

STATES OF JERSEY

Public Accounts Committee (Review of the report of the Comptroller and Auditor General on the Utilisation of Compromise Agreements)

MONDAY, 16th APRIL 2012

Panel:

Deputy T.A. Vallois of St. Saviour (Chairman)
Deputy R.J. Rondel of St. Helier
Senator S.C. Ferguson
Mr. C. Evans
Mr. A. Fearn
Mr. M. Robbins
Mr. C. Swinson (Comptroller and Auditor General)

Witnesses:

Senator I.J. Gorst (The Chief Minister)
Mr. M. Sinclair (Human Resources Director)

[14:32]

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

Firstly, I would like to just make the public aware of the code of behaviour for members of the public, which is just situated behind them there, and outside the door. Firstly, I would like to thank the Chief Minister and H.R. (Human Resources) Director for attending upon the Public Accounts Committee today. As you are aware, the reason for their being here is for the C. and A.G. (Comptroller and Auditor General) reports on compromise agreements. First and foremost, I would like to go around the table and just ask everybody to state their name for the purposes of the recording please.

Comptroller and Auditor General:

Chris Swinson, Comptroller and Auditor General.

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.

Mr. M. Robbins:

Mike Robbins, Scrutiny Officer.

Mr. A. Fearn:

Alex Fearn, Independent Member, P.A.C. (Public Accounts Committee).

Mr. C. Evans:

Chris Evans, Independent Member.

Deputy T.A. Vallois:

All right. Firstly, thank you, Chief Minister. Could you please state your name?

Human Resources Director:

Mark Sinclair, Director of Human Resources, States of Jersey.

Senator I.J. Gorst:

I am Ian Gorst.

Deputy T.A. Vallois:

Chief Minister. Firstly, thank you for coming before us today. As I stated, the *Utilisation of Compromise Agreements* is the reason for you being before us today. It is mainly to identify what you will be doing with regards to the recommendations of the Comptroller and Auditor General. So the first area that I would like to follow up on is the *Code of Conduct for Ministers*. The recommendation suggests that: "Consideration should be given to the development of the *Code of Conduct for Ministers* to deal explicitly with the relationship between Ministers and officers." How do you intend to develop the code so that there is a balance between being able to hold officers to account but ensuring that there is a culture of mutual respect?

Senator I.J. Gorst:

That is a very good question, but it is a question that has a difficult answer. Interestingly, this Council of Ministers had not, prior to this work being undertaken by the Comptroller and Auditor General, approved the current *Code of Conduct* because I, and I think other Ministers, when we first considered it on our agenda, felt that it was deficient in various areas. This was not an area that we had initially considered, but the Comptroller is absolutely right; it is an area that needs to be included, but it is difficult to get that balance right. I, and officers, have been doing some research, as you would expect, on to other codes of conduct where they try to cover this area, and I think it is fair to say that the majority of them have a couple of phrases that would not necessarily have helped with the surrounding circumstances of the departure of the former Chief Executive. They generally tend to say, and if I can quote from the Scottish one, and I know you will be obviously doing other work, and I do not know quite what work the Comptroller and Auditor General did, but it, for example, says: "Ministers in relation to their relationship with civil servants, have a duty to observe the obligations of a good employer with regard to the terms and conditions of those who serve them." That is a laudable sentiment with which to deal with those issues, but I am not sure that it quite would have helped, as I say, in the situation with regard to the former Chief Executive. If we look at the Isle of Man *Code of Conduct* that perhaps is one of the only fuller codes with relation to the

relationship between Ministers and civil servants, and I suspect that ultimately, when we do come to reviewing the code and putting it before Ministers and then publishing it, it is that sort of code that we are going to be looking for. But it is, from all that I personally have read, and I suspect others as well, it is a fairly fraught area. Ministers have a responsibility to give due respect and consideration to impartial advice that civil servants have provided, but equally they cannot be pulling them into necessarily overly political areas. The roles of the accounting officer are laid out in virtually everybody's code of conduct, making sure that you are not inappropriately influencing appointments; not asking that civil servants act in a way that would conflict with civil service codes where those codes exist. So I think it is a problem that I and Ministers recognise needs addressing. Officers will be coming back to me with revised codes. But, from the work that I have done, I am not certain that it is going to be straightforward for us to put in place a code that is going to necessarily ensure that the situations that did arise do not arise again. Having said that, we do have to try as far as possible to ensure that it does not, because, again, if you are looking at all these other codes, you tend to find that there are subtle differences with our system and the systems where the codes might be that we would want to lift off. So I have talked about the Isle of Man code; it seems robust, it seems probably stronger than the U.K. (United Kingdom) one, the Scottish one, the Australian one, and certainly stronger than the Jersey one, but layered above that is corporate collective responsibility where the Council of Ministers have this responsibility to the Chief Minister. We are going to have to make some difficult decisions about where we want to go, because I think getting a robust code is probably part of the trade-off about where we are going to go. I think we all have recognised and said that we need to review ministerial government; there are some areas where it is not working and they need to be amended. I am not sure many people want to go back to the old committee system; some do, I recognise that. So, part of reviewing the system that we have, is by necessity going to mean that we have to understand some of the issues that we need to address that have arisen, not least out of which of having a code that is not robust, which does not deal with the circumstances in which we find ourselves as the Government. So it is a long answer; we are going to do it, we are committed to do it, you can look at the Isle of Man; that is probably the best model that I can see, but there will be some other trade-offs that we might need to think about.

Deputy R.J. Rondel:

Do you see any other stumbling blocks or obstacles in trying to create that, apart from what you have mentioned?

Senator I.J. Gorst:

I think the biggest difficulty around where accountability lies is around, looking at the Isle of Man system, collective responsibility. Having said that, you look at the Scottish system and they have in place, I think they call it an independent oversight body, so where the Chief Minister, or the First Minister in Scotland, if he or she, as it might be, but he as it is, has a concern with regard to perhaps any element of the code, but particularly in this sort of instance, it would have been that the First Minister can then go to this independent body, the 2 worthies with experience and good standing in the community, and they will in a way adjudicated and give advice to the First Minister on which direction to go. So there is a model also there that we could incorporate. The stumbling block of course there, it remains collective responsibility,

because I, as Chief Minister of Jersey, I am not able to dismiss a Minister, which is why I say we need to think about trade-offs. What is the model that we want?

Deputy T.A. Vallois:

In terms of disciplinary action for Ministers as such, if they were to breach a code of conduct, what avenues are there in order to discipline them, without a vote of no confidence in the States?

Senator I.J. Gorst:

That is a very good question. I think that we can safely say that we found in the last Council of Ministers that there are not appropriate avenues available; you rely on the goodwill of the Minister to see, perhaps we could say, political sense to resign. That is what we saw in the last Council of Ministers; 2 ministers resign over actions that some States Members and members of the public felt were inappropriate. But I think there was little power in the code for a Council of Ministers, or Ministers, to remove a Minister without going to the States and asking for that removal. In the Council of Ministers before that, we saw how difficult it was to remove a Minister that the Council of Ministers wished to remove, but that Minister did not wish to resign.

Deputy R.J. Rondel:

So, do you think the Chief Minister should have the power to be able to select his own Ministers?

Senator I.J. Gorst:

The difficulty I have is that it is not always good politics to make a decision, or for me to now think: "Well I would like that power now because it would be helpful for me to be able to do something." We have to make the decision for positive reasons. If we were going to move towards collective responsibility, then we would have to think long and hard about how that would work, because it might be all right, you might think I am a reasonable person so I would only use that power in a reasonable manner. You might not think that at all. Therefore, you have to think how would potentially that power be used by an unreasonable person, before you wanted to make the decision that is the way that you would go. But, again, I refer to the Isle of Man. They have this collective responsibility, albeit they are an independent system like ourselves, they do not have a party structure. They try and get everybody into government, so they try and give everybody a governmental or executive job in one way or another. Some of it is by being a departmental member. So they have this collective responsibility, but also they almost have little caveats to it, so, if you have had a long-held view, you are allowed to go off and carry on with that view, you are not expected to follow the Council of Ministers; if you have a matter of conscience you decide about that around the council table. These are all new areas for us in Jersey with our non-party system. They in themselves perhaps raise other difficulties with correction to some of the problems that we encounter. Layered on top of this is that the Chief Executive themselves does not have the power to direct the other chief officers. So, if we are honest about it, the Chief Minister has a nice name but there is not much power that goes with it and therefore you work by either force of character or by consensus, and I am consensus person so that is how I tend to work. Others who work via a different, more command and control approach, work by force of character.

[14:45]

Deputy T.A. Vallois:

Can I ask then, would you not expect the Council of Ministers, when they meet regularly, if they were to identify an issue, or the Chief Minister was to identify an issue, between the relationship of an officer and a Minister, to be able to discuss that in that forum and to ask that Minister to resign, before it is too late?

Senator I.J. Gorst:

I do not think there is an easy answer to say yes or no to that. I hope and believe that we are working in such a way now, and we are going to put into place a new *Code of Conduct for Ministers*, we are reviewing the machinery of Government, and we will need to address some of the issues that I have just spoken about in my opening answers, but we are going to work in such a way that we will not get to the point where situations are allowed to escalate in the way perhaps that they have in the past. Because it is not in anybody's interests whatsoever to allow that to be the case. But, at the end of the day, the current code allows a Minister, who is a corporation sole, to decide they are going to carry on in office; the States has put them there, the States removes them, unless they decide to resign.

Deputy T.A. Vallois:

So what involvement will P.P.C. (Privileges and Procedures Committee) have in the development of the code for Ministers?

Senator I.J. Gorst:

In effect, we will draw up the new code and then I envisage that we would ask P.P.C. to review it as well, because the code for Ministers and the code for Members is lacking as well, if we are absolutely going to be honest about these things.

Senator S.C. Ferguson:

Should the Ministers be producing the code for Ministers or should it be produced by P.P.C. with the agreement of the Ministers?

Senator I.J. Gorst:

I think this is one of the issues that we in our system have, is it not? I think it should be produced by Ministers. Everywhere else in the world, the ministerial code is approved by the Chief Minister or the Prime Minister. If you look at the U.K. code, Ministers basically cannot do very much without written permission of the Prime Minister. Here, my Ministers can do in effect whatever the law allows them to do. At the end of the day, they do not need to refer to me if they do not wish to, but we build a consensus and we work in a different way to that. So I think Ministers have to approve and develop the code, but then it ties in with the other thing, and I think the Comptroller and Auditor General has suggested something perhaps similar to the ... no, he did not, because he was talking about the independent oversight of the relationship between Ministers and civil servants. But I think what some of this drives us to is that we do need some type of independent body to oversee these issues and concerns, and perhaps even to validate the code for Ministers as well.

Senator S.C. Ferguson:

Which is why I suggested P.P.C., because perhaps the code in the U.K. may have developed on the basis of the *Bill of Rights* and so on, which did start limiting the powers of Parliament and so on, if I remember rightly, it was a long time ago.

Senator I.J. Gorst:

There is no reason, as I have said, I would imagine that it would be consulted upon with P.P.C. anyway, but I do think it is an executive's job to do it, and it does need to be consulted on by P.P.C., who represents the Assembly in these matters.

Deputy T.A. Vallois:

Can I just ask, just in finalising the code of conduct area, what is the timeframe, would you say, for bringing in a code of conduct, and would it fit in with Employment Law as well?

Senator I.J. Gorst:

With Employment Law in what respect?

Deputy T.A. Vallois:

With regards to the ability of the relationship between Ministers and officers if the code of conduct ...

Senator I.J. Gorst:

You see, you have just hit on a very good question, because it is not covered by the Employment Law, but an employee of the States is covered by Employment Law, and therefore an action of a Minister might give rise to liabilities under the Employment Law in relationship to the employment of that civil servant. But States Members do not enjoy the protection of the Employment Law by the very nature that we are elected members of a legislature. I think, if we tried to say that we were, we would be getting into very difficult territory indeed. Is there an argument to say that senior staff, employed by Government, should have a special carve-out, or be dealt with differently, or have different clauses under Employment Law to deal with their employment? From a commonsense point of view, I think there is. But from a practical point of view, I am not sure how you would deal with such a thing.

Deputy T.A. Vallois:

I am sure it is something you are going to be looking at though.

Senator I.J. Gorst:

We are trying to look at Employment Law from the perspective as well of, is it a disincentive to get people back to work? When you get statutory protections in place, and do not get me wrong, I was the guardian of the Employment Law for the last 3 years and supported it against a number of attacks, but it does not mean to say it should not be reviewed to see if there are areas where it needs to be amended. Where is the risk/reward balance for a senior member of staff that is earning £200,000 a year? They are getting all the protections of the Employment Law and the ability to perhaps take a case before the Tribunal to protect their own position, and yet at the same time they are getting the healthy cash reward, and you cannot have a position where Ministers are not able to hold individuals to account because of other legal protections that they have.

Deputy T.A. Vallois:

The time line for the *Code of Conduct*?

Senator I.J. Gorst:

I do not know; as quickly as possible.

Deputy T.A. Vallois:

That is not really an answer, is it?

Senator I.J. Gorst:

I cannot give you an actual, because I do not know.

Deputy T.A. Vallois:

All right. Alex.

Mr. A. Fearn:

Chief Minister, good afternoon. We have already talked about the independent oversight and some of the models that exist, the Scottish model in particular. Obviously one of Chris' recommendations suggests that consideration should be given to establishing arrangements, particularly around the relationships between Ministers and officers, which is relevant to this subject. You have given us some idea about implementing the recommendation. We are assuming that you do want to implement this?

Senator I.J. Gorst:

Maybe I should make it clear that I accept all the Comptroller and Auditor General's recommendations and intend to implement them.

Mr. A. Fearn:

Obviously you have given us some idea of some of the models that you have looked at; is that giving us an indication of how you will deal with that recommendation?

Senator I.J. Gorst:

I think if we can manage to carve our way through the corporate collective responsibility issue then the answer is yes.

Mr. A. Fearn:

Is it too early to understand the impact on the structure, or any additional structure required, around that type of committee? How would you see that working, or is that still too early?

Senator I.J. Gorst:

Yes, if we take the Scottish model, they are 2 independent people completely of government appointed, and that would be the way that I think we should go, and I imagine that is the way the Comptroller and Auditor General was envisaging, but it might not have been, and, if it is not, then he will let us know in due course. The other issue that you lay on this is, as well, that you would expect people in these senior roles, either senior officers or senior Ministers, to have already in their own personal armoury, mentors of people that they were able to go to, to get advice, to run ideas past, it is not something that would be uncommon to either of you to how you

operate your own businesses and your own career path. I cannot sit here and say that is something that happens regularly, I know that it does happen with some officers, but I certainly would want to encourage and make sure it is happening with all of them.

Mr. A. Fearn:

That points to another element, which you have already mentioned in your response to the report, around improving culture. So would you see independent oversight aiding that aim of yours to improve the overall culture in the States?

Senator I.J. Gorst:

Yes, I would. I am absolutely committed, and it is one of the big themes about modernising the public service that I am starting to talk about, and that is creating a values-based organisation, going right down to the shop floor, wherever it is, and understanding what those individuals' values are; bringing them together, and from that creating an organisation that is based on those values, which become the corporate values. I think one of the problems we have faced is, the States of Jersey is a big nebulous organisation that, if we are honest, very few people feel an association with or an understanding of. But if we say: "Here is the hospital. I am in healthcare. Can you commit to that? What are your values? What does the service look like that you want to deliver?" Then you can get some agreement around that. "I am a teacher," likewise; "I am a policeman," likewise. So while we have this big corporate structure, I do not think we are going to deliver it. It does not mean to say we cannot bring back-office functions together and amalgamate administration, exactly what we should be doing, but we should be creating a value-based hospital; we should be creating values in the teaching profession that everybody buys into and that is their reason for going to work in the morning.

Deputy T.A. Vallois:

Do you see a cost to this independent oversight?

Senator I.J. Gorst:

Inevitably there will be. You do not get anything for nothing it appears in this world.

Deputy T.A. Vallois:

Would you say that Ministers are clear of their responsibilities in terms of working with officers?

Senator I.J. Gorst:

I think generally they are. In a small community, if anything, one of the difficulties I think for Ministers is getting the right balance between policy and direction, and day-to-day administration and operations. To some extent, not that I am pessimistic, in a small jurisdiction you are always going to get that because you can always have somebody phoning you up at 8.00 saying: "I have a parking fine, blah-de-blah, can you do something about it for me?" which strictly speaking should not be the role of the Minister, it should be straight away passed down to be dealt with by an officer. So there is always, again, going to be that tension, in our small community, between policy and operation. It is going to be more intense in some departments. It is much easier in Home Affairs to say: "No, the Minister for Home Affairs is very much policy, the police are getting on with their operational issues." It is much more

difficult at the hospital and much more difficult at Social Security where you are giving out benefits and it is making a difference or not to people's lives, because it is pounds, shillings and pence. So I think they are, but I think there is always a trap there.

Deputy T.A. Vallois:

With regards to the oversight body, what effect would this have in regards to the States Employment Board? Would it report to the States Employment Board or how would you see the structure?

Senator I.J. Gorst:

In our current structure, it would have to report to the States Employment Board. Maybe, I do not wish to add problems to your list of problems that need to be addressed, because I know that is not your remit, but you could argue even now there is not the clarity that one would like around the role of the Council of Ministers in appointment of chief officers and the role of States Employment Board in being the employer, and that is another area that clarity and certainty needs to be delivered in.

[15:00]

Deputy R.J. Rondel:

Could you just elaborate on that a little bit, in specific sort of areas?

Senator I.J. Gorst:

The States Employment Board is the employer of all staff, but surely the Minister and the Council of Ministers wants, by necessity, to have a large amount of input into what the roles should be; what the job specifications should be; and the type of individual that you are looking for. Yet the recruitment and the employer is the States Employment Board.

Senator S.C. Ferguson:

The Auditor General's recommendation is that consideration should be given to amending the process set out in the Chief Minister's statements, so that all compromise agreements entered into by the States are reported to the States Employment Board.

Senator I.J. Gorst:

I am perfectly happy to accept that and will be amending my ... I cannot think what we called it, but basically the document that we lodged for terms of dealing with compromise agreements to be changed in that manner.

Deputy T.A. Vallois:

What is the current status of that implementation?

Senator I.J. Gorst:

It will be, once we have made that change, it will then be implemented. As I understand it, staff are already working to it.

Deputy T.A. Vallois:

How would you see the role will be, in learning from failures in relationships, in order to move forward, and what action would be taken, if any?

Senator I.J. Gorst:

I think it is ... let us start from the background of I am absolutely committed to delivering this values-based organisation, because it is going to allow us to change in many ways. But, if there is one thing that I have found since I took over this office, it is the lack of resource that we have put into H.R. right across the States. There are good people working in H.R., wanting to do the right thing, but they are not appropriately resourced and there probably are not enough people with the skills in the areas that we want. I want them to transform the public service; I do not want them just to be dealing with people's C.V.s (curriculum vitae) and recruitment that somebody else has asked them to do; almost fire-fighting, which is what they are doing now. I want them to look at, where can they bring jobs together; where can they do that process more efficiently and effectively, so I know that we will need to make changes there and they are very much at the forefront of what S.E.B. (States Employment Board) needs to do, and change going forward. Talk about performance appraisal and performance management, another area that we need to change and we need to enhance going forward. Yes, there are performance appraisals going on across the States, but I do not think it is overstating it to say it is a bit patchy. Some work very well, others do not appear to be working well at all. Alongside that, are we managing performance? So, even where we are doing appraisals, are we managing the change that we want from somebody's performance?

Deputy R.J. Rondel:

But do you see any manpower implications that will prevent staff changing?

Senator I.J. Gorst:

There will be. We are at the state now of bringing forward a document about transformation, which talks about all these values, it talks about not just looking at costs, but looking at people. It talks about allocation of resources, it talks about what services should be delivered where, and perhaps by who. So it is going to cost money, but I would argue that the current situation that we have now is costing us money, and one of the issues that you are trying to look at with your report costs us money. So, by not managing personnel properly, by not putting in place best and effective practice, it is costing us money. Having the wrong person in the wrong place costs you money.

Deputy T.A. Vallois:

H.R. management was part of the big rise of cuts back in the first spending review, and reduced the H.R. significantly, and has that delivered basically the problems that we are seeing today?

Senator I.J. Gorst:

With hindsight, I would suggest that it has, because we cut the money without changing the process and without changing the system. At that point, if we had changed the culture, if we had changed the approach to H.R., then it possibly would have worked, but we did not. We did not bring people together, we did not amalgamate functions.

Deputy T.A. Vallois:

Whose responsibility was that?

Senator I.J. Gorst:

If you say that H.R. sits in the ... I think it then sat in the Chief Minister's Department, but it might not have been; it might have been in Treasury. But do not forget, these first-round of the £20 million savings, that some would argue were not savings, in 2004 was prior to ministerial government as well, so it would have been either the H.R. Subcommittee or the Policy and Resources Committee of the day.

Deputy T.A. Vallois:

So there was a change in H.R. structure and at the same time that a change in contract was going on for compromise agreements?

Senator I.J. Gorst:

I am not saying there was a change; I am saying that there was the savings being made, so people were ... money was being cut out of those functions. I would say there should have been a change and there was not.

Deputy R.J. Rondel:

You mentioned like this review and the Public Accounts Committee is obviously costing money as well, savings, but surely there should always be somebody keeping ...

Senator I.J. Gorst:

I can go and save you some money if you like.

Deputy R.J. Rondel:

Yes, you did mention that, but surely there should always be a Public Accounts Committee to hold people to account?

Senator I.J. Gorst:

Absolutely, yes, the Public Accounts Committee is one of the crucial committees of ministerial government, it absolutely is. I know that you are committed to it working well.

Deputy T.A. Vallois:

Absolutely. Can I ask, just moving on to the recommendations that were made in the former Chief Executive's compromise agreement report, the particular area there of performance review and appraisal of chief officers. We have heard this morning that there was much of the performances of the former Chief Executive was conducted by the former Chief Minister, Mr. Walker, and as president of Policy and Resources, and unfortunately we do not see any evidence in terms of documentation for that statement. Could the Chief Minister explain why it is that there is no documentation in a personnel file? Would he be able to explain how H.R. has come into that situation?

Senator I.J. Gorst:

You are asking a ... it is very difficult for me to be drawn into why somebody in the past has not done what I would expect would be best practice today, other than perhaps to reiterate what I just said some moments ago.

Senator S.C. Ferguson:

Do you think all the Ministers are really, either aware of, or committed to, performance reviews and appraisals of their chief officers, or senior officers with regard to the review and appraisal of others? Do they really understand how the system should work? I think the hardest one perhaps will be the Ministers and the chief officers, and the Chief Minister and Acting Chief Executive. So do you have those lined up now? Do you have them going properly?

Senator I.J. Gorst:

You are absolutely right, the most difficult are the Ministers and the chief officers, and the most difficult of those difficult ones is without the Chief Executive and the Chief Minister. The current Acting Chief Executive has carried out thorough performance reviews of his chief officers, which have involved the Minister concerned, and I remember being involved with performance appraisals for my chief officer at Social Security. The review of the Acting Chief Executive is undertaken with involvement of an independent individual.

Senator S.C. Ferguson:

Yes, and presumably you have evidence of all this?

Senator I.J. Gorst:

Yes.

Human Resources Director:

Yes, where we are at the moment, as the Chief Minister said, is the Acting Chief Executive does appraisals, they are recorded in their personnel files, the chief officers' personnel files. They include reference to the relevant Minister and that is now documented. Your point is well made though, how far does that cascade down through the organisation, and I think there is, as the Chief Minister said, there is limited success with that. I also think there is an opportunity now to develop a more robust performance management system in being absolutely clear where do the strategic objectives come from, i.e. do you derive them from the organisational mission? You then develop your strategic objectives for the year, which is then cascaded down from the Chief Minister, Chief Executive, to the chief officers. There should be a mid-year review, there should be annual appraisals and there should be personal development plans that support the delivery of those objectives. I would not say we have that in place, but that is something, as the Chief Minister said, that we are working to implement at this moment in time?

Senator S.C. Ferguson:

Do you have a timeframe?

Human Resources Director:

We hope to develop the system and take it to S.E.B. within the next ... by about July this year. Then we would hope to be in a position to implement ready for 1st January 2013 because you want a whole-year cycle in place, but we are hoping that, by the

end of the year, we should be seeing much more ... a larger percentage of performance reviews being carried out in the organisation by just the sheer fact that we will be demanding that people do performance reviews of their staff and it is unacceptable for officers, chief officers, not to do performance reviews of staff. In fact, it is a staff member's right to be appraised of his or her performance and to have feedback on his or her performance. It is also important to have development plans for them to improve their performance in order to give them the best possibility of retaining their employment and creating sustainable employment for staff.

Senator S.C. Ferguson:

So, all personnel files from now on will have records of the performance review appraisals?

Human Resources Director:

That is the vision, yes.

Senator S.C. Ferguson:

The report of the Auditor General is quite clear that there was no evidence in the files of any performance appraisal.

Human Resources Director:

That is something we are addressing. We recognise the fault and we are addressing it.

Comptroller and Auditor General:

Can I just correct that; the files I looked at were those of the former Chief Executive. I did not spend my time looking at all the personnel files of all chief officers for this report.

Mr. A. Fearn:

Can I therefore ask the director how many appraisals are done at this moment in time, and to what level they go down to basically?

Human Resources Director:

That is a very good question. As the Chief Minister said, it is rather inconsistent at the moment. For example, in Education we have a particular sweet spot there where the majority of our teachers, over 70 per cent of our teachers, do indeed have appraisals, because it is linked to the school assessment system that has been put into place there. So that is a good example of where appraisals work. In other areas it is not as successful as that and some of the percentages are sadly quite low, and in some areas, in particular around manual workers, there is a perception that they should not have individual appraisals, which I disagree with, but perhaps a way of encouraging people to engage in performance reviews is to initially start with team appraisals, for example, and that is a way of building it up. This will not transform overnight; we need to build confidence in the system, we need to feel that, particularly for certain groups of staff, that this is not going to be a tool used to beat them up, but it is going to be a tool that is used to help them to develop to do their job better.

Senator I.J. Gorst:

It is tied in with so many things that we want to achieve. If we want people to see that they have a future in the job that they are in, they have to have a career path. If we

want to do appropriate succession planning, we have to do appraisal and performance management. You cannot ... it is all tied in.

Deputy T.A. Vallois:

Would you say an appropriate performance review and appraisal system would counteract the need for the compromise agreement?

Senator I.J. Gorst:

I have a little bit of a purist attitude to these things and I think, if you get the process right, you look after the people, you get far better outcomes and you eliminate confrontation and conflict getting to a crisis point. However, even me, being an eternal optimist, recognise that there are cases when the other person just does not want to know and does not want to avail themselves of those proper learning tools and processes and that you might need to use a compromise agreement.

[15:15]

Deputy T.A. Vallois:

Would you say compromise agreements are being used more often than not?

Senator I.J. Gorst:

I again am inclined to the opinion that we would rather use them too frequently rather than having the more difficult job of putting in place the systems and the processes to deliver people fit and able to do the jobs. Although I am not sure that is quite what the Comptroller and Auditor General found in his reports, but that is my ... I have that general feeling.

Deputy T.A. Vallois:

In terms of financial exposure, would you say it is more acceptable to go through the normal employment process or to deal with a compromise agreement?

Senator I.J. Gorst:

I know one of your terms of reference is around value for money, and, if you are going to ask me were they value for money, I am not going to be able to answer you. Because the reality is, doing it the right way, doing performance appraisal, performance management, takes time, it takes effort, it takes people, and it takes money. But, to my mind, it gives the better service to the public, it gives the better organisation, and it gives the better outcomes. It might cost slightly more if you are just talking about the money that you have had to invest to go through the process as opposed to the compromise agreement. But, I would say that value for money is not just about that, it is about the service that is being delivered, it is about people being able to do the jobs at the right standard that we want and expect, delivering the service to the people of Jersey, and that sometimes you cannot put a price on.

Deputy T.A. Vallois:

Would you say there is a fear culture in the States that prevents more efficient service and more need for such things as compromise agreements?

Senator I.J. Gorst:

Like being afraid of coming before P.A.C.

Deputy T.A. Vallois:

It does not apply to Ministers I am afraid.

Senator I.J. Gorst:

I think that “fear culture” is not the term that I would want to use. I think there is a culture of not wanting to take risks, not wanting to think outside of the box, not always having the courage to do what the individual might think is right and in the best long-term interest, because they are going to get shot down, they are going to get publicly criticised, and they are going to get blamed. If somebody has done something wrong, they should be held to account for it, sometimes they can be coached through it, and we move on to the next issue. Sometimes when they have done something wrong it is so wrong that we have to part our ways because it is not a learning experience. But, most of the time, when something goes wrong, it really should be treated as a learning experience so that in the future you have better outcomes. In the accountancy office we used to say, maybe I should not put figures to this: “If you lose a client so many tens of thousands or hundreds of thousands of pounds that is a loss to the firm, but I can tell you something, you are never going to do it twice.” In fact, the commitment that you get from that person to go the extra mile, and the commitment that they have to clients and to service and to the firm, probably far outweighs what they have just lost you. Difficult to translate that into the public service, I recognise, but it is that sort of ethos that we need to try and develop.

Deputy T.A. Vallois:

Moving on to the Chief Executive’s position and role, what do you see are the difficulties surrounding that position and that role at present?

Senator I.J. Gorst:

I think the ones that have been well rehearsed. Here we have, like the Chief Minister, an individual that, to a certain extent, the Council of Ministers and the States and the public feel is responsible for the public service, but that is not what the law says and the law does not give that individual the abilities, or the accountabilities, to be responsible. That has to be addressed.

Deputy T.A. Vallois:

So, at present, we do not require a chief executive, only a chief officer, for the Chief Minister?

Senator I.J. Gorst:

We have somebody that is called a Chief Executive, or an Acting Chief Executive, and, as I say, that role currently works by one of 2 things, either trying to build consensus or by force of personality, not by what you would think when you see the term in any private sector organisation, chief executive is the person that you live in fear of because they can tell you what to do and they can jolly-well make sure it happens. The Chief Executive of the States does not have that power.

Deputy T.A. Vallois:

Will we be getting a permanent Chief Executive in the near future?

Senator I.J. Gorst:

I hope that we will.

Deputy T.A. Vallois:

That is not really an answer. Yes or no?

Senator I.J. Gorst:

Yes, we will be getting a permanent Chief Executive.

Deputy T.A. Vallois:

The role in particular of the Chief Executive, people would say would be integral to the reform of the public sector, and you have just mentioned obviously modernisation and improving and culture of change. What involvement does he ... what involvement does the Acting Chief Executive, or will the chief officers, have in terms of helping inform on the changes to law or Government as seen?

Senator I.J. Gorst:

The Acting Chief Executive is right at the centre of the transformation that I have been talking about. He, I think it is fair to say, is absolutely committed to delivering it. I have already been to the Corporate Management Board to talk about what my vision is and where I want the public service to go to. So I think that there is, for want of a better term, buy-in to this process.

Senator S.C. Ferguson:

Should we go on to the conduct for Ministers affecting the contractual commitments to officers. Will you be establishing a protocol for the conduct of Ministers in respect of the States' contractual commitments to staff and to the way in which the importance of proper conduct in this area is made known to Ministers?

Senator I.J. Gorst:

I think really that just is covered by what I said right at the start in relation to the *Code of Conduct for Ministers*, and looking at other codes and where you can do this as far as possible. I have to say that it is something that we need to try to do, but it is something that is not always easy to get the result that we are looking for.

Senator S.C. Ferguson:

Do you think Ministers really understand the role of the Minister? Do we have too many Ministers micromanaging departments as opposed to just doing policy?

Senator I.J. Gorst:

That comes back to the other point that I made earlier that I think on the whole they are not, but there is always, in a small jurisdiction, the, not necessarily temptation, but trap to be drawn there by some of the cases that come across their desk, or messages that are left on their answering machines.

Deputy T.A. Vallois:

In terms of confidentiality of contractual commitments, where does a Minister lie under confidentiality in terms of being known to a particular contractual commitment made between States Employment Board and the chief officer? Can any Minister know about that? If so, how would you relate that to the Ministers?

Senator I.J. Gorst:

I do not think that individual Ministers would be aware, or necessarily should be aware, of contractual terms that have been entered into by the employer. It comes back to the issue of the clarity between role of Minister and Council of Ministers and States Employment Board, because the employer is the States Employment Board, not the Minister.

Deputy T.A. Vallois:

The effects of a Minister on an officer in terms of if it is ensuring the triggering of the compromise agreement, should that Minister not be aware that there is that potential there; that could happen?

Senator I.J. Gorst:

It should happen a long time before it gets to that point. If there is a problem between Minister and chief officer, States Employment Board and the independent oversight, or arbitrator, or however it will work out, should be well aware of these things long before you get to the point of signing a compromise agreement. With regard to the former Chief Executive, obviously, as I have said, staff have reviewed files and there is no other clause in an employment contract that would give rise to such a liability.

Deputy T.A. Vallois:

Thank you very much, Chief Minister and Director.

Senator I.J. Gorst:

Thank you very much.

Senator S.C. Ferguson:

Just one small thing; were you aware of the details of the compromise agreement before the whole thing blew up?

Senator I.J. Gorst:

As in ...?

Senator S.C. Ferguson:

The compromise agreement with the former Chief Executive; were you as a Minister aware of the position with regard to the trigger clause?

Senator I.J. Gorst:

No. I became aware of the amount to be paid when I became Chief Minister. In fact I was one of those Members that voted to allow the former Chief Minister to divulge the amount in camera to the States.

Senator S.C. Ferguson:

Yes, but were you aware of the detail ... the fact that there was a trigger clause? When did you become aware of that?

Senator I.J. Gorst:

I cannot say for certain, but I know ... I would have to go back and look at the Council of Ministers meetings, but I do not recall being aware of it, no.

Deputy T.A. Vallois:
Thank you.

[15:27]