



## **Public Accounts Committee**

### States Annual Report and Accounts 2020

### **Witness: Chair, States Employment Board**

Friday, 9th July 2021

**Panel:**

Deputy I. Gardiner of St. Helier (Chair)

Senator T.A. Vallois

Connétable J.E. Le Maistre of Grouville

Mr. G. Phipps

Dr. H. Miles

Mr. P. van Bodegom

Ms. L. Pamment, Comptroller and Auditor General

**Witnesses:**

Senator J.A.N. Le Fondré, Chair, States Employment Board

Mr. M. Grimley, Group Director, People and Corporate Services

Mr. D. Woodside, Senior Legal Adviser, Law Officers' Department

[15:30]

**Deputy I. Gardiner of St. Helier (Chair):**

Good afternoon, and welcome to the Public Accounts Committee public hearing with the chief executive in his role as the chair of the States Employment Board, effectively, the line manager of the former chief executive. We are here today to understand the role of the States Employment Board in the exit payment of the former chief executive as part of our review into the States Annual Report and Accounts 2020. There is a clear public interest to understand your role and your responsibility in the circumstances that led to the former chief executive exit payment and what we can do to halt the pattern of huge pay-outs from the public purse to senior officers. We want the

public to know what went wrong, who is responsible, what lessons have been learned and how we can fix it for the future. We see that you are joined by the senior legal adviser as well as an officer through the States Employment Board, however we will be directing questions to yourself mainly because we have a lot of ground to cover and we ask respectfully that you keep your answers brief and succinct and to the point as possible. Let us go around and ask everyone to introduce themselves. I am Deputy Inna Gardiner, chair of the Public Accounts Committee.

**Senator T.A. Vallois:**

Senator Tracey Vallois, member of the Public Accounts Committee.

**Connétable J.E. Le Maistre of Grouville:**

John Le Maistre, the Constable of Grouville, States Member of the Public Accounts Committee

**Mr. G. Phipps:**

Graeme Phipps, independent member.

**Dr. H. Miles:**

Dr. Helen Miles, independent member.

**Mr. P. van Bodegom:**

Paul van Bodegom, independent lay member.

**Comptroller and Auditor General:**

Lynn Pamment, Comptroller and Auditor General.

**Group Director, People and Corporate Services:**

Mark Grimley, Group Director for People and Corporate Services.

**Senior Legal Adviser, Law Officers' Department:**

Darren Woodside, Senior Legal Adviser, Law Officers' Department.

**Chair, States Employment Board:**

John Le Fondré, Chief Minister. As we conclude the introductions can I very much welcome the hearing and hope that we can achieve the objectives? Obviously recognising the significant work that has already been performed by the C. and A.G. (Comptroller and Auditor General) and we welcomed her conclusion that it was not unreasonable in the circumstances, and hopefully we can explain more about that to P.A.C. (Public Accounts Committee). What I did want to place on record is some information cannot be stated in public due to legal privilege or personal contractual matters,

which I will just place that because obviously for members of the public that can be difficult sometimes to understand. I also want to emphasise that we have offered a briefing which there are precedents for, a briefing in private which we would be very happy to give complete transparency for P.A.C. in terms of perhaps the other professional and/or legal advice on matters that we may have either received or taken into account, if that is of assistance. The difficulty we have today is what we can put out in the public domain and what in terms of absolute transparency for the P.A.C. we can give to you. I just want to put that there.

**Deputy I. Gardiner:**

I am really grateful that you are making this point and we do understand. We will explore what the circumstances are and what it means for the public interest, and definitely if something is left we will follow up with written questions and a private meeting if necessary. I will go with very quick, factual questions which are in the public domain, but if some of the public is not aware we would like to get it straight. Chief Minister, when were you first notified that the former chief executive wanted to take a non-executive director role?

**Chair, States Employment Board:**

I do not have an exact date, but it would have been I think during 2020 or late 2019. It was very much an informal conversation on the back end of a meeting saying that it was something he was looking at, it was consistent, i.e., he already had another role that was very much time limited and I know a subsequent conversation made it clear that it would not have been remunerated either.

**Deputy I. Gardiner:**

Thank you. When was the S.E.B. (States Employment Board) made aware about the second employment? Just technical. When was S.E.B. made aware of the employment?

**Chair, States Employment Board:**

Of this employment, because the second employment is the trustee role that he has.

**Deputy I. Gardiner:**

Of non-executive directorship?

**Chair, States Employment Board:**

Yes. It would have been when it became public. I was asked informally and I gave my permission verbally and the obligation was to put it in writing at which point it would have gone into the S.E.B. normally. That did not happen and the S.E.B. became aware of it when it became public.

**Deputy I. Gardiner:**

So if I understand correctly you verbally would have been asked in late 2019, that is according also to the C. and A.G. report, and the S.E.B. was made aware only in October 2020 when it became public. Why did you not take it to the States Employment Board before this?

**Chair, States Employment Board:**

I think looking back with hindsight I should have done and I apologise for that. Equally, on some of these things you do sometimes get an informal conversation of the expectation and it then gets regularised in a written format, which would have been my expectation.

**Deputy I. Gardiner:**

Thank you. The C. and A.G. report found weaknesses in policies and procedures to deal with actual and perceived conflict of interest of senior staff. Have you seen any potential conflict of interest when you have been notified and what action will S.E.B. take to update this?

**Chair, States Employment Board:**

At the time as I said it was an informal conversation and it was given a verbal nod. At that time on the basis of a very limited amount of time being required, on the basis that it was not going to be remunerated, it appeared that the other role that the chief executive had was around property management advice and so on, and there was a consistency with an area of expertise that would have been in the public interest and he felt would have been of benefit to the Island, because it would have given us extra knowledge in terms of what was happening in the way the world was going with urban regeneration and those types of things. It was looked at from a positive perspective that would not have been inconsistent with the role because of a very limited amount of time being required.

**Deputy I. Gardiner:**

Would you agree that the potential conflicts of interest that were there should be investigated thoroughly and it should go through due diligence?

**Chair, States Employment Board:**

I think particularly in the context of the way things evolved if that written process had taken place that would have then brought it into a formal process and we would have then gone through those measures. At that point that was not formalised and as we have all recognised it should have been.

**Deputy I. Gardiner:**

Thank you for the answer. Why did the S.E.B. initially approve the non-executive directorship of the former chief executive?

**Chair, States Employment Board:**

In context, in essence what we were looking at was a technical breach, a technical issue that was capable of being resolved. It could be resolved by regularising and essentially giving permission for it, which is what S.E.B. did. Also, looking at it in the context of what was often the case with senior executive roles as has been seen in other places in the United Kingdom, so from that perspective the view was it was not of such an omission that it warranted dismissal or anything along those lines and one was very much going down the line of regularising the position, noting that it should have been brought to our attention in writing, but by regularising it going through the early part of that process we were doing our very best to make sure that we retained the C.E.O. (chief executive officer).

**Deputy I. Gardiner:**

Following the Council of Ministers expressing their views on non-executive directorship on 5th November 2020 that it is not compatible with his role as chief executive, did the S.E.B. change their views on the non-executive directorship?

**Chair, States Employment Board:**

I think that is where I do hand over to Mark and Darren to an extent, because also as one went into more of the position I think there were 2 or 3 factors that were coming through ...

**Deputy I. Gardiner:**

The question is very simple. Did the S.E.B. change their view of non-executives? It is a yes or no answer. It is not that we need to go into the details.

**Chair, States Employment Board:**

I think you do need to go into the context because the circumstances during that period of time were that it had become extremely politicised at that point, which were the discussions that happened at C.O.M. (Council of Ministers). At that point, I think it was the day after, maybe 2 days after the regularisation of S.E.B., perhaps the day after S.E.B. had issued the statement, was when signatures for a vote of no confidence were being gathered. It was lodged before the statement we issued that I made to the Assembly on the Monday and that political context then started to overtake matters. I think also when on further discussion around if there were other remedies that could be followed there was a view within S.E.B. because the regularisation basically was whether there was a conflict of interest that arose.

**Deputy I. Gardiner:**

I have a quick follow-up question. So if I understand correctly, if it was not politicised and if it will not be answered as a political part, as chair of S.E.B. do you think second employment as a non-executive director would be compatible with a C.E.O. for the States?

**Chair, States Employment Board:**

Within this level of roles, the nature of that particular role is seen in a variety of positions across the senior level of the working world. It is equal that even within Jersey we are encouraging sometimes second tier members of the senior executive team to take on non-exec roles on, for example, Jersey boards, to get that wider level of experience. That is where at the beginning from a principle point of view, rather than getting into some of the detail, was why the S.E.B. I would suggest were able to regularise it. At that point I do need to hand over to the ...

**The Connétable of Grouville:**

I want to follow up. Are you saying that the S.E.B. changed their mind because of public and political opinion rather than on the facts of the matter?

**Chair, States Employment Board:**

No, I am saying that circumstances were starting to change and essentially S.E.B. were trying to do their best to resolve what then became an exceptionally difficult position.

**Deputy I. Gardiner:**

Mark, before you continue, I will ask one question. How was it communicated to the chief executive that his role was not compatible? Was it communicated to the chief executive that his role was not compatible from the S.E.B. or not?

**Group Director, People and Corporate Services:**

Yes, it was. The Council of Ministers met on the Sunday and it was communicated verbally to him after the meeting of the Council of Ministers. He was present but did not attend the C.O.M.'s, so he was present in the building. Chair, if I may, you asked a specific question about the relationship between the view of the Council of Ministers and the States Employment Board. To help people understand, the chief executive is the chief executive to the Council of Ministers, which is the political executive of the Government. The States Employment Board is the employer and the employer and the States Employment Board has a specific duty to look at only their duties set out in legislation. The States Employment Board went to great lengths to make sure that while they were aware of political statements and other statements being made in public that they were following just their role as an employer.

**Deputy I. Gardiner:**

Is the chief executive also the adviser for the States Employment Board? Is that correct?

**Group Director, People and Corporate Services:**

The chief executive is the principal adviser to the States Employment Board, but he was not present and I took that role.

**Deputy I. Gardiner:**

The States Employment Board has found that the role of the chief executive is not compatible with his non-executive employment, is that correct?

**Group Director, People and Corporate Services:**

When the States Employment Board met on 29th October they regularised the arrangements and agreed with certain conditions ...

**Deputy I. Gardiner:**

Sorry, after 5th November. Let us be clear of the facts, after 5th November what happened?

**Group Director, People and Corporate Services:**

The Council of Ministers had met and made their statement public and other public statements came to the fore. At that point the States Employment Board consider a particular clause in the contract about bringing the employer into disrepute and at that point they were considering whether or not the public opinion, the press and the political statements, were triggering that part of the contract. While they regularised the second job and the permissions another part of the contract was around the reputation of the employer.

**Deputy I. Gardiner:**

Thank you. What was the response from the chief executive when it was raised with him?

**Chair, States Employment Board:**

When what was raised with him?

**Deputy I. Gardiner:**

That his role might not be compatible and that the States Employment Board were reconsidering.

**Chair, States Employment Board:**

I would have to go back and check. I do not think from that perspective that he was terribly ... I think I will hand over to Mark. There had been various discussions at which point I would have had some

feedback and Mark would have had some feedback because we tried to keep that line reasonably clean.

**Group Director, People and Corporate Services:**

The States Employment Board comprised of the Chief Minister, the Minister for Treasury and Resources, the Assistant Chief Minister and the 2 non-executive members.

[15:45]

Because the Council of Ministers had made a statement the Minister for Treasury and Resources and Chief Minister stepped out of the conversations with the chief executive at that point to avoid a conflict. The remaining members of the States Employment Board met with the chief executive and put a number of questions to him. He was co-operative. He set out his full case and, based on his right to respond, which he had, the States Employment Board as constituted then made their decisions about communication to him.

**Deputy I. Gardiner:**

Did the change in the position as to whether the non-executive directorship was compatible with the position of the chief executive give rise to a potential claim by the former chief executive against the States?

**Chair, States Employment Board:**

Apologies, can you repeat the question? I think it is getting legal and I will go to Darren.

**Deputy I. Gardiner:**

I do not think it is legal but I will try again. It was a change as to whether the non-executive directorship was compatible or not with the position of the chief executive. Did this decision or change of view give rise to a potential claim by the former chief executive against the States?

**Chair, States Employment Board:**

I will hand over to Darren because there is a point where S.E.B., as Mark has identified, was split because of the relationship between S.E.B. versus C.O.M., but equally at pretty well all stages at this point we were then getting legal advice.

**Senior Legal Adviser, Law Officers' Department:**

I think the answer to the question has to be no, in the sense that the precise question in terms of what gives rise to a claim in an employment context would typically be in a constructive unfair dismissal situation where an individual found it impossible to continue within that role, or in a situation



of dismissal itself where the employer said that that individual could no longer continue, or a situation where the 2 parties mutually agreed to bring the termination of employment. Those are the circumstances in which a termination event can occur and where a claim or a liability can crystallise, if I understand your question correctly.

**Deputy I. Gardiner:**

I am thinking about approaching it in a different way. If the non-executive appointment for the chief executive would not be approved by S.E.B. would there be less grounds for a potential claim?

**Group Director, People and Corporate Services:**

Within the employment contract, as it has been published, there is a very clear requirement to get written permission. That written permission is a discretion of the employer. The regularisation of that gave the written permission but at any point the employer, where there is a perceived or actual conflict, or where they believe it may bring them into disrepute, just its very existence, the employer has a discretion to withdraw their permission or direct some other action.

**Deputy I. Gardiner:**

How would other employees be treated if they were to do the same, if they were to get a second employment without written permission?

**Group Director, People and Corporate Services:**

In the same way. Every employee is treated on grounds of principle, so we have very clear guidance. While we accept that the position of a chief executive or senior officers can be quite unique the principles of fairness apply. The C.S.S.P. (Corporate Services Scrutiny Panel) has recently heard about the new policy framework we are putting in where we are trying to resolve issues rather than take them more formally. The regularisation of this was a proportionate resolution. As the Chief Minister said, it was an oversight; it had been received orally but not in writing. The States Employment Board considered the reasons for it; they accepted the apology of the Chief Minister and the then chief executive and then they considered whether they would give their permission. After due diligence they decided to, but with some prohibitions in there and some terms that had to be met. We would have done that with any other employee. Secondary employment is not unusual ...

**Deputy I. Gardiner:**

Absolutely I understand that, but it is about written permission that is clear in the contract and that has not been followed.

**Group Director, People and Corporate Services:**

Where it is a legitimate oversight we do not need to go nuclear on an employee. We just need to make sure that we repair whatever has been done, if it is reasonable.

**Deputy I. Gardiner:**

Thank you. Chief Minister, one last question from me: what gave rise to a potential claim? We hear a lot about potential claims, so what has happened that it was a potential claim?

**Chair, States Employment Board:**

I think that is a matter for Darren again.

**Deputy I. Gardiner:**

I would like to hear from you, if possible, what you think was the reason for a potential claim?

**Chair, States Employment Board:**

The reason I am cautious is because at each step if we say what in my opinion gave rise to the claim then what I do not want to do is step into any legal territory in terms of employment, and that is why I am going to hand it over to Darren.

**Deputy I. Gardiner:**

If you could make it a short answer.

**Senior Legal Adviser, Law Officers' Department:**

Yes. I think it is probably useful to go back to those 3 notions in terms of a constructive dismissal event, a straightforward dismissal event and a mutual agreement to bring a contract to an end. In this case on these facts it was the third example, so it was a mutual agreement to leave. Of course that then is subject to the applicable contract of employment and the terms of that employment. Again, I appreciate that there are elements in the public domain and elements that are not in the public domain, so if we possibly take a little step back from dealing with a named individual, and deal with the hypothetical where you have a contract of employment that has a mutual exit clause and says in circumstances if both parties agree that the employment is to come to an end then these are the contractual parameters that would apply to that. There is an added nuance to that in terms of what happens if one party says they wish to exercise that clause and the other party folds their arms hypothetically and says they are not particularly disposed to that. That is what we will probably deal with later in the session, but I think the important thing at this point is to emphasise the level of nuance in relation to this being a remove from a binary question of whether there was a claim or whether there was not.

**Deputy I. Gardiner:**

A quick question: had the former chief executive been asked by the States Employment Board at some point to step down from the non-executive directorship?

**Group Director, People and Corporate Services:**

Just bear with me. I need to see what was in the public domain. The conversations between the chief executive and the States Employment Board were not made public. There was no statement on that, so I do not think I can comment in public about it.

**Deputy I. Gardiner:**

No problem.

**Mr. G. Phipps:**

I just wanted a couple of clarifications. We are trying to understand what has been done differently when we go forward so that we avoid this in the future. One question that was not addressed was the question that Inna asked about that the C. and A.G. found weakness in policy and procedures in dealing with actual or perceived conflict of interest and what action the S.E.B. is taking. I wanted to know if there was any follow-up there because that was not answered.

**Chair, States Employment Board:**

Basically there is an interim policy being developed and it is going to go out to consultation, because it does apply wider than just the C.E.O. and I think if I have got my facts right that that is likely to go in September.

**Group Director, People and Corporate Services:**

Yes, we have introduced a new code of practice, which is the highest level policy from the States Employment Board. This is the standards in public service and this covers all public servants. In there, there is now a duty to declare perceived, actual or potential conflicts of interest, pecuniary interests or outside interests, including employment. We are bringing in the centralisation of the recording of those because they are currently left out in departments, and we are currently testing that central system to bring that into place for the autumn.

**Mr. G. Phipps:**

Thank you. I have one other one, but I will come back later.

**Senator T.A. Vallois:**

To follow up on the chair's questions, I hate to labour the point but you refer to a mutual agreement, the senior legal adviser referred to a mutual agreement. The C. and A.G. report found that the

settlement was reasonable in the light of potential claims, so we are trying to understand what were the potential claims in this instance?

**Chair, States Employment Board:**

I will hand over to our legal adviser and then I will see if there is anything I need to add.

**Senior Legal Adviser, Law Officers' Department:**

Again, I think it is probably helpful if I answer that at a slight remove, so even though I know that we are all dealing with the focus on one individual, given the privacy issues then it is probably best to speak at a slight remove. If an employer sought to exercise a mutual exit clause and the individual did not co-operate and the employer then pursued some form of internal process that then resulted in a dismissal, so the second category of what I described earlier, that individual would then be free to take a claim in the Jersey Employment and Discrimination Tribunal and also a claim in relation to the Royal Court. In relation to the Jersey Employment and Discrimination Tribunal there would be recourse to unfair dismissal or constructive unfair dismissal. In relation to the Royal Court there would be recourse to a breach of contract claim. There is the added question, and again I do not want to stray into what may be live litigation, but the interpretation given by the Royal Court of Jersey in relation to a dismissal that is viewed as unlawful, in other words a dismissal that in the eyes of the law is not deemed to have taken place in a lawful manner. Within those different categories there are different heads of claim. Overlaid on top of those heads of claim would be the relevance of any provisions within the contract of employment and the associated documentation with that contract of employment in assessing the level of quantum to the claim. Going back to your words, Senator, in relation to contractual exposure or contractual liability, then there would be the relevance of the legal costs and resources, both in relation to the individual and in relation to representing the employer. I think that is probably an eagle-eyed summary of what claims might arise out of a situation very similar to the one that we are focusing on.

**Senator T.A. Vallois:**

Thank you. I hope you understand that using the unreasonableness or reasonableness argument we need to understand those potential claims. Thank you for that. My area of questioning is particularly on the line management of the chief executive, so for ease of reference recommendations 2 and 3 of the C. and A.G. report. The C. and A.G. found that there were no delegations in place from the States Employment Board for the line management of the chief executive. In practice the Chief Minister acted as the line manager. Why were the line management arrangements for the chief executive position not documented?

**Group Director, People and Corporate Services:**

Within the chief executive's contract and the role profile it describes the relationship between the chief executive and the Chief Minister, and that indicates a line management relationship. So in the appraisal and precontract documentation it was agreed that the appraisal would be done by the Chief Minister as the line manager. At the beginning of every States Employment Board term the first thing that is done is to set out the delegations, so the delegations from the authority that the States Employment Board have to either members of the States Employment Board to act on their behalf or to officers. The delegation was overlooked in the 2018 delegations. There was custom and practice that the Chief Minister was assumed to be the line manager and that had been for the previous chief executive and the previous chief executive under the Chief Minister's office. There were assumptions there that custom and practice would fall. I will not talk for the C. and A.G. but I think for good governance and the avoidance of doubt the recommendation is saying that that should be documented to avoid any potential conflict or any challenge to that.

**Chair, States Employment Board:**

The follow-up is that now has been confirmed by S.E.B. in the meeting and following the review of the C. and A.G. report and what I was referring to in September, the revised scheme of delegations that will also address other conflicts is what is going to be put in place in September.

[16:00]

**Senator T.A. Vallois:**

It was stated in the response to the C. and A.G. report that this would be in place by the end of this month. Are you on track to complete that, or are you now saying that it is going to be September?

**Group Director, People and Corporate Services:**

The States Employment Board confirmed the line management arrangements in their meeting as they discussed the response to the C. and A.G. report. The full delegations have to be rewritten because what we are trying to do is cross-reference the public finance manual with the delegations of the States Employment Board. We may get into some conflicts between the 2, but we want to be absolutely clear that we are cross-referencing the requirements in the public finance manual, which led to the concerns within the accounts, versus the duties of the States Employment Board.

**Senator T.A. Vallois:**

Chief Minister, can I ask you to speak up a little bit louder, please? There are problems with the log noting. In terms of the line management for the current interim chief executive, is that in place or will that coincide with the work that has been carried out to improve the procedures?

**Chair, States Employment Board:**

It is in place because it is the same principle.

**Senator T.A. Vallois:**

So it is the same principle as the policy you have just outlined, okay, thank you. The C. and A.G. found that there were no suitable specific procedures that could be used in the event of any need to take disciplinary action in respect of the former chief executive. What action is the S.E.B. taking to develop a suitable disciplinary policy and supporting process for the chief executive position?

**Group Director, People and Corporate Services:**

I will briefly explain why there is no suitable policy. The policy that was in place was for chief officers. That followed a very different governance structure pre-Public Finances (Jersey) Law 2018 and the ministerial changes. The first thing was it was written: "Where a chief officer may need to be disciplined", but it did not quite reflect the fact that the person instigating disciplinary in that instance would be the chief executive, so it did not reflect the fact that there may be a process required for the chief executive. That is where that arose. That then gives rise to the principles of good governance and good employment, which is an individual has a right to understand anything against them, a right to respond, a right to be investigated, a right for a hearing and a right to appeal. None of those mechanisms were set up and there is an inherent conflict with the States Employment Board. The States Employment Board is 5 members and to be quorate it needs 3 members, so if you were to have even a hearing and an appeal one of those stages would be potentially challenged as being inquorate as a decision-making body. This is what we need to do. We need to put in a process that sets out who will commission an investigation, who will hear any potential hearing, who will hear the appeal and who is responsible for the whole oversight of that. There is good governance in other jurisdictions that we can look to, but this is a matter of contract, so where this affects the chief executive and some other chief officers and accountable officers across the States we do need to consult with them because it is a contractual term.

**Senator T.A. Vallois:**

Can I clarify on the points you made about the chief executive officer and the fact that it was different for the chief executive officer to chief officers? The chief executive officer, as we understand, has a number of roles, so will that be encapsulated in the understanding of that disciplinary process for that individual role? I am not talking about the individual person but the corporate role.

**Group Director, People and Corporate Services:**

Yes, so the chief executive is the chief executive to the Council of Ministers. They are the head of public service, which covers all States employees. They are the principal accountable officer, who is answerable to the Public Accounts Committee. There needs to be mechanisms where there is a

concern about one of those duties or more or their conduct how a complaint is made and then how it follows due process.

**Senator T.A. Vallois:**

In terms of the response that you provided for the C. and A.G. report you stated that this will be in place by the end of September 2021. Is that still on track? Yes? Thank you. I will pass on to Dr. Miles.

**Dr. H. Miles:**

The next section of questions is myself and Deputy Gardiner and we are going to look at severance of employment. The first question is why did the consultation required by the public finances manual with the Treasury and the Exchequer on the agreement to pay the former chief executive not take place?

**Chair, States Employment Board:**

Perhaps if I start and then Mark can come in if he wishes. Basically you have asked a very similar question to the Treasurer of the States at an earlier hearing, so I think the response is the same. The whole purpose of the ethos behind the public finances manual was basically to ensure that at the right levels advice was taken to ensure that decisions were arrived at properly. The comment he made, if I can just refer to it, is that he felt it was essentially revolving around a technicality of the issue in the public finances manual, and it was largely about ensuring that individuals, managers or leaders in the organisation who are contemplating often novel and sometimes contentious payments do so in light of receiving the right advice. What he said was in the case of this it was a decision of the S.E.B. and it is very definitely the case, which he was also saying, who undoubtedly took the most senior and expert advice available to them at all points during that process leading to the payments to the former chief executive, with the one exception. So in other words, the practical reality was that S.E.B. took the advice but instead of going to Treasury or the treasurer and the treasurer going off and getting the advice essentially, and he would have gone to the same people we went to, we went directly to the senior advisers that we use, and obviously one of them was Darren.

**Dr. H. Miles:**

Nonetheless, there was an omission there?

**Chair, States Employment Board:**

There was an omission, but it was a technical omission. It did not change the advice that would have been available.

**Dr. H. Miles:**

But it was that technical omission that led to the exemption that was mentioned in the annual report and accounts?

**Chair, States Employment Board:**

It was that technical exemption and we have all opined on that, which are in the public domain, and it is probably not worth repeating it, but it was a technical omission. It was not something that would have changed the outcome.

**Dr. H. Miles:**

The £500,000 payment to the former chief executive is disclosed as a single amount in the annual report and accounts of the States. What was the breakdown of the amount into its component elements in terms of his contract and the associated side letter?

**Chair, States Employment Board:**

In terms of what I can say publicly, it is split into 2 equal amounts associated with mutual termination of employment and pension matters. To go any further in the public domain we would have to consult with the former chief executive, because it is balancing transparency versus privacy. I am sure if we wanted to we could provide further information in a private arena.

**Dr. H. Miles:**

Do you agree that it is in the public interest for a breakdown of that payment to be made public, so that the public can understand what the former chief executive was entitled to receive under his contract and what he received in practice?

**Chair, States Employment Board:**

I think there are 2 different questions there. The first is whether it is in the public interest to put those 2 amounts into the public domain. The second point is understanding what was the contractual entitlement. If we are getting into issues of contractual entitlement, I am definitely passing that across to Darren for the legal advice because we remain very much of the view that what was offered was within the limits of contractual entitlement.

**Dr. H. Miles:**

I was going to ask a further question. Do you think it is in the public interest for this to be disclosed?

**Chair, States Employment Board:**

The reason I pause is that sometimes there could be the political view that it is in the public interest, but we always have to balance the right of the individual to privacy. Obviously the total amount has



been put into the public domain. I think that is in the public interest. At what level of detail one goes down to get to, which does then impinge upon the right to privacy and the obligations as far as I am concerned of the employer to look after the rights of employees, even former employees, I do not think I would want to comment at this stage. I absolutely agree with the total amount being out in the public domain.

**Dr. H. Miles:**

Are the former chief executive's interests more important than those of the public of Jersey?

**Chair, States Employment Board:**

I think what one has got to consider, and as we stand back in a potentially hypothetical scenario, is whether there could be any further issues that come out from that breach of privacy.

**Dr. H. Miles:**

Are you saying that the deal did not close off all the potential claims?

**Chair, States Employment Board:**

I say that at this point I am definitely handing over to our legal side from the perspective of understanding that there will be obligations on both sides to ensure that certain levels of privacy remain.

**Senior Legal Adviser, Law Officers' Department:**

Thanks, Dr. Miles. I think it might be helpful if members bear with me on this answer, because it might sound rambling for the first 30 seconds but I think it might help set the context. There has been a great deal of discussion in much documentation over contractual liability and the use of that phrase. I think what I would invite the committee to do is to perhaps think of 3 different closely associated notions, sometimes they overlap entirely and sometimes they are different and if you use the acronym E.L.P., (entitlement, liability and parameters), so E, contractual entitlement, L, contractual liability or exposure, and P, contractual parameters. I think in an example like the perhaps slight distance, the hypothetical one, what they are thinking about, we can get slightly different answers depending on which of those notions we are focusing on. If I was to begin by way of example, we are in early July. If as an employee I had not received my salary payment on 30th June then I would describe that as saying the employer has not satisfied its contractual entitlement. I have an entitlement and that has not been honoured. I would not be worried about talking about liability. I would not be talking about the parameters in which that might be a straightforward case of saying: "I have an entitlement to those monies and they have not been paid." In a sometimes quite complex employment dispute those 3 notions may not mean precisely the same thing and sometimes they can diverge quite sharply.

**Dr. H. Miles:**

I think in this particular case we are really concerned about the contractual entitlement, not the contractual limits. We are seeking to explore how the circumstances warranted that entitlement.

**Senior Legal Adviser, Law Officers' Department:**

Okay, so perhaps if you will humour me a little more, I appreciate that there has been concentrated effort on the words "contractual liability" and let us go back to this slightly hypothetical example. Say you have an individual with a contract of employment with a clause that says: "This is a mutual exit clause" and that individual folds their arms and says: "You may wish me to leave, but I'm not going to leave." If we were set an exam question in terms of saying: "What is the contractual liability in this instance?" and I am using my words carefully, I would say that is not the most useful notion and that in order to understand from an employment lawyer's perspective, and I emphasise that because I am aware we have had chartered accountants, auditors, looking at this, quite properly the Public Accounts Committee looking at it, each of them from different perspectives using slightly different language. We have been to one of London's top Queen's Counsel specialising in employment law, not only after the event, but while events were unfolding, and we benefited from what I would say would be one of the finest legal minds in this area in London. To understand the events that have occurred and the outcome that was reached, I think we have to go back and consider those 3 elements, contractual entitlement, contractual exposure and what is the risk to the employer if this falls apart? What is the risk to the employer if a process has to commence where we do not know with any certainty what the outcome of that process is? What are the correct contractual parameters? That sounds like a theoretical question. It sounds like a question that says: "We are not interested in where the boundaries are. We are interested in ..."

**Dr. H. Miles:**

Sorry, in the interests of time I am going to move this on. We are interested in the contractual entitlement and what were the circumstances, detailed in paragraph 50, of the C. and A.G. report that led to the size of this payment. That is what we are trying to get at. We are interested in the contractual entitlement.

**Senior Legal Adviser, Law Officers' Department:**

I understand the question you are asking. What I am saying is that we have expert opinion to say that that is certainly not the relevant question to be considering in this context.

**Dr. H. Miles:**

Is it the case that those circumstances just simply did not exist?

**Chair, States Employment Board:**

No.

**Senior Legal Adviser, Law Officers' Department:**

I am sorry, I do not understand your question.

[16:15]

**Dr. H. Miles:**

You have answered no, okay. I am going to move on just in the interests of time. Going back to the £500,000 ...

**Chair, States Employment Board:**

Can I just be clear? The implication I have read is that we were basically arriving at a figure randomly and that we were not taking risk into account. Let us be very clear on the basis of the advice that we were receiving, eminent professional advice, our advice was that the amount that was paid out was within the contractual entitlement and that it represented - I accept absolutely it is a large sum of money - a reasonable outcome in the circumstances for the taxpayer.

**Dr. H. Miles:**

Okay. In paragraph 53 of the C. and A.G. report she found that the £500,000 payment is in excess of both the minimum contractual entitlement and the maximum contractual entitlement. Can you tell us what was the minimum contractual entitlement and conversely what was the maximum contractual entitlement?

**Chair, States Employment Board:**

If you look at paragraph 50 we were advised that the minimum contractual entitlement was to the value of £500,000, but I think again I will hand over to Darren because there are considerations between what we can put in the public domain and what we can say in private.

**Dr. H. Miles:**

Paragraph 51 says: "These circumstances did not exist at the time the compromise agreement was signed. As a consequence the settlement does not, in the view of the Comptroller and Auditor General, fall entirely within the agreed contract of employment terms."

**Chair, States Employment Board:**

As I said, I think that is a matter for the legal advisers.

**Dr. H. Miles:**

Okay, because you did have the opportunity to comment on the accuracy of this report before it was published, Chief Minister.

**Chair, States Employment Board:**

We did comment.

**Senior Legal Adviser, Law Officers' Department:**

Can I interject there? I take the Comptroller and Auditor General's comment there to be helpful in the sense that the text that we see in paragraph 50 is stating that the circumstances were not satisfied. We are dealing with discussion around minimum and maximum in relation to contractual entitlement, but we are confining our question to one of the 3 elements and only one of the 3 elements that need to be considered in the context of what is a complex employment dispute or certainly a situation that needs to be resolved. I am conscious of what the Chief Minister said in prefatory comments. I could today read out 3 paragraphs from learned counsel's opinion, which if read out would demonstrate a quite sharply different interpretation than the interpretation given in paragraph 50. That is a privileged document. We would be very happy to explore ways of providing that to the committee while reserving privilege within that document.

**Dr. H. Miles:**

Again this is about the public interest. It may be a privileged document, but do you think it is in the public interest for the information, all the information that contributed to the decision to make a pay-out of £500,000 to the former chief executive to be in the public domain?

**Chair, States Employment Board:**

Can I put it this way around? I understand certainly from my days on Scrutiny, we are covered by the various codes of practice. One does specifically relate to legal advice and I have seen the P.A.C. refer to the same. Therefore if the P.A.C. was to receive legal advice does it automatically put that into the public domain? The short answer is usually not, because it has to be done with the permission of the Law Officers' Department, and I think we are in the same constrained position.

**Dr. H. Miles:**

I have one final question.

**Senator T.A. Vallois:**

Can I just challenge that slightly? If this was the case, if this had gone to an employment tribunal or the Royal Court this would be in the public domain. Is that correct?

**Senior Legal Adviser, Law Officers' Department:**

If the matter had not been settled beforehand, yes.

**Senator T.A. Vallois:**

Yes, so in terms of the public interest test, Chief Minister, who determines what a public interest test model is? Is it the lawyers or is it an ombudsman, or is it a determination by just one individual that on the balance of probability decides it is not appropriate?

**Chair, States Employment Board:**

What I was alluding to was that the general principle is around, as I understand it, advice around the codes of practice that are in the public domain are not released. That is not my call. I say that, but there are ways and means of achieving that, but the general view as I have always understood it and it is the relationship between client and lawyer, that legal advice does not get released. Therefore the general view all the way down the line is that is the case. We have offered very clearly, if you wish to access on a private basis the opinion that we had, we are very willing to allow you to look at that and you can have a look at the advice that we received.

**Dr. H. Miles:**

My final question is: in your view what needs to happen to make this set of affairs pass the public interest test?

**Chair, States Employment Board:**

When you say "this set of affairs" which aspect are we talking about?

**Dr. H. Miles:**

We are told that elements of the breakdown of the payment, details of contractual entitlement, none of that passes the public interest test. What needs to happen in order for the public interest test to be met in these particular sets of circumstances?

**Chair, States Employment Board:**

As I said, the difficulty we have is that - and this is purely my understanding as a layman and it is not dealing with this circumstance - it is dealing with essentially when you get into those arguments you get into the issue around release of advice, and in general there are maybe ways around it, but to date that has not been sought. In general, the view is that once legal advice comes out on one area it sets a precedent for the release of other legal advice and then the whole system of legal privilege evaporates. That may be something that I guess is a matter for the legal profession, speaking as a layman. That is the problem. Now, I fully get the point around what you are trying to

say. The point we were making is that all the way through we took professional advice and, as Darren has alluded to, that professional advice informed our decisions on the settlement amount.

**Dr. H. Miles:**

Thank you. I am going to hand over to Deputy Gardiner now.

**The Connétable of Grouville:**

I was just going to say, could you ask the former C.E. (chief executive) if he would allow you to release the advice?

**Chair, States Employment Board:**

It is not his legal advice.

**The Connétable of Grouville:**

He might give us details of the settlement. He might be willing to share.

**Chair, States Employment Board:**

I thought I was being asked about the legal advice that informed the settlement, if that makes sense. As I said, there have been times when we have corresponded to ensure or to determine where information has been put out and obviously we know some of the circumstances behind it.

**Group Director, People and Corporate Services:**

Dr. Miles, you asked about the public interest test. Firstly, the Comptroller and Auditor General's report is unfettered. We gave full access to documentation including legal privilege, legal documentation. We gave similar information to the internal auditors when considering their opinion. They are obviously independent of Government. The P.A.C. are obviously scrutinising this now and we have offered and are prepared to share some of the rationale. In terms of the public interest, there comes a reliance on bodies such as the Comptroller and Auditor General, the external auditors and this P.A.C. to give assurance of their understanding of how that arises where there is information that is not available in the public interest. We will do everything that we can to help you in that assurance.

**Deputy I. Gardiner:**

I will just follow up. Really paragraph 53, Chief Minister, of the C. and A.G.'s report clearly stated the settlement is in excess of the entitlement of the required contract. You accepted the C. and A.G.'s report and welcomed it so there is a pressure at the public expressing an interest about knowing what was the minimum and maximum entitlement and how it is going above maximum entitlement. What needs to happen for it to become public interest, in your view?

**Chair, States Employment Board:**

I think there are 2 areas. One is, as we have offered previously, I think the first step would be to allow P.A.C. to have a full understanding of the full circumstances and the ranges of items we were considering. That, in my view, could be done in a private hearing, but then you can opine publicly on the information that you have received without revealing that information.

**Deputy I. Gardiner:**

Yes, but the public are asking specifically what was the maximum and minimum entitlement and how much in excess. It is not something that if you will give me privately or to the committee privately we can share with the public. The public has a very specific, clear question: "He has been paid £500,000. How much is that above the entitlement?"

**Chair, States Employment Board:**

As I said, the difficulty is there are, as is always the case, differing opinions. We have accepted the C. and A.G.'s report but there were different opinions around this definition of the contractual entitlement. As I said at the time, and when the decision was made, our advice was that we were basically respecting those contractual entitlements.

**Deputy I. Gardiner:**

I remember the States Assembly sitting on 10th November where you stated ...

**Chair, States Employment Board:**

Contractual entitlements are no more.

**Deputy I. Gardiner:**

Yes, the contractual entitlement, exactly, and the C. and A.G. report concluded that £500,000 is more than the contractual entitlement for the former chief executive. How does that reconcile?

**Chair, States Employment Board:**

At the end of the day, the advice we had received, including the day before, was consistent with what I said in the Assembly. It was based on the advice I received. What you have got is what I said at the time, which was based absolutely on the advice that we had received, and that is referred to I think in the C. and A.G. report. I do not know if you have had the full minutes or not, but it is also alluded to in the minutes, and what has then happened is that retrospectively the C. and A.G. has come along and disagreed with that position.

**Deputy I. Gardiner:**

Have you seen the breakdown? You have challenged the advice because we received the advice but whose responsibility ultimately is it to make the decision?

**Chair, States Employment Board:**

Pardon?

**Deputy I. Gardiner:**

Who is responsible to make the decision? We received the advice and the question is: have you challenged the advice? Have you seen something different in this advice?

**Chair, States Employment Board:**

You have to also remember in the context of the timeframe we were operating in, which was very short, you do not have time necessarily to go off and get different evaluations or whatever is relevant in the context. As I said, it was based on the advice that we received at that point in time. I do not know if Darren can add in terms of the parameters.

**Deputy I. Gardiner:**

I would like to move on. I am looking at the time and I would like to get through some more questions. The C. and A.G. report found that £500,000 was not unreasonable, like you stated, given the potential claim from the former chief executive against the States and the cost of defending them. Why did the former chief executive have such a claim that resulted in such a significant settlement by S.E.B.?

**Chair, States Employment Board:**

Again I will hand across to the legal side, but I think the summary position would be it will tie into the original contract that was agreed back in 2017.

**Deputy I. Gardiner:**

I think I will stop legal advice because the question is very simple. He received more than contractual entitlement according to the C. and A.G. report. What we are trying to understand is what are the potential claims? If we can have bullet points of the potential claims or the grounds for potential claims that could be brought it would be helpful.

**Chair, States Employment Board:**

Sorry, as soon as you get into the area of what potential claims might be I run the risk of either breaching things around privacy or running into the legal arguments that are being run at the time, which is why I keep going back to the point of seeking Darren's feed into there so I do not fall breach of any particular conditions.



**Group Director, People and Corporate Services:**

Chair, if it is helpful to P.A.C., we have got to be careful not to get into conjecture around Mr. Parker or what he may be thinking or what advice he may be getting. The States Employment Board considered their risks, they looked at their liabilities and they received advice, of which potential claims may have come forward, but there was no claim from the chief executive at that point.

**Chair, States Employment Board:**

Yes.

**Deputy I. Gardiner:**

You say that you acted in accordance with the advice you were given. What level of personal responsibility do you accept for why the former chief executive believes that he might have grounds for constructive dismissal or a claim, because that option of the construction dismissal was mentioned.

**Chair, States Employment Board:**

Sorry, the issue we were dealing with was a balance of risks as to potential outcomes and in the context of what we were dealing with, hence I think the C. and A.G.'s conclusion that in the balance essentially it was not in overall terms an unreasonable outcome. You are looking at a variety of potential risks in the context of some of which Darren has outlined already, and potential exposure, if it was to go down a litigious route, which it did not. In other words, we avoided that risk and that is why it was a not unreasonable outcome.

**Mr. G. Phipps:**

I am sorry. I am just sitting here listening to all of this and I am a bit aghast, honestly. The question was: what possible grounds of constructive dismissal existed?

[16:30]

It is one thing to say all this kind of stuff, but we are trying to understand what the basis was, what were the situations that would drive constructive dismissal to this level? It is a simple question.

**Chair, States Employment Board:**

As I said, I think that is where you get to a legal outcome of what it is. I apologise. I am not trying to be difficult here, believe it or not. I would be very happy to give it freely in a private domain. What I am very, very cautious about, given the circumstances and given the obligations that we have to a former employee, of essentially breaching those conditions. That is why I am being exceptionally

cautious in those circumstances because I have seen what happens when it goes wrong. Now I am not trying to be unhelpful in any shape or form but I am recognising there is a difficulty between what we do in the public domain and what we do in the private domain so when we start getting down to ...

**Mr. G. Phipps:**

To be clear, so you are not able to or not willing to say what the bases for the discussion on constructive dismissal were? Is that what you are saying? I just want to understand that.

**Chair, States Employment Board:**

Hang on, you have already had an outline that there are already legal precedents which erase the levels of uncertainty as to what the outcomes might have been.

**Mr. G. Phipps:**

I am not talking about outcomes. I am just trying to understand what the basis for constructive dismissal was. What were the bases of the arguments so we can at least get some context?

**Chair, States Employment Board:**

I think the query was about avoiding the risk of constructive dismissal.

**Mr. G. Phipps:**

If there is a legal situation, they are to start with understanding what the bases of the constructive dismissal were. That is how they start and not what the likelihood and what other cases are. They are going to start with an understanding what the bases of constructive dismissal were and who initiated it. These are the fundamentals and not all this other stuff. That is how you then drive likely outcomes. We are just trying to get an understanding of the bases. That is all.

**Group Director, People and Corporate Services:**

In this circumstance, we had an employee. Whether the chief executive or not, an employee. The chief executive, as all employees, do not have a right to respond in various forums. A number of comments were passed in public forums about the perception of the arrangements for New River. Comments were made around his tenure and around his integrity and, as an employer, we have a duty of care towards our employee. So the States Employment Board, at the start of this when they sought to repair the first oversight of the contract, were trying to retain the chief executive so they did not start from a position of expecting a liability or an exit. They were trying to repair and resolve that and that was part of their mitigation. As time goes on, the chief executive is mentioned in documents within this States Chamber. Certain allegations were made, certain assertions were made and along with the statements from the Council of Ministers about finding the incompatibility

of his non-executive role with New River. So third parties had started to create further risk for the States Employment Board in their contractual relationship with the chief executive. Again, they tried to manage that risk in terms of looking at their due diligence, meeting with the chief executive and seeking resolution in order to keep him. After a while, that position changed because, again, outside of the States Employment Board's control, there were other statements being made that were creating liabilities and, at that point, they had to look more at their risks and the potential liabilities that were arising from that. Constructive dismissal may have been one of those and I say "may have" because it may be that the chief executive could have said that the States Employment Board had failed to protect him and meet their duty of care towards him. That is a contractual right that he has. It may well be other conversations or failures to follow due process because, as I have set out, there was no disciplinary, no appeal, no fair investigation process in place so a number of things existed at that point. The States Employment Board did not just look at constructive dismissal. They looked at remedy and they also looked at risk and repair, so it was just one aspect of what they were discussing at the time.

**Mr. G. Phipps:**

So one last question. Is it fair to assume that if he was not given verbal approval and it then had to be reversed later, this whole situation would not have occurred?

**Group Director, People and Corporate Services:**

I do not think that is a logical model I would follow because the oral approval was repaired so it had to be a written approval. That was repaired and that should have, within normal circumstances, resolved the matter. It became a very high-profile public matter which then complicated it.

**Mr. P. van Bodegom:**

Mark, you said that there were comments being made that were jeopardising the situation. Could those comments be evidence? Were people putting this in writing? Could that have been collated?

**Chair, States Employment Board:**

Yes, that was, and Deputy Gardiner has a timeline, as Darren said earlier on, in his letter of 9th January 2021.

**Mr. P. van Bodegom:**

Okay, so, Darren, you mentioned there were 3 scenarios. Dismissal, end of contract and constructive dismissal and constructive dismissal is what is being mooted. It is very difficult to prove. Very difficult to prove.

**Senior Legal Adviser, Law Officers' Department:**

I think I will possibly come back to your question and also follow on from Mr. Phipps. Where I began today was setting out 3 categories: constructive dismissal, a classic dismissal termination and a mutual agreement to part company. I think possibly part of the lack of clarity here, if there is, arises from a classification within these 3 points because I think, Mr. Phipps, if I understood it correctly, you were looking at the factors within building a constructive dismissal claim and what they would look like. In relation to what took place - and, again, I am keeping a little distance from the facts - it is in the public domain that it was a mutual decision. It was a mutual exit in relation to those. I completely get the point on the constructive dismissal. We like to think of it as a gradient so if you are fighting in the tribunal a constructive dismissal, then you have a gradient looking like that and if it is an unfair dismissal, it looks like that. In relation to a mutual exit, the terms of the mutual exit are heavily influenced by the contract of employment itself and that is not meant to be a political comment in any way. A contract was negotiated in 2017 that had specific provisions within it and the example I like to give, compared with different parts of commercial practice, is if you were dealing with an I.T. (information technology) contractor or construction contractor, you could set out the contract and say: "These are the services and if the worst happens, we have material breach and everybody fights for themselves." Or you can have a contract with a schedule with liquidated damages to say: "If the worst happens, then these are engaged and ultimately this is where we go to, the point of no return." So in terms of good practice, a contract of this nature attempting to build in a mechanism in a contract to say: "If this relationship sours, if events unfold which mean it cannot go forward, then these are the parameters within which a conversation or a discussion would take place." Now I think it is possible to take a few steps back to say: "Depending on what the state of the market is and how best practice moves along, was the 2017 envelope too wide?" That is a matter for others to discuss I think and Mark certainly would be better informed that I would be in relation to it.

**Mr. G. Phipps:**

We have some follow-up questions later about the contracts. We can move ahead.

**Senator T.A. Vallois:**

Just briefly, Mark, you referred to third parties and statements being made in the Assembly with regards to potential claims happening. Could you explain how that would be dealt with going forward considering the position of a chief executive officer, principal accountable officer, head of Public Services, all the same role, in terms of the high profile in a small community and the risks of that going forward? How are we going to learn and deal with that specific issue?

**Group Director, People and Corporate Services:**

Thank you, Senator. You are absolutely right. There is a level of scrutiny on public servants within the Island which is quite intense, and public servants must accept that scrutiny. Where there are

concerns around an individual, be it the chief executive or director generals or senior officers, they have a right to respond and be treated fairly and the most appropriate way to do that is to raise the complaints in a defined way. Now that complaint is defined in some codes of conduct for both Members, for Ministers and for officers but this situation did not apply for those codes of conduct. It would be most appropriate to raise it with the line manager who would then afford a fair process and then allow the complainant or the person making the allegations to understand that it is being resolved in the most appropriate way. I think that inherent fairness in whatever we do allows an individual a right to respond without others making comment or determining an outcome that may not be fair to them. So everything we do is about the inherent fairness, the due process that we follow and the most appropriate thing we will put in is how to raise a complaint in the future against a senior officer so we will be raising it at the right place and with the assurance that it is investigated thoroughly and properly but fairly.

**Chair, States Employment Board:**

Just to add, you asked me a very similar question at a Corporate Services hearing not so long ago so I refer to my response then.

**Senator T.A. Vallois:**

I believe part of the response was to ask at the P.A.C. because you were attending here so I have done so.

**Chair, States Employment Board:**

I was referring to the point that one thing I have learnt from the talks and discussions with various officers over a long number of years, particularly when they come in from another jurisdiction, shall we say, is the level of exposure that they receive in terms of interaction with the public which they would not normally see if they were in a similar role for example, in the U.K. (United Kingdom). There is a barrier, if you like. So here, you are very, very close to the public and therefore what can happen is that, depending on the circumstances, you can either receive lots of public support sometimes and because you never satisfy all the people all the time as we know, in certain quarters, that can turn into abuse. I have to say I do think COVID itself has affected our community sometimes and I think that is what Mark was also alluding to. All I said in Scrutiny is I think there is a responsibility on all of us as Assembly Members to make sure that if we are criticising individuals, it is more about criticising the outcomes and not the individuals themselves, if that makes sense, and sometimes that does cross the line.

**Mr. P. van Bodegom:**

Can I just move on to a break in employment and the re-engagement on a fixed term contact? So the compromise agreement with the former chief executive was dated 12th November 2020 and on

26th November, which was 14 days later, the S.E.B. decided to enter into a new fixed term contract with the former chief executive. So the question is why have the requirements for the former chief executive to continue in post until the end of March 2021 not been identified before the compromise agreement was entered into?

**Chair, States Employment Board:**

I will allow Mark to fill in the detail but part of it was that I think the initial intention and the view was that the chief executive was going to depart fairly swiftly. There was a view expressed to both myself and I think the Council of Ministers but informally from some Members from the executive leadership team who were, let us be fair or clear, in a degree of shock, is probably the word I would use, in terms of how they saw one of their senior officials having been treated I think in the wider context and in the context of the other political issues that were going on at that time. I think one of the issues they raised - and I am talking in general terms - was their concern around maintaining the organisation in a stable way. They felt that the organisation had been destabilised. Obviously, one was maintaining the processes of the Island, if you like, in terms of dealing with the pandemic which obviously, at that point, numbers were going up. Equally, what was very clear was we were concerned with flight risk from senior members of the team and equally we had a number of significant projects which were starting to get to critical points. So the overall message was around seeking and achieving an orderly transition to ensure that the pandemic management carried on smoothly, the key projects did keep going and we could stabilise the organisation and I would suggest that is pretty well what we have achieved.

[16:45]

**Mr. P. van Bodegom:**

Thank you. So, in essence, it is all about stability, okay.

**Chair, States Employment Board:**

Yes, which, ultimately, is about the interests of the Island as well.

**Mr. P. van Bodegom:**

Absolutely. The director generals were part of the evolution of the OneGov. Would it have been possible for one of the D.G.s (director generals) to step in and act up?

**Chair, States Employment Board:**

I do not know the answer. Mark, do you want to comment so it comes from you and not me.

**Deputy I. Gardiner:**

In the interest of time, we will probably follow-up with some of the questions.

**Chair, States Employment Board:**

Well, okay, I will say it then. Because of the level of the ... what is the word I am looking for?

**Group Director, People and Corporate Services:**

So the director generals were consulted about alternative arrangements. None of those expressed an interest in stepping up into that role partly for the reason the Chief Minister said. Also from practical operational reasons, which then meant there would be a shuffle through the organisation as other people stepped up into that role for a short period of time. So that is why that did not happen.

**Mr. P. van Bodegom:**

Thank you. Why did the S.E.B. not consider the key terms of the fixed term contract with the former chief executive or the proposed contract itself before it was signed on behalf of the S.E.B.?

**Chair, States Employment Board:**

Apologies. Could you just run that question past again?

**Mr. P. van Bodegom:**

Why did the S.E.B. not consider the key terms of the fixed term contract with the former chief executive or the proposed contract itself before it was signed on behalf of the S.E.B.?

**Group Director, People and Corporate Services:**

I believe they did. I am looking through the minutes very rapidly now but I will come back to that rather than stall for time.

**Deputy I. Gardiner:**

We are asking questions as we go and I hope it will be okay if we will follow up with the written questions, which will be published and also will be in the public domain.

**Mr. P. van Bodegom:**

Thank you. So there was a gap of 7 days between the former chief executive's termination of contract on 31 December 2020 and 8th January 2021 when his new 3-month contract started. During that period, who was in charge?

**Chair, States Employment Board:**

So there is a standard deputising rota, which is in place at all times for the absence of the chief executive, and on that occasion in a short spell of time, it was the chief operating officer.

**Mr. P. van Bodegom:**

Thank you. During that period, just jumping to the former chief executive, did he have access to the building, the computers and did he attend any meetings?

**Chair, States Employment Board:**

The latter part I think Mark has the detail on. I will let Mark answer that in terms of detail.

**Group Director, People and Corporate Services:**

So there is precedent for a former chief executive to act as or continue to act as an adviser in a specific capacity. For a short period of time, it was agreed, because of the COVID spike at the time and for continuity, that the then former chief executive would be allowed to do so. In order to do that, he did have access to the email system although other files were closed down for the purposes of secure communication and, if necessary, he did have access to the buildings. The buildings were monitored, his email was monitored and I have seen evidence of his email inbox. He only dealt with a COVID matter and one other issue which was an urgent commercial matter of which he had great in-depth experience and he was requested to do so.

**Chair, States Employment Board:**

I think it is worth making the point the 7 days was about having a break in continuity of service for the purposes of the Employment Law 2003 and is purely a safeguard to protect the employer's position. Nothing else should be read into it.

**Mr. P. van Bodegom:**

Okay, thank you. Who else was aware that he was not in role for those 7 days? Was it across the organisation or was it just key members?

**Group Director, People and Corporate Services:**

It was key members mainly because it was a period where most of the offices were closed down, there was very little activity and the deputising arrangements were in place so there was no lack of leadership or decision-making at the top, so there was no need for a wider announcement at that point.

**Mr. P. van Bodegom:**

Okay, so my understanding was he was acting purely in an advisory role.



**Group Director, People and Corporate Services:**

When requested on COVID matters, and there is a precedent for this because the former former chief executive did so on the hospital project when he left.

**Mr. P. van Bodegom:**

Okay, thank you.

**Senator T.A. Vallois:**

Just briefly, can I just clarify: is there not a requirement, particularly in senior roles in the States of Jersey, that they are not to be employed or work with the States of Jersey in an advisory capacity for 2 years following their employment contract?

**Group Director, People and Corporate Services:**

There would be in a standard compromise agreement. This was not a standard situation and clauses can be waived mutually.

**Deputy I. Gardiner:**

We will go the original contract coming back to where it has all started and to wrap it up, so Graeme Phipps please.

**Mr. G. Phipps:**

Thank you. The area of the exit payment is clearly tied to the employment contract so I would like to just explore a little bit although there is lots more I would like to ask and we will send written comments. On 21st July 2017, the employment of Charlie Parker as the chief executive of the Government was announced publicly. However, the States Employment Board continued contract negotiations with Charlie Parker through until November 2017 when a final contract was assigned to him. We have alluded to this contract earlier. A concern is the fact that the contract negotiations followed the announcement unarguably put forward that this would put the chief executive in a very strong position to negotiate an extremely favourable contract. How will the S.E.B. incorporate all lessons learned regarding the process for appointment of a new chief executive for the future? A short, quick answer. It is not a legal question.

**Group Director, People and Corporate Services:**

So the C. and A.G. response says that we will be considering that later on this month as a formal report to the S.E.B. but I have started to write that report. You are absolutely right. There should be no announcement about any employment and no employee should resign from their position until a contract is signed. That is a basic basically. From that, the other areas are: what control does the S.E.B. have over setting the terms and conditions? Those terms and conditions should be set before

you go out to market and candidates, during the process, should indicate their expectations because some candidates may drop out early if you cannot meet those expectations. I think those are the key points from this in a short answer.

**Mr. G. Phipps:**

As you know, our big concern is lessons learned. This is the third time this has happened. Can you tell us 3 things you would do differently this time as you are going forward with a new position to be filled?

**Chair, States Employment Board:**

I think Mark has alluded to one which is about making sure that the terms of the contract, if you like, are covered in the recruitment process. I have to say there is a wider context which is more about educating various members about what our duties are in how we deal with employees. I think that is important. That is about culture.

**Mr. G. Phipps:**

So I presume these steps are taking place and this will happen. Has the proposed contract of employment for the new chief executive been determined yet?

**Chair, States Employment Board:**

In terms of the wording, no.

**Mr. G. Phipps:**

So when will this be done?

**Group Director, People and Corporate Services:**

We are currently drafting.

**Mr. G. Phipps:**

So when do you anticipate that to be done?

**Group Director, People and Corporate Services:**

It will be done by the end of this month.

**Mr. G. Phipps:**

Okay, so what advice has been taken on this proposed contract of employment for the new chief executive? Where are you getting all the expertise you need?

**Group Director, People and Corporate Services:**

So law officers provide advice on any contractual matter and, as recommended by the C. and A.G. in her reports, the treasurer of the States will also be consulted.

**Mr. G. Phipps:**

So you have a broad enough scope so that this situation will not happen again due to the nature of the contract, I am assuming.

**Group Director, People and Corporate Services:**

Sincerely hope so.

**Mr. G. Phipps:**

How does the S.E.B. intend to deal with candidates who may not be prepared to accept the S.E.B. terms and who may wish to negotiate more favourable terms, as appears may have been the case in the past?

**Chair, States Employment Board:**

I was going to say I think, to this extent, it is hypothetical. It has not yet arisen and obviously we are in the middle of that recruitment process.

**Mr. G. Phipps:**

I think it is going to come down to understanding the cost of not getting these things correct as we now know in making sure that there are certain things you can negotiate and certain things you cannot negotiate, I presume, but I will leave that to you. What mutual termination clauses and pension clauses does the S.E.B. intend to include in the contract for the new chief executive?

**Group Director, People and Corporate Services:**

I have not provided for any clauses at the moment. One of the decisions that S.E.B. will need to make is whether or not they look at any potential liability and cap that liability. The previous S.E.B. did do that on one of the areas but it is a matter for the S.E.B. to decide on the contract.

**Mr. G. Phipps:**

So other than putting some caps on it, are there any other differences between what you have learned on contracts at this stage?

**Group Director, People and Corporate Services:**

So the employment contracts are fairly standard. Part of the issue of this one was some of the matters around resolving complaints and resolving disputes were not in there and where they are

not defined and are not included within the contract, then you get ambiguity. So the disciplinary and the complaints process must be within that contract this time.

**Mr. G. Phipps:**

How will the S.E.B. assess value for money when deciding on the clauses that it is preparing to accept in the contract?

**Chair, States Employment Board:**

I was going to say that is going to be a matter for the S.E.B. I think in all these things is understanding what the potential risk is, if that makes sense, of having it versus the potential benefit of employing the individual and the benefit to the Island of doing so versus of not employing that individual and restarting the recruitment process.

**Mr. G. Phipps:**

Well, we certainly see the cost of not having these clauses properly defined in this last case, do we not? Will the S.E.B. consult with the Treasurer or the Treasury and Exchequer Department before a contract is concluded in this case?

**Chair, States Employment Board:**

Mark, do you want to answer that question?

**Group Director, People and Corporate Services:**

Yes.

**Mr. G. Phipps:**

Thanks, I will pass it on.

**The Connétable of Grouville:**

We are coming to the end of time but just 3 final questions, if we may. Who is responsible for the circumstances resulting in the former chief executive having a claim against the States such as the only option was to make a £500,000 settlement?

**Chair, States Employment Board:**

I think you are going to find there are a variety of factors that will encapsulate that £500,000 and it will range from the nature of the contract to the ...

**The Connétable of Grouville:**

No, it was who was responsible for it happening, if you like? Who is ultimately responsible? I am assuming it is the Chief Minister and the chief officer.

**Chair, States Employment Board:**

Which happens to be same person. Thank you for that. We have already said, if you are going back to the oral permission, that it was an appropriate thing to do and it could be regularised; it was capable of being regularised and that was a minor technical breach. What then happened, as we know which is a matter for me, is that circumstances changed and I think that would be an area I would be very happy to discuss offline because I think it then comes down to how we also treat our employees.

**The Connétable of Grouville:**

Thank you, and do you think the payment of £500,000 represents good money to the taxpayer?

**Chair, States Employment Board:**

From our perspective, with the potential risks of alternative outcomes, we felt it was a good outcome for the taxpayer. I have already said that earlier and I would suggest given the C. and A.G.'s overall conclusion it was not unreasonable given the circumstances that, despite all of those technical issues, it was a reasonable outcome for the taxpayer. As I said, I appreciate for many, many people it is a significant sum of money. What we look at is what the alternative outcomes might be.

**The Connétable of Grouville:**

The key words in the C. and A.G.'s report was "under the circumstances" and it is the circumstances that was the problem. The final settlement was a problem but it was the circumstances.

**Chair, States Employment Board:**

As we have said, S.E.B. started out seeking to retain the C.A.O. (chief accounting officer) and obviously as matters changed, we had to deal with the circumstances that we were dealing with and also consider the potential alternative outcomes.

**The Connétable of Grouville:**

My final question is: what lessons have been learned? Why are we not going to be in this position with the next chief officer?

**Chair, States Employment Board:**

We have said that we have made it very clear in the recruitment process what the terms of the contract are. Can I guarantee looking ahead that some circumstances that we have not thought about arises? I cannot because that would be a hypothetical scenario. I cannot predict that in the

future. We will do our best to make sure that these things do not arise but I also refer back to my remarks I made to Senator Vallois.

[17:00]

**Senator T.A. Vallois:**

Yes, and just on a follow-up to that. You have referred to “States Members” several times and you have referred to “third parties” so I suppose the question is what is the solution then because we have a code of conduct, we have a Commissioner for Standards so what is the solution to fix this issue in your eyes?

**Chair, States Employment Board:**

I think in terms of culture, I think part of that might be as simple as getting it into the induction programme for new Members to understand what responsibilities lie with Members in relation to employees.

**Deputy I. Gardiner:**

Do you have a follow-up?

**Senator T.A. Vallois:**

There are not a great deal of sanctions in terms of States Members. It is usually at the ballot box, and now every 4 years, so in terms of the inherent fairness argument that the group director was referring to, how do we take that into play when we are talking about third parties who are States Members and who are not technically employed by the States?

**Chair, States Employment Board:**

Sorry, States Members are not technically employed by the States. They are self-employed.

**Senator T.A. Vallois:**

No, we are kind of employed. We are not employed. Well, we do not come under the States Employment Board so how do you manage that scenario? I am trying to understand. You have referred to the circumstances a number of times. I want to understand what, in your eyes, is the solution to this because I honestly cannot give you, from where I am sitting and what I am hearing, a solution but we need to try and fix this at some point.

**Chair, States Employment Board:**

No, I accept that and part of that, as I said, this is not just dealing now with this circumstance. I can think of a variety of circumstances we have seen in the past and, as I have said, I think part of that

is around culture and understanding and understanding, as I said, in the induction programme for new Members coming in, for example, what rights and responsibilities we all have to employees.

**Deputy I. Gardiner:**

My final question and I will finish so, Chief Minister, what personally are you taking as a responsibility for what has happened and for fixing it in the future?

**Chair, States Employment Board:**

We have done our absolute best to deal with the situation.

**Deputy I. Gardiner:**

But it is about yourself, not “we”.

**Chair, States Employment Board:**

I have done my absolute best to come to a measured outcome taking account of all the circumstances as they arose. I believe that “we” as a team achieved the best outcome in the circumstances for the taxpayer. I have already apologised I think for the oversight at the very beginning but, as we have said today and previously, it was a technical breach and the oral permission, as I said, I have had a reasonable expectation of receiving that in writing which the C.E.O. then has also confirmed in writing that should have been the case. It was a technical breach. As has been suggested, it was reasonable to repair it, which is what was done. Circumstances then changed and, in those circumstances, we did our very best to come up with a not unreasonable solution, I think is the right expression to use in the words of the C. and A.G., which was trying to put the best interests of the Island as a whole taking that into account and obviously the transition period of making sure in the middle of a pandemic that the Island as a whole came through that circumstance with not too much uncertainty. It is absolutely critical to understand the sheer shock that went into the system when the circumstances that took place in November did take place and I did my best and I would say, with the team, we achieved that outcome of achieving stability and taking the Island forward.

**Deputy I. Gardiner:**

Thank you very much and I think there are differences of opinion when the circumstances started and whether they started in November or they started earlier, but I really thank you for your time today and we will follow-up with our written questions. Thank you.

**Chair, States Employment Board:**

If I can just reiterate the point that if you do want a private briefing, which can be transcribed, that is fine. But a private briefing to give you the information I would love to give to you and I am very happy to do so.

**Deputy I. Gardiner:**

Thank you.

[17:04]