the Economic Advisor was an advisor. There was no concept of a Chief Executive. Now, roughly before and roughly after the establishment of the Clothier Review, the purpose of those of us who were involved at the time, and certainly this was something I was intent on as a politician and one of the reasons I came into the States, was to enable it to become a single body, a single employer with a broad framework that could manage the business of the Island, which was totally

different by the time we got to 2000 than it was even when I began in 1996. There was a huge shift in the business of the States, the things that the Island took on within its purview. To achieve what had to be achieved, you had to have a single overarching structure of public employees, civil service technical people, administrative people, manual workers and so on.

Deputy T.A. Vallois:

That is when the former Chief Executive was appointed in 2003. Is that correct?

Mr. M. Dubras:

The first step was (I will name him, and I will try not to name too many people) that after Mr. Powell retired, there was a Chief Executive to the Policy and Resources Committee. That was the first step. The expectation was that in time that role would become the Chief Executive of the States. When Mr. Ogley was recruited, by then everything had moved forward so that it was clear he was being recruited as a Chief Executive for the States of Jersey, and the key documentation was that we expected to have something like the employment of States of Jersey Employees Law, which I was very much involved in developing. The States of Jersey law had to be recreated from what was to what is now, effectively. The whole framework of negotiations with the unions was being changed from what I described earlier to ensuring that, to the best of our ability, we had reduced the number of negotiating bodies. In fact, I attempted to introduce the notion of a single negotiating body. Not all the unions were prepared to do that, but the intention and aim was to work towards that so that negotiations would be held right across the board, covering all public employees.

Deputy T.A. Vallois:

Getting back to the question that I asked initially, how did the committee view the Chief Executive's importance to the States? You have given us the background.

Mr. M. Dubras:

Right. I would hope that it is self-evident in my answer now.

Deputy T.A. Vallois:

Yes.

Mr. M. Dubras:

Each of those pieces had to be put in place, and the importance was that this was a brand new role. The previous Chief Executives to Policy and Resources were nothing like as extensive as the intention of the Chief Executive, who was the head of the public service, and that is written into the law with a management board made up of all of the chief officers, together with the Chief of Police. Because of the nature of policing, you do not consider it as part of the normal operational public service, but he was certainly to be involved in the process. The expectation was that the management board would implement what the Council of Ministers collectively decided was appropriate once the States had approved the policies, et cetera. You had two parallel organisations, if you like: the political elected body, working with an integrated public service. Clearly, the selection of the Chief Executive was critical in that. I was not involved in his recruitment. The Chief Minister was. In a previous committee, when I became involved at the end of 2002, all of that had happened and, earlier in 2003, we were then advised the results of the process of selection. Very clearly, we all

expected somebody to be recruited who was able not only to be the Chief Executive in the broadest sense of the word, but to handle the final stage of the transition from 2003 to 2006. I think you will see in the report somewhere that the expectation was he would be able to manage the transition required of politicians becoming Ministers and being able to work within a Council of Ministers and deal with their departments.

Deputy T.A. Vallois:

We have just established that he was brought into the role completely aware of the role and responsibilities and the fact that he was a fundamental part of the transition to the machinery of government, which he was to handle as the Chief Executive of the States.

Mr. M. Dubras:

Absolutely, and that is set out in the appendix to Mr. Swinson's report.

Deputy T.A. Vallois:

Were there any discussions between the Human Resources Subcommittee and the Chief Executive before the receipt of the letter, which was asking to change his contract on 2nd March 2005?

Mr. M. Dubras:

You are moving forward to 2005.

Deputy T.A. Vallois:

Yes.

Mr. M. Dubras:

No. Let me try to put it to you slightly differently. I would like to go back to 2003, because my experience of working with the Chief Executive dates effectively from the time he came on board, which was May 2003, although the contract was agreed in January 2003. He had to work out his notice. He and I sat down on a number of occasions, and initially I was also President of the Environment and Public Services Committee at the time, trying to integrate and separate those functions. I had the opportunity to work with him both as the employer, on behalf of Policy and Resources and an operating 'Minister', if you like, and obviously as a president in dealing with individuals. I worked with him for those 2 years as he started to take on the responsibility of Chief Executive for the whole, and any new appointments that were made during that period were made with his direct involvement. In other words, he started to recruit and move people around. He used those 2 years to assess individuals, and we had a number of confidential meetings about the system, if you like, the organisational changes, as well as individuals, some of whom I had reporting to me or with whom I had very direct dealings, depending on what the situation was. At the same time, we were implementing a whole number of changes which I do not need to go into at the moment, and all of this parallel work needed me and him to have good discussions. It was not just one-on-one. Those discussions also included the President of Policy and Resources at times. They also involved other politicians. I got a pretty good feel for how he operated as he took on the reins of responsibility. Obviously, it was very difficult when the States of Jersey law was amended in its passage because certain things popped up then, but I have to say that, notwithstanding the item in that law that says that the Chief Officer to the Minister reports on policy

matters, my personal view was that the intention and everybody's expectation was that the over-arching structure would operate; that the Chief Executive would be responsible for recruiting, managing, disciplining if necessary, and would have a serious input into performance evaluation using the matrix idea of drawing from the Minister if there were matters that the Minister had concerns about before an individual chief officer's performance review was signed off on the dotted line, because that is the way we worked as presidents. The best example is: the Chief Executive of Policy and Resources at the time reported to Senator Horsfall, then as the Policy and Resources President and to me as President of the Industries Committee. It was not unusual, in the way the States was moving gradually, to have situations where an individual could have two direct reports; hopefully not more than that.

Deputy T.A. Vallois:

Would it be safe to say that, within those confidential meetings that you were having with the Chief Executive about the changes in the system and moving forward, you would have discussed at some point his contract or his personal ability to do his job in the States?

Mr. M. Dubras:

No, not exactly. I certainly made sure that after the 6 months I met with the president of the time and made sure that he was satisfied that, as we went through that 6-month position, he was prepared to confirm Mr. Ogley in his position. It was one of those informal things, but I saw that as my responsibility as employer. That milestone went by, and from then on I do not recall any particular discussion of his own personal situation until 2005. My recollection is that he had his discussions in that regard directly with the president of the time. It is not something that he would have come to me about. He would have dealt with the president.

Deputy T.A. Vallois:

President of the Policy and Resources Committee?

Mr. M. Dubras:

Absolutely.

Deputy R.J. Rondel:

Could you just confirm the expectations from the political side were on both sides as well, the Chief Executive's side, from what you were just referring to?

Mr. M. Dubras:

Expectations were ...?

Deputy R.J. Rondel:

You were referring to expectations of what should be done and had to be done within the role of government.

Mr. M. Dubras:

Yes. If one turns to appendix 1, page 26 of the Comptroller and Auditor General's report, you have 2 pages there setting out the role of the Chief Executive as it was intended to be once ministerial government took effect and also what the transitional

period was intended to take care of. Obviously, there were some common elements there, but that is what I am referring to in terms of expectations.

Deputy R.J. Rondel:

Thank you.

Mr. M. Dubras:

Quite frankly, I am sure the Chief Executive, when he came to the Island, based on everything he had read, and he did a lot of work before he arrived, had every expectation that he would be continuing in that role. On Policy and Resources, as we were formed at the end of 2002 and early in 2003 as we knew this role was to be filled, it was certainly our expectation that he would be there until retirement. There was no consideration of a contractual period once ...

[10:30]

Deputy R.J. Rondel:

Based on what you had seen on the same issue?

Mr. M. Dubras:

Absolutely. I was not party at all to the appointments process because that had been done by the previous committee, but I am quite sure that everybody concerned was seeing this as such an important appointment that they were looking for someone of maturity and rounded experience who could see this thing through until people retire. In my life, I have never started employment thinking things were going to go awry. I am sure the same applies to you with your political hats on and your lay, non-elected members. Nobody goes into a job with that expectation.

Deputy R.J. Rondel:

That has answered my question.

Deputy T.A. Vallois:

In that respect, if the Chief Executive knew what his role was going to be, why in his letter did he state: "I have re-read my contract with the knowledge of how things work and see it in a very different light to that which I accepted before my arrival"? If everyone was aware of the expectations, then what was the reason ...

Mr. M. Dubras:

It is nothing to do with expectations. Expectations did not change. It is the people environment, the interpersonal relationships. You started out asking me what the atmosphere was, and Senator Ferguson knows full well because she was there, what was going on within a minority of States Members, affecting the whole of them, the way in which the States operated. I gather things were not too good the last 3 years. I am told that things are a lot better since last December. I am hopeful of that. I hope that will continue. We know that you can have 'rotten apples in a barrel' and that could affect the way in which the whole place works.

Senator S.C. Ferguson:

Could we go back to 2005, I think, now? I do not quite understand when you first got the knowledge that the Chief Executive was a little unhappy about the set-up.

Mr. M. Dubras:

I think it really came to a crunch during a meeting of members of the Policy and Resources Committee. My hunch is it was something that was discussed (you will have to ask former Senator Walker about that) and emerged possibly quite quickly as the then-Chief Executive realised what might happen through the election process, through the transition process. There were a number of things going on, one of which was the debate about the States of Jersey law. There may have been signals in that. I cannot tell you, because I did not have a personal discussion with him on this. That was very much the realm of the president of the committee. I sense he (the CEO) probably identified trends and patterns of behaviour that he may well have recognised from his work within the U.K. I am not all that good at this sort of thing, but if you Google and look at reports dealing with similar situations, you will find it. One in particular that I came across, a report of the U.K. Audit Commission, which talked about the numbers of city executives or county executives who had found themselves in situations where, if I can quote: "Council chief executives are pushed out for as little as trivial fall-outs with councillors," and: "Some payoffs arise from little more than a personality clash or the wish of new council leaders to replace the Chief Executive." I do not have direct experience of this, but this sort of thing must have been going on over a period of time. My hunch is that what Mr. Ogley realised was starting to happen here rang some bells. I would like to, perhaps, notwithstanding the two excellent reports, not just because you are here, Mr. Swinson (I have told other people how excellent these are, among all your others), there are a couple of things I would like to just see from another perspective. Whereas the term "golden handshakes and compromise agreements" applies as in the case of the 10 situations described in RC37, I feel that the situation with the Chief Executive is different. They may have ended up with a compromise agreement, but I think it began with an amended contract of employment that he anticipated a worst-case nuclear option type of situation. I think it is written into the letters, his letter certainly, which I had sight of this morning (I have not seen it for quite a number of years) where he is saying: "If this situation carries on, I could find myself in an unacceptable position." I think all the time he and we in 2005 were hoping that whatever was going on in 2005 would not re-occur and would be dealt with, but he was quite reasonably saying: "I know these things can happen. I hope it does not happen." The words in his letter show that he was showing a great deal of loyalty to the Island and a great deal of intent for working and continuing with the Island, but he was saying: "I have to take care of myself and my family." I think we all, when confronted with this for the first time, could understand, in light of what was going on, why he saw the world that way, a very changed world from where he began in 2002/2003, so there was a lot of empathy and understanding for him seeing the world that way.

Deputy T.A. Vallois:

Why did it have to be him in particular who saw through the transition? Secondly, because the former Chief Executive left the States, we have an acting Chief Executive in his place carrying out that role. Would anything have seriously been lost if we had had a transitional period in the contract, or if we had had him temporarily dealing with the transitional areas?

Mr. M. Dubras:

That is very hypothetical. I could put it to you this way. At that time, 2002-ish, I think you will probably find that the Policy and Resources Committee of the day and their advisors felt that there was nobody in the Island among the chief officers who had the experience that could have taken on that job. There were certainly some very competent chief officers, but competent in the experience of working within their own department. I go back to the point that I started out with, with the then-Chief Advisor becoming a Chief Executive to Policy and Resources. I have sat in on those meetings of the management with my H.R. hat on on a number of occasions, trying to persuade them to work together and to do things in an integrated fashion. They were not used to it. It was not the culture in the States and it was not the culture within the public service. People continually talked about silos and so on and so forth; you know about that particularly. It needed someone with the experience of working in an integrated organisation to truly be able to move the organisation into that mode, and I have worked in large organisations, larger than the States of Jersey public service, but the same issues were common then. When you had a divisionalised corporation, you needed a whole new sort of Chief Executive to make it into an integrated corporation.

Deputy T.A. Vallois:

Moving on to the best practice areas, when the letter was brought to yourselves, what consideration did you give to the public interest?

Mr. M. Dubras:

The whole matter was a matter of public interest. The whole future of the transition and the way in which it had been decided by the States of Jersey on behalf of the public to move to ministerial government and the parallel integrated public service was clearly of prime importance, together with all of the matters that we were dealing with in terms of the move to a much more international identity, et cetera. All of the things that were going on made it absolutely imperative that we not only had someone who was competent, but someone who could see that transition through. These transitions are not just 6 months, 12 months, 3 years. I made that statement in the States in the last year. Although people felt that the transition to ministerial government might take within 3 years and be effective, I said at the time that it could take 5 to 10 years, several electoral periods, for the change of culture, as it was referred to by the Comptroller, to take effect. It is almost a generational thing.

Deputy R.J. Rondel:

The employer was officially the Policy and Resources Committee.

Mr. M. Dubras:

Correct.

Deputy R.J. Rondel:

Was it the subcommittee that was delegated with the responsibility for agreeing the changes in the agreement?

Mr. M. Dubras:

Yes.

Deputy R.J. Rondel:

What steps did the committee take to confirm the basis of the Chief Executive's concerns in his letter?

Mr. M. Dubras:

My recollection is that there were a series of informal meetings led by Senator Walker, as he said recently in an interview in the *Jersey Post*, that he met and talked with others around this issue. It emerged over a relatively short period of time and we dealt with it and it was then transferred to the officers. The letter arrived and Senator Walker passed it to the officials within the Human Resources Department to look at and come up with a number of possible responses, and we met. Although the minute of the day is very short, the meeting that it was part of was something to the order of 2 hours to 2½ hours, as I recall. It did not take up the whole of the business because a lot of the work had been done between the time when it was first presented to us and the date of that meeting on 9th March.

Deputy R.J. Rondel:

When you say "to us," that is you as members of the subcommittee?

Mr. M. Dubras:

Both members of Policy and Resources and the subcommittee. We were 3 members of Policy and Resources, so we officially met in a minuted meeting as 3 members, yes, but over a relatively short period of time there were a number of discussions that went on.

[10:45]

Deputy R.J. Rondel:

Just to be clear, it was the subcommittee that was charged with that responsibility?

Mr. M. Dubras:

Absolutely, yes.

Deputy R.J. Rondel:

Did the committee ever obtain any advice from either recruitment consultants or specialist lawyers from the mainland to deal with it?

Mr. M. Dubras:

I do not believe so, no.

Deputy R.J. Rondel:

What about locally?

Mr. M. Dubras:

It would not have been normal for us to do. I cannot recall any discussion with the law officers, but there was a law officer who dealt with the H.R. Department. It could well be that there were discussions going on at that time. I cannot recall.

Deputy R.J. Rondel:

It was probably only through H.R. that ...

Mr. M. Dubras:

That would have been quite normal, yes. There were other cases going on, similar to the 10 that the Comptroller and Auditor General has reported on, in previous years, and there was always a relationship between the officers and the law officers if it needed legal advice.

Deputy R.J. Rondel:

How did the committee see it as appropriate to require a person from the local mainland authority to be present at performance appraisals, which I believe he would have been ...

Deputy T.A. Vallois:

It is in the minutes.

Deputy R.J. Rondel:

... but not for the change of contract?

Mr. M. Dubras:

I am not quite with you. I know there was a reference in the grievance procedure or the dispute procedure. I know there was a reference to outside bodies there, but I do not recall any reference under performance appraisal or review.

Deputy T.A. Vallois:

“It was suggested that a 6-monthly appraisal of the Chief Executive be undertaken by the president and the chief executive of a large local authority in the United Kingdom experienced in the recruitment and selection of senior public officers, but recognised that further work would need to be undertaken on that matter.”

Mr. M. Dubras:

Can you quote the document there?

Deputy T.A. Vallois:

It is the minutes for the Policy and Resources Committee of 17th January 2003.

Mr. M. Dubras:

Okay. Yes, I have that. That was 2003 ...

Deputy R.J. Rondel:

17th January 2003.

Mr. M. Dubras:

No, I have it now. Yes, thank you. Yes, I am sure that was something that was considered at the time. I do not remember whether that was put into effect. You would have to ask former Senator Walker about that. My understanding is that the performance reviews between the Chief Executive and the Chief Minister were conducted on an annual basis and were reported on, and I was a bit surprised that Mr. Swinson perhaps was not able to find all those records. I think there is reference to Mr. Ogley assiduously doing his side of the process. It was something that I was very intent on when I was a president, making sure that there were performance reviews done of the Chief Officer, because the expectation was that the Chief Officer had to

manage all of the other performance reviews, both of his direct reports and the rest of his department. My understanding is that Mr. Ogley took this matter seriously and performed performance reviews on all of the chief officers for whom he was not yet officially responsible for but for whom he was involved in their recruitment in the period between 2003 and 2005. My expectation is that what was already built into the system worked. There are always exceptional situations where people do not do it, but the majority did it, and it is something I would assume that today's States Employment Board would monitor and report on to the States periodically.

Deputy T.A. Vallois:

But how would it have been seen to be appropriate for them to see fit for a chief executive of a large local authority in the U.K. to be present at appraisals but not when changing the contracts of a chief executive?

Mr. M. Dubras:

I cannot answer the question, because at this time there was no question of changing a contract. We are talking about 2003. I imagine that it was considered by Policy and Resources, perhaps, at that time, that this was a good idea, working with someone who was starting in a transitional role leading towards what we described earlier, who was coming from that experience. It may well have happened. I do not remember and I do not know, if it did happen, for how long it continued. I am not sure that the review process was for 6 months for every year thereafter. It is quite normal in performance reviews in large organisations for there to be a formal annual review and there to be 6-monthly discussions just to see how people are meeting their objectives and so on. As I understand it, that carries on today. That is just part of the States' built-in process.

Deputy R.J. Rondel:

Thank you.

Mr. M. Dubras:

I can understand why they thought an external person was necessary in the early days, just to bring that experience, but I cannot say that it carried on. I do not know.

Deputy R.J. Rondel:

Did the committee obtain any guidance on the amount of terminal payments arranged in such circumstances?

Mr. M. Dubras:

Deputy Rondel, I honestly cannot remember. I do not know. There was a relatively short period of time between 2nd March, which was the date of Mr. Ogley's letter, and 9th March, when our subcommittee was meeting. It was deemed important to deal with the matter on an urgent basis, so within that week or so. I think we were made aware of the likelihood of that letter coming some days before it arrived because of the discussion that the Chief Executive had with the president of the committee, but I do not know what work the officers did before they presented it to us. We had a draft letter and we had a discussion on making that decision.

Deputy R.J. Rondel:

Was the committee relaxed about the terminal payment that came from the Chief Executive's suggestion?

Mr. M. Dubras:

Oh, no, we were not relaxed. No. We were dealing with pretty large amounts.

Deputy R.J. Rondel:

Were you relaxed about relying solely on his information and not seeking outside ...

Mr. M. Dubras:

No. The officers would have typically done work to look into matters of this nature, and as I said, there had been informal discussions leading up to the meetings, so I cannot ...

Deputy R.J. Rondel:

What sort of work would they have done, though? Who would they have sought, if they did not seek any outside advice?

Mr. M. Dubras:

I cannot tell you that they did not. We cannot assume that they did not seek outside advice. I do not know. As you know, you are not there all the time. You rely on the officers to do their professional work. I think you have to remember that we were dealing at that moment with a wholly unusual situation. All of the contracts up to that time had been based on the 6-month period that was in the original draft. That was typical. But here we were confronted with an unexpected case, in terms of the individual. No other individual came to us with this need to safeguard their contract, because they were not threatened. He was, if you like, prescient in his reading of the situation, given probable previous experience of what was going on generally in the U.K. for people in similar situations.

Senator S.C. Ferguson:

Did you not ask him where he got his figure from?

Mr. M. Dubras:

I cannot answer that. I cannot tell you. We, as a subcommittee, did not meet with him. The Policy and Resources Committee met with the President.

Deputy R.J. Rondel:

I thought it was the subcommittee that was delegated.

Mr. M. Dubras:

No, no. Just a second ...

Senator S.C. Ferguson:

The subcommittee met in response to a letter.

Mr. M. Dubras:

Yes, of course, but ...

Senator S.C. Ferguson:

Did you not raise the question?

Mr. M. Dubras:

Senator, the process began at the Policy and Resources level. The discussions were within Policy and Resources, just as they had been in 2003 with his appointment. The subcommittee did not deal with the appointment at the time; it was Policy and Resources because the Appointments Commission dealt with it. My recollection is that there was a discussion of Policy and Resources as a whole, or mostly, which was the situation Mr. Ogley was experiencing. That group said: "Right, now this is a matter for the subcommittee to deal with," but the subcommittee was informed by the attitude of the whole of the Policy and Resources Committee. We were not working in isolation.

Deputy T.A. Vallois:

You are saying that the Policy and Resources Committee did the groundwork, and it was the Human Resources Subcommittee that made the decision?

Mr. M. Dubras:

No. The initial discussions were among the larger group of politicians. It was not so much groundwork. The footwork or the groundwork was done by the officers because they were directed to receive the letter and to come up with a response, and they did the work. They came to us when we met on the 9th, and I am sure there was a strong discussion, knowing the individuals concerned, about whether or not these were acceptable, given all the circumstances. Given the expectation that it would not be implemented, the hope was that it was a deterrent. It was a security that would not be called upon. My hunch or the feeling was that it was not desirable but it was acceptable. I cannot say any more than that. I cannot remember the details of the discussions.

Deputy R.J. Rondel:

At what point was actual value for money considered and determined as in the best interests for the public of Jersey?

Mr. M. Dubras:

I think the situation was looked at in the round. It was not dissected into each of the components. I cannot answer that explicitly. As I say, I do not think we had a checklist against each of those component parts. I think people had sufficient experience. If you recall, the Human Resources Subcommittee of the day was Senator Le Sueur, the late Senator Mike Vibert and me, together with officers who were very experienced in the broad field, so we looked at it in the round. I am sure the informal discussions that we had prior to that would have teased out a lot of these issues. I am quite sure we did not take this matter lightly and there was a degree of concern, I think it is fair to say, and deep regret at what was going on within the States, that the way in which individual Members who potentially were going to become Chief Ministers were operating could cause our Chief Executive to come to the conclusion that he came to and force him to re-evaluate his situation. I think it is fair to say nobody saw this as anything other than a highly undesirable and unusual situation.

Senator S.C. Ferguson:

In the course of all this, if the consideration of the ratio, the 2½ times, was left with the Chief Executive, did you consider the main risks of revising the Chief Executive's contract as proposed?

Mr. M. Dubras:

The main risk was obvious, that you would have to pay it at some point. That was a possible consequence.

Senator S.C. Ferguson:

Yes, but did you look at the risks in any more detail? Yes, the risk is that it is going to have to be paid, but surely the States side has a certain procedure that it has to follow so that you are not held over a barrel by this risk. If you are not careful, you have a situation where the States is carrying all the risk and the Chief Executive can hold you over a barrel.

Mr. M. Dubras:

You could look at it that way, but I think, Senator, it is fair to say that. Now I am going to hark back to my own personal experiences as well as experience of working in Canada up to the year 1990. I have taken the opportunity between being asked to come here and now to check back with previous colleagues in Canada, as well as do some Googling in terms of the U.K. Contract terms of between 6 months and 2 years was not uncommon back in the 1980s and 1990s, and is still common. There is the private sector and public sector and you have people in between ...

[11:00]

Senator S.C. Ferguson:

Yes, I appreciate that.

Mr. M. Dubras:

What I want to finish off by saying, Senator, is that in my own personal experience, working out a cessation of employment that covered over a year's period with a package to go along with it, which came to about 1½-1¾ salary, including the year that I worked out, from the moment decisions were made, was not unusual.

Senator S.C. Ferguson:

Yes, but can we get back to the question? Did the committee sit down and consider the risks?

Mr. M. Dubras:

What risks are you thinking of? I will try to answer your question.

Senator S.C. Ferguson:

There is the risk that the States do not perform their duty and allow the Chief Executive to claim that, for instance ... The only prevention you have or the only condition you have for getting rid of the Chief Executive is poor performance.

Mr. M. Dubras:

Or cause, or whatever. Yes.

Senator S.C. Ferguson:

Yes. As the Auditor General has said, if you have not had your performance reviews, how can you say that he has performed badly if you have not had a review to tell him? That is one risk.

Mr. M. Dubras:

Senator, we did have all the reviews. The reviews were excellent, and those reviews ...

Senator S.C. Ferguson:

Why is there no record of them?

Mr. M. Dubras:

That is what I expressed surprise at.

Senator S.C. Ferguson:

We will obviously ask about it.

Mr. M. Dubras:

I believe there is a record on the file of all of the reviews for all of the years performed by Mr. Ogley, that they are on the file.

Senator S.C. Ferguson:

No, that is his own personal appraisal. What we are talking about is his employer's review, the Chief Minister's review of the Chief Executive.

Mr. M. Dubras:

That I cannot speak for. I cannot comment.

Senator S.C. Ferguson:

That is one risk.

Mr. M. Dubras:

That is beyond my time. All I can say is that those reviews were recorded in the period of time between 2003 and 2005, to the best of my knowledge.

Senator S.C. Ferguson:

Yes, but those were not the Chief Minister's reviews, were they?

Mr. M. Dubras:

I cannot speak for anything after December 2005. I was not involved. I had no contact.

Deputy R.J. Rondel:

There are 2 parts, are there not?

Senator S.C. Ferguson:

Yes. We will in fact ask Mr. Walker about that. The other thing is, what about the risk of a politician inadvertently triggering a payment? If your politicians who might

be bringing a complaint against the Chief Executive are not aware of the term in the contract, what about that risk?

Mr. M. Dubras:

First of all, Mr. Swinson pointed out in his report that he was not aware that the “decision” of the Human Resources Committee had not been transmitted to other members. I have for you a copy of the procedure. I managed to locate it as I knew it was there. The minutes of the subcommittee were circulated as a normal process, as they had been for years with all subcommittees of committees, so all the members of the Policy and Resources Committee of the day would have been aware that that decision was made as normal. As the minutes were signed off, so they were distributed. Everybody within the officials and the politicians of the Policy and Resources Committee knew of the decision and the details.

Deputy T.A. Vallois:

Yes, but there has been an election every 3 years since then, so how was there a requirement for people to know after that event that there was this clause in the contract?

Mr. M. Dubras: I would expect any Minister to know the terms and conditions of the employment of the Chief Officer that reports to them on policy matters, but quite honestly, the Council as a whole should be aware of any unusual terms and conditions. I think that is where you call on the advice of your officials to let you know if there is anything unusual. Given that the first Chief Minister was Senator Walker and he was party to this, he would have had that knowledge. Whether he shared that knowledge with the other Ministers, I have no idea. You would have to ask him. Of course, then-Senator Le Sueur was a member of the H.R. Subcommittee, so he certainly knew. I have no idea whether he advised all of the Ministers that he was responsible for. You are asking something that I doubt took place. I have no knowledge. It may have taken place. I am trying to imagine a situation that I have experienced where, if you take office, the first thing you do is ask to see the contracts of all the people reporting to you. I doubt if it happens in the private sector or in the public sector. You are asking for something that is somewhat hypothetical, but, as it happens, in the case we are talking about explicitly, because it was an anticipated term of employment. It was not that after the problem had arisen you changed the contract or you negotiated something. The two key people were then-Senator Walker and then-Senator Le Sueur, who were both intimately involved as much as I was, but they were performing the role of Chief Minister, so you would have to get from them whether they consciously communicated with the other Ministers and said: “Everything is nice and rosy. However, if something goes wrong, we have to know that this situation might arise.”

Senator S.C. Ferguson:

We shall ask. Why did we do it by changing the contract? Why did we not just make sure the procedures were right?

Mr. M. Dubras:

Senator Ferguson, what procedure is there to prevent senior politicians and Ministers from having a breakdown in relationship with the Chief Executive?

Senator S.C. Ferguson:

Perhaps the Code of Conduct. I am asking you. You were the H.R. ...

Mr. M. Dubras:

In your experience, has the Code of Conduct of all States Members worked without any problems, operated under the jurisdiction of the Privileges and Procedures Committee? No, it has not. Have all of those been anticipated? No.

Senator S.C. Ferguson:

That is not the answer to the question. Anyway, I will carry on.

Mr. M. Dubras:

No, but I am trying to answer your question ...

Senator S.C. Ferguson:

Yes, I believe that, but I ...

Mr. M. Dubras:

... by pointing out that this is not a perfect world, and we were entered into that renegotiated contract with the full expectation that it would never be called upon, all right? It is as simple as that.

Deputy R.J. Rondel:

Are you suggesting the Code of Conduct is ineffective?

Senator S.C. Ferguson:

No. In other words, the risks ...

Mr. M. Dubras:

It is ineffective for certain Members who will break the rules, come what may. Unless the States of Jersey decides that it is going to operate in a manner that disciplines Members who break the Code of Conduct, that change of attitude and that change of political will takes place, then you have a different situation, but you do not have that situation.

Mr. C. Evans:

Mr. Dubras, the way I understand it, there are two major components of risk: the likelihood of something happening and the impact.

Mr. M. Dubras:

The consequences, yes.

Mr. C. Evans:

We are now dealing with the impact, because this happened ...

Mr. M. Dubras:

In 2011, yes.

Mr. C. Evans:

In light of what you have said earlier, is it fair to say that the likelihood of this happening was regarded as so small that perhaps less effort was put into ensuring that the impact could have been less? This is revolving around whether 2½ times their salary is appropriate, and I feel that what you have said so far suggests that the committee saw the likelihood of this happening as so small that perhaps less time and attention was spent on determining whether the Chief Executive's suggestion of the multiple for the terminal payment was appropriate.

Mr. M. Dubras:

That is not a bad way of putting it. I think I would agree with you that the expectation was that the risk was so small that the consequence was very unlikely to be put into effect. I personally saw it as a significant amount of money, but I also saw it as a highly unlikely outcome. Notwithstanding the atmosphere that was going on, the likelihood of a change of appointment of the Chief Minister that was contemplated, I felt, while there was a reality to the contemplation (and of course one cannot see beyond the immediate period), I certainly would not have seen as far ahead as we are today. I think the assessment of the risk or the consequential component would not have had a lot of attention, particularly as we were dealing with a relatively tight timeframe at the time. It is all hindsight, of course.

Mr. C. Evans:

Picking up on the point that Senator Ferguson made earlier, with the benefit of hindsight it would now appear that the only circumstances where the States could relieve the Chief Executive of the responsibilities without there being a serious risk of the terminal payment being due were for reasons of poor performance.

Mr. M. Dubras:

Yes, it was written into the contract. It was put in the context of his ability to implement a strategic plan and see it through, and this is where, of course, we come into the dilemma of that article in the States of Jersey law about reporting to the Minister for policy direction.

Deputy T.A. Vallois:

That was the amendment to the States of Jersey law.

Mr. M. Dubras:

Yes, it was an amendment consequently. It was built into the law; it was part of the law that was passed as part of the drafting process. Personally, although it has been read as that now, at the time I did not see that as preventing the Chief Executive managing the management board and the Council of Ministers operating as a whole and dealing with all of the executive and operational aspects. The political direction is something that is part of a matrix arrangement. But I understand exactly your view of this. I would say, in answer to Senator Ferguson's question, I do not believe at the time there was the risk assessment methodology applying in the States as there is today, because a lot of water has gone under the bridge in terms of the economy and so on and so forth. I think it is fair to say we were not geared up, and there was no checklist and there was no procedural matter that we said: "Right, let us take this proposal and refer it to the risk assessment people." We did an analytic assessment, given all the information that we had over probably a 2-3 week period, that is all, of concluding that the chances of implementing these terms of the contract were so small

that the consequential aspects of it were not paid as much attention to as if they would be today if someone came to you. Bearing in mind that 6 months to 2 years was not, in my book, extraordinary, given my experience in Canada and given some of what goes on in the private sector. It was certainly extraordinary for us, but I think the ...

[11:15]

Deputy R.J. Rondel:

How did you measure that 2½ times payment at that time?

Mr. M. Dubras:

I do not remember. I cannot answer the question. I have no idea. There is nothing in the papers that I have been able to draw on. I know there must have been drafts and working papers to go along with this, but I have been very fortunate, Chairman, that the officials have been very helpful to me, not only your officer but the members of the Chief Minister's office and the Human Resources Department. Over the last 3 days, since Friday, they have come up with virtually all the documents I asked to see to refresh my memory, so through you, my appreciation of everything people have done. When I was first asked to come this morning, I had nothing to refer to because I have not been particularly following this matter and I have been away through the winter. We had to do some fast work.

Deputy T.A. Vallois:

I will pass on your appreciation. That is fine.

Mr. C. Evans:

One last point, then, from my perspective anyway. I think you have made it fairly clear that you think that the performance reviews of the Chief Executive were in full compliance with the procedures.

Mr. M. Dubras:

Yes, that is my understanding.

Mr. C. Evans:

But according to the Comptroller and Auditor's report, there is no documentation relating to the committee or the Chief Minister's review of the self-assessment done by the Chief Executive, so it would appear that the performance reviews were only ...

Mr. M. Dubras:

Yes, that took me by surprise, I have to say. Two or three matters that were reported on were surprising to me, and that is one of them. My understanding is that the personal files should contain both the self-assessment, if you like, which is the start of the process, and any consequential conversation and record of things like: "There is an improvement needed" or there are some specific courses or exposure to things that should happen, consequential actions flowing from the review. That should all be documented, so I would have expected the Chief Executive's file to contain a complete package for every year that he has been in office. I did ask the officials whether or not there was a central storage. Because these are confidential documents and personal to the individual, they are normally, in my experience, in the personal file, but I asked whether or not there was a central collection point so that a whole

department's records would be kept in place, and I got the answer that, to the best of their knowledge, no, because most people have them in their personal files. I cannot answer for anything since 2005, I am sorry, but it was a huge surprise to me.

Deputy T.A. Vallois:

Are there any other questions at all from the committee? Unfortunately, we have another hearing at 11.30 a.m., so I would like to formally close this, if it is okay with the committee members, and thank Mr. Dubras for his participation in coming before the Public Accounts Committee today.

Mr. M. Dubras:

Thank you.

Deputy T.A. Vallois:

We appreciate your witness. Thank you.

[11:20]