

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 24th SEPTEMBER

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[9:32]

The Roll was called and the Dean led the Assembly in Prayer.

COMMUNICATIONS BY PRESIDING OFFICER

1. The Deputy Bailiff:

There is nothing under A other than to remind Members that we currently have a meeting of the Commonwealth Magistrates' and Judges' Association in the Island, which may explain from time to time over the course of this sitting the absence of both the Bailiff and me from the Chair, but it is a great privilege for the Island to have the Commonwealth Association here.

APPOINTMENT OF MINISTERS, COMMITTEES AND PANELS

2. Election of Minister for External Relations

The Deputy Bailiff:

The first item is the election of Minister for External Relations.

Senator B.I. Le Marquand (Deputy Chief Minister - rapporteur):

In the temporary absence of the Chief Minister I propose Senator Bailhache for that post.

The Deputy Bailiff:

Is that seconded? **[Seconded]** Are there any other nominations?

Deputy R.G. Le Hérissier of St. Saviour:

I would like to nominate Deputy G. Baudains. Thank you.

The Deputy Bailiff:

Deputy Gerard Baudains. Is that seconded? **[Seconded]** Are there any other nominations?

Deputy M.R. Higgins of St. Helier:

I would like to nominate Deputy Montfort Tadier.

The Deputy Bailiff:

Is that seconded? **[Seconded]** Are there any other nominations? Deputy Baudains, Deputy Tadier, can I ask you both to withdraw from the Chamber. Senator Bailhache will give his address to Members and then face questions. Then Deputy Baudains will be invited to return and after that Deputy Tadier will be invited to return.

2.1 Senator P.M. Bailhache:

After the elections at the end of 2011 I was delighted to be entrusted by the Chief Minister with responsibility for External Relations as an Assistant Minister and I hope that the Assembly will show the same faith by appointing me to the newly created Ministerial post. I believe that the portfolio has never been more important than it is in 2013. The Ministry of Justice has been cutting back on personnel and Jersey is expected to represent its own interests on the international stage to a much greater extent than has ever been the case before. I have been doing the job for 2 years and I think I have acquired some new skills during that time. Before standing for election as a Senator I had represented the Island in different capacities for a number of years. I was Solicitor General

between 1975 and 1986, and Attorney General between 1986 and 1994. During that time I had many dealings with foreign governments and foreign officials in the context of extradition and the investigation and prosecution of criminal offences, and the resolution of legal disputes between the United Kingdom and Jersey. Between 1995 and 2009 I held the office of Bailiff and in that capacity I gained a different experience of representing the Island in a number of other ways, in particular by receiving and entertaining royal and diplomatic visitors, but also by protecting the Island's constitutional position in relation to the United Kingdom by giving advice to Ministers and to senior civil servants. I think that many of the skills I learned during those periods are helpful in the context of the Ministerial role. But diplomacy, as I have discovered, requires other skills too, which I have been trying to learn during the last 2 years. Diplomacy involves finding the sometimes delicate balance between asserting one's position firmly and clearly and using language that achieves that aim but without causing offence and with the best chance of achieving the desired aim. A distinguished former British ambassador to Washington described it as the part of getting one's own way. Jersey, of course, has fewer levers to pull internationally than a sovereign state but that does not mean that the art of diplomacy is unimportant to us, nor that it cannot occasionally be deployed to good effect.

[9:45]

One of the purposes of this speech is to enable Members to learn of the candidates' proposed policies in the Ministerial post. The Minister for External Relations is in the unusual position of having his policies set by the Council of Ministers. The common policy on External Relations has been set by the Council of Ministers and reported to the Assembly and I would of course abide by it. I hope that the Assembly will entrust me with this important office.

The Deputy Bailiff:

We are about to open 20 minutes of question time. The Greffier will sound a bell after 19 minutes, which is a warning, and a final bell after 20 minutes. When the final bell goes after 20 minutes, whether the questioner is speaking or the candidate is speaking, the person speaking will stop and sit down. The final bell will be the final bell. Greffier, if you will now start the clock running. Deputy Le Hérissier.

2.1.1 Deputy R.G. Le Hérissier:

I wonder if the candidate could tell us under what circumstances would he propose independence for Jersey?

Senator P.M. Bailhache:

As the Deputy well knows, the Council of Ministers has considered this question and determined that achieving independence is not part of the policy of the Government of Jersey, but it is the policy to seek to be ready for independence, should that become necessary. I think it is very difficult to answer the Deputy's question, and I am not sure that I am inclined to speculate on the kinds of circumstances which might make it in Jersey's interests to seek that step. At the present time it is not in Jersey's interest.

2.1.2 Deputy M.R. Higgins:

Obviously the Minister for External Affairs is going to have to answer many questions about Jersey, not only about the finance industry and its role but also, for example, the historic child abuse case, which the Minister for External Relations, for example, was not supportive of the Committee of Inquiry and was not in the States when the vote was taken. I would like to know what his stance is about the historic child abuse and how he can answer the critics that his only history for dealing with these matters was not exemplary.

Senator P.M. Bailhache:

I am not sure that I understand what was intended by that last barb from the Deputy. If it was a reference to a speech that I made on Liberation Day in 2008 I do not, I am afraid, resile from anything that I said on that particular occasion. I am not sure that the question of child abuse is central to the role of the Minister for External Affairs. The Assembly has set up a Committee of Inquiry to investigate matters in accordance with the terms of reference and that will be a matter for the Committee of Inquiry in due course. These are sensitive and difficult matters. Every Member of this Assembly is appalled by child abuse and the question of how one prevents it is something that has been considered on a number of occasions. I do not think it has very much to do with the role of the Minister for External Affairs.

2.1.3 Senator S.C. Ferguson

Given the global dimension of the laws which we are passing, many of which derive from United Nations committees, can the negotiation of relations with the E.U. (European Union) and U.K. (United Kingdom) really be considered as anything other than window-dressing?

Senator P.M. Bailhache:

The Senator asked a good question a fortnight ago and received a very substantial reply in relation to the legislation which has been passed during the last 40 years, I believe, since the European Communities (Jersey) Law 1973 was enacted. The Senator will know that Jersey's relationship with the European Union is embodied in Protocol 3 and that we are bound by European legislation only to a very limited extent. I think there are circumstances nonetheless when it is in the Island's interest to seek to have European legislation applied to the Island, even though we are not obliged to implement it in accordance with the provisions of Protocol 3. The decision as to whether or not such legislation should be applied does require important consideration and it is not window dressing. There are important considerations to bear in mind.

2.1.4 Deputy J.M. Maçon of St. Saviour:

Could the candidate please explain what his top 3 priorities, if he were to obtain this position, would be and what they would do for the Island?

Senator P.M. Bailhache:

As I said in my opening remarks, the policies of the Minister for External Relations are set out in the common policy which has been adopted by the Council of Ministers, and there are a number of priorities set out in that common policy and I think it would be wrong for me to identify any particular policies which I thought were more important than others,. The Council of Ministers has set the priorities and those are the priorities to be followed.

2.1.5 Deputy G.P. Southern of St. Helier:

I feel I must press the candidate on the issue of independence. He used the phrase: "It is not in the interests of the Island at the present moment." Can he envisage circumstances in which it would be in the Island's interest to declare independence and does he expect to see those conditions in his tenure of office?

Senator P.M. Bailhache:

I do not know how long the tenure of office will be if I have a tenure of office. I think that is quite a difficult question to answer in that respect. Perhaps I can help the Deputy in this way. In 1971 the United Kingdom decided to negotiate its entry to the European Economic Communities and the first stance taken by the United Kingdom Government at that time was that the Channel Islands did not have a choice. If the U.K. obtained entry to the European Communities then the Channel

Islands would go into the Communities on exactly the same basis as the United Kingdom. Very considerable concerns arose at that time and there was much debate as to the future of the Island's autonomy, the future of our industries, and many other things as well. The second stage adopted by the United Kingdom was to say: "We will try to negotiate some special relationship for you and it will be for you, the Islands, to decide whether or not the terms that we have negotiated for you are acceptable. But we must tell you that if you do not accept those terms then you will be obliged to become an independent state and look after your own affairs." The Island was presented with that choice in 1971 and found, after debate in this Chamber, that the terms negotiated by the United Kingdom, after consultation with relevant people and the Committee involved at that stage, were acceptable and Protocol 3 accordingly came into existence. So that was the last occasion when the Island was faced with an ultimatum, as to whether or not it wished to seek independence. As I say, I do not wish to speculate on whether any circumstances like that might arise in the foreseeable future.

2.1.6 Deputy T.M. Pitman of St. Helier:

I would like to go back to the answer the candidate gave to Deputy Higgins. The candidate said that he did not feel child abuse was particularly relevant to this role. I have to put it to the candidate that some of us work very hard to try and restore Jersey's international reputation that we are no longer one that sweeps child abuse under the carpet. But throughout his career, Attorney General, the Roger Holland scandal; as Bailiff, Jervis-Dykes; the infamous speech on Liberation Day where, if I could remind the candidate, he said: "Rather than child abuse it was the unjustified and remorseless denigration of Jersey and the people that is the real scandal." Could the candidate then tell us how he will join with us to work towards gaining the trust and respect of those who have been abused?

Senator P.M. Bailhache:

There are not many issues which affect the reputation of Jersey, and the Deputy is of course right, that the reputation of Jersey was adversely affected at that time by what I think I described in 2008 as the remorseless denigration of the Island and its institutions. The fact that one can condemn that remorseless denigration while at the same time condemning child abuse, whether it is institutional or not, does not seem to me to be in point. The other issues to which the Deputy has referred I think are long-buried in the distant past and I do not wish to respond to those.

2.1.7 Connétable D.W. Mezbourian of St. Lawrence:

The Senator has told us that during the past 2 years he has acquired new skills. He then referred to the skill of diplomacy. Will he tell us what other skills he has acquired and give us an example of how they have been beneficial during his role?

Senator P.M. Bailhache:

I do not know that it is possible to describe in any detail new skills that I may or may not have acquired. I have tried to acquire some of the skills of diplomacy and deployed them on the occasions when it has been necessary. Diplomacy involves, as I said in my opening remarks, a balance of assertiveness and tact. I spoke to the French Ambassador recently as a result of the designation of the Island as an unco-operative territory by the Government of France, and it is in the public domain that I expressed in fairly strong terms my disappointment that the French Government had not sought fit to consult with the Government of Jersey before taking this aggressive step. I believe that the conversation that I had with the French Ambassador was appropriate in the context of the matters that I have been speaking about.

2.1.8 Connétable S.W. Pallet of St. Brelade:

In light of the current visit of the Lord Chancellor to the Island, what will the Assistant Minister do to ensure that the Island is represented fairly and strongly internationally by the U.K. Government as a Crown Dependency, and does he feel the Island has been treated fairly by the French in relation to the threat of blacklisting early next year and if not, what he intends to do to minimise that risk?

Senator P.M. Bailhache:

There seem to be 2 questions there. I do think that the French Government has acted unfairly towards Jersey in the designation of the Island as a non-co-operative jurisdiction and that is going to be the subject of considerable discussions, both at Ministerial and official level in the days and weeks ahead.

[10:00]

There is a meeting with the French Ambassador on Thursday to be attended by the Minister for External Relations, whoever he may be, and there will subsequently be discussions between officials to see whether the differences that have arisen between the competent authorities of the 2 countries can be bridged. I hope that they can but, as Members will appreciate, politics comes into these equations to a certain extent. We have, as I said in my opening remarks, few levers to pull and it will be important, I think, for the Island to secure the assistance of the United Kingdom Government, which is the sovereign power, and which has a duty constitutionally to protect us in these kinds of matters. I do not think I can say any more than that. The Minister of Justice, who I think is probably poised to leave the Island as we speak, has been asked to do whatever he can to ensure that the full weight of the United Kingdom Government is behind us in our negotiations with the French Government.

2.1.9 Deputy M.R. Higgins:

The Assistant Minister for Foreign Affairs mentioned that he is following the policy set by the Council of Ministers. Does he not believe though that this House should determine what the external relationship should be for Jersey and we should have a debate on these issues to determine what the policy is rather than just a few Ministers behind closed doors?

Senator P.M. Bailhache:

One of the advantages of the creation of the post of a Minister for External Affairs is that Members will be able to question the Minister in future on any issue arising out of the conduct of the Island's external affairs and so the matter will be brought much more into the public domain than it has been in the past. So far as the common policy is concerned, I think that goes to the question of what kind of Government we have. If we have Ministerial government, Ministers must set that policy. That is the provision in the law and that is what has happened so far.

Deputy M.R. Higgins:

Supplementary, Sir?

The Deputy Bailiff:

No, Deputy, there are other Members. You can come back later on if needed.

2.1.10 Senator L.J. Farnham:

It is looking likely that in 2017 the U.K. will hold a referendum on their membership of the E.U. Should, as a result of that referendum, the U.K. withdraw from the E.U. what would be the ramifications for Jersey?

Senator P.M. Bailhache:

If there is a referendum in the United Kingdom in 2017 and if the decision of the people of the United Kingdom is to withdraw from the European Union, one of the consequences will be that the Treaty of Accession of 1971 to the European Economic Communities will fall and with it will fall Protocol 3 and our existing relationship with the European Union. In those circumstances it will be for the Island, the Channel Islands, and the Isle of Man, to see what can be done to negotiate a new relationship with the European Union. There are many imponderables in that respect and a great deal of work is being done by officials in order to try to bring light to these difficult questions. But there are so many uncertainties that it is very difficult to make any positive plan at this stage for what the Island would do in those circumstances.

2.1.11 Deputy J.A.N. Le Fondré of St. Lawrence

I have seen the candidate in action and I consider him to be eminently qualified for the post. However, is there not a risk by raising the risks and possibilities we have been referring to and the issues concerning the Island's constitutional position, even as recently as in the last few days, that we could be seen to be crossing over from being prepared to be independent to seeking independence? What will the candidate be doing to ensure that there is absolutely no danger of that very important message being mixed-up?

Senator P.M. Bailhache:

The Deputy makes a fair point. I think that all one can do is to reiterate what the Government of Jersey's policy is and what we are doing. The difficulty of not talking about these issues is that one gives the impression to the public that one is not concerned about these issues, and it seems to me that they are matters, particularly the matter raised by Senator Farnham raised a few moments ago, about which people ought to be thinking. All intelligent people ought to be concerned about our position in relation to Europe if the United Kingdom pulls out of Europe in 2017. There may or may not be consequences so far as sovereignty is concerned, it is impossible to tell, but I do not think that any purpose is served by pretending that these problems do not exist.

The Deputy Bailiff:

Thank you, Senator. Can I now invite Senator Bailhache to withdraw from the Chamber and Deputy Baudains be invited to come in. While you catch your breath, Deputy, I was just going to remind you that a bell will sound after 9 minutes, which is your warning, and the final bell will sound at 10, and there will be no slippage past the second bell. So when you are ready the Greffier will start the clock.

Connétable P.J. Rondel of St. John:

Sir, was it not 20 minutes on the previous speaker?

The Deputy Bailiff:

Twenty minutes for questions, 10 minutes for speaking.

2.2 Deputy G.C.L. Baudains of St. Clement:

I thought it was important for this particular position that we had an election because the public complain about Constables, some of whom walk into an office without facing an election but here, in my view, we have a situation which could potentially be more serious. I have no idea whether Senator Bailhache is the right person for the job, so I am not sure. But when our Foreign Minister, or whatever name we prefer to use, was an Assistant to the Chief Minister basically he had to do what the Chief Minister wished him to do. If that was not carried out then the Chief Minister could replace him. But now, having created the new position of Minister for External Relations, we have a completely different ballgame and this is what has concerned me because with a Minister being corporation sole and the Chief Minister not having any ability to force any of his Ministers to do

anything, he does not have the ability to hire or fire, so he is only there for the nuclear option of asking the States to remove any particular Minister which does not appear to be doing the Council's will. That is a nuclear option which is simply never going to happen because it would reflect badly on the Chief Minister. What I am concerned about in this situation, to my mind, there is a very real danger we could end up with the Chief Minister wanting a certain foreign policy and the Minister for External Relations doing something else. It would be extremely damaging for Jersey. So in my view the way we mitigate that is to get the candidates to tell us with their speeches and questions that follow what policies they intend to follow. That way we, as an Assembly, can then hold them to account later because without that election the possibility of doing that simply evaporates. The title "Minister for External Relations", as listed on the Order Paper, sounds to me a little too much like the Council of Foreign Relations, a rather shady organisation. But in his email last night the Chief Minister referred to the title as Minister for External Affairs, and I am not sure that sounds much better. Presumably somebody knows the correct title. The post is only for a year because after the next election all the posts will be up for election again and by which time hopefully, if this Assembly agrees, the Chief Minister will have the ability at least to fire if not hire, and therefore have some control over his fellow Ministers. At the moment we do not have that and that concerns me because the ability to fire an underperforming Minister does not exist. During the one-year duration of this post, if elected I would ensure that there was only one foreign policy, that of the Council of Ministers via the Chief Minister. In other words I would be acting as an Assistant Minister. I would be carrying out the wishes of the Chief Minister so there would only one be foreign policy. I would not be developing policy of my own but carrying out the Council's wishes. So in conclusion, I would say that if any Member has any questions on policy I suggest he or she puts them down to the Chief Minister.

The Deputy Bailiff:

Thank you very much. The time for questions now opens. Deputy Le Hérissier.

2.2.1 Deputy R.G. Le Hérissier:

I wonder if the candidate could outline to the House what advice he will be giving to the Chief Minister in respect of pursuing independence for Jersey.

Deputy G.C.L. Baudains:

With regard to the question of independence, I, to a certain degree, follow the thinking of Senator Bailhache. We simply could not survive as an independent state. I do not believe we could even do that in conjunction with the other Channel Islands. We have never historically been able to get sufficiently close to them to do that. But I think we do have to have options so that we are not caught out in this rapidly changing world. I cannot see it happening but if the United Kingdom went into the Euro I do not think it would benefit us to do so, but we need to have an alternative policy which I know has been worked on in the past few years, so that we are not caught out without having done our research.

[10:15]

2.2.2 Deputy M.R. Higgins:

As the States of Jersey has never debated our external relations, we have never had a debate about where we should be going. Should it be left to the Council of Ministers to determine what the future of this Island is and the policies they should pursue? Does the candidate believe that the States of Jersey should at least debate these issues and try to come to an agreed way forward and then the Council of Ministers should pursue that agreed way forward?

Deputy G.C.L. Baudains:

I can completely agree with the Deputy. It does seem to be a somewhat less than a grey area. It is somewhat of a vacuum that we are not quite sure what is going on until we receive a notification from the Chief Minister that we are doing this or we are doing that, but it has not been debated in this Assembly. I do agree with the Deputy that what we should do is debate the basics of a foreign policy for the Council of Ministers and obviously the Minister for External Relations to follow.

2.2.3 The Connétable of St. Lawrence:

Senator Bailhache told the Assembly that he has acquired the skill of diplomacy during his 2 years as Assistant Minister. Does the Deputy believe that it is a necessary skill for this post and can he give an example of his own diplomatic ability? **[Laughter]**

Deputy G.C.L. Baudains:

I am trying to think of what the previous Chief Minister used to say when anybody accused him of having potentially misled the House. People say: "Give me an example", and of course you can never think of one in the timeframe available. I consider that I am a diplomatic person. I try to understand the subject before I act. I do not act in haste. Referring to the candidate who has spoken before me, I appreciate that he has a fine mind but I am not always comfortable with the way that he goes about things. To be perfectly blunt, I would have thought the ideal candidate for the job would have been Senator Ozouf. I have heard nothing but good reports about him, but of course he is not standing for the post because he is already occupied.

2.2.4 Senator S.C. Ferguson:

Given the global dimension of the laws which we are passing, many of which derive from United Nations committees - the fishing quotas is one that springs to mind - can the negotiation of relations with the E.U. and the U.K. really be considered as anything other than window-dressing?

Deputy G.C.L. Baudains:

How long have I got? I think it is 20 minutes I am limited to. I am very concerned about the way that the E.U. is going. I am very concerned at the way that it now overrides national law and national sovereignty but of course, on the other hand, we all have to work together. We might say that we do not like the E.U. telling us to do this or telling us to do that and then of course when we want to export our produce or financial services: "I am sorry the door is closed." So there has to be compromise, there has to be a policy that we are both comfortable with because otherwise we simply would not be able to trade. It is not an ideal situation but you have to achieve the best situation that you can for the Island, the same as we did when we entered into Protocol 3 in the first place.

2.2.5 Deputy J.M. Maçon:

This is the same question from me to all candidates which is, can the candidate explain if he were successful what his top 3 priorities would be and what he would do for Jersey?

Deputy G.C.L. Baudains:

Quite simple, in referring back to my opening speech. My first priority would be to be advised by the Chief Minister what policy he wanted me to pursue. The second would be to listen again and the third would be to take note of what he said in the first place.

2.2.6 Senator L.J. Farnham:

Should the U.K. have a referendum in 2017, and as a consequent of that decide to withdraw their membership of the E.U., does the candidate have an understanding of what the consequences for the Island could be?

Deputy G.C.L. Baudains:

The consequences for the Island would obviously be quite profound and we would then be no longer in negotiation with the E.U. We would be working mainly to the United Kingdom because the United Kingdom would be the organisation that is sorting out new trade partners or existing trade partners in Europe. Whether they were still prepared to trade under existing circumstances or new circumstances there would be an incredible amount of debate going on but mainly through the U.K. rather than directly with the E.U.

The Deputy Bailiff:

No other questions for the Deputy? Deputy Higgins.

2.2.7 Deputy M.R. Higgins:

The same question I asked Senator Bailhache. Jersey's reputation has been sullied by the child abuse scandal and by the time it has taken for the Island to come to terms with it and have a Committee of Inquiry. What would you tell people outside about Jersey and its way of dealing with problems such as that because it is reputational, it is not just the economy, it is everything that happens in Jersey that the Minister for External Affairs will have to deal with. What will you tell them about how the Island handles things such as child abuse?

Deputy G.C.L. Baudains:

I know child abuse is very close to certain people's hearts and so it should be. I am not satisfied today that we - moving away from abuse - are looking after children as well as we should be even today. Regarding the historic child abuse, there are basically 2 sides to this. There has been over-exaggeration by national press but we have failed ourselves and the best way to approach such a difficulty is with honest answers. What happened? What went wrong? Because when you tell the truth you do not have any difficulty remembering what you said last time.

2.2.8 Deputy R.G. Le Hérissier:

It is said that small states or small jurisdictions have no real powers and when the elephant rolls over, the insects underneath the elephant get crushed. How would the candidate ensure that he punched or that he ensured that the Island punched above its weight in negotiations where it is often big-powers that rule the roost?

Deputy G.C.L. Baudains:

The Deputy raises an interesting question. I have always been slightly wary of the position that Jersey has taken over the last few years of trying to be a major-player on the world stage when clearly we are not. I mean we sign these bilateral agreements, but what happens if the other party does not honour them? Where is our fleet to go and attack them? We just roll over. There is nothing we can do about it. I think Guernsey would be a better example to follow. You get on quietly with your work and do not put your head above the parapet quite so much. That way you get the work done but you get less problems sent your way. I think we need a slight variation in the way we operate. I am sure we are creating quite a lot of problems for ourselves that would not otherwise exist.

2.2.9 Deputy T.M. Pitman:

I think it is fair to say that within the Council of Ministers, not just the current one, there is always a mentality-of-group think, in not facing criticism but rather battenning down the hatches. How would the candidate approach severe criticism, whether it be on child-protection failings or tax issues? How would the candidate approach that? Would he engage with people or would he just say: "No, everything is rosy in the garden"?

Deputy G.C.L. Baudains:

Quite a difficult question because it highlights the question that the Constable raised earlier of diplomacy. I am the sort of person that wants the truth. That is why I get so frustrated in this Assembly at times trying to find out what is going on. I follow the old adage that you never ask a question until you know the answer. But trying to get the answer is sometimes not so easy. But the point is, yes, you can huff and puff, you can criticise people, you can take it to another level if you really feel that it needs it, but all the time you have to consider is whether that is in the Island's best interest? I am not a person who likes to back away if I am in the right. Sometimes unfortunately it is the best thing to do.

2.2.10 Deputy M.R. Higgins:

Protocol 3, we have discussed it briefly but there are so many unknown variables out there at the moment. We know there is the Scottish independence. We know there is the possibility of a referendum in the U.K. We also know the U.K. would like to renegotiate its terms with Europe. All of which will have an impact on Jersey. What do you see as the biggest threat to Jersey from these negotiations?

Deputy G.C.L. Baudains:

Protocol 3 is clearly - how can one put it? It is becoming out of date. It no longer applies properly to our present situation. But also I think one has to appreciate that any renegotiation of Protocol 3 would not be to our advantage. We would lose far more than we would gain so I think it comes down to the fact that although we are not happy with it, I know some people complain that their passport has a stamp in it which makes them essentially, they think, a second-class citizen in European countries although in reality it does not seem to apply. Yes, we could probably get that removed with great expense in other areas. We have to tread very carefully.

2.2.11 Deputy T.M. Pitman:

If successful, how would the candidate as Minister for External Affairs argue the case for Jersey being environmentally-friendly when, as we know, we have paid well over-the-odds for a redundant piece of technology at the Energy from Waste plant? How would he put it across that we do care about the environment and we will play a part, however small?

Deputy G.C.L. Baudains:

I think we already play a part. For example, I know at the present time, due to the failure of one of our cables to France, we are burning a lot of oil to generate electricity, but normally we import a vast majority of our electricity from France which, is in the main, nuclear-powered. Whichever fuel you use there is an effect on the environment. I mean people may say: "Well, nuclear fuel, there is no carbon dioxide rated, is that not wonderful?" But you only have to look at Three Mile Island, Chernobyl and the plant in Japan to see that that is not always the case. Where do you store the waste? It's dangerous to mankind for thousands of years. My view is, and I do not think it has been properly addressed, it is an internal issue, and that is we have created a need to commute. It is quite ridiculous to have ... I mean we have just seen it with the problem at Mount Bingham and the traffic. But those are people going to work. People in the east of the Island working in town. People in the west of the Island working in town. This should be, I believe, an issue not only for this Assembly but chiefly for the Environment Department and the Minister for Planning and Environment. Why are we not building offices in the west of the Island so that people do not have to drive into St. Helier to go to work? It will alleviate the traffic. It is no good hoping that people will leave their car behind and walk and cycle. Some will. But it is not convenient for everybody. I remember somebody have a go at me in the *J.E.P. (Jersey Evening Post)* many years ago for not using my bicycle to go to town but I pointed out that if I stood at the bus stop with an outboard-engine in one hand and ticket in the other they would not let me on the bus. If I put 40 gallons of

diesel on my bicycle I am sure it would collapse. There are times you just cannot do it. But you have to do as much as you can carefully and responsibly. There is no silver bullet there.

[10:30]

2.2.12 Senator S.C. Ferguson:

Renegotiating Protocol 3; the candidate commented that we would lose more than we would gain. Would the candidate care to describe what we would lose or gain? Would he be prepared to expand on that comment?

Deputy G.C.L. Baudains:

There are many areas but the one that would worry me the most would be the ability to control immigration, which, as I understand it, we have the ability to do so at the moment, providing we treat everybody equally. I am looking at the problems in the United Kingdom and I would not wish those on Jersey. There are numerous other issues, but I think that would be the chief one.

2.2.13 Deputy T.M. Pitman:

I apologise if the candidate has answered this but there is no audio in the restroom. He touched briefly on independence and I think what he was saying was we needed to be prepared. But does he believe that Jersey could survive as an independent nation and if so how would that affect his approach to doing the job of Minister for External Affairs?

Deputy G.C.L. Baudains:

I thought I had explained that. Sorry, if I did not make myself clear. I do not believe Jersey could survive independently at all. I put it in the no-chance bracket. Together with the other Islands we might but I think it would be very risky. We would have no defence requirements. We rely on the United Kingdom for an awful lot of things. If we have emergencies. I mean in the last resort if there was a lot of upheaval and rebellion in the Island we could not handle that ourselves, we would have to call in the United Kingdom to bring in people to help us. The same if there was aggression from outside. Unlikely, but we would have no ability to respond to it and when other countries know that you have no ability to respond, you are weakened. As I touched on in another question, we have bilateral agreements, we have all sorts of agreements with other countries. Providing there is goodwill on both sides that is fine. But when you have got somebody, and I am not going to name the countries involved, who are not prepared to co-operate then how do we enforce that? At the moment we have an ally in the United Kingdom. We send most of our children to university. We rely on their hospitals and all this sort of thing. We can have service-level agreements with them, but we need a fall-back position, but it is somewhere I would hope we did not have to go.

The Deputy Bailiff:

Are there any questions? Very well, Deputy Baudains, you seem to be forgiven of your last minute of question time. Can I ask you please to withdraw from the Chamber, and we will ask Deputy Tadier to return? It would be very helpful if a few more Members returned to the Chamber. We are on 26 Members at present. Deputy, while you get your breath back, I am just reminding you, as I did earlier candidates, you are entitled to take the 10 minutes. The bell will sound as a warning after 9 minutes, if you are still speaking, and the second bell at 10, and there is no give-way time, so when the second bell goes, you sit down.

2.3 Deputy M. Tadier of St. Brelade:

This may well be the last contested election we have for any Minister, depending on what changes we put through and whether we adopt the Machinery of Government's recommendations, which is also a move from certain areas, to have non-contested elections but simply appointments for

Ministers. We are not here to talk about that today, but I think it is important whenever there is a position available, whenever there is a duplicity or a multiplicity of views, that those are expressed, irrespective of who ends up winning the post. That really explains my candidacy today for this position. What is the purpose of the role for Minister for External Relations? It is a relatively new role, although it has been going for a while under a different name. It will be the first post of its kind. Is it simply to go abroad and sell the finance industry? If so, why do we have a very smooth and well-branded Jersey Finance and its head, as well as countless others in whose financial interest it is to keep the machine ticking? Radical as it may sound, I think the Minister for External Relations needs to be visibly separate from the interests of such powerful lobbyists so as to retain credible objectivity. I can see one smirk over there; it is better than a scowl. My job would be to make a firmer challenge to the industry to make sure that tough questions are asked and that we are not fobbed off. Two examples: we have heard of this “sniff” test. This is the type of meaningless jargon that we are given as an answer when we are asked about what mechanisms we have in place as a government to guard against the kind of business which may be perfectly legal - and we saw that in the case of Jimmy Carr - which we have coming to the Island, which Ministers have admitted causes reputational damage to the Island. I would make sure that we have a written statement of exactly what kind of business as a Government we think it is acceptable for the industry to be accepting, and this should be available for all to see, which is in line with a move to greater transparency. T.I.E.A.s (Tax Information Exchange Agreement) we are just about to sign with Switzerland; that marks our 32nd information exchange agreement. But what happened with France? We are told that it is critical and highly significant that France put Jersey’s finance industry on the blacklist, yet over a month later we still do not have the answers. Why not? We were fobbed off 2 weeks ago, by being told that we cannot give the information unless we speak to France. Very basic information about how many T.I.E.A.s had been signed. I would make sure that we have a more open approach with our own Members when dealing with these things. I would also be more radical; I would move Jersey as the first jurisdiction towards automatic information exchange, because we know T.I.E.A.s in their current form are of limited value. If you have to know the information you want before you can ask for it, it does seem to defeat the object slightly. It may be that some might see that as a risky strategy, but I say it gives Jersey first-mover advantage in the international community. It acknowledges the challenge that global finance is facing, that tax as a commodity is no longer accepted by global citizens, and that as a jurisdiction which seeks to be transparent and progressive, we need to be making the first moves, leading the rest of the world, which ultimately will give us the advantage. This does not mean we should not be robust with our foreign counterparts. There is a lot of hypocrisy in the international community over tax and tax havens, or perceived tax havens. The U.K., France, Europe in general, and the U.S.A. (United States of America) all have their own tax havens, off-shore or on-shore jurisdictions which they are all too willing to keep, while at the same time having to speak with a so-called forked tongue, if you like. I think we should seriously address this, find out what the international moves are, and we should all work in unison on this. Part of the solution, not part of the problem, is the pithy expression that we are told, which is pedalled by some of our local propagandists. My alternative would be: “My brother’s problem is also my problem.” If something affects world citizens, then it affects all of us. Similarly, we were told only 2 weeks ago that homophobia is outdated and is no longer acceptable in our community. I also believe that countries which practice homophobia, sexism towards women and particularly the death penalty, should not be unchallenged. Although one has to be diplomatically sensitive, I would make a point when going abroad, when dealing with such Ministers who hold such views, who have outdated and human rights non-compliance, death penalties, *et cetera*, simply do not shake their hand. We will not tolerate it in our own Assembly, we should not tolerate it in the international community. Party conferences, yes, of course we should attend. We should do so, and in an official capacity; we should be invited, not pay to have a little stall in the corner selling some Jersey merchandise. We

should have direct lines of conversation open with Ministerial counterparts on all sorts of subjects to do with health, the environment, *et cetera*, so that all of our Ministers can be involved and really punching to our weight, but across the spectrum, not limited to selling one part of our industry. It may sound counterintuitive, but I would use my time sorting out Jersey's problems internally because as an island we are not simply, as some would have us believe, a faceless business that caters for super-wealthy who do not live here. We also have an Island community which sadly too often comes second in the consideration of our priorities. We talk about reputational damage to the Island. I say that when we have 13,000 people in a very small, 100,000 population, and if we consider that many of those are not eligible for benefit or for housing, 13,000 of those live in States Trust housing. We have others who need subsidies to live in private sector. Why is this, in a wealthy island? We have a derelict swimming pool at Fort Regent, which is a testament to government procrastination and ineptitude, when it could be a jewel in the crown that would be used by tourists, business people and locals alike. Would that not be great for our international image? Healthcare; how does any Minister travel overseas to sell Jersey when we have thousands of people back home who cannot afford to visit the doctor when they are ill, or the dentist when they have a toothache? We have bus drivers, nurses, teachers, on the brink of strike-action; with morale in the public sector at an all-time low. How do we, on the one hand, have senior Ministers actively speak against the need for a committee of child abuse, even though it is a big problem being faced by many countries, but on the other hand talking about reputational damage to our Island? How do we shake the hand of the Speaker of the Commons and talk to international diplomats, when we have not even implemented a separation of powers in Jersey, which is long overdue, and which we know causes eyebrows to be raised at the highest possible level? But I think there is a positive way forward for Jersey; we need to concentrate on greater cultural diplomacy. I would like to see a multi-purpose cultural centre, perhaps akin to the Barbican in London, built in Jersey, which would be of use both locally and when receiving tourists, business people and also foreign diplomats. Not a national gallery, but a world-class and unique arts centre that will bring others to Jersey. Just as an aside, I like to, when I go abroad, compare and find the best of travelling, and the Venice *Biennale* I certainly recommend. Something akin to that could be done in Jersey, which would bring the international community here, to celebrate local and international arts. It is something we do well already, it has to be said, both in the Parishes, and I know St. Helier in particular puts on some great events which probably would not happen if it was solely left to the States of Jersey to do; we must encourage all that cultural activity in Jersey.

[10:45]

We hear a lot about reputational damage, as I said, but I pose the question: which is more damaging and to whom? Simply being honest or trying to constantly cover up? Build on our cultural and economic links with France is something we must do. We already do it fairly well, to a certain extent. We know we have the twinning; it works very well. But I think we can go one step further. I will fight for more funding for tourism, for culture and for leisure, for sustained support of involvement of the Parishes in doing this, because I think that is the natural way, certainly for working with France. I heard it said that the French may try and blacklist our finance industry, but they will never blacklist our beaches. I think there is something true to be taken here. Whatever the future holds for the Island, I think that we have a strong future, but I do not think it necessarily lies where it always has done. As we know, historically, things change. We need somebody, preferably who is younger, who does not have a particular axe to grind, who is not part of the *ancien* regime and who will be able to go away. I also favour more French-speaking, a bilingual school, for example. I would insist that all of the Ministers at least try and learn some Chinese and Arabic in the next few years, because we are going to be having to do greater business and cultural links with those areas.

The Deputy Bailiff:

Thank you very much. We now have 20 minutes of questions, starting now. Deputy Le Hérissier?

2.3.1 Deputy R.G. Le Hérissier:

I wonder if the candidate could outline the circumstances in which he feels Jersey should push for independence?

Deputy M. Tadier:

I think in the instance that we overnight perhaps go mad and lose our minds, then we should go for independence. I did read one of the first documents before I came into politics, the one that was commissioned and chaired by one of the candidates, and quite clearly it was a worthwhile piece of work, but after reading that, one was left with the very distinct impression that it is not at all feasible, for various reasons.

2.3.2 Deputy M.R. Higgins:

Although the candidate mentioned the child abuse, Jersey's reputation has been sullied worldwide because of the child abuse scandal and the Island's response to it. How do you think that the candidate could try to repair that damage in the world forum?

Deputy M. Tadier:

The Deputy will know my own views on this. It is an area that I have obviously put a lot of work into. I think the international community is aware that these kinds of things happen everywhere and it is not the fact that it has happened - because we are all human - it is very much the response that one has to it, and I do not think we responded universally in the correct way. I think simply by being honest, showing what we have done, by showing that we have now pursued a committee of inquiry that will to all intents and purposes be robust, I think that is all one can do, and one must not try to hide one's inadequacies in certain areas; you have to show that you are human but also constantly sell the good points of Jersey.

2.3.3 Deputy T.M. Pitman:

The candidate in his speech made quite clear that he does not see this role as just being a Minister for the finance industry. Given that perhaps his opinion would be in a minority among the Council of Ministers, how would he resist any moves to pressure him into being just a promoter, if you like, for the finance industry, and how would he put across those other things about where we do protect children, that we do have a good tourist industry, or we could have? How would he stick to his guns, as it were?

Deputy M. Tadier:

As things currently stand, Ministers are appointed by this Assembly. There is no collective responsibility in the Council of Ministers, there is no Whip, or at least there should not be, although it is moving towards that area. So any candidate who is appointed today will be done so on the basis of the Assembly's approbation and they will therefore have a mandate. Then, if those views do not fit with the Council of Ministers something has to give. But we are electing a Minister for External Relations today, and we do that on the basis of what we have heard and what we think about the candidates involved. Would I have the backbone to stand up to the Council of Ministers? Absolutely; and I think the Deputy has heard the contents of my speech and knows where I am coming from.

2.3.4 Deputy J.M. Maçon:

Same question to all the candidates: could the candidate please explain, if successful, what his top 3 priorities would be and what he would do for Jersey? Thank you.

Deputy M. Tadier:

I think I have said that. Cultural diplomacy is one of them; I think it is something which, as I have said, benefits us locally and internationally. Also, the key thing is that it adds to true diversification of the economy. The other one is to really sit down and hammer something out, going forward, for a long-term plan for where we see ourselves in terms of the finance industry, what is our position? We cannot simply always be reactive. I think we have to sit down and take the bull by the horns on that and do it in an honest way, notwithstanding the fact that I have said there is an element of hypocrisy in the international community. Those are probably the 2 big ones, but also caring for our own community; I think you cannot separate your international image from your local image.

2.3.5 Deputy G.P. Southern:

What advice will the candidate be giving his Chief Minister to progress moves towards automatic exchange of tax information and extension of the E.U. Savings Directive into the area of trusts?

Deputy M. Tadier:

I think we have seen a classic example with the U.K. We had a stance which said: "No, we are certainly not going to do what the U.K. wants." They wanted information automatically exchanged, which we were willing to give to the U.S. Then we huffed and puffed, and then after a while they forced it upon us anyway. That is the reality of it. Why put ourselves in that situation? Why not be the leaders and say: "We recognise where this direction is going; if we have got nothing to hide (as will be used in the C.C.T.V. (Closed Circuit Television) debate, if it happens) why do you care about open and transparent exchange?" We should be leading that; we should be leading by example and not waiting for it to happen when we are at a disadvantage when it comes to tactics.

2.3.6 Senator S.C. Ferguson:

Given the global dimension of the laws which we are passing, many of which derive from United Nations committees, can the negotiation of relations with the E.U. and United Kingdom really be considered as anything other than window-dressing?

Deputy M. Tadier:

That is a complex question; I do not think I can do that question justice. I think, clearly, we do have people that work in our departments who understand the complex nature of international relations. Certainly, from a Ministerial point of view, we would expect simply somebody who is adept, who can talk to a wide range of people, preferably in their own language, and certainly we have to be sensitive to the always-changing local sensibilities. That is all I can say for now.

2.3.7 Senator L.J. Farnham:

It is a distinct possibility that the U.K. will hold a referendum in 2017 on its membership of the E.U. If, as a result of that, the U.K. decide to withdraw from the E.U., does the candidate understand the ramifications that could arise for Jersey?

Deputy M. Tadier:

Does anybody understand the ramifications? I think you would be hard-pressed to find anyone who could tell you what the ramifications will be, because there is an element of unpredictability in that. Clearly, there would be ramifications, but Jersey is not currently a member of the E.U. It is not part of the U.K. either and I would presume that, first and foremost, our relationship with the U.K. would come first, although we have to be aware that we are part of a greater community.

2.3.8 Connétable J. Gallichan of St. Mary:

The Council of Ministers' common policy on external relations lists 16 actions in support of the principles. Does the candidate feel able to sign up to deliver all of these, and if not, are there any particular ones that give him concern?

Deputy M. Tadier:

I do not have the list with me, but what I would simply say is that why is this the Council of Ministers' external relations policy? When has this ever come to the States? It was never lodged in the form of a proposition, it was a report, and we were told this is our external relations policy. That is not currently how things work. The Assembly is ultimately one that is sovereign in those terms. I would renegotiate many of those and reprioritise them.

2.3.9 The Connétable of St. Brelade:

In light of comments made this morning in regards to improving external relations with the French authorities, what would the candidate for the Minister for External Relations do to improve this relationship if he were to meet the French ambassador this Thursday and prevent Jersey being blacklisted by the French authorities, potentially avoiding huge damage to the local finance industry?

Deputy M. Tadier:

I think what you do is you talk to the ambassador in frank terms and you say: "We want to know why we have been put on this blacklist." Frankly, I cannot believe that 4 or 5 weeks have passed since we were blacklisted - it is more than that - and that we do not know why that is the case. We must know why that is the case. If we do not know why that is the case, we should be sacking our External Relations Department and getting a new one employed, because clearly somebody knows more than they are letting on, and again, we are being hoodwinked. So, you simply use *realpolitik*. You sit down, you have a chat, and say: "What is going on here?" If there is something that Jersey needs to resolve, we resolve it. If it is something which we cannot resolve, then we deal with it as best we can.

2.3.10 The Connétable of St. Lawrence:

A similar question for the third candidate: Deputy Tadier has referred to cultural diplomacy and he has also told us that one has to be diplomatically sensitive, and indeed Senator Bailhache told the Assembly that he has acquired the skill of diplomacy during his 2 years as Assistant Minister. Does Deputy Tadier consider that he has the skill to undertake sensitive diplomacy, and if so, what example can he give us as evidence?

Deputy M. Tadier:

When one is in the Assembly, and I would consider that the candidate who may eventually win this may be a good example of that, one may be completely undiplomatic with one's colleagues in the Assembly when it comes to this quasi-party political system - and we know that the poll-topper who topped the polls said that the States spend all the time calling each other names and when he got elected spent most of his time calling other Members names - but I would refer the Constable to the various conferences which I know she has been on and which I have been on. Speak to those members of the Commonwealth Parliamentary Association, the A.P.F. (Assemblée Parlementaire de la Francophonie), when we have had visiting dignitaries, and just ask them: "What did you think of Deputy Tadier when you were abroad?" and see what they say to you.

2.3.11 Deputy R.G. Le Hérissier:

He has alluded to the issue, but could the candidate inform the House how he will reconcile a tension which will possibly fall apart between his own views on the role of finance and in some respects having to promote a finance industry which he seems to be very uncomfortable with?

Deputy M. Tadier:

Tension can be healthy. If I were to be elected today it would be because the Assembly wanted me to be elected, so there would already be an element of crisis within the Council of Ministers, which the Deputy knows full well. Nonetheless, I would not be selling the parts of the industry which I did not agree with or which were unsellable. You renegotiate the position and you re-prioritise the priorities that you would be having under your portfolio, and I think the Deputy understands what I mean.

2.3.12 Deputy T.M. Pitman:

It is quite ironic that we have had a visit from our U.K. Justice Secretary. The fact is that the U.K. have failed to intervene when they should in abuses of human rights and the justice system which I have to say I do not think is fit for a Third World country. How would the candidate go about interacting with the U.K. Justice Minister to ensure that they did fulfil their constitutional obligations with regard to law and order and good governance?

Deputy M. Tadier:

I think it is always difficult when you are dealing with people at the top. Diplomacy can have 2 sides to it, and you can end up getting nowhere. I think what is important is that we remember in the U.K. that there are 650 M.P.s (Members of Parliament) in the House of Commons. I think it is important that any of us in this Assembly who have particular areas of concern, whether it be to do with the legal system, which certainly I do have concerns about access to justice in Jersey, we should be making direct contact with our counterparts in the U.K. because it is not simply those with titles who hold sway; it is those Back-Benchers who are dealing with constituents on a daily basis. I think that is something that we need to start doing; also at party conferences, individually or collectively going to see them and hearing what their ideas are, how they run the show.

2.3.13 Deputy M.R. Higgins:

The candidates have talked about the policy that they would pursue as the Minister for External Relations. As the States has never debated foreign policy and our stance, does he believe that it should be the preserve of the Council of Ministers or does he believe that everyone in this Assembly should have a right to say and determine the policy that we are going to pursue with the rest of the world?

[11:00]

Deputy M. Tadier:

Yes, it is the latter. I think the Assembly cannot expect to pass everything; we leave certain things as delegated responsibly to Ministers and their departments. But something as critical as external relations, which is a relatively new area of policy of Jersey, should be coming in the first instance to the Assembly for at least some debate, some amendment if necessary, so that we can have consensus. At the moment it is very difficult for the Council of Ministers to claim that this has the backing of the Assembly and the full credibility it might otherwise have, without first putting it to the Assembly for its endorsement and perhaps enhancement.

2.3.14 Deputy T.M. Pitman:

Although it would only be part of his role, if the candidate is successful as Minister for External Relations, how would he deal with questions and challenges which would surely come as to why Jersey has not yet signed up to the U.N. (United Nations) Convention on the Rights of the Child, and would he give out the message: "Yes, I am going to push my Ministerial colleagues to do this" instead of procrastinating?

Deputy M. Tadier:

Indeed. Were it my decision, I would prioritise a Minister for Children before a Minister for External Relations, because that is the critical area. Indeed, last week when we had the same comment about homophobia being outdated, it was followed by the next priority which is to maintain and protect our children's interest in Jersey and I think that is the way we go. I think we have a very good team, I believe, at the Health and Social Services Department, when it comes to children, with good intent there. We have someone in there, to all intents, who is responsible for children and we should make that an official role. But we should be signing up to that, absolutely, and it is strange that we do not.

2.3.15 Deputy T.M. Pitman:

Travelling the world and meeting dignitaries, opposite numbers from many different places, does the candidate feel that the ability to speak a number of different languages is a help, can he tell us if he speaks any languages and perhaps he can demonstrate by speaking a few words in all of them? [Laughter]

Deputy M. Tadier:

I will not do that. I think it is important. I do not think it is the be-all and end-all. I think there are other skills that come with having lived abroad; when you learn another language, you learn another way of thinking and I think that is the key thing. If you become too inward-gazing, you forget that different cultures do things very differently, certainly if that is the case China is a stark example where the cultural sensibilities are perhaps even more important than the language-barrier. You need to know exactly what you are doing in those terms and that is why it is important. On my first day in office as the Minister for External Relations, I will be getting the Minister for Education, Sport and Culture in and saying: "Right, we need to do something about a foreign-languages policy which is updated and not simply based on those languages which were popular in the 1950s and 1960s", albeit that they are equally valid. We need to move in that direction culturally and for the jobs, because I think they are going that way in our Island.

2.3.16 The Connétable of St. Lawrence:

Does the Deputy consider his interview with the *Le Parisien* newspaper to have been an example of his sensitive diplomacy? [Approbation]

Deputy M. Tadier:

With the right-wing tabloid *Parisien* French newspaper - which I do not think was particularly well-written as an article - but absolutely, it is not necessarily about sensitivity, it is about not being ... I do not know what the acceptable parliamentary-phrase is for somebody who does not ... what is the expression? Somebody who tells it as it is rather than necessarily pedalling ... yes, Deputy Pitman was asking for some French and *taureau* is the word for bull in French.

The Deputy Bailiff:

Are there any further questions for the Deputy? Very well, then I invite Senator Bailhache and Deputy Baudains to return to the Assembly before the ballot sheets are distributed.

Deputy A.E. Pryke of Trinity:

Sir, while we are just waiting for the candidates to come back up, can I just remind States Members that the Health and Social Services Department have got a presentation at lunchtime at the *Société*.

Deputy M.R. Higgins:

Sir, can I ask the Minister for Health and Social Services what the presentation is on? That would be helpful.

The Deputy Bailiff:

Minister, you are being asked what the presentation is about.

The Deputy of Trinity:

Sorry, Sir. It is on general policy. I am looking at 4 particular areas - as I said 2 weeks ago - end of life, so there will be an End of Life presentation, there is also a very important launch of M.A.S.H. (Multi-Agency Safeguarding Hub) and so it is important that we have States Members on that, and updating on where we are with regulation of care. To end that presentation we will have an update on the bowel screening.

The Connétable of St. John:

Sir, can I ask a question of the Minister? Will this cover anything also to do with drugs that cannot be supplied to people who need them? Is that a yes or no, Sir?

The Deputy Bailiff:

I think it is being treated as a rhetorical question, Connétable. Very well, I am now going to ask the Usher to circulate the voting sheets. It is an open ballot. Members are reminded they have got to put their names at the top and the candidate for whom they are voting at the bottom. If you put it the wrong way round, your votes will not count and it will be a spoilt vote.

The Connétable of St. John:

Sir, could we not have an open-ballot?

The Deputy Bailiff:

It will be an open-ballot. When the votes have been gathered in, the Deputy Viscount and the Attorney General will be asked to withdraw with the Assistant Greffier to count the votes. The votes will be published thereafter. Very well, if the Deputy Viscount will retire with the Attorney to count the votes, and the Assistant Greffier.

3. Privileges and Procedures Committee (representative of the Chairmen's Committee).

The Deputy Bailiff:

While that is being done, I think we might move on to the next item under F., which is the resignation of the Deputy of St. Peter as a member of the Privileges and Procedures Committee. There is nothing you wish to add, Deputy?

Deputy K.L. Moore of St. Peter:

No, thank you, Sir.

The Deputy Bailiff:

Very well, and then following from that, the nomination of Senator Sarah Ferguson as a member of the Privileges and Procedures Committee. That is your nomination, Chairman, is it?

3.1 Deputy J.M. Maçon:

Can I just say a few words, Sir? We would just like to thank the Deputy of St. Peter for her time spent on the Privileges and Procedures Committee, both on behalf of that Committee and on the Scrutiny function side. We did discuss this around the table and we are thankful that Senator Ferguson has come forward and wishes to be presented as the new representative on P.P.C. on behalf of the Scrutiny function.

The Deputy Bailiff:

I must ask whether there are any other Members wishing to stand, but they must be representatives of the Chairmen's Committee if they are to do so. If no other Member wishes to stand, then I declare Senator Ferguson to be elected. [Approbation]

4. Notification by the Chairman of the Corporate Services Scrutiny Panel in accordance with Standing Order 125(1) of a reduction in the number of members of that panel.

The Deputy Bailiff:

Now, the Chairman of the Corporate Services Scrutiny Panel wishes to give notice to the States about the number of members of that panel.

4.1 Senator S.C. Ferguson:

Yes, but it has slightly changed, Sir. We have been privileged ever since the Corporate Services Scrutiny Panel started, to have had the services of the Connétable of Grouville and we have greatly benefited from the input from that representative of the Connétables' Benches. It has made a considerable and solid contribution to our business. The views from the Connétables' Benches have a slightly different slant to the rest of the Assembly and gives a much wider dimension to our deliberations and, therefore, the panel is delighted to be able to report that the Connétable of St. Lawrence has put her head in the noose and ... [Laughter] metaphorically-speaking, and has volunteered to join the Corporate Services Scrutiny Panel, which will bring our numbers back up to the original 5 that we should have.

The Deputy Bailiff:

So you do not wish to notify a reduction to 4, then?

Senator S.C. Ferguson:

Sorry, Sir. No, originally we were contemplating reducing the number because it makes a difference to the quorum and we cannot go on having inquorate meetings, but ...

The Deputy Bailiff:

I am not sure whether Members were expecting to elect a member of the Corporate Services Scrutiny Panel today. Do Members wish to proceed with it on that basis or do you wish to have time to ... Very well, there is the proposal that the Connétable of St. Lawrence join the Corporate Services Scrutiny Panel. Are there any other nominations? It is seconded. [Seconded] Very well, the Connétable of St. Lawrence is elected. [Approbation]

The Connétable of St. Lawrence:

May I thank the Assembly.

5. Election of a member and an associate member to represent the States of Jersey on the British-Irish Parliamentary Assembly.

The Deputy Bailiff:

Very well, we come on to the next item, which is the election of a member and associate member to represent the States of Jersey on the British-Irish Parliamentary Assembly. I invite nominations.

The Connétable of St. John:

Sir, prior to that, are we allowed to debate this, given that this may have all been put together back in 2005, or whenever it was that this was brought to the House. I have never been in the debate

when we agreed to move forward with the British-Irish Council or the Assembly, and I would have liked to have said a few ... well, more than a few words, in a debate.

The Deputy Bailiff:

Well, as I understand it, it was a nomination that was made informally on the last occasion by Members, and Members agreed it outside a formal States sitting, but it has been agreed with the Chairman of Privileges and Procedures Committee and the Bailiff that on this occasion it ought to be a nomination in the Assembly, sitting formally for that purpose, and that is why it is on the agenda.

The Connétable of St. John:

Sir, could you advise me how do we go about debating it in this Chamber prior to making any nominations, please?

The Deputy Bailiff:

Well, it is on the agenda and, in the same way as other matters which are on the agenda, are capable of being put to one side. You can ask to move on to the next item or defer it to another date, as the case may be, if that is what you wish to do procedurally, Connétable.

[11:15]

The Connétable of St. John:

Sir, could we move on to the next item so that P.P.C. (Privileges and Procedures Committee) can bring this back as a full proposition so that it can be debated in the House?

The Deputy Bailiff:

Is that proposition seconded? **[Seconded]** There is a proposition to move on to the next item, it is a proposition that is put to the vote without debate and therefore I will ask the Greffier to open the voting.

POUR: 9		CONTRE: 36		ABSTAIN: 0
Senator S.C. Ferguson		Senator P.F. Routier		
Connétable of St. Helier		Senator A. Breckon		
Connétable of St. John		Senator A.J.H. Maclean		
Deputy R.C. Duhamel (S)		Senator B.I. Le Marquand		
Deputy R.G. Le Hérisssier (S)		Senator F.du H. Le Gresley		
Deputy of Grouville		Senator I.J. Gorst		
Deputy S.S.P.A. Power (B)		Senator L.J. Farnham		
Deputy M.R. Higgins (H)		Senator P.M. Bailhache		
Deputy G.C.L. Baudains (C)		Connétable of Trinity		
		Connétable of St. Clement		
		Connétable of St. Peter		
		Connétable of St. Lawrence		
		Connétable of St. Mary		
		Connétable of St. Ouen		
		Connétable of St. Martin		
		Connétable of St. Saviour		
		Deputy J.A. Martin (H)		
		Deputy G.P. Southern (H)		
		Deputy J.A. Hilton (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy of Trinity		
		Deputy S. Pitman (H)		

		Deputy M. Tadier (B)		
		Deputy T.M. Pitman (H)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy A.K.F. Green (H)		
		Deputy J.M. Maçon (S)		
		Deputy of St. John		
		Deputy J.H. Young (B)		
		Deputy S.J. Pinel (C)		
		Deputy of St. Mary		
		Deputy of St. Martin		
		Deputy R.G. Bryans (H)		
		Deputy of St. Peter		
		Deputy R.J. Rondel (H)		

The Deputy Bailiff:

Very well, then we go back to the point on the agenda, which is to nominate 2 persons to represent the States in the ...

The Connétable of St. John:

Sir, since I lost that debate or that vote, you gave me another alternative, apart from moving on to the next item. Could we follow that particular course, Sir?

The Deputy Bailiff:

I am not sure I can remember what it was, Connétable.

Deputy G.P. Southern:

It was defer to another time, Sir, you said.

The Deputy Bailiff:

Is that what it was? It is a matter for a Member to propose any resolution; he is entitled to propose without notice. That is a matter for Members.

Senator I.J. Gorst:

Sir, I am not sure if I can help. It appears to me that the Connétable of St. John is not so much concerned about the nomination of a Member to this particular Assembly and the British-Irish Council, he is more concerned about the Assembly being members of that association in general, and that is what he, as I understand it, wishes to discuss. It would, I believe, be open to that Member to lodge such a proposition for discussion in this Assembly, it should not stop us nominating to fill a vacant position in what I think is a very useful Assembly, and it is very important that Jersey is represented in that Assembly.

The Deputy Bailiff:

Connétable, you will also have noted from the Order Paper that there is to be a meeting of the British-Irish Parliamentary Assembly later in October.

The Connétable of St. John:

I have noted that, Sir, hence I have my concerns about whether or not Jersey should be part-and-parcel of the British-Irish Council and the British-Irish Parliamentary Assembly and I am remiss in not having done something prior to this this morning, but I have been working on it over the weekend and I have concerns in my own mind that we are going down the wrong road of looking north all the time when we should be looking at the much bigger picture and also trying to mend

bridges going south. Historically, when we had a problem with our French neighbours we would pick up the phone or pop on the boat and go and meet them in France with any of our decisions that we need to get around the table for, not go via London to an embassy and to speak to a civil servant when historically we could speak directly with the Ministers in Paris.

The Deputy Bailiff:

Connétable, if you have a proposition to make, you had better make it, otherwise we are going to move on to take nominations.

The Connétable of St. John:

Sir, I have already proposed that we move to the next item, I cannot do that again, so ...

The Deputy Bailiff:

You cannot. Very well, I invite nominations from the floor.

5.1 Deputy A.K.F. Green of St. Helier:

Yes, Sir, I would like to nominate the Constable of St. Peter.

The Deputy Bailiff:

Is that seconded? **[Seconded]** Are there any other nominations?

5.2 Deputy J.H. Young of St. Brelade:

Sir, can I nominate Senator Alan Breckon? He served from 2006 to 2012 on the council.

The Deputy Bailiff:

Is that seconded? **[Seconded]** Are there any other nominations?

Deputy J.A.N. Le Fondré:

Sorry, can I seek a point of clarification? Is this for the principal post or for the position of associate?

The Deputy Bailiff:

No, it is for the 2 posts and then we will have the vote. There will be a vote anyway, but if there are 3 candidates, Members will vote for 2. The candidate with the most votes will become the primary representative and the candidate with the second number of votes will become the associate.

5.3 Senator L.J. Farnham:

Sir, can I propose Deputy Le Fondré.

The Deputy Bailiff:

Is that seconded? **[Seconded]** Are there any other nominations? Very well, Greffier, have we got some ballot papers?

Senator L.J. Farnham:

Sir, I wonder if you could just clarify the procedure? I am sure it is straightforward, but just for the avoidance of any doubt.

The Deputy Bailiff:

On this occasion, it is not an open-ballot, it is a secret-ballot, so you just need to place 2 names on the ballot paper; a Member should place a 1 by their first choice and a 2 by their second choice.

Deputy M. Tadier:

Sir, are we allowed to plump in this election? So we can use one vote, we do not have to use both?

The Deputy Bailiff:

You do not have to use both votes. Thank you. The Usher and the Deputy Viscount will now collect the votes. The votes are all collected, then I will ask the Deputy Viscount and the Attorney General to retire and to count the votes. In the meantime we have had the response of the Attorney on the votes for the Minister for External Relations. Senator Bailhache received 36 votes, Deputy Baudains received 3 votes, Deputy Tadier received 7 votes. There was one abstention. As Senator Bailhache has obtained more than the 24 votes needed, he is elected as the Minister for External Relations. **[Approbation]**

Senator Sir P.M. Bailhache (36)	Deputy G.C.L. Baudains (3)	Deputy M. Tadier (7)
Senator Routier	Deputy Le Hérisser	Deputy Duhamel
Senator Breckon	Deputy Maçon	Deputy Martin
Senator Maclean	Deputy Baudains	Deputy Southern
Senator Le Marquand		Deputy S. Pitman
Senator Le Gresley		Deputy Tadier
Senator Gorst		Deputy T. Pitman
Senator Farnham		Deputy Higgins
Senator Bailhache		
Connétable of St Helier		
Connétable of Trinity		
Connétable of St. Clement		
Connétable of St. Peter		
Connétable of St. Lawrence		
Connétable of St. Mary		
Connétable of St. John		
Connétable of St. Ouen		
Connétable of St. Brelade		
Connétable of St. Martin		
Connétable of St. Saviour		
Deputy of Grouville		
Deputy Hilton		
Deputy Le Fondré		
Deputy of Trinity		
Deputy Power		
Deputy Lewis		
Deputy Noel		
Deputy Vallois		
Deputy Green		
Deputy of St. John		
Deputy Young		
Deputy Pinel		
Deputy of St Mary		
Deputy of St Martin		
Deputy Bryans		
Deputy of St Peter		
Deputy Rondel		

The Deputy Bailiff:

Apart from the British-Irish Parliamentary Assembly results, there is nothing further under F, nothing under G. or H. Questions.

QUESTIONS

6. Written Questions

6.1 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING SECOND DETERMINATIONS OVER DECISIONS ON INCOME SUPPORT:

Question

Will the Minister state how many second determinations over decisions on Income Support (IS) have been requested on an annual basis since 2008 and state how many times these decisions have been changed?

What is the average time it takes to process a second determination?

Will he indicate how many IS decisions have been subject to appeal annually since 2008 along with the proportion of decisions which were successfully appealed and the time taken to arrange tribunal hearings?

How many individuals on IS in this period have been found not to be actively-seeking work and had their benefit reduced or stopped and in the light of his proposals to extend sanctions for IS recipients to those deemed to have left work “without good reason” does he consider that these figures reflect an efficient and effective appeals system in which recipients of IS can place their trust?

Will he inform Members on what grounds the Tribunal can uphold an appeal and state where and how these grounds are published, so that benefit recipients can fully understand what they need to establish to prove their appeal?

Answer

Any adult included in an Income Support claim has the right to request a second determination (i.e. a review or reconsideration) of any decision made under the Income Support Law that affects their household. This request will be dealt with by a different officer who will fully review the original decision. If the claimant still disagrees with the decision of the second officer, they have the right to appeal to an independent tribunal, either the Income Support Medical Appeal Tribunal which deals with appeals against impairment component decisions or the Social Security Tribunal which deals with all other appeals. There is no cost to the claimant in appealing a decision and they do not need to take legal advice. However, before this formal process starts the first officer will often contact the customer to explain the decision in more detail and give them the opportunity to present any additional relevant information. Many cases are resolved in this manner with the minimum of delay and administration costs.

There are currently 6,767 active Income Support claims covering 12,126 people. The Income Support team currently deal with an average of 39 new claims a week and 250 changes to existing claims. It is estimated that 1.5% of decisions are challenged by claimants leading to an informal or formal review.

The Department aims to complete each review within 21 days. In some cases this may take longer and the most common cause of a delay to a reconsideration is to give the customer the opportunity to obtain more information to support their claim.

This table indicates the number of tribunal hearings in respect of Income Support appeals:

Year	No of hearings	Departmental decision upheld	Departmental decision overturned
2008	2	1	1
2009	6	4	2
2010	6	6	0
2011	3	3	0
2012	10	10	0
2013 (to date)	1	1	0

As the appeals process is completely independent of the Department, my officers are not responsible for arranging the tribunal hearings. This is undertaken by the Judicial Greffe, who will always seek to arrange a time and venue that meets the need of the appellant.

The grounds on which the Tribunals operate are set out in the Income Support (General Provisions) (Jersey) Order 2008, covering the Income Support Medical Appeals Tribunal; and the Social Security (Determination of Claims and Questions) (Jersey) Order 1974 with regards to the Social Security Tribunal. All decisions made under the Income Support Law are set out in writing and include an explanation of the claimant's reconsideration and appeal rights. The Department also publishes this information on its website and in more detail in a booklet entitled 'If You Think Our Decision Is Wrong'. This booklet is issued to the customer as part of all formal reconsiderations.

There are at present 1,316 individuals receiving Income Support who are required to be actively seeking work. In the last 12 months, an average of 29 individuals per month have been identified as not actively seeking work and have received a financial sanction. It is estimated that 1.5% of these decisions are challenged by claimants leading to an informal or formal review. None of these decisions have been subsequently appealed against.

I consider that the process of internal review and external independent appeal set out in the Income Support law does provide an efficient and effective appeal system and the very low level of reviews and external appeals confirms that Income Support decision-making is robust and trustworthy.

6.2 CONNÉTABLE OF ST. JOHN OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE ANNUAL RENTAL FROM LIBERTY WHARF PROPERTIES:

Question

Could Members be given the annual rental received for all property leased at Liberty Wharf, broken down by tenant names or addresses and the rental received per property?

If any property is let with a deferred rental please give details and outline the reasons why no income is received.

Answer

The majority of Liberty Wharf is owned, via four 150-year leases, by Islands Development Limited ('IDL'), Liberty Wharf 1 Limited ('LW1'), Liberty Wharf 2 Limited ('LW2') and Liberty Wharf 4 Limited ('LW4'); all of which are subsidiaries of Harcourt Developments Limited ('HDL'). Any income derived from the various properties sub-leased by these entities at Liberty Wharf is for the

benefit of IDL/LW1/LW2/LW4 and ultimately HDL. Any leases entered into that are for a term greater than nine-years will be listed in the public registry.

The only parts of the site that remain in the ownership (via a 150-year lease) of The States of Jersey Development Company Limited ('SoJDC') are the bus station and an electricity sub-station. A nine-year lease is in place between SoJDC and the Minister for Transport and Technical Services ('TTS') for the bus station and TTS pay SoJDC £100,000 per annum in rental. A ninety-nine year lease is in place between SoJDC and Jersey Electricity for the electricity substation. Jersey Electricity currently pay SoJDC £14,630 per annum in rent.

6.3 CONNÉTABLE OF ST. JOHN OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE ESPLANADE QUARTER AND HARCOURT:

Question

Could the Minister update Members on any claim by Harcourt against the States of Jersey, or any States-owned Company in respect of the Waterfront and Esplanade Square/Quarter and explain how the States of Jersey Development Company can arrange deals for 'anchor' tenants for proposed new office blocks on a site which is subject to court action?

Would the Minister detail what security, if any, is being given to proposed tenants and whether the prospective tenants were told of the Harcourt dispute at the start of negotiations?

Would the Minister provide details of the companies and the area lease, annual rental, and money received to date from such 'anchor' tenants?

Answer

The States of Jersey Development Company Limited ('SoJDC') has been completely transparent with regard to the litigation. Its publically available accounts for the year ended 31 December 2012, which were laid before the States on 16 April 2013 (R32/2013), clearly state at Note 11 entitled "Legal Action" on page 26:-

"Harcourt Developments Limited ('Harcourt') has filed an action against the Company. Harcourt is claiming that the Company should not have terminated what it alleges to be an agreement relating to prospective development projects and is claiming damages for breach of contract. The Company will defend the action brought about by Harcourt and does not envisage the action will delay any of its current plans and activities."

Unexpectedly, the then Minister for Treasury and Resources in 2008 was joined in to the action at a late stage.

The Solicitor General has brought two strike out applications to court already which has resulted in significant changes to the pleaded Order of Justice. A third strike out application is presently being prepared.

The States of Jersey set up SoJDC as a 100 per cent States owned property development company for it to operate on a commercial basis at an arm's length from the States of Jersey. The prospective tenants that SoJDC is in discussion with are confidential and any financial terms are commercially sensitive and not for public disclosure. What the Minister can disclose is that SoJDC is in discussion with potential tenants for a total of 150,000 sq. ft. of new office space and SoJDC expect to receive further requests for another 50,000 sq. ft. before the end of the year.

6.4 CONNÉTABLE OF ST. JOHN OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE FINANCIAL AND PLANNING DETAILS OF THE ESPLANADE QUARTER:

Question

Would the Minister provide details of the amount of taxpayers' money that has been spent to date progressing the 2 planning applications at the Esplanade Square/Quarter development and explain why the applications to date have been purely for commercial office space and do not follow the States-approved Master Plan, which includes retail and residential?

Answer

The first phase of the Esplanade Quarter has been renamed the 'Jersey International Finance Centre' ('JIFC'). The Minister is advised that, to date, £904,656 (of which £201,899 relates to planning fees) has been spent by The States of Jersey Development Company Limited ('SoJDC') in progressing the planning applications for No.1 JIFC and No.4 JIFC. These costs have been funded from SoJDC's own existing resources. SoJDC will be undertaking the direct development of the JIFC in accordance with its Articles of Association. The tens of millions of pounds of profits generated from the JIFC development are planned to be paid back to the States of Jersey via a dividend to the Treasury, for the benefit of Jersey tax payers.

The first two applications have been for office accommodation. The Esplanade Quarter Masterplan does propose a mixed-use development, however, the Masterplan provides for use classes to be clustered in certain areas of the Esplanade Quarter as opposed to being 'pepper-potted'. The use class in the Masterplan for these two buildings was for offices and therefore these proposals are in accordance with the Esplanade Quarter Masterplan which was approved by the States of Jersey.

The Minister is further advised that the JIFC phase of the development will include a restaurant and a small number of coffee shops for office workers in the vicinity and to ensure the area remains vibrant in the evenings and at weekends. The residential content of the approved Masterplan will be delivered in the second phase following the completion of the JIFC. This second phase will also include restaurant and retail provision in accordance with the approved Masterplan.

6.5 DEPUTY J.A. MARTIN OF ST. HELIER OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE LIBERTYBUS PERFORMANCE RECORD AND DEALING WITH COMPLAINTS AND STAFFING ISSUES:

Question

Further to indications, following some 2,000 complaints, that the Transport and Technical Services Department has been closely monitoring the bus operator during an initial probation period with a view to assessing the competency of LibertyBus, would the Minister advise on the company's performance record over the first six months of 2013 and, in particular, would the Minister detail how many services ran more than 10 minutes late and, of those services –

- (i) how many ran more than 15 minutes late
- (ii) how many ran more than 20 minutes late?

Additionally, would the Minister indicate how many scheduled services did not run at all, or failed to complete their planned route?

Further, would the Minister either confirm or deny reports that –

- (a) one or more LibertyBus employees resigned from their position/s at the Customer Information desk;

- (b) whether those resignations, if they occurred, resulted in internal transfer or departure from bus company employment; and
- (c) whether the resignations were linked in any way to the huge volume of complaints being received by LibertyBus, some of which apparently subjected the information staff to unpleasant abuse?

Answer

2487 communications were logged by Libertybus in the first 6 months of this year. 1156 were general enquires and 1321 were complaints or suggestions.

Recorded complaints for the first 6 months are as follows: -

Jan	789
Feb	176
Mar	141
Apr	97
May	67
Jun	51

Any service operating within 5 minutes of the departure time is classed as on time. Although Libertybus does not currently provide specific data for the number of vehicles running 10, 15 and 20 minutes late it does have data on services that operate outside of the 5 minute window.

In the early days of the new contract, it is acknowledged that operational issues resulted in significant punctuality problems with the service. In particular the linked route 15 (airport) and 18 Les Marais services and the town area route 20 were unable to run as timetabled. This was recognised as unsatisfactory by Libertybus and TTS and revised timetables and routes were introduced. This has significantly improved the service as can be seen from the figures for the last 3 months as shown below.

- June 85.7% of services operated on time
- July 86% of services operated on time
- August 90.7% of services operated on time.

The monitoring technology that Libertybus in conjunction with TTS are finalising will provide a more extensive automatic reporting system and this will be able to identify services that operate between 5 minutes late and 10 minutes late, and then over 20 minutes late. This should be fully operational before the end of the year.

With regard to services not running at all, this information is monitored daily by Libertybus. In the summer schedule Liberty bus operate 2250 journeys per week which equates to 43,382 miles per week. The average number of journeys which did not run over the last 16 weeks is 3.62 per week, which is 37 miles per week. This includes Battle of Britain day and Battle of flowers day where the previous operator did not operate services for over 3 hours on each of these days. Whilst TTS will be liaising with Libertybus to see that improvements continue, it should be noted that the number of additional services such as relief buses to meet demand and special services to events such as Jersey Live and Jersey Rugby matches far outweigh the number of failed services.

With regard to parts a, b and c of the question, I understand that since Libertybus took over the bus contract in January, one Customer Service member of staff has retired and one resigned. Both have now returned to the employment of Libertybus.

I can further advise that one has taken up a short term position as a Customer Service Agent and the other has become a Driver.

I am unaware of the reasons for any Libertybus staff resignations as this is a private matter between the Employee and their Employer which I am not privy to.

6.6 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING EXPLAINING THE BENEFITS OF RAGWORT:

Question

Further to his response to my written question of 10th September 2013, in which the Minister declared that “Ragwort remains an important species that is of benefit to the broader environmental” (sic), would the Minister outline those benefits?

Answer

Ragwort *Senecio jacobaea* is an extremely important plant. Worldwide at least 30 insect species and 14 species of fungi are entirely reliant on Ragwort.

In Britain, at least 77 species of insect have been recorded eating ragwort leaves, or living in the stems and flowers and it is an important nectar source for hundreds of species of butterflies, moths, flies, bees and other invertebrates. Over 100 species of invertebrates have been recorded visiting ragwort flowers for their nectar.

In Jersey, the black and red 7 spot burnet day flying moth is entirely dependent on ragwort and would disappear from our countryside if ragwort was eliminated.

It is apparent that ragwort needs to be controlled where it poses a risk to livestock, but the response should be proportionate.

Natural England, the UK Government’s advisory Department on the Natural Environment state;

“In many situations ragwort poses no threat to horses and other livestock. In the right place, ragwort contributes to biodiversity and is important for wildlife in the UK. It supports a wide variety of invertebrates and is a major nectar source for many insects. It is a natural component of many types of unimproved grassland and is used by some invertebrate species that have conservation needs”.

6.7 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING ALTERATIONS OF LA ROUTE DU FORT AND ST. CLEMENT’S ROAD JUNCTION:

Question

Further to his reply to my written question of 10th September 2013 regarding alterations to the junction at La Route du Fort/St Clement’s Road as a result of a request by St Luke’s School, would the Minister for Transport and Technical Services advise whether his department counted the number of children using that junction concurrently with their vehicle count and supply the details, or, if they were not counted, explain why not?

Would the Minister confirm that, given the young age of the children (eleven or under) and the fact that to reach the junction they first have to cross Beach Road and walk beside a very busy main road carrying heavy vehicles, the number of children crossing the St Clement’s Road junction alone is likely to be minute?

Answer

Whilst the issue of crossing St Clement's Road at La Route du Fort junction was highlighted in St Luke's School Travel Plan, the alterations being made will assist all pedestrians, especially those with limited mobility, who need to cross the road.

A survey of pedestrian crossing movements was carried out; however the number of pupils was not separated out from the number of other pedestrians using the junction. It was not considered necessary to record the ages of pedestrians using the junction, as the pedestrian facilities are for the use of all pedestrians.

As a general rule children 10 or over are considered to be able to judge speed and distance, and can walk to school unaccompanied, albeit parents should judge the ability of individual children. Children under the age of 10 should be accompanied by an adult who should teach them road craft whilst walking them to school. Beach Road is a lightly trafficked one way road which is significantly easier to cross than the two way road that is the southern leg of St Clement's Road. Provision of such pedestrian facilities is consistent with the States of Jersey Sustainable Transport Policy, which aims to encourage walking as a mode of transport for short journeys.

Whilst I am unable to confirm exactly how many children will use the new crossing, I can confirm that the numbers of all pedestrians taking advantage of the new crossing facility, young or old, parents or children, will be an average of 18 per hour, compared to the number of motor vehicles diverted onto other routes averaged at 8.8 per hour. These averages are calculated from surveys taken before the works commenced, and do not include any suppressed pedestrian demand that is likely to add to these figures once the facility is in place.

6.8 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE OPERATION OF THE INCINERATOR:

Question

With regard to the Energy from Waste Plant, could the Minister advise -

- (a) how many tons of rubbish are presently stockpiled waiting for incineration and where are the stockpiles;
- (b) how many months the plant has now been operating and detail, during that period –
 - (i) how many times it has operated continuously for more than a week;
 - (ii) whether flue temperature was maintained at operational levels at all times and whether supplementary fuel had to be used to achieve that;
- (c) what length of time the plant must operate continuously before it can be formally 'accepted' or signed over;
- (d) at what point in time he will conclude the plant is unlikely to ever be 'acceptable';
- (e) what he intends doing in the event acceptable operation cannot be achieved;
- (f) given the problems with the incinerator, why 95% of the contract has been paid and whether such payment was contractually required; and,
- (g) in the event payment could not be avoided, who was responsible for drawing up the contract and was legal advice taken?

Answer

- (a) There are approximately 6,500 tonnes of shredded bulky waste stockpiled at La Collette awaiting incineration and it is planned to process that waste during the remainder of this year and possibly into the early part of next year.
- (b) The plant first started burning waste in January 2011 which is 32 months of operation, which equates to 139 weeks.
- (i) During this period the plant has been operating “continuously for more than a week” on 96 occasions. To assist with answering this question “continuously for more than a week” means that the plant processed waste for a minimum of 7 days without stopping.
- (ii) The flue temperature is maintained at operational levels when the plant is processing waste and allowed to cool when the plant is not. Supplementary fuel is not used to maintain the flue temperature. Supplementary fuel is used to start the incineration process and on rare occasions is used for short periods to support combustion should the furnace temperature start to drop below 880⁰C. This is to ensure that the furnace temperature stays above the minimum Waste Incineration Directive (WID) limit of 850⁰C whilst the plant is processing waste.
- (c) The plant has successfully dealt with the Islands municipal waste since December 2010. The plant was formally accepted at “Takeover” which was achieved on the 29th July 2011. Takeover is the point at which the plant is handed over from the contractor CSBC (Jersey) Limited to the purchaser, The Minister for Transport and Technical Services.
- (d) The plant has been, and is, processing the municipal waste generated on the Island. Therefore, the plant is acceptable. However due to the robust contract my officers are making sure all aspects of the plant are working to a high standard. My invitation to the Deputy to visit the plant is still open and I would be very happy to show him the facility and allow officers from the department to discuss the operational detail of the plant.
- (e) There is a strong contract in place which has a range of remedies which may be applied if the plant does not meet the agreed specification. These remedies can range from financial penalties to mechanisms whereby the contractor is given the opportunity to rectify problems.
- (f) The payments to the contractor CSBC (Jersey) Limited have been made in accordance with the Energy from Waste contract signed on the 14th November 2008.
- (g) Contract payments are made against “Milestone Events” defined in the contract. For a payment to be made the contractor must submit an invoice when the relevant Milestone has been achieved. Once submitted, an independent Project Manager will verify that the Milestone has been satisfactorily achieved and then certify that payment is due. Eversheds LLP were engaged to provide legal advice and contract drafting. The contract has worked well for duration of the project and is still working well for the States of Jersey.

6.9 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHIEF MINISTER REGARDING UNDERSPENDS AND NEGOTIATIONS FOR PUBLIC SECTOR PAY:

Question

Given the substantial underspends in both 2012 and 2013 amounting in total to over £40 million, does the Chief Minister consider that the below-inflation pay offer to the public sector, removing some £14 million from departmental spending, remains justifiable?

Will he consider returning to the negotiating table with public sector representatives with a fresh offer to end the continuing dispute?

Will he, in particular, consider consolidating those elements of the offer that are currently unconsolidated?

Answer

Departmental underspends are one-off items which may occur for a variety of reasons. For instance: -

- 1 - a department may decide it would be prudent to spend some of its budget the following year, or circumstances may have delayed the relevant project.
- 2 - a department may have made required savings earlier than required – like Home Affairs during the CSR process.
- 3 - there may have been an amount allocated for a specific purpose, like Income Support, all of which is ultimately not required.

Salaries, on the other hand, are a continuing expense which cannot be funded by one-off underspends.

There are no plans to make a further financial offer to public sector representatives. We have reached agreement with many staff groups, for example Nurses, Police, Prison and Fire Service. We continue to have constructive discussions with other pay groups about a wide variety of workforce issues.

The pay awards made to public sector employees are fair and prudent within the Island's finances.

6.10 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING PUBLICATION OF A CLAIMANT-FRIENDLY VERSION OF INCOME SUPPORT CALCULATOR:

Question

Will the Minister advise what progress, if any, he has made in producing a claimant-friendly version of the Income Support calculator for publication on the Social Security website, to enable Income Support claimants to better understand their claim?

Will he also state whether the Income Support Policy Guidelines (version 2) to assist officers in assessing IS claims has been updated since its release in March 2009 and, if so, will he release the new guidelines to Members who wish to understand the system or, better still, agree to publish the guidelines on the website?

Notwithstanding the responses to the above, will the Minister inform Members of the rules concerning the treatment of household income as capital or income in the Income Support system and release to Members any guidelines for staff involved in this particular area?

Answer

Good progress has been made on creating a web-based Income Support calculator. The Department is working closely with the gov.je website team and an external supplier to produce a calculator that will be accessible on a variety of different digital devices. A technical upgrade is currently in progress on the gov.je website and it is anticipated that the calculator will be available shortly after the upgrade has been successfully launched.

I should also note that the Income Support award letter was completely redesigned during 2012 in order to help claimants understand their claim. The letter now contains a detailed breakdown of the way a claim is calculated, and this change has been welcomed by both customers and outside agencies such as the Jersey Citizens Advice Bureau.

The Income Support Policy Guidelines document issued in 2009 provided an overview of the Income Support system. This document has been comprehensively reviewed over the last few months and will be reissued later this year. Subject to the outcome of the forthcoming States debate, the new version will incorporate the revised rules to be applied to failed jobseekers and individuals who leave paid employment. This document will be available on the Income Support website.

A series of detailed presentations and workshops on the Income Support system were provided to States Members and other key stakeholders during 2012, to coincide with the introduction of the updated award letter and application form. Feedback from Members who attended those sessions was very positive and I would be happy to organise additional sessions for any other States Members who would like to understand the Income Support system better. In addition, a briefing session for the proposed changes to the rules for jobseekers is being organised in advance of the debate planned for 8 October.

I can confirm that there are no situations where household income is treated as capital for Income Support purposes. There are situations where capital is treated as income, and these are explained in detail in Schedule 2 of the Income Support (General Provisions) Order 2008.

Income Support staff use a variety of internal procedures and guidelines. These are technical documents which are not designed for public circulation. The relevant section from the Income Support Policy Guideline issued in 2009 states:

“Deemed income from capital

If the Income Support Unit does have capital assets in excess of the disregards available, then a deemed income is calculated based on the excess amount. Given the same income, a household with capital assets has more financial stability than a similar household with no capital assets. So, capital needs to be taken into account when calculating a means tested benefit. “Deemed” income allows the benefit to be gradually withdrawn as the assets of the household increase. If a deemed income is calculated, any actual income from the asset is completely disregarded

For every £250 of excess capital, an income of £1 per week is included in the Income Support calculation.

This policy is still current.

6.11 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING EXTENSION OF MATERNITY LEAVE:

Question

Given that the latest advice concerning the benefits of breastfeeding infants recommends maintaining breastfeeding for a period of 26 weeks if possible, will the Minister consider extending maternity leave provision to cover this period, rather than the maximum of 18 weeks currently proposed?

Answer

A woman does not have to be on maternity leave in order to continue providing her baby with breast milk.

In its recommendation on Maternity, Paternity and Family Friendly working¹, the Employment Forum noted that a maternity period of 10 to 18 weeks will usually provide sufficient time for a breastfeeding routine to have been established.

The Forum recommended that, if any breastfeeding provision is to be made, a code of practice or guidelines should outline what should reasonably be provided by an employer, taking into account the recommendations of the World Health Organisation (WHO) which include safe, clean and private facilities and daily breaks to express milk.

A code of practice might specify that employers should accommodate breastfeeding employees by providing the following;

- a private room, preferably lockable, to breastfeed or express milk
- a clean fridge for storing expressed milk
- a place to wash, sterilise and store containers
- time off to express or breastfeed.

The family friendly rights that I propose to bring to the States next year will include the right to request flexible working for all employees with caring responsibilities. This might include a request to work part-time or from home, or a change to work start and finish times in order to allow time to express milk or breastfeed.

When protection against discrimination on the grounds of sex is introduced, a refusal to make appropriate adjustments to enable a woman to continue to express milk or breastfeed may amount to unlawful sex discrimination.

7. Oral Questions

The Deputy Bailiff:

His Excellency has arrived, having no doubt said farewell to the Secretary of State for Justice. I am sure Members would like to welcome him. **[Approbation]** We now come to oral questions. The first question, Deputy Young is to ask of the Minister for Education, Sport and Culture.

7.1 Deputy J.H. Young of the Minister for Education, Sport and Culture regarding schools charging their former pupils fees for providing the school-attendance certificates required for residence cards:

Will the Minister for Education, Sport and Culture inform the Assembly whether he condones the present practice of some schools charging their former pupils fees for providing school-attendance certificates which are required for residence cards and whether he considers the arrangements made to assist the Social Security Department to issue the cards to school leavers to be satisfactory, and will he state whether he is proposing any improvements to avoid undue bureaucracy in future?

Deputy P.J.D. Ryan of St. John (The Minister for Education, Sport and Culture):

Dealing with the second part of the question first, for a moment. Schools from this education year onwards will be giving students an attendance-confirmation letter automatically when they leave the schools. That is both in primary and secondary schools, because secondary schools can only attest to attendance for the previous 5 years, so that is not enough for members of the public to prove a 10-year residency, so they would need to go back into primary as well, and that is why we

1

www.gov.je/SiteCollectionDocuments/Working%20in%20Jersey/R%20EmploymentForumsReccommendationMaternityPaternityFamilyFriendly%2020091211%20EV.pdf

are doing that. Dealing with the first part of the question, it is only a small handful of our schools that are currently charging for the letters and although they are within the law to be able to charge up to £30 for this service, the maximum being charged by those few state schools is £10. To directly address the Deputy's question. Because I have only just become aware of this problem over the last week or so, I have had some careful conversations with the Assistant Minister in charge of the Population Office in the Chief Minister's Department, and we are in agreement that it is not satisfactory that schools should be charging for this service, so we will be prevailing upon schools, although I should not aim any criticism at schools; all that head teachers are doing is trying to control their own administrative costs in whichever way they can. So I will defend that situation, I do not think there is any criticism of school heads for doing this. We have agreed at a political level that this is not satisfactory for the public, so we will be making sure that in future schools do not charge for this service.

[11:30]

The extra administrative costs that there are on schools, and there undoubtedly are because the electronic records at schools only go back so far, and what we are finding is that information is being required from some considerable time ago in many cases, and of course, that is paper records, and in some cases those records reside in the public archive. That is where we are and the officers are currently discussing as to how the extra administrative costs in schools are going to be covered.

7.1.1 Deputy J.H. Young:

I am grateful for the Minister for Education, Sport and Culture's positive answer there, but can he confirm or advise the Assembly whether the improvements he is talking about involve an automatic-transfer of computer data about who is in our schools to the relevant department in the future, so that administrative glitches are minimised?

The Deputy of St. John:

That is not quite as simple as it sounds because, as I have already stated just a minute ago, most of these records that are being asked of the schools go back to the time before electronic data existed, so there is only paperwork. So it would be a pretty large ... I hesitate to use the word "massive" but certainly quite a difficult task to create a database right across the board going back decades to create an electronic database. Nevertheless, that will be possible for the period of time that electronic records exist, and I believe that it may be necessary for the Population Office to bring some regulation to allow those transfers of data that the Deputy refers to, because of course it is at the moment covered under Data Protection (Jersey) Law so it will require this Assembly to debate a change to that.

7.1.2 Deputy J.H. Young:

The Minister for Education, Sport and Culture has advised the Assembly of the undoubted difficulties in collecting the historic data which is needed into a database, but could he advise the Assembly whether these matters came as a surprise or whether there were prior discussions in the 3 years this system was under its gestation. Was this a surprise to the Minister or was he involved in earlier discussions about how to solve this problem?

The Deputy of St. John:

Any discussions like that would be between officers rather than at a political level, that is the first point, and so yes, it was somewhat of a surprise to me, and that is not surprising because there are many different ways in which members of the public can obtain the necessary proof of residency. The recourse to school records is only one of several ways and really it a bit of a surprise, therefore, that many people have decided that the recourse to school records is the easiest version of the various different options they have.

7.1.3 Deputy M. Tadier:

Does the Minister agree that in this day and age - notwithstanding what he said about records - we have 2 States departments, the Education, Sport and Culture Department and the Social Security Department, from which the public would expect some legitimate information-sharing to be able to go on between those 2 departments rather than a whole rigmarole of being forced to have a card that potentially nobody wanted in the first place, then being forced to pay £10 to £30 for a certificate to prove that you exist in the way that you do? Will the Minister for Education, Sport and Culture look into direct information-sharing between the Education, Sport and Culture Department and the Social Security Department so that members of the public can be facilitated and not put in this position?

The Deputy of St. John:

I think it is the Population Office and the Education, Sport and Culture Department that the Deputy is referring to rather than the Social Security Department. It would be better if departments talk to one another whenever possible. I think that goes without saying. We are, however, doing everything that we can to help the Population Office in this short period of time and it is fairly clear that once the initial flurry of requests has been dealt with that it should settle down, that would be my understanding. I cannot speak for another department and the Population Office, that question should be asked of the politician in charge of the Population Office.

7.1.4 The Connétable of St. John:

I am flabbergasted at what I am hearing this morning. Will the Minister for Education, Sport and Culture please confirm that the Population Office and the Education, Sport and Culture Department have not been working together over the last 3 years? That being the case, how long is it going to take for him to get all the records that are required down to the Social Security Department, hard-copy and/or microfiche plus computer files - because I am aware that the computer files only go back to 1991 at the Social Security Department - so that people can walk in there and not have to go back to a school, an employer or to another place to get information? Everything should be transferred to the Population Office. Will he ensure that the necessary barriers for data protection are removed?

The Deputy of St. John:

There are no barriers under what is currently under the law; the department has to abide by the law like any other department does. As far as the question of whether my department has been working with officers in the Population Office, of course they have, but I think that, as I have already said, there are several different ways in which members of the public can get the information they need, and they do not have to go to schools. We are, as I say, doing our best to help the Population Office, but any further questions that the Constable may have should be aimed at the politician in charge of the Population Office in the Chief Minister's Department.

7.1.5 Deputy G.P. Southern:

I have not quite yet heard what the Minister for Education, Sport and Culture is going to do about this charging. Is he saying that the charging will stop as of now ...

The Deputy of St. John:

Yes.

Deputy G.P. Southern:

... and when can he expect to have the information required - and it is commonplace, everybody knows you have to traipse around schools traditionally to get your 10-year qualies - what will he do

to make sure that people do not have to, with or without the charge, traipse around the schools and/or Jersey Archive - which he is also in charge of - in order to establish their 10-year record? When will he do it by?

The Deputy of St. John:

Members of the public do not have to traipse around schools, there are several other ways that they can obtain this. All I can do is to provide the information as quickly as possible to members of the public. If it takes a little bit of time, I am really sorry about that but, as I say, that question should be aimed at the Population Office.

7.1.6 Deputy G.P. Southern:

Is the Minister saying that this was completely unforeseen, that there has been no discussion between the Population Office, the Social Security Department and the Education, Sport and Culture Department over this completely foreseeable problem of establishing 10-year residency?

The Deputy of St. John:

I think it was completely unforeseen, yes.

7.1.7 Deputy R.J. Rondel of St. Helier:

Would the Minister please clarify how many years of electronic data are being held by the Education, Sport and Culture Department? He mentions that a number of students have got a lot of other means of obtaining the information, but does he accept that students are perhaps being advised by Social Security Department to go to the Education, Sport and Culture Department to obtain the relevant information?

The Deputy of St. John:

The records are held at schools, they are not held by the Education, Sport and Culture Department, certainly from a period ... I do not have at my fingertips the actual dates where the electronic data is held, but they are held by schools rather than the Education, Sport and Culture Department. I cannot remember the last part of the question.

7.1.8 Deputy R.J. Rondel:

First of all, is the Minister saying that he does not know how many years electronic information has been held for - just to clarify that - and does he accept, although he mentioned that there are number of ways that students can obtain information, that perhaps the Social Security Department are advising students to go to the Education, Sport and Culture Department and their schools?

The Deputy of St. John:

I would think that the Social Security Department - although I do not know for sure because I have not stood there and listened to the advice being given - will be advising members of the public that there are several different ways and one of them is to go to the school.

7.1.9 Deputy J.H. Young:

Would the Minister for Education, Sport and Culture agree that his answers today have revealed a serious systemic failure in the system, particularly for school-leavers, and would he accept that this is not going to go away, that it is an ongoing problem? Will he commit to bringing a report to this Assembly telling us how he proposes to rectify the situation for the future and the improvements made to our system?

The Deputy of St. John:

Any report would be the responsibility of the Population Office. This lies firmly in the remit of the Population Office, not in the Education, Sport and Culture Department.

The Deputy Bailiff:

We have spent 13 minutes on that subject, we are going to move on, but before we do, I can announce the results of the vote on the British-Irish Parliamentary Assembly. Deputy Le Fondré received 32 votes, Senator Breckon received 27 votes, the Connétable of St. Peter received 21 votes. There were 2 spoilt papers. Accordingly, Deputy Le Fondré is nominated as the Jersey Member and Senator Breckon is the Associate Member. **[Approbation]**

Deputy J.A.N. Le Fondré:

Can I thank the Assembly, Sir.

7.2 Deputy R.G. Le Hérissier of the Minister for Treasury and Resources regarding a review of Jersey Telecom's wholesale rental structure:

Would the Minister, as representative of the shareholder, inform Members when Jersey Telecom intends to announce the wholesale rental structure that will accompany the move to fibre-optic and explain why has there been a delay?

Deputy E.J. Noel of St. Lawrence (Assistant Minister for Treasury and Resources - rapporteur)

J.T. (Jersey Telecom) has already announced the wholesale rental structure and therefore there has been no delay. Wholesale prices for J.T. fibre-optic services to all operators were announced on 2nd March 2012, which included 1-gigabit and 100-megabyte products. About a year later, on 1st March 2013, J.T. added a 50-megabyte product and it was made available to all operators at the same time. This was a regulatory obligation on J.T.

7.2.1 Deputy R.G. Le Hérissier:

Would the rapporteur confirm that the wholesale prices for products and indeed rentals are run totally separately and there is no cross-subsidisation from other J.T. services in order to make these products more acceptable and thereby crowd out other entrants to the market?

Deputy E.J. Noel:

I am able to confirm that under the terms of its licence issued by what was J.C.R.A. (Jersey Competition Regulatory Authority), now C.I.C.R.A. (Channel Islands Competition and Regulatory Authorities), J.T. as an integrated operator, J.T. Retail, is only permitted to offer broadband products that can be replicated by other licensed operators. Essentially, this means that if another operator cannot offer a similar retail product then neither can J.T. Where other operators choose to offer fibre-optic broadband products, it is entirely down to their own operations and their business strategies.

7.2.2 Deputy G.C.L. Baudains:

Could the Assistant Minister for Treasury and Resources advise: when customers choose to sign up to the various speeds available, do Jersey Telecom advise them of the contention ratio, in other words, that they may not get the speed they are paying for?

Deputy E.J. Noel:

Similar to the Minister for Education, Sport and Culture, I am not present when the advice is given out so I would not be able to answer that question.

7.2.3 Deputy M. Tadier:

Can the Assistant Minister for Treasury and Resources explain why it is that Jersey Telecom, who own the infrastructure, can be undercut by their competitors when they offer wholesale broadband supply and also without download limits which Jersey Telecom currently employ? How does that make economic sense and what is the long-term effect for the sustainability of Jersey Telecom?

Deputy E.J. Noel:

Broadband wholesale charges are set and it is down to the individual operators to base their pricing model on there. If the operators choose to undercut J.T.'s retail offering, then it is down to them.

7.2.4 Deputy M. Tadier:

The second part of the question: if J.T. is to remain sustainable but also provide good value to their users, not simply to the States as the sole shareholder, how can it be sustainable if their costs are higher when they are selling a product wholesale to another supplier who are then charging less? Does the Assistant Minister for Treasury and Resources not acknowledge that cannot be a sustainable model for Jersey Telecom to pursue?

Deputy E.J. Noel:

I believe the Deputy is getting a bit confused there. J.T. offer their wholesale prices to their competitors, it is the same price to J.T. themselves on that side, and it is down to the competitive market and individuals to buy their retail broadband services from whichever provider they wish to.

[11:45]

7.2.5 The Connétable of St. John:

Since the introduction of the broadband scheme, could the Assistant Minister for Treasury and Resources explain why some installations are taking up to 13 weeks and longer to install and others have considerable delays on even the most minute piece of equipment that is required within the house after the installation is in?

Deputy E.J. Noel:

I cannot answer that detailed question. I will endeavour to find out and report back to the Constable.

The Connétable of St. John:

Can he report that to the House so that it is recorded, please?

7.2.6 Deputy G.C.L. Baudains:

In his answer to my previous question, the Assistant Minister for Treasury and Resources was unable to answer in relation to the contention ratio. Could he tell me who can answer in relation to that, which is a potential mis-selling of a product? Who is accountable for that?

Deputy E.J. Noel:

That is a matter for J.T. If people are unhappy with the advice they have been given, then I would suggest that their first port of call is the Complaints Department within J.T., and again if they get no satisfaction there, there is a regulator that they can contact. This is not a matter for the shareholder.

7.2.7 Deputy R.G. Le Hérissier:

Could the rapporteur confirm that cross-subsidisation of one service by another has not, in fact, been outlawed by the C.I. (Channel Islands) Competition Authority? Could he confirm that is the case and could he confirm that businesses trying to break into this market are contending that

Jersey Telecom is cross-subsidising its tenders for these particularly commercial services, and it is not the open-market that he suggests that it is? So could he categorically confirm that cross-subsidisation exists?

Deputy E.J. Noel:

The Deputy's point is a point for the regulator, it is not a point for the shareholder. J.T. wants to get all its operators on board as soon as possible so that even more Islanders can benefit from the fibre installation. Furthermore, when the Ministerial decision was signed on gigabit, it was made an obligation on J.T. to work with C.I.C.R.A. to ensure that other operators had access to the fibre network and I have been advised that they are living up to that obligation. However, as stated before, whether operators choose to avail themselves of that broadband is a matter for them.

7.3 Deputy G.C.L. Baudains of the Minister for Transport and Technical Services regarding tenders for the Energy from Waste Plant:

Given that one of the largest engineering firms in the world stated that it would have built a new incinerator for £66 million turnkey, that is £40 million less than we have paid for the current plant, would the Minister for Transport and Technical Services advise whether he now regrets that his department told that firm not to bother to tender at the expression of interest stage?

Deputy K.C. Lewis of St. Saviour (The Minister for Transport and Technical Services):

The engineering firm that I believe Deputy Baudains is referring to did not contact Transport and Technical Services or its consultants with regards to the Jersey project. An intermediary company who claimed to have the right to represent the main technology supply company did contact the department, however, this intermediary never took up the offer of a meeting with T.T.S. (Transport and Technical Services) to understand the overall requirements of the project, and did not submit a formal expression of interest for the pre-qualification process. In order to assess the true and accurate position as regards the main technology supply company, who are very well-respected in the waste industry, their sales director was contacted directly by Transport and Technical Services' technical consultants. This was to ascertain their precise involvement. Their response confirmed that they had passed information to the intermediary company relating to 2 of their plants built in Sweden. A simple investigation of the 2 named plants identified that the main comparison plant was in fact designed to burn fuel based primarily on virgin wood and waste wood chip. It had also been designed to burn refuse-derived fuel, R.D.F.

7.3.1 Deputy G.C.L. Baudains:

As his department has contacted this firm, as we have just heard, could the Minister for Transport and Technical Services confirm that in fact the firm that I am talking about would have built an incinerator exactly the same style as we have now, for £66 million, but had we wanted a more up-to-date plant, it would have been £60 million?

Deputy K.C. Lewis:

As I say, this was proposed by an intermediary company that did not have the full specification, so unless you have the full specification, it is impossible to tender for it. It is a bit like somebody booking a house; the question is how many rooms, how many bathrooms? Unless you have the full spec, it is impossible to quantify.

7.3.2 Deputy G.C.L. Baudains:

Would the Minister for Transport and Technical Services not agree with me that if you go out to tender and you get a quote, then whether the company has understood the full technical

specification or not, they are obliged to build it for that quote and that this company had the full information required?

Deputy K.C. Lewis:

That is the problem, we believe the company did have the full specification required. A company named ART who were co-ordinating this as the intermediate company, did not have the full backing of the company; in fact, the main company were not aware that a bid was being put forward.

7.3.3 Deputy G.C.L. Baudains:

I think we are going round in circles. Would the Minister for Transport and Technical Services not confirm that the real reason a bid was not put forward was because the department told them not to do so?

Deputy K.C. Lewis:

With regard to the Deputy's statement that my department told the firm not to bother to tender at the expression of interest stage, I can find no evidence of this whatsoever. The Transport and Technical Services Department and its advisers informed me they did not tell the firm not to bother to tender. The £66 million cost quoted by the Deputy is purely speculative. This whole project has been subject to an inquiry, it has had an internal audit and everything has come back full approved.

7.3.4 Deputy G.C.L. Baudains:

I wonder if the Minister for Transport and Technical Services would refer back to the proposition which was brought to this Assembly by the then Minister - which I recall was Deputy de Faye - because I recall the report of that proposition effectively referred to the fact that this company had been told not to tender.

Deputy K.C. Lewis:

I have seen no evidence of that. There was a full internal audit which came back clear.

7.4 Deputy J.A. Hilton of St. Helier of the Minister for Planning and Environment regarding a meeting between himself and representatives of the Co-op:

Would the Minister for Planning and Environment inform Members of the date of the meeting which took place between himself and representatives of the Co-op (Channel Islands Co-Operative Society Limited) which he referred to on 10th September and would he also state when he made the decision not to take part in determining the planning application?

Deputy R.C. Duhamel of St. Saviour (The Minister for Planning and Environment):

Friday 19th October 2012, and it was on Monday 13th May 2013 that I confirmed my decision not to sit in with my Planning Applications Panel to determine the application.

7.4.1 Deputy J.A. Hilton:

In an answer given to Deputy Young on 10th September, when asked if alternatives had been discussed, the Minister for Planning and Environment responded: "It was my recollection that no alternatives were discussed." Is the Minister for Planning and Environment still of the opinion he did not discuss alternative amendments or schemes with the applicant and, if so, did he not find it surprising that after considering the original application at a Ministerial meeting in October that the applicant should submit an application which included totally demolishing the building?

Deputy R.C. Duhamel:

I notice the Deputy Bailiff has left the Chamber and this application is *sub judice* at the moment so I am wondering or not I should answer that particular question.

The Greffier of the States (in the Chair):

I understand the matter is coming to the court, I am not sure it is yet before the court, so I think you can answer the question.

Deputy R.C. Duhamel:

I think in that case, yes, it is my recollection that alternatives were not discussed and it is not a matter of surprise that a particular application which has not been considered by the Planning Applications Panel or myself has not been discussed or presented to a panel or body for decision in the light of comments that have been expressed by the department. I feel that if I say any more we are starting to stray into an area that might be a form of challenge for the particular application that has been presented to the Planning Applications Panel for decision-making. I would just like to say that in all circumstances I have followed the Ministerial protocol, as I read out last time, and I remind the House that I have not determined the application.

7.4.2 Deputy J.A. Hilton:

I do not believe the Minister for Planning and Environment answered part of my question. The question that I asked the Minister for Planning and Environment was: was he surprised after the private meeting that took place with the applicant that they submitted an application to demolish all of the historic buildings?

Deputy R.C. Duhamel:

Personally, I was not surprised, particularly because of references that had been made by my officers as to a way forward in this particular difficult case. There are letters on file, which may be viewed, suggesting whatever advice had been given by the department, and it is pretty clear that advice did suggest that, having got to a stalemate position, the only alternatives left were the radical ones.

7.4.3 Deputy J.H. Young:

I wonder if I can ask the Minister for Planning and Environment to clarify: the answer he gave referred to his answers to earlier questions where my recollection is that he did say that he had not authorised his officers to make any suggestions about demolishing those buildings. Yet he appears to have indicated just now that that was not the situation that his officers did so. Could he clarify that?

Deputy R.C. Duhamel:

I do not think I have issued any statement saying that I have authorised officers to give advice. The advice that is given by officers is given by officers. All I can say is that I have on file and with me, a letter from the department suggesting ... and I can paraphrase it or read it out exactly, it is written by one of the officers: "Accordingly, I must advise you that the department's view on this application has not altered since it was expressed in the February letter. Additionally, we can suggest no alternatives other than radical reductions in both the size of the building and the loss of heritage to overcome these concerns." It goes on to discuss other matters. As I say, we are straying into things that might well be material to the challenge that the Co-op is making in respect of an application and I think it is not right that this House, in the absence of full particulars, should be straying into those questions.

7.4.4 Deputy J.H. Young:

Not wishing to lead the Minister for Planning and Environment into dangerous areas, but would he not agree that such a letter containing such comments from a planning officer - although the Minister for Planning and Environment says this was issued without his authorisation - would he not agree that such a letter issued by an officer does have potential legal implications as a principle? Would he not accept that?

Deputy R.C. Duhamel:

Again, Deputy Young is moving into an area that is asking me and the rest of the House to judge on something for which we do not have the particulars in front of us and we should not be drawn, so I am not in a position to comment on that.

7.4.5 Deputy J.A. Hilton:

A final question. Going back to the Minister for Planning and Environment having stated 2 weeks ago that there were no discussions around alternative amendments of schemes, can the Minister for Planning and Environment explain to me that if he did not give pre-planning advice why did he feel he had to withdraw from determining the application that he had determined the previous month in a Ministerial hearing? What did he feel had changed that he was not able to do that anymore?

Deputy R.C. Duhamel:

Again, it says under the protocol, and it is quite clear, which is why I read it out last time and I will read it out again, it says: "If there is a direct or indirect financial interest or prejudicial interest or where the Minister has been lobbied or has been subject to personal approaches or personal interests he or she would not be comfortable disclosing, the Minister should regard him or herself as conflicted on receipt of the application and not determine the application to ensure public misconceptions of undue influence do not arise."

[12:00]

I consider there are things that I am not comfortable disclosing, in particular other States Member interest in this particular application, and on that basis I have excluded myself from making the decision. It is absolutely quite clear that I have not made the decision and there are things, or I know things, such that I am counting myself as being conflicted on receipt of any application and I have not taken part in the decision-making. That is as far as I am prepared to go.

7.4.6 Deputy J.A. Hilton:

A supplementary, very briefly. Just in the Minister for Planning and Environment's last answer he said that there are things that he was uncomfortable about disclosing. Will he tell the Assembly what those things are?

The Greffier of the States (in the Chair):

Presumably not. [Laughter]

Deputy R.C. Duhamel:

Presumably not, absolutely right, Sir. Unless we are prepared to go into an in camera session and I can divulge things that perhaps I would not wish to divulge, then fair enough, but I am not prepared to go there at the moment. I do not think it is right I should be queried as to why I have excluded myself from making a decision and the protocol is very clear: it says that if the Minister, and I repeat: "Feels that he is conflicted, for whatever reason, then he does not take part in the decision." That is what has happened and that is that.

7.5 Deputy G.P. Southern of the Minister for Social Security regarding zero-hours contract staff and proposals to sanction those leaving employment ‘without good reason’:

Will income support recipients be caught by proposals to sanction those leaving employment without good reason if that employment was subject to a zero-hours contract which had delivered variable or no income in the first 2 weeks and does the Minister for Social Security have plans to deliver support for those who are subject to very variable earnings on zero-hours contracts on a more timely basis than the 5-week cycle he suggested previously?

Senator F. du H. Le Gresley (The Minister for Social Security):

Income support claimants who are also jobseekers will always be encouraged to take up zero-hour contracts if one becomes available. This will give them work experience and may lead on to a more permanent position. If the amount of work available under the contract is only for a few hours per week, the jobseeker will continue to be supported by their personal adviser at the Social Security Department and they will continue to look for a full-time post under their jobseeker's agreement. If the individual is not provided with any hours in a week but they are still employed under the zero-hour contract, then they have not left employment and the proposed sanction would not apply. The sanction would, however, apply if the income support claimant was undertaking work under a zero-hours contract providing at least some income towards their own living expenses and the individual then either resigned from the position without having another job lined up or was dismissed as a result of their own actions; for example, misconduct. When assessing variable income under any type of employment, officers calculate benefit entitlement using recent actual income information. The Income Support Law specifies that earnings for monthly paid workers should be based on the last 2 months' earnings and for weekly paid workers the value should be based on the average of the last 5 weeks. However, the law also allows other periods to be used depending on individual circumstances. Income support officers already work with individual claimants to identify an appropriate period for review and I have no plans to amend this process.

7.5.1 Deputy G.P. Southern:

The Minister for Social Security is suggesting that a 5-week cycle is adequate to keep people who may have had a major loss of income in the last week and have no money to live on and that it is adequate for them to wait for 4 or 5 weeks to make up that income through their income support claim or, indeed, if they work more hours, to come into the department and have that money clawed back because of an overpayment. Does the Minister for Social Security think that that is a reasonable way to ask workers in the Island to behave?

Senator F. du H. Le Gresley:

I am not suggesting anything. It is written into the law and if the Deputy would like me to quote the law I can do, but it is in the Income Support (General Provisions) (Jersey) Order 2008, Schedule 2(4)(2). So it is not a suggestion from the Minister; it is law. In respect of somebody who has a drop in income, they would almost certainly contact the department if they were finding financial difficulties because of a drop in income and this is what we call a change of circumstances. We would examine their last payslips and arrange for their income support claim to be amended. We do this numerous times in a period of uncertain employment prospects and this is nothing new at all.

7.5.2 Deputy G.P. Southern:

How long on average does it take a change of circumstances form to be processed?

Senator F. du H. Le Gresley:

It depends on the volume that the department are dealing at any particular time.

7.5.3 Deputy G.P. Southern:

Is that period habitually more than 3 weeks?

Senator F. du H. Le Gresley:

Not to my knowledge.

7.5.4 Deputy S. Pitman of St. Helier:

Who will be and what experience will they have in determining what is or is not a good reason to leave the job?

Senator F. du H. Le Gresley:

The determining officers at the Social Security Department are trained and experienced in the main, although obviously from time to time we have trainees, and they will be assessing whether a person has left their employment without good cause against guidelines which I outlined at the last Assembly. If a person is unhappy with the decision of that officer, they can request a second determination and this will be looked at completely separately by a different officer who has not been involved in the case. If they are still not happy, they have the right of appeal to a tribunal.

7.5.5 Deputy S. Pitman:

Could the Minister for Social Security tell us if this situation is anything like his impairment component where determining officers determine how immobile or what clinical costs somebody needs without, in most cases, a medical opinion? Could he tell us if it is anything like that and what training these officers are given?

Senator F. du H. Le Gresley:

The assessment of somebody who has an impairment is based on a form that the person claiming impairment fills in, possibly with the help of their social worker or somebody in the family. The advice and information from their own G.P. (General Practitioner) is also taken into consideration, and the officers who deal with impairment claims are not the same officers normally who deal with other income support claims.

Deputy S. Pitman:

The Minister for Social Security did not answer the second part of my question. I asked what training is given to these officers determining somebody's reason for leaving a job.

Senator F. du H. Le Gresley:

We really are digging into the depths of how you run a Social Security Department. Of course officers are trained. They are trained based on guidelines that have originated from the U.K. on how to deal with impairment claims. Training is carried out all the time and people are continually upgraded in their knowledge.

Deputy S. Pitman:

Sorry, Sir, he still has not answered. I am talking about where somebody has left a job without good reason; what training does the officer have determining that?

Senator F. du H. Le Gresley:

We do not have that provision in yet, so it would be rather difficult to answer that question.

7.5.6 Deputy M. Tadier:

Does the Minister for Social Security anticipate that an unintended consequence of this move may be that the Jersey Employment Tribunal will have more cases coming to them while the people who

have been sacked for all sorts of reasons are trying to prove that they left their job for a good reason rather than simply because they are lazy people who do not deserve any money from the Social Security Department?

Senator F. du H. Le Gresley:

I cannot pre-guess whether the Jersey Employment Tribunal will have more cases, but the fact is that the department will not be working in conjunction with the Jersey Employment Tribunal. We will be working to assess whether somebody is entitled to income support and we cannot delay on that while somebody may be perhaps waiting for a tribunal hearing.

7.5.7 Deputy M. Tadier:

The Minister for Social Security seems to have pre-empted my supplementary question which was: will they wait if a tribunal hearing is going on? Surely the fair-minded thing to do is ... if there is a case going to the Employment Tribunal, is he seriously saying that he will cut somebody's benefits who may have been sacked for things to do with their gender, because we do not have gender discrimination in Jersey? They may have to wait 6 or so weeks without any support until their name is cleared by the Jersey Employment Tribunal. If that is the case, will the Social Security Department be making a back-payment and what will that individual do in the meantime while they have to survive with no money?

Senator F. du H. Le Gresley:

We have to distinguish between a benefit system and the fact that we have an Employment Law and people have rights under that Employment Law. The benefit system is designed to assist people in need. If we bring in the regulations that I am proposing, if somebody walks out of a job without just cause, of course the officers will investigate and speak, with permission of the person claiming benefit, with the employer and make a decision based on all the information available. If we did not make decisions, we would end up in a situation where people would not receive benefit, so we have to proceed under the rules of income support to assess a claim and people have a right of appeal if they are not happy with that decision.

7.5.8 Deputy J.M. Maçon:

On that vein, when these guidelines are being developed, can the Minister for Social Security explain how the Social Security Department will deal with things such as bullying and harassment claims, which cannot always be proven, which we know does occur within the Island?

The Deputy Bailiff:

I have allowed a very wide series of supplementary questions. The starting question was about zero-hours contracts but, Minister, if you wish to answer that question you can.

7.5.9 Senator F. du H. Le Gresley:

At the last Assembly I did answer a question about bullying and harassment and explained to Members that clearly this is a difficult area and one where the officers would be looking at what action that person took within the employment to remedy the situation that was causing bullying or harassment. In other words, did they take it up with their line-manager or did they speak to the human resources department if there is one? Provided they have taken all action available to them in the workplace, then obviously we would take all that into consideration.

7.5.9 Deputy G.P. Southern:

The Minister for Social Security referred to the process of second determination. Does he accept that that often takes up to a fortnight to complete? Could he tell me, despite the fact that he says

that the Social Security Department aims to complete a review - that is an appeal - within 3 weeks, what is the actual time taken on average for an appeal to the tribunal?

Senator F. du H. Le Gresley:

The Deputy is correct that a second determination can take up to 2 weeks, often because we are, for the benefit of the claimant, trying to get as much additional, perhaps new, information that might give reason for the second determining officer to perhaps approve or disapprove the claim. Insofar as the time-span for getting an appeal, that is out of our control because the appeal regime is run by the Judicial Greffe.

Deputy G.P. Southern:

If I may have a supplementary, the Minister for Social Security has just avoided the question.

The Deputy Bailiff:

The question was not about zero-hours contract, Deputy, and time is marching. You have had 11 minutes on your question and we have to get through the list.

7.6 Deputy M. Tadier of the Minister for Treasury and Resources regarding plans to improve access to Fort Regent:

Can I just ask as a point of order, seeing as the Minister for Treasury and Resources is not here and I have not been informed of his absence, how the question will be answered?

The Deputy Bailiff:

By the Assistant Minister for Treasury and Resources. You mean by whom it will be answered? I cannot say how it is going to be answered. As a point of order, it will be answered by the Assistant Minister for Treasury and Resources.

Deputy M. Tadier:

Thank you, I understand. Not wanting to be pedantic, but the questioner has the right to have the question answered by the Minister, him or herself, but again on this occasion I am happy for the Assistant Minister to ...

The Deputy Bailiff:

You must give notice of that if you wish the Minister to answer.

Deputy M. Tadier:

I have given Standing Notice, but anyway, let us get on to the question. It is a very short question. Will the Assistant Minister for Treasury and Resources say what plans, if any, he has to improve access to Fort Regent?

Deputy E.J. Noel (Assistant Minister for Treasury and Resources - rapporteur):

As the Assembly will know, this comes under my remit in any event so Senator Ozouf would have probably wanted me to answer it even if he was here. The Fort Regent Steering Group is working with the States of Jersey Development Company and representatives of the Association of Jersey Architects to develop proposals for the future of the fort.

[12:15]

At the Jersey Architecture Week at the end of June it was made clear that access to the Fort, along with funding and design, were the 3 key requirements to a successful regeneration. The steering group is fully supportive of this position and will ensure that good quality access to the Fort is

given a high priority in the development proposals. The next meeting of the steering group is next week on 3rd October, after which I will update States Members on the current state of the proposals and a timetable for the next steps. In the interim, Property Holdings and Education, Sport and Culture in conjunction with the back-to-work team at Social Security are progressing the replacement of handrails and repairs to the ramparts to improve access to the external spaces at the fort.

7.6.1 Deputy M. Tadier:

The question is we all seem to be united and the Scrutiny Panel in 2009 gave a recommendation that it was key that access was improved to the Fort, preferably from Snow Hill, and also that something be done about the old swimming pool site. I know from previous comments of the Minister for Treasury and Resources in 2011 that he is also supportive of that. Can I ask the Assistant Minister for Treasury and Resources where the urgency is here? We have known for over a decade and we have had various reports, independent and in-house, saying that something needs to be done about access to Fort Regent, and yet we have seen no action in the last 15 years. When will this be materialising?

Deputy E.J. Noel:

I cannot comment on colleagues that have gone before me in this matter over the past 15 years, but what I can give the assurance to Deputy Tadier and to other Members is that with the anniversary of the Fort, with its 40th year being next year in 2014, we intend to make significant progress in coming up with solutions for the way forward in 2014. Hopefully, we will have work in place on whatever that is in time for the Island Games in 2015.

7.6.2 Deputy T.M. Pitman:

When I successfully, I am pleased to say, moved that there be a proposition back in Scrutiny to make this an issue again, and indeed while I was on the original Steering Group, we had reached the stage where moves were being made to create access through Hill Street. Can the Assistant Minister for Treasury and Resources tell us if that is still in the pipeline because it did seem a very viable process to follow?

Deputy E.J. Noel:

Currently, the States of Jersey own part of the ramparts site to the north of the Fort. We are in the process of formulating a Ministerial Decision to transfer that land from Property Holdings to the Housing Department. We have had a feasibility study done where we can create some 50 to 60 additional social rented homes on that site. That will allow us at some point in the future to consider connecting that development to the fort itself. However, the final piece of the jigsaw is access from that site through into Hill Street and currently the States of Jersey does not own any of that land. It would require a willing seller of a suitable property and the States of Jersey as a willing buyer.

7.6.3 Senator L.J. Farnham:

I do not like to criticise Deputy Noel, who is doing a very good job at the helm of Property Holdings, but I am going to. Will he not agree that the neglect of Fort Regent and the failure to do anything has now become a major embarrassment for the Island? This question has been asked before and we have had the same answer before that is: "We are thinking about it." How much longer are we going to think about doing something with this tremendous asset we have? Can the Deputy please assure the Assembly that when he does a presentation to us we are going to get something exciting and worthwhile?

Deputy E.J. Noel:

I concur with the earlier remarks of Senator Farnham. I agree that this is something that is a particular problem of the States. It has been kicked down the road, so to speak; the tin can has been kicked down the road for far too long. I hope that after the proposals have been through the Regeneration Steering Group this Friday and the Steering Group meeting on 3rd October I will be able to delight the Senator with what we are anticipating is an exciting opportunity to regenerate one of our iconic buildings and an iconic facility for all Islanders.

7.6.4 Deputy M.R. Higgins:

Can the Assistant Minister for Treasury and Resources tell Members whether he is currently negotiating with Aquasplash to vary the contract to enable a swimming pool to be back at Fort Regent?

Deputy E.J. Noel:

We have looked at the contractual obligations and the Education, Sport and Culture Department has negotiated a break-clause with Serco, the operator of the pool. Whether or not this forms part of our deliberations for Fort Regent in the future, Members, I am afraid, will have to wait until the latter part of October.

7.6.5 Deputy M.R. Higgins:

Can the Assistant Minister for Treasury and Resources tell us what the cost of the breaking-clause is going to be?

Deputy E.J. Noel:

I do not have that detail and if and when it comes to fruition that we may wish to exercise such a break I will obviously inform the House of any financial cost at that time, if there is any.

7.6.6 Deputy J.H. Young:

The break-clause that the Assistant Minister for Treasury and Resources has just referred to, can he confirm that also includes the ongoing commitment to revenue subsidy that the States has to provide under that agreement?

Deputy E.J. Noel:

I do not have the details of that to hand. It is a break-clause that has been negotiated by the Education, Sport and Culture Department and not by Property Holdings. I will endeavour to find that information and if I can pass it on to the Deputy I will.

7.6.7 Deputy M. Tadier:

The Assistant Minister for Treasury and Resources spoke about the difficulty of certain areas which may not be owned by the States of Jersey. Can he confirm that the ownership of the Snow Hill rock face, which was identified in earlier plans as the ideal site for glass elevator-type access from Snow Hill, is within the ownership of the States of Jersey and so ownership is not an issue? It is rather the political will and the financing to make that decision?

Deputy E.J. Noel:

I can confirm that that rock face is in States ownership. However, that particular access is an access-area to nowhere currently with the current configuration of the facilities within Fort Regent. Having an access-point at that juncture takes you further away from a lot of the facilities than possible other alternatives.

7.7 Deputy T.M. Pitman of the Chief Minister regarding the full and complete costs arising from the secret court proceedings against former Senator Stuart Syvret:

Further to his answer of 10th September 2013 and his subsequent media release, will the Chief Minister clarify for the Assembly the full and complete costs arising from the secret court proceedings against the former Senator Stuart Syvret? Will he clarify what percentage of the costs, if any, were paid for by the 4 individuals themselves?

Senator I.J. Gorst (The Chief Minister):

As explained at the last States sitting, the costs of bringing the case incurred by the Data Protection Office amounted to just over £387,000 for a 6-year period from 2008 to September 2013. The additional costs to the Data Protection Commissioner's Office were met by court and case costs. The 4 individuals did not fund the court costs. The only additional costs to the Court Service were £14,010 to the Bailiff's Chamber. There were no additional costs incurred by the Judicial Greffe.

7.7.1 Deputy T.M. Pitman:

I must ask, is the Chief Minister happy to stand by that figure? Because I think I can come back to the Assembly with a rather different one very soon.

Senator I.J. Gorst:

I have no reason to doubt the figures which I have quoted. They have been provided to me respectively by the Court Service. As I said, they are additional costs. They do not include the sunk-costs of the normal running of the Court Service.

7.7.2 Deputy T.M. Pitman:

That is quite clear that it should be highlighted in the costs in their entirety and really the answer is not good enough. Could the Chief Minister not go away and come back with a proper answer?

Senator I.J. Gorst:

It is a proper answer. The budget for the Court Service is approved as part of what is now the M.T.F.P. (Medium-Term Financial Plan) process and is in the public domain. The Court Service runs within those budgets, albeit, of course, there are court and case costs, and I have discussed what funds came out of court and case costs for this particular case.

7.7.3 Deputy M.R. Higgins:

Personally, I do not think it is good enough, the answer that the Chief Minister has given. This case was held in secret. There have been all sorts of fudges, non-answers given by Assistant Ministers and all-sorts about what has gone on here. How many other cases have taken place? We know that there have been other breaches of the Data Protection Law. Can the Chief Minister give us an assurance that there have been no other cases funded in this way or done secretly in the past?

Senator I.J. Gorst:

Of course, hopefully one would not expect me to be aware of all the cases going before the courts. That is not within my remit and, therefore, I have had no reason to ask that question and be aware of any other such case. I have been asked in this instance. I have taken the exceptional step of releasing the costs incurred by the Data Protection Commissioner's Office because of public interest, and I do not think I need to go any further.

7.7.4 Deputy M.R. Higgins:

You say in the public interest, but was it not the Data Protection Commissioner who invited these people to come to her department and to discuss with lawyers about bringing a case in this particular instance? Why was the Data Protection Commissioner inviting people to come in and

form an action and then the public pick up the bill for it when other people, where there has been data protection breaches, have not been given any financial assistance whatsoever?

Senator I.J. Gorst:

It is my understanding that the judgment made it perfectly clear that the Data Protection Commissioner acted within her remit and in accordance with the law and Members of this Assembly should be satisfied with that. It appears to me that some Members are not satisfied with the law. If Members wish to see changes to any piece of legislation, that is perfectly within the remit of a Legislative Assembly, which we are.

7.7.5 Deputy G.P. Southern:

How much money was taken from the court and case costs funds to pay for this case?

Senator I.J. Gorst:

I have answered that on a previous occasion and I have just answered it again this morning.

The Deputy Bailiff:

I understood the Chief Minister to say what he said earlier, that he had answered the question earlier this morning.

7.7.6 Deputy M. Tadier:

The Chief Minister has asked whether Members are happy and they can bring their own amendment, but is the Chief Minister happy that a precedent now seems to have been set that in the past, a case which seems to be a libel case of defamation, has used data protection instead? Because the test, of course, is that some content on a website is found to be harassing. Should the test not be whether it is factual or not? Because something can be harassing and it can also be true. Is the Minister concerned that, again, public money is being used and we have created a precedent here that anybody on any site who does not like what is being written about them can now have their court cases funded and their names removed by the taxpayer?

Senator I.J. Gorst:

I would have thought the Members of this Assembly were fully acquainted with the Data Protection Law because they have licences as individuals to handle data. The way that we handle data is very important in the way that other individuals, reporters and media, *et cetera*, who handle data should abide by the Data Protection legislation. If they are not doing so, then they should expect to suffer the consequences of not complying with that piece of legislation. The court, as I understand it, made it quite clear in its findings that damage had been caused to those individuals in the way that the data had been handled.

7.7.7 Deputy M. Tadier:

Is not the only issue here that nobody had heard about this Data Protection Law being used in what would otherwise be a libel case, apart from the first time it is used that we know about when it is used against a very high profile figure who is an enemy of the establishment? That is how it is perceived. Will the Minister speak on that issue and talk about whether that recourse will be available to anybody else who wants to take action about defamation?

Senator I.J. Gorst:

It was a data protection case and it was connected with data handling, and that is very different from libel.

The Deputy Bailiff:

Can I remind Members that this is a question about the costs which have been incurred?

7.7.8 Deputy M.R. Higgins:

It is still about costs, but it is also about principle. We have in this House at the present time a Member who broke the Data Protection Law and was not prosecuted. Why is it that there is one rule for one person and not for another? I cannot see how the Data Protection Commissioner did not bring a prosecution in that case when it was a cut and dried breach of Data Protection Law.

The Deputy Bailiff:

Well, that is not a question.

Deputy M.R. Higgins:

Does the Chief Minister agree there should be a consistent standard across the board?

Senator I.J. Gorst:

Let me say I have no reason to doubt whatsoever that the Data Protection Commissioner nor our Prosecution Service act in any way other than consistent and in line with what we would expect around making appropriate prosecution decisions.

[12:30]

7.7.9 Deputy T.M. Pitman:

I have a nice big file here for next time about yet another data protection breach not prosecuted. Given the Chief Minister's answer and his press release, I believe he expressed his contentment with the way the process has been unfolded against former Senator Syvret. Could he tell us is he also content that other individuals are denied by the Data Protection Commissioner's Office to bring the same sanctions, processes, against one of the individuals involved in the case? Indeed, a gentleman who has numerous complaints against the police and was found guilty of making death threats to the family Stuart Syvret lived with. Where is the consistency in that? Is the Minister content and can he please give us a proper answer instead of saying that he is quite happy to accept anything the Data Protection Commissioner says?

Senator I.J. Gorst:

It is not me saying that, it is the court that has said that. I stand by the court's decision in this regard and I believe that this Assembly should too. We will shortly be coming today on to a proposition, very appropriately on the back of a proposition from Senator Farnham, to make sure that judicial policy and budgets have appropriate executive oversight. Part of that proposition rightly should mean that Members of this Assembly do not involve themselves in individual cases and get involved in operational matters. The court quite clearly said that the Data Protection Commissioner had acted appropriately and within the bounds of the law that she administers. The Members of this Assembly should be satisfied with that, not try and second-guess every single decision made by either the Data Protection Commissioner or the Prosecution Service.

7.7.10 Deputy T.M. Pitman:

A final supplementary because the Minister has not really answered my question. I can say for a fact that this is what happened because I am that individual who requested support against an individual who runs hate sites. Indeed, he was one of those behind the hate site that the email stolen by Deputy Power from the Deputy of Grouville ended up on, a pro-child abuse cover-up website. Where is the consistency? Why is the Chief Minister content, as it is his responsibility so he tells us?

Senator I.J. Gorst:

I am not sure that it is appropriate for individual Members to be referring to their own individual cases and trying to use this Assembly to get a hearing about decisions that have been made by appropriate authorities.

The Deputy Bailiff:

Very well, we come ...

Deputy T.M. Pitman:

A principle.

The Deputy Bailiff:

I understood you to be talking about your own case, Deputy.

7.8 Deputy J.H. Young of the Minister for Education, Sport and Culture regarding sites under consideration for the new Les Quennevais School:

Will the Minister for Education, Sport and Culture disclose the sites that are being considered for the new Les Quennevais School and set out the proposed timetable for the project, including its consideration by the planning system as required by the Island Plan?

The Deputy of St. John (The Minister for Education, Sport and Culture):

I think, firstly, I would like to thank the Deputy and other Deputies for their interest in a new Les Quennevais School. We are all working towards the best possible solution for our secondary students in the west of the Island. Unfortunately, I am not in a position at this time to name any of the sites under consideration. Discussions need to take place with all interested parties and I am sure that the Deputy understands that this would neither be appropriate or in the public interest. I can assure Members that work to progress the project, however, is taking place behind the scenes intensively. This includes discussions with the Planning Department and I can confirm that we will be making a representation as part of the current Island Plan consultation so that it takes account of the requirement for a major new school in the west of the Island. My understanding is that the Island Plan process will culminate in a States of Jersey debate next March. As far as the timetable is concerned, currently the funding is not available in the current Medium-Term Financial or Capital Plan, but £7.5 million is currently earmarked for 2016. The next M.T.F.P. will require States approval and the rest of the money will also have to be found and approved by the States Assembly at that time. Assuming that the necessary funding is made available by the States, then we are aiming to commence building a new school in 2016.

7.8.1 Deputy J.H. Young:

The Minister for Education, Sport and Culture referred to behind-the-scenes discussion with the Planning Department and informed us in his answer that he is going to be making representations to the Island Plan consultation, which I am sure the Minister knows closes tomorrow. Can he tell us how right and transparent he thinks it is that he is able to make those representations to the Island Plan process, and yet members of the public, who are being invited to do the same thing by the Minister, for all issues on use of sites in St. Brelade are denied the opportunity to know what is being said about the choice of those sites in that area? Is that a right and proper process, the way that goes? Is it not time that the behind-the-scenes things become open and transparent?

The Deputy of St. John:

I think that the Deputy is under a little misconception here. We are not at this stage having consultation with the Planning Department about individual sites. We are simply making a representation as part of the current consultation on the Island Plan so that the Planning Department

takes account of the requirement for a major new school in the west of the Island. The detail will follow later and it will only follow when the department is in a position to settle on their preferred option. We cannot rush this process. I do understand the frustration, particularly of Deputies in the west of the Island, but this is a really important issue. I must just once again ask the Deputy and other representatives in the west of the Island, as I did 2 weeks ago, to remain patient. However, I would add one thing and that is this. My department does not have a monopoly on good ideas. I will shortly be asking all of those people in the west of the Island, representatives and others, to come to a meeting in case there are things that we have missed and there are other better ideas. I will just repeat myself. As far as the planning process is concerned, it is extremely generic at this point. It has to be. We are just lodging the fact with the Island Plan consultation that there is going to be the requirement for a major new secondary school somewhere in the west of the Island. That is sufficient at the moment. That will reserve our position with the Planning Department. I hope that is clear.

7.8.2 Deputy J.A. Hilton:

In the Minister's previous answer, he said that £7.5 million had been set aside for 2016 but there is no other funding available at the moment. I think it is totally unacceptable that a school like Les Quennevais, which is built for 400 pupils, is currently at 800 pupils attending it. The Education, Sport and Culture Department must have known this for a very, very long time. What pressure is the Minister bringing his Ministerial colleagues under to deliver this project in the next year or 2?

The Deputy of St. John:

I completely agree with the Deputy and that is all I can say. When the Education, Sport and Culture Department, with myself at the helm, first became aware of all of the issues at Les Quennevais School, I immediately said that this was just not acceptable that we were looking to refurbish the school on its existing site. I have already explained 2 weeks ago that my view is that that is unacceptable and that we need a new Les Quennevais School on a new site. That does take time to process and to follow the necessary processes required for that. I am putting a lot of pressure on my States colleagues and within the Council of Ministers and, I have to say, with some success. I am quite hopeful and confident that we will be in a position within the terms of the next Medium-Term Financial Plan to provide a new Les Quennevais School. I cannot say more than that because it will need to come back to the States and I will need, or whoever the new Minister for Education, Sport and Culture is in the next term, the support of the States Assembly as a whole in order to allocate the necessary funds.

7.8.3 Deputy J.A. Hilton:

I am slightly surprised at that answer because the Deputy has been Minister for Education, Sport and Culture for 2 years now and we do not appear to have moved on at all in 2 years. What I would like to hear from the Council of Ministers and from the Minister for Education, Sport and Culture is that when the capital programme comes forward in the next month or 2 that money is set aside for next year so that this school can be delivered in a timely fashion.

The Deputy of St. John:

The planning processes, the various things that there are, feasibility studies that we have been carrying out over the last year - I understand the frustration - but I would like to remind the Deputy that we would still be in a position where we were moving ahead with a refurbishment, with £7.5 million in the longer-term capital plan allocated for 2016. I have to say I find it a little bit surprising that the Deputy is accusing the department of not moving fast enough. In fact, this department is moving extremely fast.

Deputy J.A. Hilton:

Excuse me, I am not accusing the department of moving fast enough, I am accusing the Minister for Education, Sport and Culture and his fellow Ministers on the Council of Ministers.

The Deputy of St. John:

I have to say that that is totally unfair and I completely reject that.

7.8.4 The Connétable of St. Brelade:

I am pleased that the Minister for Education, Sport and Culture thinks that a new school is important. It is. What I have to say as well, though, is that whatever happens in St. Brelade in terms of either refurbishing or moving the school, and certainly if it is moving the school, it is going to have a major impact on St. Brelade. In his earlier reply, although he thanked the Deputies, he again made no reference to the Parish or the Constable in regards to his reply. When will the Minister for Education, Sport and Culture begin engagement with some key stakeholders, including the Parish, in regards to ensuring that a new school at Les Quennevais provides the facilities that will allow the excellence that the current Head spoke about at her open evening last week, again which no member of the Education, Sport and Culture Department attended?

The Deputy of St. John:

I think the question, other than the statements there, again is unfair from the Constable. He knows that I will involve the Parish Deputies and himself included and the Parish absolutely as soon as I can and it is not and would not be detrimental to the public interest to set hares running speculatively on where the sites may be. It is simply not in the public interest for me to do anything else, and I am sure the Constable understands that. I would just say to him once again I understand the frustration and I am equally frustrated, but I am not and my department is not the only department involved here. There is also Property Holdings that are probably more involved at this stage with assessing the feasibility of the various sites than the Education, Sport and Culture Department is. There is a joint approach between Property Holdings and the Education, Sport and Culture Department. We are absolutely moving. I cannot do more. I have brought things to the Council of Ministers. I have been very, very strident in making the case for a new Les Quennevais School. I would ask all of the political members of St. Brelade to accept that that is the case. I will bring it to them for much more detailed discussion absolutely as soon as I can, but without prejudicing the interests, particularly the financial interests, of the general public.

The Connétable of St. Brelade:

Frustrated is not the word I would use. It is disappointed. I am just merely disappointed that apparently the Constable of the Parish that all this work potentially could go on with is not trusted to be in-the-loop when some of these decisions are made. That is merely the point I am making.

The Deputy Bailiff:

This is question time. I understand the statements being made but it is question time. Deputy Tadier.

7.8.5 Deputy M. Tadier:

Whether it is frustration or otherwise, the representatives, I think all of us and certainly those in the area, want to help the Minister. We need to know what we can do to help him. Would he acknowledge that bringing forward the build date from a proposed 2016, notwithstanding the fact we know delays do happen - let us look at the Lesquende site - would be killing 2 birds with one stone? We know we have a school which needs to be rebuilt. It is too small and they do very good work under difficult circumstances. We have a construction industry locally which needs some input. Would the best way not be to allocate funding as soon as possible for the new build to get

some spades in the ground but also to bring it forward because it is a win/win for all involved? Does the Minister agree and what can we be doing to help him?

[12:45]

The Deputy of St. John:

If it were at all possible to bring it forward from 2016 then I feel sure that that would be a good thing to do. My advice is that the design process, the various other processes that there are, the tendering process for such a major public expenditure, all of these things do take a certain amount of time. I cannot really make any comment on that, but my advice is that the earliest possible date that we could start, realistically, would be in 2016. Even then there are various things like the Assembly having to agree that the funds should be allocated; the Treasury and Resources Department needs to consider that, as does the Council of Ministers. There is quite a lot of way to go yet to start putting a spade in the ground and I am told it is 2016.

The Deputy Bailiff:

Minister, can I please ask you to keep your answers as crisp as possible and can the Members making questions put the questions as quickly as possible? I am going to allow 2 more questions ...

The Deputy of St. John:

Well, Sir, I agree with you and if the questions were simple I would give simple answers. But people seem to be asking the same questions over and over again.

7.8.6 Deputy S.G. Luce of St. Martin:

The Minister for Planning and Environment has been quite clear with Members that only certain specific subjects will be considered during the Island Plan review. Has the Minister for Education, Sport and Culture had an assurance from the Planning Department that he will be able to discuss the issue of the relocation of Les Quennevais School during this review?

The Deputy of St. John:

We have had some informal discussion with the Planning Department around this area and I can, I think, confirm that that would be the case, yes.

7.8.7 The Connétable of St. Mary:

Just very briefly, there is much talk of location, rebuild, whatever, but my concern is simply for the education of the children who are part of my constituency. I would just like the Minister for Education, Sport and Culture to take on board that it is not simply the locality of Les Quennevais which is important; there are representatives who are very, very interested in this across the west of the Island. Will he involve us all?

The Deputy of St. John:

Absolutely, yes.

7.8.8 Deputy J.H. Young:

In the previous session we found out that the site was going to be in the west and then we found out it was in St. Brelade, but disappointingly the Minister for Education, Sport and Culture has not taken this forward. Would the Minister for Education, Sport and Culture not accept that the planning process that he is following, this behind-the-scenes process, is far more convoluted than it needs to be? Would he not accept that in reality this means that he is going to be putting the project off until well into the next States, 2015 and 2016? Because I cannot see how he can put forward a generic position without sites into the Island Plan review and why he is able to follow this secret

process where everybody is told we can only comment on the proposals on the table. If there are no proposals on the table, how can the Island Plan Review deal with it? Will he ...

The Deputy Bailiff:

Can you do it before 2016, Minister?

The Deputy of St. John:

If it is at all possible, yes, but I do not believe that it will be.

LUNCHEON ADJOURNMENT PROPOSED

The Deputy Bailiff:

Thank you. I give notice to Members that Cold Weather Bonus: Variation of Conditions, P.115/2013, has been lodged by Deputy Southern. The States will now stand adjourned until 2.15 p.m.

[12:48]

LUNCHEON ADJOURNMENT

[14:16]

The Deputy Bailiff:

Very well, we resume Oral Questions.

7.9 Deputy R.G. Le Hérissier of the Chairman of the Public Accounts Committee regarding a study of the fibre optic project undertaken by JT:

Does the Public Accounts Committee intend to undertake a study of the fibre-optic project undertaken by J.T. and, if so, when will this commence?

Deputy T.A. Vallois of St. Saviour (Chairman, Public Accounts Committee):

The Public Accounts Committee has been maintaining a watching brief on Gigabit Jersey throughout 2013. This subject was last discussed on 8th July. Preliminary requests for background information have been submitted to the Treasury and Resources Department and the Public Accounts Committee expects to receive a response imminently. The Public Accounts Committee has secured initial briefings from both J.T. and the Treasury and Resources Department on this project. The questioner will be aware that the Public Accounts Committee are currently conducting 2 reviews which are live, monitoring progress with the previous review, and are set to reveal terms of reference for the integrated care record system implemented by the Health and Social Services Department. We are also aware that we have to leave capacity to consider reports produced by the new Comptroller and Auditor General, whose own work programme is now well and truly under way. Governance of Jersey Telecom is already cited in the C. and A.G.'s (Comptroller and Auditor General's) published audit plan as a topic for review in the period 2013 to 2014.

7.9.1 Deputy R.G. Le Hérissier:

I am much indebted to the chairman for that comment and I know if it emanates from her mouth something will happen quickly. Could the chairman confirm that they have received the business plan as part of their preparatory work, the business plan that accompanies the fibre-optic project, and that that will be of assistance in enabling them to make a decision?

Deputy T.A. Vallois:

I can confirm that we have not received the business case as yet. However, we have received the Oxera report based on the business case.

7.9.2 Deputy J.M. Maçon:

Within this, the chairman said that there was a watching brief over this project. Can the chairman confirm whether or not - as has been made to me, comments or allegations - J.T. has not been removing the copper fibre as it has been going and the people who are installing the fibre-optics have not been removing the copper and recycling it in order to make the most of the assets? Has that been made or brought to her attention?

Deputy T.A. Vallois:

P.A.C. (Public Accounts Committee) has been made aware by many stakeholders with a range of reviews on the execution of the Gigabit Jersey project. However, as P.A.C. have not fulfilled the terms of reference for this review as yet, I am unable to confirm with Deputy Maçon as to whether it is an area we will be looking into explicitly.

7.9.3 Deputy R.G. Le Hérissier:

Would the chairman not say that it was highly unusual that a project of such magnitude appears to have started without a business plan having been put in place? Would she not say that that rung enormous alarm bells with the P.A.C.?

Deputy T.A. Vallois:

I am unable to confirm whether there is or is not a business case in place. As I have stated, P.A.C. have requested a business case and we are waiting for the Treasury and Resources Department or Jersey Telecom to come forward with the necessary information.

7.10 Deputy G.P. Southern of the Minister for Social Security regarding the numbers of under and overpayments of Income Support:

Will the Minister update Members on the figures he gave on 26th June 2012 on the numbers of under and overpayments of income support, which at the time he stated were expected to increase as a result of the continuing economic downturn?

Senator F. du H. Le Gresley (The Minister for Social Security):

Income support benefit is paid in advance and this means that adjustments to compensate for over and underpayments of benefit will arise during the course of a claim. Any change of circumstance that occurs after a benefit payment has been made and during the period paid for which affects the value of the claim rate will result in the need for a payment adjustment to balance the over or underpayment. The most common reason for an adjustment is a change in employment. In many cases, there is a short delay before the claimant provides all the details to the department. When this change is processed an adjustment is made to future benefit entitlement to take account of the underpayment or overpayment of benefit during the time. As anticipated in my written answer last year, I can confirm that the number of income support adjustments increased in 2012. There has been an increase in the total number of income support claims, but the increase in the number of changes is also driven by an unstable employment market in which income support claimants are taking up temporary jobs whenever they become available.

7.10.1 Deputy G.P. Southern:

I thank the Minister for Social Security for his answer. A supplementary: can he clarify for me in terms of overpayments, when the Social Security Department reclaims those overpayments is it the case that the rate that you collect any payment is at £3 per day, a maximum of £21 a week, or is it

the case, as he stated this year, the minimum amount that we will collect is £3 a day or £21 a week; however, the maximum amount is £6.50 a day? Is the collection of £3 a day or £21 a week a maximum or a minimum?

Senator F. du H. Le Gresley:

Minimum.

7.10.2 Deputy G.P. Southern:

A minimum, okay. Will the Minister for Social Security further confirm or deny a statement made by one of his predecessors back in 2008 that if an overpayment is to be recovered weekly repayments over an extended timeframe will be agreed with the claimant? Is it not the case that there is no agreement from the claimant; all he does is receive a letter saying: "Overpayment, £21 per week"?

Senator F. du H. Le Gresley:

There will be circumstances where a claimant would find it difficult to cope with a £21 a week reduction. In those situations, the claimant has the right to request reconsideration. In some cases those have come to me personally for me to use Ministerial discretion to reduce the amount of payment, but I use that very sparingly.

7.10.3 Deputy G.P. Southern:

I believe I have asked this question of the Minister for Social Security before, but will he confirm that as far as he is concerned the withdrawal of £21 a week from somebody's income support, which is the minimum that they need in the circumstances, does not cause hardship in most cases?

Senator F. du H. Le Gresley:

Every case is different.

7.11 Deputy G.C.L. Baudains of the Minister for Transport and Technical Services regarding why traffic was not redirected around the north and east of Mount Bingham in order to alleviate traffic congestion caused by the recent rock-fall:

Would the Minister explain why his department is not redirecting traffic around the north and east of Mount Bingham in order to alleviate traffic congestion caused by the recent rock-fall?

Deputy K.C. Lewis (The Minister for Transport and Technical Services):

On the weekend of 14th and 15th September the Parish of St. Helier were carrying out work on Mount Bingham rock face when they discovered that areas of the rock-face were in danger of collapsing on to the road below. In conjunction with the Transport and Technical Services Department, the road was immediately closed. Diversion signage has been in place for these works to be carried out. The Parish of St. Helier commissioned a geotechnical engineer, who came to the site on Tuesday, 17th September, and inspected the rock-face and confirmed that the road must remain closed until emergency works had been carried out. At this point, the Parish's contractor put out improved signage to assist in diverting traffic away from the area. The Parish consultant has advised that the emergency works will take 4 weeks to complete, during which time the road will need to remain closed at all times. However, after the 4 weeks, once the initial emergency works have been completed, one lane will be able to be opened and the remaining stabilisation works will be completed with one lane closure. Now the full extent of the road-closure is known, the Parish's contractor is providing further advance-warning signage. To answer the Deputy's first part of the question, the Jersey Electricity Company were working on the Normandie 3 cable at the top of South Hill.

7.11.1 Deputy G.C.L. Baudains:

I am not quite sure why the Minister for Transport and Technical Services spent 3 minutes not answering the question and did not really cover it in the last sentence. My understanding is that the rerouting around by the gym and down the eastern face of Mount Bingham is not possible at the present time because the J.E.C. (Jersey Electricity Company) are laying a cable. Could the Minister for Transport and Technical Services advise how long that section of the road will be closed? Because it would certainly alleviate traffic if it could go down behind Mount Bingham while that rock-face is being stabilised. Does he know how long the J.E.C. will be doing that trench-work and is it not possible that one lane could be open?

Deputy K.C. Lewis:

No. The work around the top of the South Hill there and down the side of Mount Bingham is estimated to take 4 weeks.

7.11.2 Deputy G.C.L. Baudains:

After a conversation with the Minister's department, it had been suggested the possibility of allowing traffic to use the emergency road that was created for the emergency services through La Collette. Could the Minister state why that option has not been taken up?

Deputy K.C. Lewis:

Yes, the road, if you look the other way, comes from Green Street along what is the Esplanade, then turns left and goes out along the peninsula to the rear of the Energy from Waste plant and the fuel farm, which would be totally unsuitable for major traffic.

7.11.3 The Connétable of St. John:

That very road that the Minister for Transport and Technical Services is referring to, when I emailed him a week or so ago recommending the use of that, he did not say that it was totally unsuitable for traffic. Would it be suitable, as it is a road, for alleviating some of the pressure by putting it one-way at peak periods of the day, morning and evening, to try and alleviate some of the problems we are having? Would that not be possible if he worked with the Parish of St. Helier?

Deputy K.C. Lewis:

We are working with the Parish of St. Helier to alleviate all problems. There were 2 questions. One was for use of the cycle track, which would not be appropriate, and the other one was the use of the emergency relief road, but which also would not be suitable because it comes out to the rear of the fuel farm.

7.11.4 Connétable A.S. Crowcroft of St. Helier:

Would the Minister for Transport and Technical Services agree with me that the relevant authorities have moved with impressive speed to alleviate these problems given that a geotechnical design has been finalised, planning approval to proceed with emergency work has been granted, and a contractor has been mobilised and commenced the contract, and that this is almost unprecedented to have such a major piece of engineering works undertaken so quickly? Would he agree to pass on my thanks to his officers?

Deputy K.C. Lewis:

Yes, and I thank the Constable of St. Helier for his kind words. Yes, this is unprecedented. It has been all shoulders-to-the-wheel to get this sorted and all departments have worked very well together. I think we are missing something in the sense that there is I think 3,000 tonnes of rock have come down so far. This is a good news story in the sense that no one was killed and no one was injured. It is a major inconvenience, though, which we are trying to alleviate.

[14:30]

7.11.5 Deputy G.C.L. Baudains:

With that amount of rock, no doubt the Minister for Transport and Technical Services will be able to use it for his new reclamation site. The media was telling us at one stage that the road could very well be closed until Christmas. I presume and hope that is not the case. Could the Minister for Transport and Technical Services advise us of the most likely date when it will be possible to allow traffic, albeit perhaps on one lane?

Deputy K.C. Lewis:

Yes, certainly. My officers are working very closely with other agencies. We are working with the Parish of St. Helier to get Mount Bingham sorted and we are also working closely with the J.E.C. to put on extra gangs, especially down the other side of Mount Bingham, to be in and out as soon as possible. But we will, all being well, we are pushing very hard to get at least one lane open within 4 weeks.

7.12 Deputy T.M. Pitman of the Attorney General regarding compliance with Article 6 of the European Convention on Human Rights:

Following his answer of 10th September in which he stated that the single instance of the Superior Number failing to exercise its jurisdiction to act on inappropriate standards of honesty, integrity and/or behaviour of a Jurat would not cause the U.K. authorities to intervene, would the Attorney General clarify whether this effective lack of challenge to higher authority is compliant with Article 6 of the European Convention on Human Rights?

Mr. T.J. Le Cocq Q.C., H.M. Attorney General:

Article 6 of the European Convention of Human Rights guarantees certain minimum rights to an individual in the determination of that individual's civil rights or criminal charges against him. Those rights are designed to ensure a fair trial. A litigant who believes that he did not receive a fair trial has a right to appeal to the Court of Appeal or in some cases to the Judicial Committee of the Privy Council. Both are of course Article 6 compliant courts. The jurisdiction of the Superior Number to petition Her Majesty in Council is not part of a determination of the rights of any litigant before a court in which the Jurat has sat. But accordingly the question of compliance with Article 6 does not arise. As to actions or otherwise of the U.K. authorities, that is not a matter for which the Attorney General has any responsibility.

7.12.1 Deputy T.M. Pitman:

I thank the Attorney General for that. Lord McNally, former Minister for Justice, says he cannot intervene in such circumstances. Now the Attorney General has just said that you have a right of appeal through the appeal system in Jersey, but I am afraid he has been misled because I have it in black and white from a single judge of the Appeal Court that it is no business of the Appeal Court to deal with the Jurat in this case who we all know, it is in here, helped conceal child abuse. Could I have an authoritative, definitive answer please?

The Attorney General:

I find it difficult to give an authoritative and definitive answer when I have not understood the question, I am afraid.

7.12.2 Deputy T.M. Pitman:

If I can help the Attorney General, it is not very difficult. Under human rights any mechanisms which will have to be genuine and real, I think the Attorney General would agree with that, the

Minister has quite clearly said he cannot deal with Jersey because it is an independent jurisdiction; an Appeal Court judge acting in Jersey says it is no business of his. So that quite contradicts what the Attorney General has told me. So all I am asking for is, who can one appeal to, or is it just like most things in Jersey, it is just a Mickey Mouse system made up as we go in my opinion and many others?

The Attorney General:

The question that I was asked is about Article 6 and its applicability specifically to certain provisions of the Royal Court (Jersey) Law. I have answered that question and I do not think I can assist the Deputy any further. I decline I think to speculate on a specific case.

7.12.3 Senator P.M. Bailhache:

Would the Attorney General agree that the conduct of the Jurat in question in Deputy Pitman's case was exhaustively examined before the Court of Appeal and that the judge declared that he could not see how any reasonable and fair-minded observer in possession of all the facts could conclude that there was any possibility of bias on the part of the Jurat?

Deputy S. Pitman:

I have to stand up and point out that ... I am sorry, but I believe that Senator Bailhache is in conflict here. He used to work with *[Name omitted from the transcript in accordance with Standing Order 109(7)]* at Victoria College.

The Deputy Bailiff:

The Senator is quoting from the Court of Appeal judgment and asking the Attorney General to comment.

Deputy S. Pitman:

I am sorry but he was a colleague and I think it is a conflict of interest and you should not be presiding over your brother when questions are being asked over him and over the Judiciary this morning. I am sorry, I am not the only Member in this House that has objections to it, but you seem to think that it is okay.

The Deputy Bailiff:

If I thought it was not appropriate for me to be presiding I would not be presiding.

Deputy S. Pitman:

I am afraid it is not. You should recuse yourself, Sir.

The Deputy Bailiff:

Well, I am not going to.

Deputy S. Pitman:

You should, and I am afraid you are answerable to the members of the public, and members of the public will perceive that you have a conflict when it comes to presiding over your brother and the Judiciary.

The Deputy Bailiff:

Deputy, the position is that the Senator is a Member of this Assembly and just as you and as Deputy Trevor Pitman have the right to ask questions of the Attorney General, so has he the right to ask questions. Would you kindly sit down.

Deputy S. Pitman:

I believe it is wrong. He is a former colleague of this former Jurat and he should not be asking questions, and you should recuse yourself from presiding over when he is being asked a question ...

The Connétable of St. John:

Sir, can we move on please?

Deputy S. Pitman:

... of the Judiciary.

The Deputy Bailiff:

Would you kindly sit down? You have expressed your point of view. In the circumstances, Senator, would you please repeat your question?

Senator P.M. Bailhache:

I asked the Attorney General whether he would agree whether the conduct of and the complaint against the Jurat in question in Deputy Pitman's case was not exhaustively examined before the Court of Appeal, and whether he would agree that the judge in that case expressed the view that he could not see how any reasonable and fair-minded observer in possession of all the facts could conclude that there was any possibility of bias on the part of the Jurat.

The Attorney General:

I can confirm that that behaviour was examined fully as the Senator suggests and that the court made the observations that the Senator has just set out.

7.12.4 Deputy T.M. Pitman:

Now we return to reality, if I could just say that it was not looked at in full. The judge did not add the full details. Indeed, he did not even know that the Sharp Report did not come out until after *[Name omitted from the transcript in accordance with Standing Order 109(7)]* was appointed. But just so that Members can know and the Attorney General can respond, what the actual Jurat did was refuse to look at video evidence against the man who took little boys off on boats, got them drunk, masturbated them, performed oral sex on them, and then he refused to look at evidence. Then he wrote that as long as the police did not press charges it could be seen as an unsubstantiated allegation.

Senator P.M. Bailhache:

On a point of order: is it appropriate firstly for the Member to name the individual in question? I ask that that name be struck from the Hansard report of these proceedings. Is it appropriate that this unrelated conduct should be referred to in this way under the privilege of this House?

Deputy T.M. Pitman:

May I continue?

The Deputy Bailiff:

No, one moment please. A point of order has been referred to me and I shall address it. Senator, my ruling on the point of order which is raised is that the question which Deputy Trevor Pitman wishes to put falls within the corners of the question which is set out at paragraph 12 on the agenda and therefore that is in order. However I think it is unnecessary that the name of the Jurat be published and accordingly I am going to rule that it should not appear on the Hansard record. Would you like to put the question again and leave out the name of the Jurat?

Deputy T.M. Pitman:

Absolutely. The name of the Jurat will be in the report that I will finally lodge next week so people can see the proof. But I must say the Senator said that people were in full possession of the facts. The Senator was in full possession of the facts because he was the Bailiff who allowed this individual to sit as a Jurat for the first of the 14 years. How could anyone, I am asking the Attorney General, seriously say that that has been exhaustively examined, and despair when we have a man who refused to do what the Jurats' only job is, to look at evidence, decide on fact. He refused to look at selective evidence and then he made a decision about a paedophile who was probably not a paedophile. How is that fair and how can one appeal against that?

The Attorney General:

I confess that it is absolutely impossible for me to speculate and to answer a question about what was in the mind of a judge or a former Bailiff. It is simply something that I cannot possibly know. Therefore I cannot possibly make any judgment call upon it or certainly give legal advice in respect to it. In terms of matters of appeal, if anyone is aggrieved by the fact that they do not think they have had a fair trial, as I have already said in my answer, there are well-travelled avenues of appeal as far as the judicial committee of the Privy Council and in some cases to the European Court of Human Rights in Strasbourg which are available to all litigants who do not believe they have had a fair trial through the courts.

7.12.5 Deputy T.M. Pitman:

Can I just seek clarification from the Attorney General, and I am not attacking the Attorney General on this; I respect him. But anyone should surely be able to achieve justice in Jersey. It should not be a case that one has to go to the Privy Council or all the way to Strasbourg which takes years. I have it in black and white that the Appeal Judge says it is no business of the Appeal Court to look at this problem. So who can one appeal to? If it is nobody, just to say nobody. I am happy with that answer. I am not trying to catch the Attorney General out.

The Attorney General:

The business of the Appeal Court is to determine whether there is a valid ground of appeal in connection with any particular case. It is absolutely right that it is not the business of the Appeal Court to discipline members of the judiciary or to make any observations about members of the judiciary. But that has nothing to do with the determination or the rights of the individual litigant. Those rights are vindicated by the appeal process.

8. Questions to Ministers without notice - The Minister for Transport and Technical Services

The Deputy Bailiff:

We now come to the Questions to Ministers without notice. The first question period is the Minister for Transport and Technical Services.

8.1 The Connétable of St. Lawrence:

My question follows on from that of Deputy Baudains earlier, but I want to refer to the longstanding closure of Le Mont Cambrai in St. Lawrence, closed northbound for 6 months and the work that has been undertaken on Le Mont Felard, both of which come under the Transport and Technical Services Department as highway authority. Will the Minister advise me, please, when those works are scheduled to be completed?

Deputy K.C. Lewis (The Minister for Transport and Technical Services):

Yes, indeed. I am delighted to inform the Constable that both roads will be open within 2 weeks.

8.2 Deputy C.F. Labey of Grouville:

The Minister gave this Assembly an undertaking in the last sitting that he would come back and inform us when the eastern cycle track would be rectified and who would be paying for it. So far I have not received that information, if perhaps now he could inform us.

[14:45]

Deputy K.C. Lewis:

The answer is as soon as we can get engineers together to do that and the contractor who dug it up will be paying for it.

8.2.1 The Deputy of Grouville:

I am not satisfied with that answer. Two weeks ago he gave a similar non-answer and I would have expected him to have at least got the engineers and at least have a timeframe in mind. Could he give us some undertaking that he will come back to this Assembly with a timeframe? I am getting pressure from my parishioners - rightly so - as to when this cycle track is going to be rectified that was paid for by the taxpayer and dug up by the J.E.C. and has not been put right.

Deputy K.C. Lewis:

As the Deputy can imagine it has been all hands on deck with other projects at present, but I can assure the Deputy that as soon as we are able we will get that remediated. I believe my department is experimenting with different textures and different surfaces that will please bike owners and users of the cycle track, and it will be done as soon as possible at the expense of the J.E.C.

8.3 Deputy G.P. Southern:

Will the Minister inform Members what progress has been made on the amelioration of terms and conditions, terms which he singularly failed to transfer from the previous company and in particular whether the company have belatedly recognised the Unite union as the appropriate negotiating body to discuss terms and conditions?

Deputy K.C. Lewis:

Déjà vu, Sir. I believe the recognition is in process by the company which is an independent company and not part of T.T.S. I believe there is recognition there if it has not already been accomplished.

8.4 Deputy J.H. Young:

Is the Minister aware of the complaints of the head Les Quennevais School and her management team as voiced at the parents' meeting on the 19th about the school bus service where buses are not turning up, turning up late and breaking down, and generally causing problems to the school? If he is aware of them, what is he going to do about it?

Deputy K.C. Lewis:

Yes, I am aware and both T.T.S. and Liberty Bus apologise for any delays involved. It is a tough call, because I think we are carrying about 800 more children than we were in the last term. It is an unknown entity at the start of the school term exactly how many school children are going to use the bus service. But it is being extended day on day and incrementally day by day it has improved. Sadly because of the works which I have mentioned previously, there is added disruption. So we do ask people to be patient and we are trying to get there as soon as possible.

8.5 Deputy G.P. Southern:

Could the Minister address the first half of my question: is he aware what progress has been made on the amelioration of terms and conditions of Liberty Bus?

Deputy K.C. Lewis:

I am not sure of the exact details, but I thought all of the remuneration problems had been settled along with split shifts and extra shifts, *et cetera*. I believe negotiations may still be ongoing.

Deputy G.P. Southern:

Will the Minister ascertain what actual progress has been made and report to the House?

Deputy K.C. Lewis:

Yes, indeed.

The Connétable of St. John:

Can Members not have some on this side of the Chamber? They are all that side of the Chamber and my light has been on since the beginning.

The Deputy Bailiff:

You are the fourth next.

The Connétable of St. John:

But my light was on and there are Members who have had 3 goes so far.

The Deputy Bailiff:

You are absolutely right, but you are using up valuable time.

8.6 The Deputy of St. Martin:

If I could return to the issue of the road closure at Mount Bingham and ask the Minister: he has indicated to the Assembly that the road will close for 4 weeks. But could he confirm that both work teams are in fact working extended hours and 7 days a week?

Deputy K.C. Lewis:

Yes, I can confirm that the rock team are working all hours and my team are working very closely with the J.E.C. to put on extra gangs to get the cable installed down Mount Bingham as soon as possible. This is the Normandy 3 cable. I have a sample in my hand. It is quite an extensive cable and unfortunately because there is so much works under the road on Mount Bingham it has to come down the centre of the road because there are so many services there at present. But I have requested that extra gangs be put on to get this work done absolutely as soon as possible and get one lane open to ease traffic congestion.

8.7 Deputy M. Tadier:

My question relates to kerbside recycling. When I last asked the Minister the question about a year ago he said that one of the limitations to increasing Jersey's recycling rates is the complexity of implementing 12 separate kerbside schemes. He said that they would like to pursue this but they must have the support of the Comité des Connétables. How much further are we to getting an Island-wide kerbside recycling scheme which does not rely on the current postcode lottery?

Deputy K.C. Lewis:

Yes, there are a few Parish recycling schemes going on at the moment, led by the Parish of St. John. Most Parishes have various types of recycling going on. We are in the middle of a WEEE project which is Waste Electrical being collected down at Bellozanne and other points. There is no

separate initiative going on at the moment, but I believe the Constables are receptive to recycling and that is something we will pursue.

8.7.1 Deputy M. Tadier:

Since the last time I asked a question, I was told that basically the Comité des Connétables were portrayed as a hindrance to having an Island-wide kerbside collection scheme. Will the Minister confirm that he is in favour of having an Island-wide scheme which is the same no matter where you live in the Island, and if so what steps will he take to bring all the Parishes together if need be, or to institute a centralised scheme so that we can basically catch up with the 20th century when it comes to recycling all of the basic materials which should be being recycled, not simply put into landfill?

Deputy K.C. Lewis:

I think I would rather go to the 21st century, personally. But I would never describe the Constables as a hindrance. My department has a very good relationship with all the Constables and this is something that we are progressing.

8.8 Deputy R.G. Le Hérisier:

On a variation on the cycling theme, I wonder if the Minister, notwithstanding some of the excellent work being done with extending the network, could he indicate why the current surface is being used when it is quite clear it is being rejected by a large number of cyclists who insist on cycling on main roads rather than on the paths?

Deputy K.C. Lewis:

This is a very good question. My Assistant Minister, Deputy Le Fondré, is in charge of the cycle routes and we are experimenting, as I have mentioned previously, with various top surfaces which will give better adhesion for all cycles. We are aware a lot of the fast cycles do not like to cycle on the railway walk and on the cycle tracks because of the hogging there which they do not really appreciate. But we are experimenting with different surfaces to see if that can be remediated.

8.8.1 Deputy R.G. Le Hérisier:

I wonder if I can ask the Minister for Cycle Routes and his Assistant who is going I know at a fair clip in dealing with the issue, when are the surfaces going to be replaced? When is the experiment going to end and the services be replaced?

Deputy K.C. Lewis:

I do not know. These experiments are ongoing at the moment. It is a very tough call because even though the hogging does look aesthetically in keeping with the countryside, one of the criticisms I often get is for urbanising the countryside. So we certainly do not want tarmac down there. But we are still working on a useful surface that will do the job adequately and look in keeping with the countryside. We will progress that as soon as possible.

8.9 Deputy S. Power of St. Brelade:

I wonder if the Minister could give an indication to the Assembly in the light of the Mount Bingham problem as to how often his department surveys the lining of the tunnel and the structure and integrity of the lining of the tunnel. Because it seems to me, given the traffic congestion caused recently, that it is now in everyone's interests to know how good that lining is.

Deputy K.C. Lewis:

As the Deputy is aware, public safety is my number one priority and I am not sure of the exact dates but I know that the tunnel is subject to regular maintenance and cleaning and checking of all surfaces.

8.10 The Connétable of St. John:

That was 5, not 4, persons ahead of me. That said, could the Members be told how many miles, feet and inches of new sewerage extensions will be put in place over the next 12 months across this Island? How many have been put in place over the last 2 years under your tenure across the Island, please, and also how many miles of road are going to be surfaced/resurfaced over the next 12 months under your tenure?

Deputy K.C. Lewis:

I need to get back to the Constable over exact details of that, but we are doing all we can to maintain the Island's infrastructure at present. As has been stated before, we are coming up to St. John early in 2014 to remedy all of those roads up there. But I will get back to the Constable with an exhaustive list.

8.10.1 The Connétable of St. John:

The Minister should have those numbers at his fingertips because is it not true that no feet, inches or miles or kilometres - whatever you want to call it - of new drains have been put forward into the countryside over the last 2 years?

Deputy K.C. Lewis:

I believe that to be correct, but we are working on maintaining what we have at present and, as the Constable is aware, we are working on upgrading the existing sewerage plants which is part of the system.

8.10.2 The Connétable of St. John:

Could the Minister not have told us that in the first place, instead of telling me he will come back to me with those numbers?

Deputy K.C. Lewis:

I do not have the exact details and I am sure the Constable is aware of the Phillips Street project which is part of the St. Helier Flood Alleviation Project which is quite extensive and a lot of pipe work coming under town.

8.11 Deputy M.R. Higgins:

Could the Minister tell the States whether he has had any second thoughts about the location of a police station at Lime Grove House following the delays in traffic round Mount Bingham and concerns that if we had problems with the tunnel, no police could get out anywhere to the south side of the Island?

Deputy K.C. Lewis:

I am not the sponsoring Minister on the police station project. But my concerns, whether it is east or west of the tunnel there, would be a problem. But at the moment being east one can go through the tunnel or down past Snow Hill, Mulcaster Street and out that way. So it is slightly preferable east to west in that sense. But it is my information that the police are not there like Dixon of Dock Green waiting for the phone to ring. They are out on patrol. So if there is any incident the cars are patrolling the Island. But this is more of a question for the Minister for Home Affairs, not for myself.

8.12 The Connétable of St. Mary:

I know the Minister shares my love of filter-in-turn junctions, but I wonder if he could comment on the vast choice of junctions that exist, particularly in St. Helier, and comment particularly on junctions that during mediation works were merged and then filter-in-turn and are now filter-in-turn where the merge was and give way where the filter-in-turn was, and does he not think this is confusing for the public?

Deputy K.C. Lewis:

I am sure with the Constable being multilingual would understand both filter-in-turn and merge, both being the same thing. But I like to keep things simple and I like the Jersey way of filter-in-turn. It works well and long may it live.

8.12.1 The Connétable of St. Mary:

Supplementary: why was the filter-in-turn installed temporarily and has now become a give way again?

Deputy K.C. Lewis:

I am not sure which junction the Constable is referring to, but I will ...

The Deputy Bailiff:

Very good answer, Minister, because we have now reached the end of your 15-minute period.

9. Questions to Ministers without notice - The Minister for Home Affairs

The Deputy Bailiff:

We now come to the second question period for the Minister for Home Affairs.

9.1 Deputy T.M. Pitman:

Can the Minister for Home Affairs advise that in instances where there is evidence of data protection breaches - certainly by police officers, probably court officials and possibly even a States Member - can a States Member thwart the police in their investigations by quoting his parliamentary privilege? This is a court case, nothing to do with the States Assembly, I should point out.

Senator B.I. Le Marquand (The Minister for Home Affairs):

We are struggling to understand the question, I am afraid.

[15:00]

Data Protection law is not one of my specialities and indeed, the police when they do work in that area will normally work in conjunction with a Data Protection Registrar. But I am not sure I understand the precise question.

9.1.1 Deputy T.M. Pitman:

The gist of it, if it helps the Minister is, having presented evidence to the police about what seems to be a clear data protection breach, when the police have gone back to him to clarify this matter, the States Member has said he does not have to answer because he has parliamentary privilege. So the police really cannot proceed in those inquiries any further. That has been accepted by the police. All I am asking is, is that right and proper?

Senator B.I. Le Marquand:

I do not think that parliamentary privilege operates outside of things which happen in the Assembly or in a Scrutiny Panel. So if parliamentary privilege is being claimed for something which happened outside that, my own view would be that that is not correct.

9.2 Deputy R.G. Le Hérissier:

Given the encouraging information of downward spiralling crime contained in *Building a Safer Society* and the Minister's many pronouncements on that, is he saying that this downward spiral is entirely up to the police or is he saying it is up to other factors, in which case when will he be reducing police numbers?

Senator B.I. Le Marquand:

No, I am never going to claim that a decrease in crime, including a decrease in youth crime, is entirely down to the police. What I have said is it is down to very good work being done by a whole number of agencies. There are also factors of changes of social patterns, particularly with youth crime which are happening right across Western Europe. The Deputy is right, of course, that there will come a time if crime figures do continue to decline when the Minister will come under serious pressure to give a dividend, as it were, back in terms of financial reductions. We do not think we have arrived at that point as yet and what we are seeking to do at the moment is to increasingly improve the service that we are giving; but that point will arise, I accept that.

9.3 Deputy M.R. Higgins:

Further to the Minister's written answer to the States Assembly on 10th September 2013, in which he stated that the Deputy Chief of the States of Jersey Police brought the disciplinary action against the 3 officers involved in the bugging of the car involved in the Curtis Warren case, will the Minister state what action he proposes to take against the Deputy Chief of Police for giving false evidence to the disciplinary hearing conducted by Mr. Mike Barton, the Chief Constable of Durham Constabulary, and in particular a statement made that he was not the complainant in this case but the Attorney General was? This is what I was trying to ascertain from the written question. I wanted a definitive answer as to who is responsible. There is a blame game going on, the Minister is now stating categorically it was the Deputy Chief of Police, he said it was the Attorney General. Are you going to take any action against the Deputy Chief of Police for misleading the disciplinary hearing?

Senator B.I. Le Marquand:

If the Deputy has a complaint about the Deputy Chief Police Officer, I would ask him to write to me in detail with that. I do not think this is the right place for me to be commenting on such matters.

9.3.1 Deputy M.R. Higgins:

With respect, Minister, I am replying to your answer to the States which is either misleading or he has a case to answer.

Senator B.I. Le Marquand:

I am not going to conduct matters in relation to potential complaints against senior officers in public in this Chamber. I have made that very clear in the past and that is my position.

9.4 The Connétable of St. John:

Given the very poor quality of many of our main roads across the Island, can the Minister give details of the number of incidents where the poor quality of the surface of our roads have been a contributory factor to accidents across the Island?

Senator B.I. Le Marquand:

I cannot immediately. There was a study done not very long ago which I think the Connétable would be aware of in relation to the breakdown of the causation for accidents. I do not have that in front of me but if he would care to contact me on that I will seek to find that information for him.

The Connétable of St. John:

Could the Minister make that available to all Members, please?

Senator B.I. Le Marquand:

Yes, if I can find it. Interestingly enough, I was trying to get hold of the very same information recently for another purpose and was having difficulty with that. So provided I can get hold of that breakdown I will make that public.

9.5 Deputy S. Power:

The Minister may or may not be aware that the U.K. Prison Service announced at the weekend through the Justice Department that it was planning to phase-out smoking in U.K. prisons. Has the Minister given any thought to this and does he think it is a realistic prospect for our prisoners here?

Senator B.I. Le Marquand:

We have been considering this for some time and I do come under certain pressure from one of my Ministerial colleagues in this connection, but it is not a very simple matter. Some prisons have done this. It can create difficulties in terms of people switching to other things. For instance, I recently visited the Isle of Man where they have done this and people have started smoking just about everything you can imagine instead, which creates other problems. My own personal provisional view has been that I would seek to switch to a system with electronic cigarettes if we were able to, but that has not been finally tested in a way that enables us to do that. I personally have doubts about a complete ban without an alternative for the reasons of the experience of the Isle of Man.

9.6 Deputy R.G. Le Hérisier:

Given the fact that the current Fire Chief was appointed in order to bring about good succession planning but he himself became the successor, could the Minister assure us that there is now a proper succession planning system in place in the Fire Service and in other of these services?

Senator B.I. Le Marquand:

We have a very good number 2 in the Fire Service who is local and who, no doubt, in due course will be a very strong candidate to succeed the present Fire Chief. In relation to the Police Service we now have a developmental programme for high-flyers for the future but that is unlikely to achieve a situation where we have either a deputy or chief who is local for 10 years or more. In relation to the Prison Service, it is proving very difficult to have a developmental programme because it is very difficult to get the wider experience that would be needed for individual officers. In relation to Customs and Immigration, which is entirely home-grown, we have in the past had an excellent progression of officers moving up. I think that covers my main departments.

9.7 The Connétable of St. John:

The Firearms Liaison Group, how often do they meet and when was the last time that they met, please?

Senator B.I. Le Marquand:

That varies. I think there have been 2, possibly 3 meetings, in the period of 5 years that I have been Minister. It is said to be variable depending upon where there are specific incidents. I am struggling to remember the precise date of the last occasion. I just cannot recall it.

9.7.1 The Connétable of St. John:

Historically there was a Firearms Liaison Group that met on a regular basis, is the Minister telling us that the liaison group do not meet on a regular basis to discuss various firearms laws and amendments which have come about, and these are passed across this group, which are, in a sense, clubs and associations and the public in general.

Senator B.I. Le Marquand:

It tends to meet as and when there are particular issues. I am not 100 per cent sure of this but I think we have met in the last 6 months, but I am not 100 per cent sure. I am looking at the Connétable of St. Martin who is nodding. I have a recollection of a meeting downstairs here within the last 6 months but the tendency has been to meet when there are specific issues to bounce off the liaison group which need to be considered.

9.8 Deputy T.M. Pitman:

A few months ago the Minister for Home Affairs stated that the police were now going to be brought up to speed with their U.K. counterparts with internet crime. Could he tell us, has any progress been made and are we getting close, because I am dealing with an individual who lives in another country who is investigating what he believes to be the bullying to death of his son over here a short time ago.

Senator B.I. Le Marquand:

We are appointing an officer who is a specialist in this area. That was an additional post. I am afraid I cannot say precisely where we are within that process. There was a separate piece of work being done which the Deputy has discussed with me, to do with aggressive offensive material on the internet. That piece of work, which I thought was going to be under my oversight has now moved away from me and is in fact being conducted by the Minister for Economic Development. So I am not so involved with that as I thought I was going to be. If that was the area the question was about.

9.9 The Deputy of St. Martin:

Given the physical and arduous job that the uniformed services do on our behalf, is the Minister satisfied that 55 is a suitable retirement age?

Senator B.I. Le Marquand:

This is something that has been considered in relation to the police, whether that is appropriate or not, and of course it depends upon the role that an officer is performing. If you are expecting a person to be fit and active and chasing people around, as it were, on the streets, then that does create certain issues. It is a matter which is under review but we have not reached any clear decision on it as yet. What has tended to happen, of course, is that a number of officers who have had specialist skills outside of the normal uniform police have been kept on and retained as civilian officers so that we could keep their skills within the force. So that means that there are a number of former police officers who are still working but they are not police officers, they are civilian workers.

9.10 The Connétable of St. Brelade:

Some time ago while I was a member of the Education and Home Affairs Scrutiny Panel concerns were raised as to coverage of Customs at ports. Is there any current concerns as to the coverage of ports at busy times and, if so, is the Minister doing anything to alleviate that?

Senator B.I. Le Marquand:

The situation is that at times, because the priority is the Immigration side, there will not be anybody doing Customs checks at the port or at the airport or whatever. I believe that is a perfectly acceptable risk and, indeed, that was looked at recently I think by the Scrutiny Panel, if my memory is serving me right - and I am looking at the chairman - who came to the same view as I have done. If one passes through a major airport anywhere else, it is not unusual for there not to be Customs people there at a given time. It is a question of allocating resources and what are appropriate risks. In relation to drugs matters, great deal of the successful prosecutions or major ones arise from information rather than just by accident coming across somebody.

9.10.1 The Connétable of St. Brelade:

Just in regards to vehicles entering into the Island, are checks carried out on a regular basis or are there gaps when vehicles are not checked or there is not coverage at the ports?

Senator B.I. Le Marquand:

I think there would normally be somebody checking vehicles coming in. I think the gap would be more so at the airport, but I cannot be absolutely certain about that, I am afraid, as to whether there are sometimes gaps in vehicle checks. This would be vehicles coming from the U.K., because of the need to have Immigration checks on any vehicle that is coming the other way from France, we will always have people there to check it. I do not, I am afraid, 100 per cent know the answer to that. My suspicion is that there are rarely such gaps.

The Connétable of St. Brelade:

I wonder if the Minister could let me know in private, if he could.

Senator B.I. Le Marquand:

Yes, I will do that.

PUBLIC BUSINESS

10. Organ Donors' Register (P.89/2013)

The Deputy Bailiff:

That brings question time to an end. The 15 minute second period having now expired. There is nothing under J, Personal Statements, there is nothing under K so we come to Public Business. The first item is P.89 - Organ Donors' Register - lodged by Deputy Le Hérisssier and I ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion to request the Minister for Health and Social Services - (a) to establish an Organ Donors' Register in Jersey; and (b) to review the current policy in respect of organ donations and to bring forward recommendations for improvement.

10.1 Deputy R.G. Le Hérisssier:

Hopefully this will be dealt with in short order because I know there is a lot of support for it, but the doubt might be around the Organ Donors' Register and that obviously is the Minister's doubt, and it will be addressed, to a greater extent, by Deputy Tadier. The reason this has been brought is that I have had several approaches and when I looked into the figures there was this considerable disparity, the rate of organ donation in Jersey is 9 per cent and in England it is 31 per cent. Even the English figure is seen a quite low. So clearly we have a problem.

[15:15]

We are basically technically part of the English donation system. We do not have an independent service or indeed a semi-independent service here so when you do sign up on a website - and that is the way you are invited to do it so it is somewhat impersonal, it has to be said - you are signing up to the English system. What this means is there is quite a gulf in the Island in the sense that here you are being asked to take one of the most emotional, difficult decisions of your life where basically you are asked to contemplate your own mortality, you are being asked to do this and yet you are being asked to do it on a website and the counselling, the publicity is not available. We do have access to special nurses but they do not, as I understand it, work or are based on the Island. We do have doctors who are interested, we have G.P.s who are interested, but they have told me again: "Where do we go? Where do we go? Who do we go to?" Now, you may say: "Well, it is very simple, just tap-in on a website and it will come up and you just sign away your organs." I think that is being rather flippant, so to speak, about it. It is a much more emotional system, as I have just said, and that is why we are asking for a separate Organ Register. So I will address that first because people have run away with the idea - and it could well be the fault of the proposer - that by proposing an organ donation register we are proposing the whole panoply of special theatres, special teams, special counselling, *et cetera*. There are other ways of achieving this end rather than simply replicating the English system. I think that is where the Minister in her most considered comments has possibly got it wrong. That would be one of the rare exceptions. It is not the case... there are other ways of doing it, there are ways of putting your name on a Jersey register so it is contemporaneously put on the English register, for example, and there do not have to be big data protection issues. You will notice in Health's comments an awful lot has been made about the heavy bureaucracy, it is as if it is a massive stone being wheeled up a hill where it is all so, so difficult and so, so impossible. Would it not have been nicer to have seen a little bit of enthusiasm, a little bit of "can do"? When you read the long list of bureaucratic objections, layers of bureaucracy, data protection issues, *et cetera*, it is rather sad and it would have been so much better if the thing could have been dealt with in a much more upbeat fashion, given, I think, the growing public support that there is and the fact that people want to be properly informed and they want to be involved in the decision. They do not just want a quick: "No, it is okay." Maybe some people do a quick entry on a website or a quick tick on a driving licence, which of course is a popular way in England to get people involved. So I will rely on my good colleague, Deputy Tadier, to elaborate on the Organ Register but suffice it to say... and perhaps we are at fault if it is a misnomer to refer to it fully as an Organ Donation Register, but we are not suggesting the whole thing be repeated here. There are different ways of achieving it and there are different ways, for example, of getting relatives involved, which as you study the way other countries do it the involvement of relatives, the involvement of continuously available counselling and educational services is absolutely crucial - absolutely crucial - to how you launch and manage your organ donation system. We now come to part 2, which I think is much more straightforward and, to be fair, the Minister for Health and Social Services and her team have approved it with enthusiasm - or almost - and I have to thank them for that. There are exciting developments, as we know, in the United Kingdom and, of course, the most exciting one, which is why this took such a long time to come forward, although it was not to prove a key point quite frankly at the end, was the Welsh vote. The Welsh have voted - and I have to get this right, there are so many variations on the system - as I understand it, and the Minister will no doubt correct me, for soft opt-out. She is nodding. Basically, where there is an assumption that you will give your organs were terrible things to happen but always, always and in every country ultimately it is done in final consultation with relatives. That is always the defence in any country but it has always been found when that consultation occurs ... if it is done against a background of proper counselling, as I have said, of proper educational services, of a real push to get families to debate and to tell each other what they are doing so it does not come as a terrible surprise when that terrible moment does arrive. If it is done against that background the system works much, much better and there are countries like

Spain who have proved that. Now, the Welsh law is obviously very new, it was only passed in July, there is a massive amount of money that is being devoted to the educational/counselling side of implementation and obviously they have taken to heart this notion that you must work very closely with all parties involved and you must make sure that when the terrible event occurs, when doctors and nurses are involved in seeking permission that it is done against a background that people have been made aware over a longer period. That it has just not come as a bolt out of the blue. The Welsh, I think, will probably set something in motion, there is no doubt about that. We obviously currently are just simply part of the English system which is an opt-in system, but the Welsh have set something in motion and we could well see major changes in the United Kingdom as a whole or in other parts of the United Kingdom. So, on that basis, I move the proposition. I think both parts are equally valid. Please, please do not dismiss the notion of an organ donation register until you hear fully what is meant by that and certainly I praise the Minister for accepting the notion of a study. I hope it can be done more speedily than say 12 months. I think it can, there is an awful lot of material there. The Health Department has collated it and indeed I would like to thank them for the work and for sharing the reports when they were doing that. Thank you, I move the proposition.

The Deputy Bailiff:

Seconded? **[Seconded]** Are you going to speak now, Deputy Tadier, because I understood from the proposer that you were going to address all the things he has not in making the proposition?

Deputy M. Tadier:

It is nice to be told twice in one day one is going to be making a speech on something but I would like to hold back if that is all right because I would like to hear from other Members.

The Deputy Bailiff:

It is just a disadvantage that when Members make their contributions they do not know what the propositions are. Very well, Deputy Lewis.

10.1.1 Deputy K.C. Lewis:

If any of our loved ones needed a transplant to save their lives I do not think there is any of us here would hesitate in accepting the organ concerned. Is it not only fair that we should reciprocate by donating our own organs? I have done it online and I have discussed it with my wife that my organs should be donated in the event of my death. I do not smoke so the lungs should be okay; I do not drink so the kidneys should be okay. I have high blood pressure, goodness knows why. **[Laughter]** I cannot go for (a) but I would definitely support (b) and I commend Deputy Le Hérisier and Deputy Tadier for bringing this forward.

10.1.2 Deputy M. Tadier:

I was trying to wait until the Minister had spoken but nonetheless this is essentially something that Deputy Le Hérisier primarily, and myself, have been working on. It was raised by a constituency contact of the Deputy and also I have some interest in this from residents in my area who have had direct experience with the need for an organ. It does remind me of a situation which takes place in some future parallel universe where at some point organs are very sought after and the recycling scheme, whether it is Parish run or Island-wide run, or indeed a U.K. register, is being put to the maximum of its use. To the point where these organs are being auctioned and there is a local farmer, a school teacher and a States Member whose organs have come up for auction. Their heart and their brain mainly. The farmer's heart is there in good condition and it has been auctioned for a pittance and then you have the teacher's brain which is auctioned, again only fetches £100, the States Member's brain and heart come up for auction and they fetch hundreds of thousands of pounds and people cannot figure out why and they say: "Well, of course, that is because the States

Members' ones have never been used." They fetched the best premium. But back to the present day. Really this grew out of a desire for what was happening in Wales, which turned out to be the soft opt-out option and which questions were asked surrounding that and it was seen to be generally uncontroversial that of course when we no longer need our organs, if they are in good condition, they should be put to better use because we know, whether locally or nationally, there are people who are literally crying out for these organs which can seriously change their lives, enable greater longevity and everything that goes with that. So the principle, I think, has already been agreed under the radar so to speak. We are being presented with some difficulties here so the strong message that must go out today, whatever the result is of part (a), is that we want to move towards that possibility of having an opt-out option where in the eventuality the default position is that you may have your organs reused after one's death. I think that is something we hopefully all agree with, and that message is one that is going out to the Minister for Health and Social Services and the department. The issue I have with the establishment of the Organ Donor Register - and Deputy Lewis touched on it already - is that there was never an intention to create an "us" and "them" mentality with the U.K. saying: "This is our register and anybody who registers in Jersey and who lives in Jersey can therefore not qualify for exchange with the U.K. because we know, of course, that we have people who come from the U.K. and settle in Jersey, we have Jersey residents who have ties with the U.K. and maybe travelling back and forward. But the question I wanted to ask the Minister for Health and Social Services - and I hope she can answer - is how does this work out in reality? If you have an individual who has been involved in an accident, is pronounced dead in a Jersey hospital, they may have registered in the U.K., how do we know about that? How does the person working in A. and E. (Accident and Emergency) know that this person is registered? They may not have their wallet with them. They might have just nipped out to the shop and they have been knocked over. How do we know that they are on the English register? If it is an issue of data protection as we are being told that you cannot be on 2 registers or something would have to be resolved, what right do Jersey doctors and nurses have to access the U.K. database? Is it the case that we are not picking up on people who are registered on the U.K. database because they have done it via a U.K. site or it had moved from the U.K. and that we do not know about it in Jersey. Clearly these questions are very distressing to be asking potential relatives. There may not be relatives at the scene any way, there may be individuals without the nuclear family or obvious relatives in Jersey. What do we do about those? How do we know about what their wishes would be? The hope would be that in establishing a Jersey donors' register of course it would automatically be linked to one in the U.K. so that it can create a bigger pool of resources rather than a narrower one. This is one that we would like the Minister to go away and tell us how it can be done. We are not tying her hands in any way with this, we are saying this is clearly the intention, if there are consequences which are unintended and which need to be resolved, please go away and do that. It cannot be beyond the wit of man. You have individuals in your department who, I am sure, can do that. We can have information exchange with other countries, we know that we have signed 32-odd with international jurisdictions for different purposes, we should also be able to have information exchanged when it comes to the very important issue of a donors' register. So, of course we take on board all the comments that have been made but these do not seem insurmountable and we would like the Minister to go away and find a way to create a local register where people can register in Jersey because they live in Jersey and where that information will be used and accessible in the most appropriate way if they are in this unfortunate circumstance to pass in those circumstances, but nonetheless who wish their organs to be used for the greater good at the end of that.

[15:30]

10.1.3 The Deputy of Trinity:

I will try and answer Deputy Tadier's questions as I go along. If I do not then I am sure he will ask for clarification at the end. If I start with part 2 of the proposition. I am pleased that the Deputy has agreed to take this proposition in 2 parts and I commend the Deputy for his diligent and dogged commitment to this important issue, which is reflected in his decision to bring this proposition to the House. I fully support the aspirations of the Deputy to increase organ donation in Jersey and to encourage more Islanders to sign-up to the Organ Donation Register. The second part of the proposition asks that my department undertakes a high-level review of organ donation in Jersey. This, I would agree, provides the States with an opportunity to look at all the options available, which is to potentially increase organ donation registration in the Island. I did go across to Wales and spoke to the Welsh Health Minister and their policy team regarding the drop-out option. This is part of a side issue, it has taken them about 5 years to get to where they are and there will be another 2 years before they bring it into being. I think it has cost them about £7 million so far. I suspect, based on the initial views of clinical experts, that it will be a more complex and challenging issue that we might anticipate and this was confirmed by the officers in Wales. There is no doubt - and I am sure the Deputy would agree - that being an Island community I doubt that it presents us with challenges beyond those faced by our neighbours in the U.K. I welcome any action we can drastically take to actively support in doing that here in Jersey. The review will probably recommend legislative change to the way organ donations is managed and there will probably be significant investments. Nevertheless, a high-level review of organ donation in Jersey will assist in identifying both the opportunities and the obstacles to increase organ donation and registry in Jersey. To that end, I support part 2 of this proposition. This takes me back to part 1 of the proposition, asking to set up a local organ donation list. As it has been said by the 2 Deputies, it is a very complex, sensitive and highly emotive subject. No one can fail to sympathise with those patients and their families who desperately are waiting an organ transplant. We must also think of the families too who are involved in making that decision of donating an organ from their loved one who has just died. Few would argue that increasing organ donation registration is a worthy cause. But we know there are probably many reasons why people have not registered as organ donors: often it is as simple as they just have not got around to it. But whatever the reason there is no doubt we need more people to sign-up. Jersey actively supports the national organ donation public awareness campaigns, which is led by the U.K. Blood and Transplantation Directorate. We know that these are high-profile events, encourage more people to register as organ donors, especially this year when the media focused on local recipients. At this point I would like to thank the media for the high profile they gave to this. Following the most recent public awareness campaign I am pleased to be able to inform Members that in August we saw a record increase in the numbers of organ donors in Jersey up from 564 on the previous month. For the first time Jersey has broken through that 10 per cent barrier in the number of Islanders registered as organ donors. In July we were just 9.3 per cent, so we are going the right way. I am not complacent but there is still a long way to go. In the U.K. the average is 31.3 per cent. We would actively work to encourage more Islanders to join this campaign. But I have to ask, is by having a local Organ Donor Register going to achieve that? Clinical and organ-donor experts, both here in Jersey and the U.K., have made very clear their views. A Jersey Organ Donor Register would only serve to add another unnecessary and potentially confusing layer of bureaucracy to the organ donation process. Quite simply I think it would certainly just have the potential to hinder rather than help. Indeed, a consultant anaesthetist who was on the radio yesterday saying there was no benefit or need for a local register. Any register needs to be straightforward and piggy-back on someone else's system and we use the N.H.S. (National Health Service), it needs a very simple process. Also, if we did or not, would it be legally binding outside Jersey? To this point, I will try and answer Deputy Tadier's question about if someone was in A. and E. It is very sensitive and I will try and do it with as much sensitivity as I can. When someone has been in A. and E. in a serious accident, or whatever, at most times they are transferred to Southampton Intensive Care Units. It is usually

those patients who are able to donate an organ as they are usually in Southampton General Hospital. It is usually a sudden event that happens. The decision there is made in Southampton. If a decision needs to be made in Jersey and the consultant anaesthetist and the clinicians feel this patient may be an appropriate donor, whether they are on the register or not the consultant would contact the national Donor Organ Register to see if they are. If they are then there is a whole sequence that sets into place where a specialist organ nurse will come over to Jersey, talk with the family. Talking with the families is essential because at the end of the day you need the families' permission. If they are not on the Organ Register and the consultant anaesthetist or whoever it is feels that the patient is appropriate, then the discussions with the families begin and the specialist nurse will come over. If it goes on so that the family do agree then it sets in another motion where a transplant team comes over from the U.K. to retrieve the organs. I hope that has answered that question. Another important factor in us considering the proposal to set up the register is whether we would bring any new and additional benefits to Islanders. The reality is that the Jersey Donor Register, by its mere existence, would not mean a guaranteed increase of organs being available to Jersey patients. Any significant increase in the number registered as organ donors across the U.K., of course, would statistically improve the chances of Jersey patients waiting for a transplant. But the Jersey register could not dictate that any organ will go to a local patient. It will still always go to the most appropriate recipients on the waiting list. We also have responsibility to consider the potential of the cost of setting up and running an Organ Donor Register and it will require some legal work. We would also need to engage the support of the organ donation experts and blood and transplant co-ordinators in the U.K. We would need to be able to properly resource robust monitoring and maintenance of the register because keeping up-to-date records if someone changes their mind or whatever, that is so important. Therefore, while we fully support all efforts to increase and improve organ donation in Jersey I cannot, however, support part 1 of the proposition. The most important way is to encourage people to add their names on the national register, it literally only takes 2 minutes. You can either do that on the website or by a phone call. But also it is also having that conversation around the kitchen table so that all the family are aware of everybody's wishes. I finish with a comment from a consultant involved in organ donation here and it is endorsed by another consultant too: "Having an Organ Donor Register for Jersey is not a step towards an opt-out system. There is a perfectly good Organ Donor Register in the U.K. which Jersey people can use and which can be used to assess patients' wishes. The Jersey register can be expected to increase confusion for Islanders, decrease the number of Jersey donors because a significant number of Jersey donations take place where death occurs in the U.K. The Jersey registration will not be legally enforceable in these cases, which could impact on potential donations being considered. Increased costs, the Jersey Organ Donor Register would need to be set up and managed for all eternity." The plan is likely to result in the exact opposite of the intended outcome. To date the Island has been extremely well served by the national register, so I ask, why change that? I urge Members to vote against part (a) of the proposition.

Deputy M. Tadier:

May I seek clarification? What I am still not clear about, and hopefully the Minister can elucidate, is that a U.K.-registered individual, let us say a Jersey resident, is pronounced dead in Jersey; how is it possible for a Jersey doctor to then access the U.K. database to find out whether that individual... and if that is the case, if they already have access to the U.K. information, what is the problem with data protection? Why can we not simply have a Jersey register which automatically would register somebody in the U.K. so that we would know exactly who in Jersey is on our register and they would also be on the register in the U.K., given that the authorities and the Health Department can already access the U.K. register?

The Deputy of Trinity:

As I have said, the clinician feels that it is not every patient who dies in A. and E. who is appropriate for them to give organ donations, there has to be a set clinical criteria. If that clinician thinks that they will ring up the national register to find out if that person is on the register or not, it is one central information base and that is the most important thing. As I said, if the clinician feels it is appropriate, then set patterns go into place where a nurse specialist will come over and talk to the family.

Deputy M. Tadier:

This is supplementary and it may be a question that the Attorney General would need to address; we are being told that one of the key reasons that the local database is impossible is for data protection reasons. You would presume that because Jersey is a different jurisdiction; what would have been told to the U.K.; how is it that a Jersey-based health authority, a doctor or nurse, can phone up the U.K. and be given what one would presume is data-sensitive information about who is on the U.K. register? If that is an argument, and it seems strange that it is being put forward as one, but if the Attorney General at any point in the debate can perhaps help with that because we can either access the information, at which point a local register is not a problem, or we cannot access the U.K. register and *vice versa* and therefore it is a problem but that is not what we are being told.

The Deputy Bailiff:

Is it a matter for the Attorney, Minister?

The Deputy of Trinity:

It is, Sir, he is nodding.

The Attorney General:

The only point that I think I can make which is of help is, of course, that the English organ donation system is governed by U.K. legislation and, accordingly, the transfer of information will be under that legislation. If legislatively it is permitted then there is no reason why that information cannot be transferred. That does not mean there is reciprocity and it does not mean that information held in Jersey can, therefore, be transferred to the United Kingdom. That would require a legislative change, in my view. But that is not to say that it is impossible of achievement, it is something that would need to be covered and dealt with.

Deputy M. Tadier:

Do we know at the moment whether the U.K. legislation or that register extends for Jersey being able to seek information about who is on that register? Do we have that information available?

[15:45]

The Attorney General:

No, I am afraid that I cannot answer that question.

10.1.4 Deputy J.A. Martin of St. Helier:

This has been a subject close to my heart for many years and I used to think, well, the opt-out system has got to be the only way. Again, it was drawn to my attention that I even mentioned something in March of last year. It was not down to religious grounds, and this is because I looked at the system that is leading the world, not Europe, and that is Spain. If I thought for one moment that a local register or even being on the U.K. register would improve people donating their organs, I would say: "Yes, let us do it." I think when the figure quoted by Deputy Le Hérissier ... it is even quoted that the average 31 per cent of the total population in the U.K. being registered: the actual organs that are harvested are still only around 12 per cent. What is happening? When you look at Spain - and it is one of the most successful countries, as I say, it is leading in the world - they have

a totally proactive system. It may sound a bit insensitive to some but I think we heard at lunchtime how many people have sat down with their relatives and had the discussion about even how you want to die or what will happen to, say, your organs after death? They employ a network of transplant co-ordinators in every one of their major hospitals, between 165 like our equivalent where they have an A. and E. Department in Southampton, there are the consultants who do the transplants and there are nurses and there are doctors. They have these teams, as I say, and in their words they closely monitor every A. and E. Department and actively they do not really ... although they are opt-out and their law permits them to go ahead without speaking to or asking the relatives, the doctor who set up the Spanish scheme and brought these couple of donators together, said: "No, we must speak to all the relatives." As far as I can see they do not even mention the register. The man or lady who happened to end up in Jersey, if we had one of these teams here or one we could fly in very quickly they would be speaking to the relatives for hours and hours and hours. As I say, they approach, they know their subject, they talk to the relatives, sometimes for many, many hours, also being sensitive of how long that they can keep the organs, that they will be good. We think that we should set up a Jersey register. It is not about the bureaucracy to me, it is about will it make any difference? The Spanish system is not a cheap system but when you compare the amount of people, just take kidney transplants alone that are then removed from the dialysis, it halves the medical bills in all of these countries, so you have to get them up there. Spain is nearly now up to 40 per cent, not registered because you are an opt-out, actually harvesting the organs, saving many lives or giving the quality of life you expect. We are in Jersey, we are trying to do something that can be done but we cannot do it alone. I am really, really pleased to see that in Britain they set up a taskforce and I will quote this: "A taskforce set up by the Government rejected a move to pursuing consent, which would be the opt-out, but recommended adopting the system of transplant co-ordinators late last year." If they were to change the system of pursuing consent tomorrow it would not make any difference. As well as for the British Medical Association who added that: "The organisation had been disappointed with the decision not to try to pursue consent. The main issue is to increase the number of transplant co-ordinators in Intensive Care Units and a culture change in hospitals to gear them up for carrying out the transplants." The Spanish system quotes: "The success of our system is the way you approach the relative, not the country you are in, not whether you are opt-out or not whether you are opt-in." I fully understand where both the Deputies are coming from. They think that a local Organ Register may help. I absolutely cannot see this. It does take a complete culture change. As I say, we must ask the question, even if there are 31 per cent, as I say, registered in the U.K. but 12 per cent are being harvested, it is because families are not being approached but what about the other 69 per cent who are not registered? Do they mind having their organs taken? That is the question that needs to be asked just around the time of death. It will be in A. and E. Departments and it is not a good subject to talk about. But Spain quotes: "While England or Great Britain are failing, 45 English people died in Spain last year." Again, they did not ask whether they were on the register but everyone was approached by the co-ordinating teams and all 45 gave permission to have their organs harvested. Probably went to the Spanish... I do not know the exact details of where they would go. It just shows you we are looking at the system of let us get everyone registered. You can have 100 per cent registered and if there is nobody there at the time to talk the relatives through because some people do not tell their relatives that they are registered. It is just something they do. They might tick the box on a U.K. driving licence. They may do it here. That is the conversation that needs to be done. It is done fantastically well in Spain that leads the world and Great Britain or the U.K., I know Wales have gone opt out. But, again, if they do not follow this system, you can opt in and opt out, you will not... This is for years the U.K. have remained static but Spain, followed by Portugal and Belgium, are all up there in the 30 per cents and more. They have these co-ordinators and they know how to handle the subjects and the sensitivity with the relatives. I am so sorry to the Deputy. I would love to say: "Yes, let us get a Jersey register." It will not solve the problem. We need to follow the

U.K. The consultants say we need to follow the U.K. and I just want the U.K. to follow the best in the world and that is Spain. I hope they do it very quickly.

10.1.5 Connétable S.W. Rennard of St. Saviour:

Everyone in my family carries a donor card and I have a sticker on the windscreen of my car saying that I am a donor. I would be bitterly, bitterly disappointed if, when the time came for things to be harvested, my family were asked and then went against my wishes. That is the whole idea of being registered. I have registered. One of my members of my family does not wish the eyes to be removed, so we have spoken about it. Now is a good time to talk about it. Like the Deputy was saying, when you are all around the table, when everybody feels fine. I know I do not sound fine but you will see when you are quite fit and you think to yourself: "Now would be a good time to do something about it." When you have a loved one that you have lost most probably under the saddest and the worst circumstances you could ever imagine and yet you are then being asked: "Oh, by the way, may we have this, may we have that?" The family are going to be so distraught about losing their relative in the first place, they are not going to want to have their organs harvested. I feel that if you carry a card and you are registered it is a very important thing. My husband is also registered with the Anthony Nolan Trust and he has been called on and sadly was not a match for the child that needed the thing. But it was an English list. He was called upon. Everything was sent. We went to the hospital here, they saw to everything. I still say he had the list. I would not have gone and said: "Oh, you cannot do that." It was my husband's wishes that he was on that list. It is my husband and my grandson's wishes that we are on the organ donors' list and I am on it. I would be so bitterly disappointed if one member of my family was allowed to come along and say: "Look, I am sorry, I do not want that to happen" because it is not what I want to happen. If I can help somebody with anything I have left, they are more than welcome to it and that includes singing Beautiful Jersey. **[Laughter]**

10.1.6 Deputy R.C. Duhamel:

As much as perhaps Members would be - me too - a supporter of recycling in the round, I do not agree with the idea of setting up registers for spare human-part recycling. I think the fantastic advances that have been made by medical science over the last years, Dr. Christiaan Barnard or whatever when he started off with his heart transplants, they are absolutely fantastic. But a lot of the problems of rejection of those tissues end up with the people who receive the donor parts having to live protected lives and to be on particular types of medicines in order to stop the tissue being rejected in the main. One might ask and one might say: "That is fine if it actually prolongs a loved one's life for a period of time." Perhaps for those who believe in this then it is all well and good if they wish to place their names on a particular register. But I think our medical science, as I say, is moving ahead so fast, and I was reading the medical journals only the other day. Medical scientists have come up now with a lot of the genetic engineering that is being done and the understanding of D.N.A. (Deoxyribonucleic acid). We are able to take animal transplants at the moment. Wash out, for example, a pig's heart for the flesh-type cells that are obviously needed until we get down to a specific arrangement of cells that forms the chassis, if you like, of the heart. The fascinating thing is that medical science is finding at the moment that if we then populate that animal chassis, if you like, with human tissue from the person who is going to be the recipient of that organ, then the problems of rejection can be overcome. What it means is that instead of human-to-human tissue transplantation being the norm, I think what is likely to happen, in perhaps an even shorter time than most of us can realise, is that our own cells will be used in conjunction with other animal volunteer donors, if you like, in order to deliver our own transplants or spare parts in a way that gets around the moral and ethical problems of soliciting for spare parts from other family members. As I say, that is the way that I think is the way forward in the future. I

think this is almost a medical hokey-cokey at the moment with an opt-in and opt-out system. But I think it is definitely not the way of the future. I feel on those grounds that I cannot support it.

10.1.7 Deputy J.M. Maçon:

I thank Deputy Duhamel for his speech because he raised a lot of points that I was going to raise about this possibly being dated medical technology. For example, I was watching a programme recently where they have been able to do simple structures such as bladders. They have been able to take genetic material from the individual, grow them another bladder and be able to put that in and, again, you do not run the risk of having these rejection issues from tissues. But my problem about this proposition is that I do wonder if perhaps in this particular example, we are putting the cart before the horse, in the sense that because (b) is asking the Minister to go away and review the policy, so we want to guess what an outcome will be before the Minister has a chance to review that entire policy, which is why I am not really happy about (a) because it wants to tie a Minister's hand before they have been able to do a review, which does not seem right. At the same time, I do not think it is right because the Minister has not done that review either, for the Minister to be turning around and saying: "Oh, no, we cannot accept this option either because, again, that work has not been done." There do seem to be certain problems on both sides and my objection is about (a) on a point of process, I think which does allow Health to do that type of review because, as Deputy Martin has pointed out, there may be different models. There may be better models that we should be pursuing from around the world that might be better than the register system, in which case I would much prefer Health to be able to carry out and do that process without having their hands tied. In this case I will be supporting the stance of the Council of Ministers to reject part (a) and support part (b).

[16:00]

10.1.8 Connétable M.P.S. Le Troquer of St. Martin:

I am not speaking on religious grounds at all. As a slight aside, I was a fatal road investigator in 1986 when a young man was critically injured on the Island in a road accident and I think that the law of using human organs in Jersey was changed by this Assembly and it is as recently as that. What I really wanted to do, to speak of... and it is a clarification in following on from Deputy Maçon because looking today, to review the policy you have the 2 parts of the proposition and I think Deputy Maçon has just wrapped it up exactly. I may have missed it, I am sorry, Minister, but who is going to carry out the review? If it is going to be an in-house review and not involving anybody else, there is an opportunity of involving Deputy Le Hérisier who could be on this panel. Then other people coming back with suggestions and part (b) of the proposition covers everything and could cover the point of having an Organ Donors' Register on the Island. If I can just urge the Minister maybe to ... I will vote for (b) I will have to vote against option (a) at this stage because I think there is still the option there for this to come back at a later date. That is all I wanted to say.

10.1.9 The Connétable of St. Peter:

This plays very close to my heart, this particular proposition, insomuch as I have an older brother who is on the heart lung transplant waiting list in the U.K. and so I am very much aware of the need. Unfortunately he is getting older as we all are. He is probably getting to an age now where they probably would rather give the heart lung to a younger person so he may well not ever get one. Another part of my experience to do with donations is my time at the airport when I have been called out on several occasions in the middle of the night when particularly a young person had died, or was on the point of death through a major trauma road accident, and we used to fly all the way if they called in- horrible word- harvesting teams from the U.K. if the parents gave permission for the body parts to be harvested to go away to the U.K. for transplanting. Coming to the point of the proposition: one of the issues I have, I do not have an issue with the proposition *per se*, but part

I gives me a problem insomuch that if we have a register here in Jersey how would the U.K., when they want an organ, know that we have got one in Jersey? Now, what would that mean is that people in Jersey would have to register in Jersey and then also register in the U.K. as well so why not just register in the U.K. now where we can interrogate that in Jersey if we have a patient here that wishes to take advantage of an organ in the U.K.? We are going to do that anyway. We do it now. We do not wait until a Jersey person comes up with an organ. We go now and interrogate the U.K. register to see if there is a heart, a lung or a kidney in the U.K. of the right match for the Jersey person who will then fly over to the U.K. to have it transplanted. So I think having a Jersey register for me is, sorry to use the term, but it is a useless duplication. It does not really have a purpose in itself but what has had a purpose is Deputy Le Hérisier and Deputy Tadier raising the profile because we have had an increase since we started to talk about this. Certainly in the U.K. they have had similar things where every time this becomes a national comment they see a flush of enthusiasm, people start registering on to the transplant list. I am going to register a difference with Deputy Duhamel who spoke about Christiaan Barnard back in 3rd December 1967 when he did his first heart transplant, 46 years ago. Now, it has taken 40-odd years to get to a point where transplants have become almost an everyday event and acceptable and the experience in that is there. I think while he is right and there is potential to grow new organs from embryo cells that may well be another 30 years away before it becomes part of where we are now with donations. So in the meantime we do need to encourage people to register for donations on the Organ Donor Register so as we can use it now. Obviously I am supporting my Minister in this. I am going to support her in accepting part (b) [Aside]. I know Deputy Le Hérisier had a conversation about part (a) while we were away recently on the C.P.A. (Commonwealth Parliamentary Association) and I think we shared an almost commonality of view there. I think for me having a Jersey register does nothing but adds on extra work and some cost in preparing it. I would rather see us encouraging everybody in Jersey to go on the U.K. register because that will include us. If we are in the U.K. it will include us. If we are not in the U.K. but we know where we can find an organ that would suit us.

10.1.10 Deputy S. Power:

I have listened to this debate with great interest and I congratulate Deputy Le Hérisier for at least bringing it to the Chamber. It was a good speech, as was the speech by the Minister for Health and Social Services, but I think the speech that stands out to my mind is the speech by Deputy Martin who identified some of the key issues and that is - one of them certainly - will a Jersey home-grown Organ Register improve the percentages with Jersey. She made a number of interesting comparisons between the U.K. and Spain, and she had a wealth of information regarding Spanish statistics and take-up rate. It seems to me that we are bounded by this great debate on national frontiers, the U.K. Organ Register, the French one, the German, the Spanish and indeed Deputy Duhamel and the Constable of St. Peter referred to Dr. Barnard in South Africa. Shortly before he died he said that the problem will not so much be genetic engineering in the future. He says: "The problem will be can the organ donation system catch up and keep up with the expertise in transplant surgery across the world?" and he is absolutely right. It has not been able to keep up. There is expertise out there in the world and these experts, these transplant surgeons, are limited by the supply of donors. The data that should be available across frontiers is not available and I cannot see for me today how a Jersey sub-register based on the U.K. register, or linked to the U.K. register or not linked to the U.K. register - it is not clear - will work. In an ideal world we would have a system like the Spanish system but the Minister for Health and Social Services does not have a budget for it. So we may then have harvested material here that we would end up sending out, so that is simply not an option for Jersey. I think Deputy Maçon said that the cart is slightly before the horse on this one, and I think it is. I agree with the second part of this proposition. I am not quite sure whether we are ready for the first one yet but I think the debate has got to be had and part of

the debate has been had here today that this is something that is on everyone's mind. I think a lot of the ethical issues have been dealt with. I think a lot of technical transplant issues have been dealt with but I think the actual donation - the Donor Registers - have not kept up and I wish there was some progress made in that way. I am not quite sure that this will be the way to do it. I think this progress that has to be made in the future will have to transcend national frontiers. Interestingly, another thing Dr. Barnard said when he did perform his first transplant was: "There is absolutely no difference between the heart of a black man and the heart of a white man. The heart of any man or any woman is no different." I think that the future will be trans-frontier sharing. On that basis, without wanting to get into any more detail, I wish I could support Deputy Le Hérisier. I thank him for what he has brought to the Assembly today but I will be supporting part 2.

The Deputy Bailiff:

Does any other Member wish to speak? I call on Deputy Le Hérisier to reply.

10.1.11 Deputy R.G. Le Hérisier:

I must thank the Members for their contributions. There have been some very ... well, they were all good and a lot of them were from the heart and they were much appreciated and some were, like Deputy Duhamel's blue sky thinking, that we may be too narrow in the approach we are taking and well we may be. On the issue that Deputy Martin raised, she did raise some very good points which I thought were totally supportive of what I was saying, because what I was saying is the fact of the existence of the register, while it is important to catalyse things it is what is behind it that really matters. The kind of support you get through hospitals, the counselling, the way you deal with the families, all those issues and that is what the Spanish... I understand, and Deputy Martin can correct me, I think that is what they proved. They have had, I think since about 1979, an opt-out system but it is only in very recent years that the numbers of donations have really gone up as they have introduced these other systems. So I am not naïve enough to think that a change in the law will lead to an automatic increase in donations. There is a lot else that has to happen at the same time but I thought those were very good points. On the point that Deputy Maçon and other people raised - Deputy Power for example - are we being inconsistent in asking for 2 things? The reason we asked for this - and maybe it was a bit bizarre - is knowing the pace of change in Jersey and the long time it would take, and the Minister mentioned how long the Welsh have spent discussing the matter and they have reached ... I mean there have been unfortunate phrases like "Welsh hearts for Welsh people" enter the debate, for example. Of course it is a debate that can get far too parochial for reasons that Deputy Power alluded to. The reason we asked for a register was as an interim step basically. It was again to focus people's thinking to get them to sign-up and to get the Health Department to bring in mechanisms, maybe the driving licence, but it could be others as well, it could be passport applications, it could be forms available at a Parish Hall, with backup, not just forms left in a dusty corner. It would have to be properly backed-up. The idea was it would force the authority in this case, which is Health and Social Services, to really focus on how they are going to get more people to contribute and then in the bigger study, yes they can look at what increases contributions but, more importantly, they can look at what is a sensitive environment and the Constable of St. Saviour, in a very good personal speech, mentioned that. What is the environment which ensures that the medical system gets itself really geared-up and then all of a sudden it skids to a halt because the relatives, either because they have not been informed or because they are suffering terrible emotional trauma at the time, all of a sudden they pull the plug on what the health authorities thought was a fairly well-managed system. So I know that is not entirely consistent but that is why we suggested a register to get things moving, to get the health authority to think about what is the kind of backup involved without all this talk of new operating theatres and all this talk of different data protection and jurisdictions. So, on that basis, I would like

to thank the Members again. I think it was a very mature debate; some excellent points were raised and we will vote separately on (a) and (b).

The Deputy Bailiff:

Anybody call for the appel? The appel is called for. I ask Members to return to their seats. The first vote is on paragraph (a), a request to the Minister for Health and Social Services to establish an Organ Donors' Register in Jersey and I invite the Greffier to open the voting.

POUR: 7	CONTRE: 37	ABSTAIN: 0
Senator A. Breckon	Senator P.F. Routier	
Senator S.C. Ferguson	Senator A.J.H. Maclean	
Deputy R.G. Le Hérissier (S)	Senator B.I. Le Marquand	
Deputy G.P. Southern (H)	Senator F.du H. Le Gresley	
Deputy S. Pitman (H)	Senator I.J. Gorst	
Deputy M. Tadier (B)	Senator L.J. Farnham	
Deputy M.R. Higgins (H)	Senator P.M. Bailhache	
	Connétable of St. Helier	
	Connétable of St. Clement	
	Connétable of St. Peter	
	Connétable of St. Lawrence	
	Connétable of St. Mary	
	Connétable of St. Ouen	
	Connétable of St. Brelade	
	Connétable of St. Martin	
	Connétable of St. Saviour	
	Deputy R.C. Duhamel (S)	
	Deputy J.A. Martin (H)	
	Deputy J.A. Hilton (H)	
	Deputy J.A.N. Le Fondré (L)	
	Deputy of Trinity	
	Deputy S.S.P.A. Power (B)	
	Deputy K.C. Lewis (S)	
	Deputy T.M. Pitman (H)	
	Deputy E.J. Noel (L)	
	Deputy T.A. Vallois (S)	
	Deputy A.K.F. Green (H)	
	Deputy J.M. Maçon (S)	
	Deputy G.C.L. Baudains (C)	
	Deputy of St. John	
	Deputy J.H. Young (B)	
	Deputy S.J. Pinel (C)	
	Deputy of St. Mary	
	Deputy of St. Martin	
	Deputy R.G. Bryans (H)	
	Deputy of St. Peter	
	Deputy R.J. Rondel (H)	

The Deputy Bailiff:

So the Greffier will reset the system and we then come to paragraph (b) and I will ask the Greffier to open the voting.

POUR: 42		CONTRE: 2		ABSTAIN: 0
Senator P.F. Routier		Deputy R.C. Duhamel (S)		
Senator A. Breckon		Deputy G.C.L. Baudains (C)		
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy of St. John				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

11. Sunstone Holdings Ltd. and De Lec Ltd. – ex gratia payments to investors (P.90/2013)

The Deputy Bailiff:

We now come to P.90 - Sunstone Holdings Limited and De Lec Limited:ex gratia payments to investors - lodged by Senator Breckon. I ask the Greffier to read the proposition.

[16:15

The Greffier of the States:

The States are asked to decide whether they are of opinion, (a) to request the Minister for Treasury and Resources to make ex gratia payments from central reserves to investors who suffered financial losses as a result of investments they made in Sunstone Holdings Limited and/or De Lec Limited with such payments being limited to a maximum of £48,000 per investor with this maximum being calculated as 100 per cent compensation for the first £30,000 lost and 90 per cent of the next £20,000; (b) to request the Minister for Treasury and Resources to take the necessary steps to bring forward for approval legislation to require the Jersey Financial Services Commission to make a one-off payment to the States to meet the total cost of the ex gratia compensation payments made under paragraph (a); and (c) to request the Chief Minister to bring forward for approval no later than December 2014 proposals under Article 27 of the Financial Services (Jersey) Law 1998 for the establishment of an Investor Compensation Scheme in Jersey.

11.1 Senator A. Breckon:

I should say at the start that I have no pecuniary interest in this matter. Some people are known to me and some people have become known after this was lodged that I did not know were investors that we are talking about today. First of all I would like to give thanks to the States of Jersey Police Financial Crimes Unit for supplying redacted information and that means that the financial limit I originally thought was £2.7 million; that is now a maximum of £1.9 million. I also give thanks to the Judicial Greffier and staff for directing me towards the Royal Court papers and judgments which have been helpful in what I want to say today and in my background reading to this. Also to the Solicitor General, whom I did ask if he would look over my shoulder to make sure I was not disclosing anything that was not in the public domain in the report that I have produced. Also thanks to those people who have contacted me who have lost money through the dishonesty of others. With me they have been, I should say, sincere, frank and honest. What is this about? Is it about people or money or both? I would say it is about ordinary people who are known to many of us, and some are not identified, and there are some involved here who I still do not know who they are, and I am not particularly interested, and depending on the outcome of this, if there was a settlement, if they get something all well and good. It is about what happened to those people, to their money, as investors as it were. What is it not about; it is not about any one individual in a position of authority and the surrounding high profile publicity. On the contrary that person was acting as a director of a company, he still probably had a duty of care and some obligations but 3 others were acting to deceive while licensed by the Jersey Financial Services Commission as financial advisers and I believe that is important to Members. They were doing that under the umbrella of Goldridge Stone and because they were known and established, trading under this financial services company - Goldridge Stone - they used that position to defraud individuals. The court said: "They recklessly misled people." I heard yesterday at the presentation that the Jersey Financial Services Commission were aware as long ago as 2001 that there were some regulatory issues with this company and, at the time, they looked over their shoulder and in 2004 they backed off a bit. The individuals involved were, in my opinion, using Goldridge Stone as a vehicle for the equivalent of insider trading. I will explain a little bit about that but they were licensed as individuals and as a company by the Jersey Financial Services Commission. That gave them knowledge of clients' personal details and finances. Over the years many ordinary people had taken out policies or raised funds or had policies that became due and because people had gone to them over many years they had a trust in them to give them the right advice, to help them make the right financial decisions. They trusted them for that reason under the umbrella of that company and as individuals. Now we all know that that was now a mistake. However, the ordinary people were not to know at the time because they had given their trust to the individuals who were licensed by

the Jersey Financial Services Commission and that is where many of the problems lie. So who are the ordinary people? Perhaps I should explain to Members some of my previous knowledge. When I was chairman of the Consumer Council people used to come to me with all sorts of issues including matters like this, and I was aware of the Alternate investor situation, and I also had a file on Sunstone and De Lec but because the cases were under investigation, rightly, I was restricted in what I could do. All I could do really was make a polite inquiry: "Where is this? Is anything likely to surface very soon?" because people were frustrated because the investigations were taking so long. Questions like: "Is anybody doing anything?" At the time these would have been questions that were rightly asked. I would say that I have not met all of the people but I would describe those I have met as middle-Jersey. In that way many will not have had a penny off us by the way of benefits or allowances or anything like that. I would generally describe them as good citizens who have worked and saved, been in business, worked for others, have family values and also shown some good Jersey examples of thrift. They have brought up families, shown respect for others in authority, and they have been valued members of the community. Having said that they cannot believe the situation that they have found themselves in: "why are we in this position?" Then that brings in a series of questions: Well, what can we do?" Where could they go? Who could or would do anything? What I can say, all those people that I have met and spoken to are devastated. So we, not the Council of Ministers - this Assembly - are the last resort, all of us. It is up to us to make a decision. The reason I say some of that is we have been somewhere near here before. First of all I want to refer to the court papers of 5th October 2012. This was the sentencing hearing before the Royal Court and Superior Number and the Commissioner was Mr. Pitchers. He had this to say at paragraph 11: "Some general points with regard knowingly committing these offences is particularly serious when it came to the final counts. Your fleecing of [a person - I will not name them: it is in there but I will not name the person] was as dishonest as it would have been if you had held up a bank to get the money. The Jurats were satisfied in the trial that all 3 of you were present at the meeting you had with [so-and-so]. You were having these in the offices that you were all occupying and the other 2 of you were aware of what was going on when one of you was speaking to him." It goes on at paragraph 12: "It is important to stress that one of the reasons why these offences are so serious is because it is vital that those who invest with professionals, whether they are regulated or unregulated in their business, must have confidence that they are being given accurate and honest advice and not being misled but at the heart of this case is something even more important. The victims, these investors who lost their money, were ordinary people whose lives have been altered for the worse forever by your reckless and your later dishonest behaviour and that is a matter of great seriousness. These are not people who could afford to lose the money that they lost." The details of... that person was brave enough to suggest to me that I circulate them to Members by email which I did the other day. Having said that, the investor was alerted by the Financial Services Commission in March 2008 and advised to try to recover £100,000, he got £20,000. Later during the criminal investigation Grant Thornton were used as forensic accountants and it was discovered that £80,000 of his cash was misappropriated fairly quickly, within hours really, of being in an account. Having said that, as I mentioned before, the Jersey Financial Services Commission had complaints about Goldridge Stone in 2001 and 2004 and after investigations they were given the benefit of the doubt and allowed to continue. Complaints were made by the investors to the Jersey Financial Services Commission in 2007: not January 2008, it was in 2007. The case I have just talked about, that particular individual was aware that Goldridge Stone and the advisers were still trading in March 2008. The Jersey Financial Services Commission now are taking a very serious watching brief and they alerted him to the fact that he should always - not as he had been told - he should try to recover his money and he did that within hours and also sought legal advice to do that. He contacted a private bank where there was a client account where his money should have been and of course it was gone. Following on from that - this was in March- in May 2008, and I have a copy of it here, the financial advisers were still

advertising - this is on 20th May 2008 - in the *Jersey Evening Post* looking for investors on 20th May. This is some few months after that. When the person who had lost the money saw this he contacted his lawyer and he contacted the police. The question was: "Why are they still trading? Somebody else could be walking into this, why have you not closed them down?" The other question was: "Should the public not be alerted to this?" Following from that there was raids on premises in June and a little bit later the advisers and Goldridge Stone were struck off. The Jersey Financial Services Commission made a statement, would you believe, on 25th July 2008, so we are talking March, April and May, all that is going on there watching bank accounts, and it said this: "The Jersey Financial Services Commission issues the public statement under Article 25(a) of the law. Following an investigation into the fitness and propriety of the principals it appears to the Commission to be reasonable and necessary to issue each of the principals with directions under Article 23 of the law preventing each of them from engaging in any employment with any registered person as defined under the law. The principals have been issued with equivalent directions under each of the regulatory laws. The directions shall remain in force and until such time as the principals satisfy the Commission that there are no longer any grounds justifying the directions in which case the directions may be withdrawn or varied."

[16:30]

It goes on to say: "The reasons for the directions arise from the principals' conduct between February 2005 and March 2008 whilst they were the principal persons of Goldridge and simultaneously directors and shareholders of Sunstone Holdings Limited. Goldridge was authorised by the Commission to provide investment advice. Sunstone is a Jersey company whose activities do not fall within the regulatory responsibilities of the Commission. The principals of Goldridge operated Sunstone primarily for the purposes of investing in property in the United States of America. In concluding that the principals are unfit to be employed by a registered person the Commission is considering the conduct of all 3 principals as directors of Goldridge Stone." The question that raised for me is, well, where had they been in the meantime? If somebody was causing a nuisance in a pub they could get thrown out and then if they kept doing it, they could appear before the magistrate and they would be banned from the premises within week, so why is something like this allowed to continue? They had not finished yet and a letter went out to current clients of Goldridge Stone on 20th June 2008. I will just quote a couple of extracts from it. It says this: "The financial services world is a constantly changing place. Not only in terms of product availability, regulation and cost but also in terms of the personnel employed within each organisation and the structure required to meet the responsibilities required in the future. Recently, the directors of Goldridge Stone decided to cease offering financial advice to its client base but alternatively to agree a client servicing agreement with a company we believe are better placed to deal with all aspects of your current and future financial needs." Also in the letter, it says: "Should you have any concerns or questions regarding this move we would be happy to answer them. We want you to be provided with the best help and advice from now on ..." That is interesting "from now on": "... and we believe we have made a sound business decision at this time." Now, come on, the J.F.S.C. (Jersey Financial Services Commission) were on their tail and they send out a letter like that. What they did do, as a way of comfort, was say: "Just to confirm, if you have personal pensions or savings products or a lump sum investment, these are all with either finance houses or insurance companies previously recommended by Goldridge Stone Limited. No money is directly invested or placed with us. None of these policies will be disrupted by the proposed move to this servicing agent." They had not finished yet. They changed tack. 20th August 2008, they sent out a letter. Now, this was under the heading of Sunstone Holdings and they had moved office. What they were calling people: "Dear Property Partner." That had never been used before so they were changing tack. I will just quote a couple of bits from it. What it says is this: "Due to an investigation initiated by the Jersey Financial Services Commission into the affairs of Sunstone

Holdings Limited, an unregulated entity, and in their desire to serve the public interest, and we believe display their autonomous control over all things financial, they subsequently saw fit to close down Goldridge Stone Limited, a regulated entity, of which the directors were principals. Sadly, as a result of trying to protect Sunstone Holdings and its partners' interests, the directors were forced to provide statements admitting to irregularities within Goldridge Stone on the complete understanding that it would effectively end the disruption to Sunstone Holdings but ensure the closure of Goldridge Stone. Irrespective of the truth, the directors rationalised that this would be an acceptable loss and we felt at the time jobs could be obtained elsewhere within the financial services industry." This is dated 20th August 2008. It goes on to say: "There is now another investigation being undertaken by the Joint Financial Crimes Unit at the request of the Attorney General to see if any criminal activity has taken place. The police have taken away all the original paperwork and although they said they would try not to disrupt business, this has also hampered all progress. The impact of all of this is even more apparent to our personal lives and that of our families. The directors fully believe that they have done nothing illegal whatsoever and can account for every penny of the monies received. A certain individual brought about a court case, which we believe prompted the Jersey Financial Services Commission and the Jersey Financial Crimes Unit to act. Because of this, the company has been forced to spend a substantial amount in legal fees to defend its position. Unfortunately, 2 or 3 other partners saw fit to join this bandwagon of negativity instead of talking to us and made the problem worse than necessary. The money could have been used in better ways to repay interest or bills. This company remains determined not to give preference to any one individual over other partners." The conclusion of that says this: "The directors are still determined to get the company through a difficult period and will do all they can but it is with great regret to have to say we cannot pay out any further interest to loan note holders or repay any capital back until things have improved due to the reasons given." They conclude by saying: "It may take a year or 2, but given patience and understanding, the company's directors still believe all partners and loan note holders can be repaid in full." That is dated 20th August 2008. I think it is important to remember this; I am not talking about compensating investors in full. I am talking about a sum of compensation. In a similar manner to what was done in the case of Alternate investors and I would like to remind the House of what we did then. I have seen a number of documents that are inaccurate. It says: "The States agreed not to compensate Alternate investors." No, we did not. It was a Ministerial decision. It was not the States Assembly; it was a Ministerial decision. As a result of that, it became known that this had happened and on 13th May, the Minister for Economic Development - Senator Maclean - gave a statement regarding the payment of compensation to a group of local residents who were victims of misleading advice from Alternate Insurance Services Limited. I will just quote a few bits from that: "These individuals suffered losses as a result of recklessly misleading advice given by a local company called, Alternate Insurance Services Limited. Payments to the investors will be made on the same basis as the U.K. Financial Services Compensation Scheme with each investor limited to a maximum pay out of £48,000. Following a full external audit, the payments will be distributed to the investors by my department as Economic Development has responsibility for financial services. My decision follows a Royal Court judgment in the case of *Jersey Financial Services Commission v Alternate Insurance Services Limited*. In light of the unique circumstances of the case, which are unlikely to be repeated, there were clear and compelling arguments to support compensating these individuals. I gave particular regard to the following exceptional facts when arriving at my decision. Without exception, those affected could fairly be characterised under the commonly used phrase 'widows and orphans.' The affected investors in this case were all local residents who were not sophisticated investors. The Royal Court found that they were given recklessly misleading advice, which led them to invest in high-risk products believing in fact they were low risk resulting in significant losses, sometimes in excess of their initial investment. The court's view was that all such investors should be compensated. In 2001, when this case occurred, the sector was not fully

regulated. Normally professional indemnity cover was invalid. Due to the insolvency of Alternate, only a small proportion of losses could be recovered. All other possible avenues for recovery through the courts were exhausted by the Financial Services Commission. Given the uniqueness of this case, the Council of Ministers supported my view that there were sufficient grounds to make one-off payments to the affected investors. I hope that these payments will go some way in helping to relieve the consequences, including genuine hardship that many of these people have suffered as set out in the judgment of the Royal Court. As a result of this case, I have asked my department to commence a review of investor protection. In the past it was decided in common with other jurisdictions not to have a standing scheme due to the cost of running it. It was always intended to deal with exceptional cases as and when they arose, on a case-by-case basis, as in this instance. We will now look again at the cost benefit analysis of establishing a standing investor compensation scheme and will report our findings and proposals to members.” To my knowledge, we never did receive a report about that and about whether we should have a scheme. So here we are again with a situation and thankfully these things do not happen very often but perhaps, as one of my propositions says at (c), we should have something in place. The other thing, the Judge was critical of the States in his judgment in the case of Alternate Investors, and he had this to say at paragraph 402 of the judgment: “It may be the case that Alternate is not insured so that the sums ordered by the court to be paid cannot be recovered from Alternate’s insurers. The question might be asked why the States have not yet exercised the power given to them by Article 27 of the 1998 Law to establish via regulations a suitable compensation scheme or schemes. In the absence of any effective system for ensuring the persons under the 1998 Law are firmly insured with adequate cover, the question becomes the more pertinent. The investors would be entitled to ask the question because in the absence of insurance of Alternate, they would be left without redress and the States might consider that the circumstances of the investors, including named individuals and others, require redress, a point which we will return to below.” What they then said was: “For the future, however, the court recommends that the issue, whether a compensation scheme or schemes should be established, should now be addressed. We emphasise that for investors such as those to be left without compensation should not redound to the good reputation of Jersey and its investment community.” The date of that court decision was 26th January 2007. Some 15 or so years later, from 1998, when we have had the opportunity to do this, nothing has been done. I believe that is a failure and that leaves us with, I believe, a duty of care. That is what my proposal is about.

[16:45]

I also think that the Jersey Financial Services Commission, if at a later date a Committee of Inquiry or something looked at their process and conduct here, it might reveal other things but that is something for another day. That is why my proposition includes at the start a request for payment equivalent to the Financial Services Scheme in the U.K. from the States’ funds, but recovery under paragraph (b) from the Jersey Financial Services Commission. Their annual report for 2012 shows that they have an accumulated reserve of £7.247 million. It also begs the question: “Who regulates the regulator?” What happens if the regulator is not up for it? We have just seen a case there on the front of the *Financial Times* where the company was fined over \$900 million by regulators in the U.S.A. and the U.K. for indiscretions. I brought a proposition to the States for the Jersey Financial Services Commission to be able to fine companies as well, along the way, but unfortunately that is not there yet. I think it does show as well that there is need for an investor compensation scheme. Nobody wants to use it. It is like the insurance of flooding or fire. Nobody wants to claim it on their house but it is no good trying to get the insurance when the worse thing happens. I would say that is similar to an A.B.T.A. (Association of British Travel Agents) scheme for travel. People go on a packaged holiday, included in the price of the holiday is a few pounds, about £5 or £6... but when somebody gets stuck in Turkey or whatever it is, then the scheme steps in and gets people back to where they are supposed to be and then they can finish off their holiday.

But it is for when all else fails because people take out travel insurance, they do things themselves. Of course, there is a cost to that. There is also a benefit because we can then say Jersey is an international finance centre of some standing and we can use it as a Kitemark if we want to attract investors. We do have regulation, we do have safeguards but this appears: "Well, it is not me. It is not us. It was not them." That is really no good. It is up to the people involved and that is why I believe we should step in and act. We can demonstrate by doing that, that for the individual investor there is some but not total protection. It would have limits on... the same as the U.K. does, but it also shows, I believe that somebody cares. Even with something like protecting bank deposits, it took a long time to come and some of that came from pressure from the outside world because people had money in Jersey banks. Do we have bank protection scheme? No, we do not. We were getting out of line. We are out of line again. As I understand it, the U.K. have raised the limit to £80,000. Ours is still £50,000. So although a scheme could be brought in, hopefully it will be rarely - if ever - used. We have a bank deposit scheme, it could be similar to that, if the industry is well regulated and I believe there are some lapses in this particular case. So there are quite a few ordinary people who have been left high and dry by this and some are known because of publicity and others not. I was just interested, aside from that, that the Jersey Financial Services Commission mentioned the other day that we have this thing on a website. I know some people who are involved here who would not know how to switch a computer on. I do not mean that disrespectfully. They do not have one, they do not want one, they probably do not even know what a website is. So it is a bit glib to say that we have information on a website. That does not go down very well with me. People have been affected by this across the Island. It is not confined to any one area or whatever. I found out as part of the investigations that that is the case. Some of those who have lost money have been open in public about it but there are others still suffering in silence. Some feel embarrassed by it all. They do not want to be identified; I do not have a problem with that. I do not particularly want to know who they are but what they have all done, they have all faced an ordeal. When this came open, they went to the Jersey Financial Services Commission. They have been to C.A.B. (Citizens Advice Bureau), some have taken legal advice. They gave statements to the Jersey Financial Services Commission. They have given statements to the States of Jersey Police, Financial Crimes Unit, and some gave evidence in court. One lady told me: "I could not go through that. I am not in the best of health, I just could not. I gave a statement but I could not go to court." There was an 8-week trial and some people were cross-examined. For people who are facing the ordeal, this is part of it. Then the question is, you have been through this ordeal, you have been through this nightmare, you have been through this torture, so where do we go from here? When you look at what can be done, the help to secure convictions so you can say: "Well, you did get a result" and that is why I am seeking Members' support today because people have nowhere else to go. There is no legal remedy. There is no point pursuing anything anywhere else so we - not the Council of Ministers, this Assembly - are the arbiters of that as the last resort. Just to give Members a couple of examples and just a bit of detail, I sent an email to Members a few days ago and I outlined the details of a widow in her 80s. When I lodged this proposition, I did not know this lady had lost any money. Her husband died about 10 years ago and I have probably known the both of them for about 40 years. Her and her late husband were clients of Goldridge Stone. They had bought a house, they had policies, they had various things, insurances, things on the house, so the financial advisors knew. This is the financial advisers at Goldridge Stone who were regulated by the Jersey Financial Services Commission. They had this insider knowledge of this lady and her family. They knew her husband had passed away. They knew she had some insurance policies; she had some money from that. Since her husband died, she sold her house and moved into sheltered accommodation. They knew she had some cash but they also knew she had a couple of little pensions, so she was not reliant on her nest egg to live. But what she said is: "It is there because the service charges on my apartment are going up, the utilities are going up. I am going to have to dip into it and if I need some help and support, I can buy that in. I can mind my

own business. It is nobody else's business but mine." Now she is worried: "What am I going to do now?" because she has lost a 6-figure sum of money. As I say, I have known these people and I would describe this lady and her former husband as a bit thrifty and she has lost a 6-figure sum. Also, as 3 ladies I know who sadly went through the process of divorce but as a result of that, in the ancillary matters, there was going to be some sort of financial settlement and all of them were known to Goldridge Stone and the financial advisers. Some of them were persuaded to change. I have had this file for years and 3 or 4 years ago one lady was persuaded, because she had a bond for £50,000 with an insurance company, to cash it in and move it in to Sunstone. They only knew that she had that money through Goldridge Stone. That was the connection and there were some issues there with other things and she was given all sorts of advice. Some was good, some was not but it was all through Goldridge Stone and she says that: "She was recommended by a friend in 2003 when I was looking for investment advice on where to place funds as I was expecting to receive following my impending divorce." So it goes back as far as that. For many of the people that I have spoken to the content is different but it is similar and it has the connection with Goldridge Stone. What has happened, basically, is that ordinary people have been swindled out of their savings, sometimes their pension fund, some money was left for them by an elderly relative, they have had policies that have been due and cash from that but the connection is Goldridge Stone. The other day the Jersey Financial Services Commission has said: "Well, we were watching them", because they were looking for churning - which is getting people to cash in a policy - but I do not think they have been looking closely enough because these people were targeted to move funds. If you looked at somebody's books and 10 people were cashing-in policies: "Well, why is that? Where is this going?" Do they need it for living expenses or they have particular problems so perhaps the regulator has not looked closely enough. I know that some Members have spoken with some of those people who have been affected and that has been appreciated by those with this problem. I think the Chief Minister met with some people at lunchtime today. The reason I say that is that there is a political cliché that something must be done. The question is what exactly is it we are going to do? Before I conclude, you will be pleased to hear, I will just give Members a flavour of the background to some of this. The other thing, can I say, is that the investors were not collective in the sense that a story was being told to one, another story was being told to another but they were not sitting there comparing notes. Many were not known to each other. One or 2 were but not that many. Again, this comes from the sentencing hearing on 5th October 2012 and the Commissioner had this to say. This is at paragraph 5: "The defendants were told of the flawed nature of the business plan from the beginning. The sentencing court has had placed before it, as it was at the trial court, an email from one of the 4, in September 2004, indicating that he understood that the J.V.A. (Joint Venture Agreement) did not reflect the true position and needed amendment if investors were not to be misled by it. This is in 2004. No amendment was ever made. Almost at the same time, another individual who was not one of the 4, sent an email to 2 of them pointing out that using only cash from investors without any other cash flow was robbing Peter to pay Paul. He said in his oral evidence that he voiced these concerns on several occasions. That particular individual had connections with these companies but he had the good sense to resign. As the Jurats found, the statements to investors, both orally and in writing, by the J.V.A. were reckless from the beginning. The degree of recklessness increased as the financial position of De Lec and then Sunstone got worse.

[17:00]

However, there came a point where the business was so mired in debt and the position with the U.S. properties so hopeless, that it was out and out dishonest to take money from anyone and that was reflected by the Jurats at the trial of no longer convicting of these offenses of recklessness, misleading statements but convicting of knowingly making misleading statements. From late 2006, there was a series of emails, which were placed before us by the Crown as they were before the trial

court, passing between the 3 defendants, acknowledging in colourful terms the hopeless financial situation they were in but they still took investors' money. By the end, no honest representation could be made to invest because had it been, that potential investor would have run a mile. So the defendants had no option if they wanted to continue to bring in money but to lie and that is what they did and that, Members, is where we find ourselves today because of this situation. People were misled, they were lied to, they were deceived, they knew they had money and they were targeted for what they could get. I would just like to mention, in conclusion, some of the comments of the Council of Ministers. There are some inaccuracies in there. First of all, I mention the Alternate investors case. Well, I would say this is very similar. It is not something we want to be doing very often or indeed doing again. We need regulation in place so that is not the case. They say in paragraph 3 of their comments: "The Jersey Financial Services Commission plainly had responsibility for ensuring that the independent financial advisers acted in a fit and proper manner and acted appropriately." Well, I do not think they did. I do not think they did. They also say in their comments at the bottom of paragraph 3: "The States decided to compensate." Well, no, we did not. It was a Ministerial decision, as I have quoted from, and in the back of my proposition is that Ministerial Decision. They also say in their comments: "It has been suggested in correspondence sent to States Members that the fraud was investigated belatedly by the J.F.S.C. (Jersey Financial Services Commission). Well, I would say it was. They were on the case once. They let it go. Perhaps then if they had picked it up earlier in 2001 to 2004, I would not be standing here today talking about this issue. It goes on to say: "It acted immediately upon notice on 26th January 2008." That is not true because they were informed before that and there was a lawyer accompanied one of the people who went to make the complaint in 2007. The other thing is somebody took out a private action in the court and they say that some of this alerted them to it but they knew before that because they were aware of people seeking redress. There were a number of actions that were hovering about. They say in the Council of Ministers comments and this is about the Financial Services Commission, it had: "Received no prior notice of or complaint about these activities, nor could it have picked them up from the supervision of Goldridge Stone because they were being conducted separately from that entity on other contractual terms." Well, if they are really looking at it, I would say: "Yes, they could have picked that up." At the bottom of the page, it talks about: "The Commission devoted a considerable resource undertaking that was a complex investigation but by 27th June 2013 Goldridge Stone had been struck off." It was not 2013. It was 2008. They also say: "In light of the Alternate case and other events, the J.F.S.C. has sought to educate investors of the risks associated with different types of investment under the heading 'Protect Your Money' websites which provides the following information." As I said, some of these people would not know what a website is. They have not got a computer. The Council of Ministers also talk about in paragraph 6: "It is made clear by all regulatory authorities that when an investment is contemplated particularly in high risk areas such as foreign property purchases, investors should always seek independent advice separate from those promoting the investment scheme." Well, at the time, those involved had no reason to doubt the people they had trusted for many years. Many years, some of them. They, as well, mention a government scheme - regulation is a last resort but I would say that we need that - and I am reminded of I do not know how many times I have gone on about having a Financial Services Ombudsman. This would not necessarily cure that but it would have been an avenue and if a number of people were going, then perhaps there could have been something to stop what was going on which resulted in the criminal trial and convictions. For those reasons, I generally believe that there are 3 parts to this proposition. One is initially for the States to compensate people up to a certain level which is in paragraph (a) of the proposition. Paragraph (b) suggests that is recovered from the Jersey Financial Services Commission and paragraph (c) asks the Chief Minister to bring something back for legislation before the end of 2014. The reason for that is quite simply nobody will have to stand here again and do this because it will be regulated, people will pay a few pounds extra for whatever it may be

but that puts in the safeguards and it gives a degree of comfort and it also demonstrates to the outside world that when situations like this do happen, we can act appropriately. It is not an ideal solution, I would say, because many people have lost more than that but that is not what I am proposing and that is the generality of what I am doing. So with that... just something that came up yesterday in discussion with the Constable of St. John. Well, maybe somebody should look at this in more detail so they can give it some scrutiny but I can say with some certainty for the people involved, a file has been generated, they have given paperwork, statements have been given and Grant Thornton have done forensic accounts. There are boxes full of information but if any Member wants more information, I suggest they read some of the transcripts of the court reports which, due to the former Bailiff sitting on my left and due to the Jersey Legal Information site, are available readily to many people so you can get access to that. You can see what was said and I have only quoted from bits but I have accumulated quite a bit of paperwork with that because it is quite comprehensive and there was 8 weeks of trial and there are notes on that. There are all sorts of things but this has been looked at in some detail and the other thing people have had to do is they gave personal impact statements of how it affected them and, obviously, that is a very personal thing. It affects different people in different ways and not just financially but emotionally and for reasons I hope I have demonstrated to Members, I would ask Members to support this. As I said, it is not just about the Council of Ministers. It is a responsibility that we have as Members of this Assembly and, with that, I make the proposition.

The Greffier of the States (in the Chair):

Is the proposition seconded? [**Seconded**] Chief Minister.

11.1.1 Senator I.J. Gorst:

Perhaps I could start by thanking Senator Breckon for his full introduction and acknowledging that I know, for many Members, this will be a difficult debate and ultimately a difficult decision but, as Senator Breckon said, it is one for the States to make and he is asking us to make it, albeit it will probably be tomorrow now. I also want to acknowledge that he has, as he rightly admitted, spoken a lot about individuals and the affect that this fraud has had upon their lives and the way that he has seen that first-hand and I think he said at the start of his opening comments that, for him, it was not so much about the money but about the people. I have to admit that that is a legitimate case to make and it gives me little pleasure to make the comments which I am going to make which I feel need to be made. I think there are a number of points that I would ask Members to consider before they decide to support this proposition today. Firstly, I want to talk about the role of the J.F.S.C. because I am afraid that I feel that Senator Breckon has said some things which were unfair with regard to the J.F.S.C.'s role in this particular case. It is quite clear that the investment activity engaged in by Sunstone and De Lec is not and was not an activity which is subject to regulation by the J.F.S.C. and that is the primary point to make and for Members to bear in mind. It, I suppose, can be quite easy, as Senator Breckon did in his opening remarks, to say that Goldridge Stone is regulated, that is right, and the individuals with regard to their role at Goldridge Stone was also regulated but not in regard to the promotion of this particular type of investment. Senator Breckon tried to indicate that because this particular firm had been under a technical term called "enhanced supervision and review" from 2001 to 2004 that they should have spotted this fraudulent activity and been able to stop it. The Jersey Financial Services Commission have been quite open about the enhanced supervision and review that they carried out between 2001 and 2004 and they have quite clearly said that those shortcomings were due to incompetence and negligence and not connected with dishonesty which is what we are considering with regard to the case before us today. In 2004, the review and reporting process concluded that improvements had happened but it is clear and important to say that none of the investments with regard to Sunstone were made on or were done on Goldridge Stone contracts but were via Lewis and Foot individually and Sunstone.

[17:15]

No documents were found at the Goldridge Stone site that were held separately at the New Street premises and no complaints or concerns were raised in those times by Sunstone investors with the Commission. In fact, as I understand it, while I appreciate this is not the case with all investors, some investors were clearly told that the scheme was nothing to do with Goldridge Stone. I think it is important for Members therefore to realise that it is difficult to see how the Commission could be expected to take action with regard to Sunstone because its activities were deliberately concealed from their regulatory gaze. Therefore, I do not think it is fair for Senator Breckon to have made the comments that he did because I do not think there is a question of there being a regulatory failure on behalf of the Jersey Financial Services Commission. The second point I ask Members to consider is that if this investment activity is not subject to regulation - which it is not in common with other jurisdictions around the world - is it then right to ask the Assembly to ask the Jersey Financial Services Commission to use their reserves which have been gathered from regulated entities and regulated activity to fund the amounts we are being asked to today for something which is unregulated? Other suggestions have been made that the reserves are in fact in place for funding such eventualities and that is not the case. There is a clear purpose for the reserves. It is not to fund in a distress scenario but it is to allow the Commission to fund difficult legal regulatory cases and that is important that the Commission has that ability unhindered to be able to fund legal cases against entities, individuals and activity that does fall within its remit. There is a case that could be made that, by acting in a way that Senator Breckon is asking us to act, we could be considered to be interfering with the operational independence of the Commission and that is something which we should not do and international bodies would frown upon as being completely inappropriate. The third point which I think is equally important is Senator Breckon made great play of: "If we had set-up a compensation scheme, we would not find ourselves here today." That is not the case because it should be made clear, as I think the Council of Ministers did in their comments, that if the circumstances covered by the proposition were to be replicated in the U.K., they would not be covered by the U.K. investor protector scheme. Therefore, as I have said, the suggestion that if we had produced such a scheme that matched that in the U.K., investors would be compensated is incorrect and Senator Breckon would have to have lodged a very similar proposition asking for an ex gratia payment to be made from tax revenues. That is one of the reasons why this case cannot be seen, as Senator Breckon indicted, to be similar to the Alternate case because as Senator Breckon quoted from Senator Maclean's statement to the Assembly in the Alternate case, it would have received compensation under a U.K. equivalent scheme. That is not the case with regard to what we are being asked to consider this afternoon. I think, therefore, it follows that what has to be considered is whether, when individuals make risky investment decisions which are the subject of fraud, they should be insured against the effect of that by compensation from the taxpayer because that is what we are being asked. If the view is held that there can be circumstances when compensation from taxpayers will be justified, there must be a sufficient case made that the events and the impact is so exceptional that if compensation is to be offered, it would be without setting a precedent that many others could and no doubt would seek to take advantage of. As a general principle, it should not be the role of taxpayers to provide compensation that would have the effect of reducing the need for investors to exercise due care, to take independent advice and to avoid risky investments. I am afraid to say that investment in property in a foreign country is a risky investment. As I have already alluded to, I do not believe that the Alternate case is a precedent for this case because the circumstances are quite different, as I have said, and it bears reiteration particularly that the Alternate case was subject to regulation and this case is not. In the Alternate case, there was a detailed analysis by the judge of the hardship placed by individual investors, something which is not available in the current case. However, as Senator Breckon said, there are or were impact statements available. The judge, in suggesting to government, that it should address the issue of an investor protection scheme, no doubt did so in the knowledge that those investing

with Alternate - which is what the judge said in that case - as a regulated entity would have been covered if such schemes existed that matched that available in the U.K. and, as I have said, that is not the case in this instance. Some may feel that the Council of Ministers perhaps were scaremongering but I must make clear that there are other cases which can be expected to come forward if the proposition is adopted. For example, a judgment in June included the statement by the court that the victims had lost money also in respect of property investment. They had lost money which they could ill afford which was having a drastic effect upon their retirement. Of course, as I have said and as Senator Breckon said, it is a matter for the States to decide but I believe that it would be difficult to defend discriminatory action from one case to another where precedents have been or perhaps may be set. It is against the background of those facts that the Council of Ministers felt it should issue the comment which it did at the end of last week. I am afraid, as I said at the start, much as it gives me no pleasure whatsoever and much as I understand Senator Breckon's comments about the individuals and the people, I do feel that I have to ask Members to think extremely carefully before they decide to set this precedent and make payments in this case because I feel that that is not the right position to take.

Deputy J.A.N. Le Fondré:

May I propose the adjournment, Sir?

The Greffier of the States (in the Chair):

If I have no other Members wishing to speak, perhaps it would be a convenient time to adjourn if Members are content. Very well. Just before the adjournment, I can announce to Members that there are 3 reports that have been presented this afternoon - Minimum Wage: Employment Forum's Recommendation and the Minister's response are P.116; a Land Transaction from the Minister for Treasury and Resources is P.117; and a report from the Comptroller and Auditor General, "The Management of Major Property Transactions - Learning from the Proposed Acquisition of Lime Grove House." I understand that copies are in Members' pigeon holes outside the Chamber. Very well, the Assembly will stand adjourned and reconvene at 9.30 am tomorrow morning.

ADJOURNMENT

[17:25]