

# STATES OF JERSEY

## OFFICIAL REPORT

**TUESDAY, 29th JANUARY 2013**

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[9:32]

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

**COMMUNICATIONS BY THE PRESIDING OFFICER**

**1. The Bailiff:**

I am delighted once again to welcome His Excellency to our deliberations today. **[Approbation]**  
There are no other matters under A.

**QUESTIONS**

**2. Written Questions**

**2.1. DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR OF THE MINISTER FOR TO THE CHIEF MINISTER REGARDING THE COURT CASE INVOLVING THE ACTING MAGISTRATE:**

**Question**

In the light of the recent Court Case involving the then Acting Magistrate, what proposals is the Chief Minister considering to ensure that matters are dealt with more expeditiously in the future, and does he propose to review the issue of full remuneration while any Court case is resolved ?

**Answer**

Dealing with difficult cases such as those recently encountered with the Magistrate Designate is not straightforward. An individual must be innocent until proven guilty. In the case of a Justice this is further complicated by the need for separation of powers between judiciary and legislature.

The issues arising are being considered and my proposals will follow best practice elsewhere and be the subject of consultation.

**2.2 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING CONSULTATION REGARDING THE HARBOUR CYCLE TRACK SCHEME:**

**Question**

Further to answers the Minister gave on 15th January 2013 regarding the harbour cycle track scheme, would he identify when the Marine Traders Federation were consulted, given that the latter have no record of such consultation?

**Answer**

The Director of Transport and Acting Senior Engineer met with a representative of the Jersey Marine Traders Federation on Friday 12th August 2012 at 14.30hrs at TTS's South Hill Offices.

**2.3 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES REGARDING THE RANK TAXI SERVICE:**

**Question**



Would the Minister advise whether he is content with the present service supplied by rank taxis and, if not, would he outline what he intends to do about it and when?

**Answer**

As the Minister for Transport and Technical Services, I have set out in detail all matters relating to taxi regulation which I consider to be issues of concern in my Green Paper consultation 'Taxi Regulatory Reform' published March 2012.

As a result of that consultation, a policy White Paper is in the process of being developed which will set out the reforms I intend to present to the States for their consideration this year. Until that White Paper is published it would not be appropriate for me to indicate my policy intentions.

The States' Sustainable Transport Policy charges me to introduce improvements to the taxi service to provide a simplified system based upon what the public needs by 2015.

**2.4 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT OF THE MINISTER FOR PLANNING AND ENVIRONMENT REGARDING THE VISUAL STATE OF LA COLLETTE RECLAMATION SITE:**

**Question**

Would the Minister advise whether he is happy with the visual state of La Collette reclamation site - with particular reference to the earth mounds, white plastic sheeting, rusty containers, incinerator building etc - and, if not, what, if anything, he intends to do about it?

**Answer**

The earth mounds, plastic sheeting, containers and the energy from waste plant are all present at La Collette in connection with authorised activities. The nature of the activities at La Collette reclamation site are such that there will inevitably be some features which are not visually attractive however this impact will change over time.

The energy from waste plant has implemented a landscaping scheme designed by Townsends Landscape Architects – one of Europe's leading landscape architecture practices – that will take a little time to fully establish itself, but I am confident that in time the landscaping will have a positive effect on the area. The shipping containers that are present will hopefully be removed soon, following an acceptable solution for the disposal of the asbestos waste they contain being agreed.

All the activities at the reclamation site have been considered vital to the proper functioning of the island and in the context of providing these facilities the visual impact is not unreasonable and in time will lessen.

If the Deputy or any other States Members can offer further solutions and ideas to visually improve this site, I would be more than interested in hearing them.

**2.5 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE CHIEF MINISTER REGARDING THE IMPLICATIONS OF THE FOREIGN ACCOUNT TAX**

## **COMPLIANCE ACT (FATCA) AGREEMENTS WITH AUSTRIA AND LUXEMBOURG:**

### **Question**

What advice from his international finance advisors has the Minister had on the implications, if any, to Jersey's intention to sign a US FATCA agreement, of warnings from the European Commission for Taxation and Customs to Austria and Luxembourg that, should they sign FATCA agreements with the US, then other EU countries will use their "most favoured status" to achieve automatic exchange of tax information?

What further advice, if any, has he received on the EU Commission decision to extend this pressure for automatic exchange to Switzerland, along with a threat of blacklisting within 6 months if current tax information practices are not improved?

Do his advisors consider that these moves within the EU in response to the potential extension of US FATCAs have brought closer the advent of the automatic exchange of tax information within Europe, including the Crown Dependencies, and if not, why not?

### **Answer**

I am advised that Jersey's intention to sign a US FATCA agreement, to which my statement of the 7th December 2012 referred, is not affected by any warnings from the European Commission to Austria and Luxembourg. However, as a result of signing FATCA agreements with the US Austria and Luxembourg may be expected to withdraw their present opposition to adopting automatic exchange of information in respect of the requirements of the EU Directive on the Taxation of Savings Income. Under the terms of our savings tax agreements with the 27 Member States Jersey would then be required for the purposes of those agreements to move to the automatic exchange of information in place of the present retention tax and voluntary disclosure arrangements.

I am further advised that the position of the European Commission on third countries, which will include Switzerland, has been clearly set out in a recommendation published last month regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters. This refers to the publishing of black lists of third countries not complying with the minimum standards specified. These standards are those of the Global Forum on Transparency and Exchange of Information for Tax Purposes and the EU Code of Conduct Group all of which Jersey satisfies.

## **2.6 DEPUTY G.P. SOUTHERN OF ST. HELIER OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING JOB OPPORTUNITIES ANNOUNCED IN HIS RECENT MEDIA RELEASE:**

### **Question**

Will the Minister inform members how many of the 1,442 job opportunities, including 90 non-locally qualified created by the 172 licences for undertakings from inward investment in Jersey in the period 2008 to 2012 announced in his Media Release of 14th January 2013, have actually been filled, broken down by year and by sector?

Will he further state how many of these licences granted, and how many of these jobs created, were in the finance sector and subject to tax at the 10% rate by year? Will he further state how much company tax these companies actually paid by year?

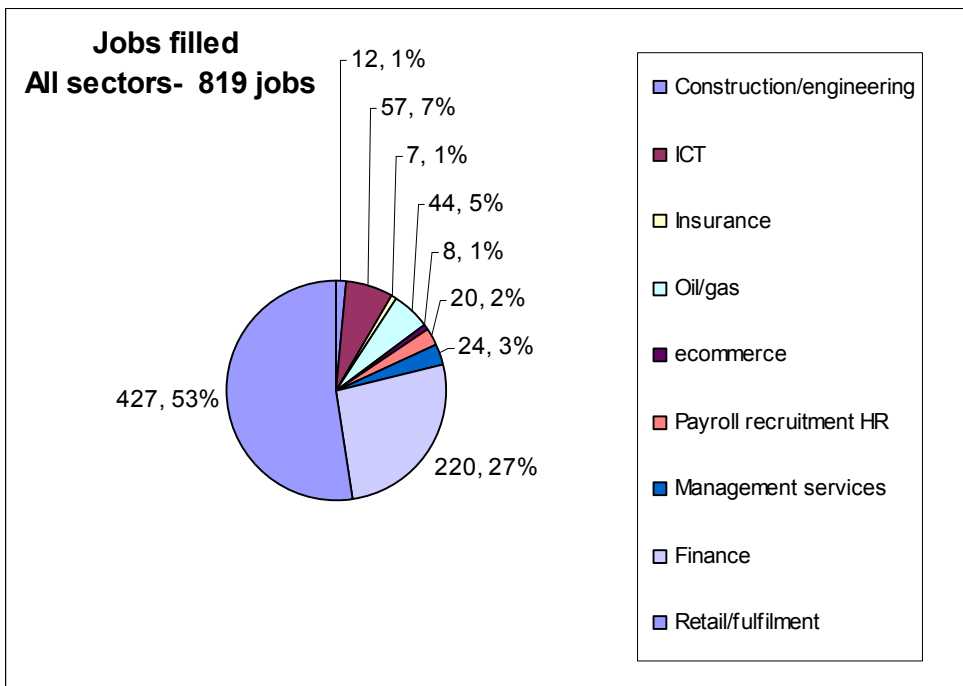
Will he also state for those companies in the oil, gas and mining sectors who are not directly involved in extraction in Jersey, what activities they actually undertake in the Island to justify their presence and registration in the Island?

**Answer**

***Will the Minister inform members how many of the 1,442 “job opportunities”, including 90 non-locally qualified created by the 172 licences for undertakings from inward investment in Jersey in the period 2008 to 2012 announced in his Media Release of 14th January 2013, have actually been filled, broken down by year and by sector?***

Of the job opportunities created, 819 had been filled by June 2012. Additional opportunities filled since then will be accounted for once the December 2012 manpower returns are completed and the figures released.

The attached chart shows the breakdown of the jobs filled in various sectors during the period December 2008 – 2012. We have not broken the information down to year by year for two reasons. Firstly, staffing licences are granted under the Regulation of Undertakings and Development Law on a 3 year basis and therefore businesses will fill the available posts depending on their growth over a rolling period. Secondly, it may be possible to identify an individual business from the sector and therefore be able to ascertain staffing licence numbers which are confidential to that business.



***Will he further state how many of these licences granted, and how many of these jobs created, were in the finance sector and subject to tax at the 10% rate by year? Will he further state how much company tax these companies actually paid by year?***

One of the key aims of the Economic Growth and Diversification Strategy is the growth and diversification of the finance sector, which provides 41% of GVA. Therefore, I am delighted that of the 172 licences granted, 43 were for finance sector related undertakings. In the time available to answer this question it has been estimated that approximately a quarter of these businesses are subject to a 10% tax rate. These businesses have created 442 job opportunities, of which 220 had been filled at June 2012.

My department is not privy to tax paid by individual businesses or persons. This is confidential between the business and/or individual and the Income Tax Department.

*Will he also state for those companies in the oil, gas and mining sectors who are not directly involved in extraction in Jersey, what activities they actually undertake in the Island to justify their presence and registration in the Island?*

These businesses undertake a wide variety of businesses activity within the Island. These activities include having their headquarters with senior employees based in Jersey, for example, Chief Executive Officer, Chief Finance Officer and Chief Operating Officer. Employees are also involved in marketing, finance, analysis, accountancy and sales. Local personnel are also employed on site at locations across the world.

## **2.7 DEPUTY M. TADIER OF ST. BRELADE OF THE MINISTER FOR HOME AFFAIRS REGARDING THE COSTS OF DISCIPLINARY ACTIONS:**

### **Question**

Will the Minister give a breakdown of the total cost to his Department in respect of the disciplinary action against three of the officers involved with the importation of illegal drugs in 2007, as follows

-

- (a) The cost of the criminal investigation by Hampshire Police and their associated legal costs?
- (b) The States' police's legal costs preceding the disciplinary Hearing?
- (c) The cost of the disciplinary hearing including the legal advice for the Presiding Officer?
- (d) The travel and accommodation cost for the various officers attending the disciplinary Hearing?

and advise from which budget the funding is coming from?

### **Answer**

It is only possible to give precise figures for bills paid to date for matters other than normal police officers' time and the figures below refer to this.

- (a) It should be noted that the investigation into the actions of the three officers started as a general review of police actions. As issues arose, it became an investigation into potential criminal and / or disciplinary proceedings. The total cost of the whole process was £117,104.
- (b) There was more than one disciplinary hearing, so I am not sure as to which hearing the Deputy is referring. This notwithstanding, it is not possible to separate out the legal costs

incurred preceding any disciplinary hearing from those incurred during a disciplinary hearing as, understandably, a great deal of work is done in the run up to a hearing as well as during. The total legal costs associated with the disciplinary hearings to date are £119,808. This figure includes the £10,000 that I agreed to contribute towards the legal costs to ensure equality of arms for both sides after it was brought to my attention by the independent Chief Officer conducting the disciplinary proceedings that the financial resources available to the Police Association may be exceeded.

- (c) The cost of the disciplinary hearings including the legal advice for the Presiding Officer to date are £6,192.
- (d) The cost of travel and accommodation for the officers attending the disciplinary hearings to date are £4,562.

The budget is part of expenditure on Police Operations and has been funded from the 2012 Police Budget.

## **2.8 DEPUTY M. TADIER OF ST. BRELADE OF H.M. ATTORNEY GENERAL REGARDING LEGAL POWERS OF THE U.K. TO PREVENT JERSEY SIGNING A FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA) AGREEMENT WITH THE U.S.A:**

### **Question**

Will HM Attorney General advise whether the United Kingdom government has any legal power to prevent Jersey signing the proposed FATCA with the USA and, if so, can he explain the legal and/or constitutional basis for this can be found. And, in this eventuality, what appeals mechanisms does the Island have against this decision?

### **Answer**

A FATCA agreement concluded between Jersey and the United States of America would be an international agreement which can normally only be entered into between sovereign states.

Jersey is not a sovereign state and as such has no power to enter into international agreements without the consent of the Crown, in right of the Government of the United Kingdom (hereafter referred to as “the UK”).

The UK has, however, allowed Jersey to enter into international agreements relating to taxation information under a letter of entrustment dated the 23<sup>rd</sup> November 2009. It has further entered into an agreement with Jersey on the 1<sup>st</sup> May 2007 known as the “Framework Agreement” under which it is agreed that Jersey will develop its international identity.

Accordingly, the UK should consent to the conclusion of a FATCA Inter-governmental agreement made on appropriate terms between the United States of America and Jersey.

There is no right of appeal, per se, but should the UK unreasonably withhold consent to such an agreement then that decision may be amenable to Judicial Review in the High Court of England and Wales.

## **2.9 DEPUTY T.M. PITMAN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE USE OF ROOMS IN THE MAGISTRATE'S COURT BUILDING:**

### **Question**

Are rooms in the Magistrate's Court building, Union Street, either rented, leased, hired, loaned or used by any private organisations? If so, what rooms, by whom, and for what consideration?

### **Answer**

The 'Magistrate's Court Building' includes areas occupied by the Probation and After Care Service as well as the Courts themselves and ancillary offices.

No rooms are rented, leased or hired to any third party for a monetary consideration. Detailed below are the circumstances in which rooms may be permitted to be used by other organisations:-

1. The Magistrate's Court will make available a Court for Law Firms for the following:
  - Yearly - practical experience of Court processes for 6th Form students
  - Practical experience of Court processes for newly qualified Advocates  
The above are normally a full day session.
  - Ad-hoc lunchtime sessions covering issues such as Bail, Committals etc
2. The Magistrate's Court makes provision for the following training:
  - Witness Skills Training - run by Highlands College on behalf of the States of Jersey
  - Police Witness Skills and Court Processes
  - Prison Officers Court Processes
  - JFSC Court Process training  
The above are normally full day sessions.
  - Centeniers training - normally a Saturday morning run by the Police Legal Advisers
3. Interview rooms are used on an ad-hoc basis for a variety of reasons regarding the court - for example debt collection agencies for consultation with clients during Petty Debts Court sessions, Advocates interviewing clients prior to court appearances etc.
4. The Victim Support and Witness Service, Centeniers and the Law Officers' Department are provided with a dedicated room and use of other rooms on an 'as required' basis - for example the training of new volunteers for the Victim and Witness Support service. This is provided rent free in recognition of the service provided to victims and witnesses
5. The Magistrate's Court is part of the Court Service estate and is frequently used by the Royal Court and the Appeal Court.
6. There are a number of informal visits to the Magistrate's Court from organisations such as the secondary schools/colleges, Scouts and Hackney Boys Club which, strictly speaking, also use rooms.

7. The Magistrate's Court has an agreed protocol for the Police to use the Custody Suite as an emergency Police Station - this has been activated twice.

There is no charge levied on any of the above activities as they are viewed as being supportive of the overall aims of the Court.

8. Probation provides an office space for the part time co-ordinator of the ADAPT programme for domestic violence perpetrators as part of the States and Court support for the charity. The co-ordinator is employed by a charity (the Hampton Trust) and in return no charge is made by the Trust for Probation Service referrals which are usually over 50% of those on the programme.

9. Very occasionally Probation has allowed ad hoc use of an interview room for medical professionals preparing a report for the Courts when there is a security risk. No charge is levied by Probation.

## **2.10 DEPUTY T.M. PITMAN OF ST. HELIER OF H.M. ATTORNEY GENERAL REGARDING THE AMOUNT SPENT ON A SUPER-INJUNCTION CASE:**

### **Question**

In responding to my question as to how much taxpayers' money had been spent and/or allocated in support of the so-called 'super-injunction' case being brought by four private individuals under the Data Protection Law, the Assistant Chief Minister stated that he could not answer as this was sub-judice. Will the Attorney General clarify -

- 1) that this does indeed apply to revelation of monies/costs even though they have nothing to do actual facts of the case;
- 2) provide the exact wording of this ruling;
- 3) outline when the Crown/Law Officers were engaged in support of the case?

### **Answer**

1. It is a matter for the Chief Minister, as for any States Member, as to how he or she answers a question in the Assembly. The term "sub judice" means "under judicial consideration" and embodies a rule that governs what public statements can be made about ongoing legal proceedings and, generally, prevents States Members from discussing matters awaiting or under adjudication in the courts. The Attorney General is unable to express any view on whether or not the matter is in fact "sub judice".
2. The question does not make it clear what "ruling" it refers to and the Attorney General is therefore unable to answer it, even were it appropriate to do so;
3. The Attorney General assumes that the expression "Crown/Law Officers" refers to the Attorney General and the Solicitor General and, in this instance, the Law Officers' Department. Neither the Law Officers nor anyone else in the Law Officers' Department have been engaged to provide advice or support in any case which the Attorney General believes may be referred to in the question.

## **2.11 DEPUTY T.M. PITMAN OF ST. HELIER OF THE CHIEF MINISTER REGARDING PROPOSED CHANGES TO THE ROYAL COURT (JERSEY) LAW 1948:**

### **Question**

Will the Chief Minister detail who initiated the proposed change to the Royal Court (Jersey) Law 1948 (P.93/2012) allowing Guernsey Jurats to potentially sit on Jersey cases?

### **Answer**

The proposed change to the Royal Court (Jersey) Law 1948 was initiated from the Bailiff's Chambers in 2010 and following discussion with Guernsey was lodged in the Assembly for the reasons set out in the accompanying report.

## **2.12 DEPUTY T.M. PITMAN OF ST. HELIER OF THE CHAIRMAN OF THE ELECTORAL COMMISSION REGARDING THE BASE FIGURES USED IN ITS REPORT:**

### **Question**

Will the Chairman of the Electoral Commission explain why the Commission chose to base its proposals on the number of eligible voters in each Parish rather than the higher figure of the population of each Parish, given that all parishioners can expect to receive representation?

### **Answer**

The Commission's terms of reference required it to consider constituencies and mandates. Proposals based on the population of each parish would potentially have taken it into territory that fell outside its terms of reference, and would have required the Commission to set aside academic advice on best practice.

In paragraphs 5.27 – 5.33 of the final report, the Commission makes the case for each eligible voter to be able to exercise broadly similar voting power whilst maintaining the simplicity of a system based on parish boundaries. Considered advice from Dr. Alan Renwick, a reader in comparative politics and Director of Postgraduate Research Studies in Politics at the University of Reading, refined the Commission's thinking in this regard. Dr. Renwick prepared several reports at the request of the Commission and these can be accessed via the Commission's website using the following link -

<http://www.electoralcommission.je/news/research/>

In his report entitled: 'The Jersey States Assembly in Comparative Perspective,' Dr. Renwick provides, amongst other things, a most helpful explanation of the standard measure of mal-apportionment and of the value of the Sainte-Laguë apportionment method (also known as Webster's method) to achieve equality in the value of the vote among pre-determined districts. In both cases, the number of eligible voters is taken into account, rather than the overall population.

The final part of this question raises the issue of who should be entitled to vote, as well as how those who are not entitled to vote have their voices heard in a democracy. Neither of these questions fall readily within the Commission's terms of reference. It is nevertheless a matter of



record that the States revisited the former question as recently as 2007, when it elected to lower the voting age from 18 to 16. Regarding the latter issue of voices being heard, the Commission is sure that all Members endeavour to uphold their duty to represent all their constituents in a manner consistent with their oath of office.

### **2.13 DEPUTY T.M. PITMAN OF ST. HELIER OF THE MINISTER FOR TREASURY AND RESOURCES REGARDING THE JERSEY FINANCE INDUSTRY IN 2012:**

#### **Question**

Can the Minister outline what the estimated total of monies channelled through Jersey by the financial industry was in 2012; how this has reduced since the onset of the global downturn of 2008; and what is the estimated total benefit to the Island in terms of both overall taxation and investment as of 2012?

#### **Answer**

It is not possible presently to provide a total estimate of 'monies channelled' through Jersey because of the wide range of financial services activity that takes place on the Island and the different ways in which it occurs, many of which cannot really be described as 'channelling'. However, some further work is being undertaken on this at the moment which will be reported to States Members in due course. For example, in banking the total value of (sterling and foreign currency) deposits in Jersey as published by the JFSC amounted to just under £150bn in the third quarter of 2012. This compares to the equivalent figure of just over £200bn at the end of 2008, although it must be remembered that trends are affected by exchange rate trends because they include foreign currency deposits. In addition, the net asset value of funds managed in Jersey was just under £190bn in the third quarter of 2012, compared with about £240bn at the end of 2008.

It is understood that Jersey Finance, at a recent industry update, gave their estimate of the benefit of the Finance industry to the Jersey economy through taxes and duties as £300million per annum. The latest estimate from the Economic Adviser's Department of the benefit, based on the 2010 year of assessment, is that it provides approximately 50% of the Taxes and Duties raised. This figure is currently being updated based on the latest available information.

In terms of the benefit of the Finance Industry to Jersey it is possible to consider this in terms of economic activity (GVA), employment and expenditure by finance businesses in the economy. Figures for 2012 are not yet available for some of these, so, making an estimate based on 2011 would suggest the following:

- Gross Value Added (GVA) of the Finance sector in 2011 was £1,493 million or 41% of total GVA that year
- Gross Value Added (GVA) of the Finance sector in 2008 was £1,716 million or 46% of total GVA that year

(Source: Jersey Economic Trends 2012 – Statistics Unit)

- Employment in the Finance sector in June 2012 was 12,590 staff, or 22% of the total number of people employed at that time
- Employment in the Finance sector in 2008 was 13,220 staff, or 23% of the total number of people employed at that time

(Source: Jersey Labour Market at June 2012 – Statistics Unit)

- Expenditure on Goods and Services by the Finance Sector in 2011 was £410 million
- Expenditure on Goods and Services by the Finance Sector in 2008 was £352 million  
(Survey of Financial Institutions 2008 and 2011 – Statistics Unit)

**2.14 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING DETAILS OF 400 JOBS CREATED:**

**Question**

Following the Minister’s statement to the media regarding his department’s role in job creation in the Island will he outline, using the following table, details of the 400 jobs created?

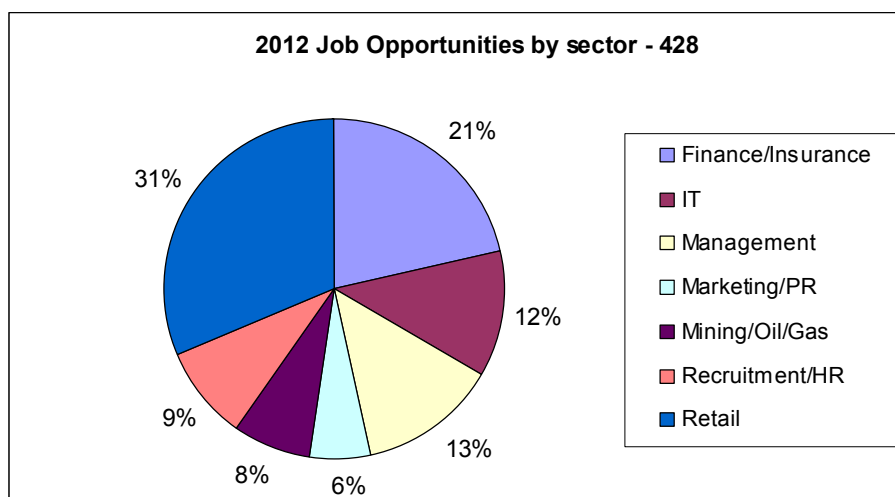
Name of Firm	Type of Business	No. of jobs created	Type of job created	Full or part time	Date created

Note: Type of job created e.g. Clerical, sales, junior management, middle management, senior management, technical, junior, driver etc.

**Answer**

I have not identified specific companies and their business details previously for the reasons outlined in my answers to question 1240/5/6937 and 1240/5/6969 and I refer the Deputy to Hansard.

If the Deputy is referring to the 428 job opportunities created in 2012, a sectoral breakdown is provided below. The type of jobs vary depending upon the business and the sector but include CEO, CFO, administration, accountants, sales, waiter and waitresses, IT and marketing.



**2.15 DEPUTY M.R. HIGGINS OF ST. HELIER OF H.M. ATTORNEY GENERAL REGARDING THE ACCOUNTABILITY OF LAW OFFICERS TO THE STATES OF JERSEY:**

**Question**

Will Her Majesty's Attorney General explain to members the various checks and balances that apply to the Law Officers and the Law Officers Department and explain how and in what way the department is accountable to the States of Jersey Assembly?

### **Answer**

It is unclear from the question precisely what is intended by "accountability" and "checks and balances".

The Attorney General and Solicitor General are appointed by the Crown and hold office during good behaviour. Although the Attorney General is the senior Law Officer they are independent of each other. The Law Officers have supervision of the Criminal and Civil Functions of the department through the Director of the Criminal Division and the Director of the Civil Division. The Law Officers are sworn office holders and are bound by the terms of their oaths.

Many of the members of the Department are also lawyers who owe independent professional obligations. Other than the Law Officers, all members of the department are subject to the codes of conduct and other policies applying to all civil servants.

The Law Officers' Department carries out a number of different functions and different considerations apply to the various functions.

Neither the Law Officers nor the department are accountable to the States Assembly for prosecution decisions or prosecutorial matters which are and must remain independent of political considerations and pressure.

Similarly, the Law Officers' Department is not accountable to the States Assembly for operational matters as it must maintain its ability to give impartial and independent advice.

Subject to such exceptions the Law Officers' Department is accountable to the States Assembly through the Attorney General or Solicitor General who are members of the Assembly.

Financially the Law Officers' Department is accountable to the Chief Minister's Department and Treasury and thereby ultimately to the States Assembly for matters of financial management.

Some decisions of the Law Officers may be challenged before the courts. In the exercise of their functions, the Law Officers are public authorities under the Human Rights Jersey Law and must therefore act compatibly with the Convention rights of others, whenever such rights are engaged by the exercise of those functions.

Should the States Assembly fundamentally lose confidence in a Law Officer then the Assembly could adopt a motion of no confidence in that officer. Although the motion would not be legally binding, the Crown and the officer concerned would inevitably pay regard to the views expressed by the elected representatives of the Island.

### **2.16 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR SOCIAL SECURITY REGARDING CHECKS AND BALANCES REGARDING HEALTH INSURANCE FUND (H.I.F.) PAYMENTS TO G.P.S.:**

### **Question**

Further to my written question 1240/5(7300), dated 11th December 2012 regarding Health Insurance Fund payments to doctors, will the Minister:

- (a) explain whether a similar check to that requested in the original question has previously been carried out by the department and if not what checks and balances have been made in this area;
- (b) explain the reasons why nine or more doctors are claiming more than £100,000 per annum for patient consultations in 2011;
- (c) explain the reasons why 22 or more doctors are claiming more than £15,000 per annum for referral letters in 2011;
- (d) why certain doctors have had significantly high consultation and referral payments over the three years examined;
- (e) why doctor 41's level of consultation fees and referral fees appear to be physically impossible on the basis of a normal working week and number of consultations per day?

### **Answer**

Whereas question 7300 did not explicitly refer to the checks and balances provided by my Department in respect of Health Insurance Fund payments to local GP practices, I can reiterate the information provided in response to question 7223 (asked by Senator Ferguson on 20 November 2012). This stated that:

*“Claims are checked automatically using embedded business rules within the Department’s IT system before processing and invalid claims are rejected, according to those business rules. These rules include automatically rejecting multiple claims for the same consultation and alerting the Department if a patient has more than one visit/claim within 24 hours from a single surgery. In the latter scenario, payment is not made unless the surgery can confirm that it is a genuine instance of 2 separate claims. When claims are rejected, this information is provided to the GP, as each batch of claims is paid.*

*In addition to these automatic checks which are applied to every claim submitted, the Department undertakes periodic random checks on claims by confirming details with the individual patient, by either letter or phone call. The Department also writes directly to surgeries, again on a random basis, to confirm details of claims. Checks are also specifically undertaken in respect of patients with high numbers of consultations.*

*A Medical Director has recently been appointed to lead the Primary Care Governance Team and he has already undertaken a number of visits to local practices to ensure that best practice is being followed and has initially focussed upon practices with high levels of consultation or referral letters*

*Between 1 October 2011 and 30 September 2012 2,438 claims were disallowed.*

*The claims submitted by GPs include information on the identity of each patient and the date and time of their consultation.”*

The variation in the level of payments demonstrated in the tables attached to answer 7300 relates to the variation in the level of activity as undertaken by individual GPs. GPs in Jersey operate as

private businesses and are free to practise on a part-time or full-time basis. Within practices, some GPs will work longer hours than others. During the period in question some doctors may have been on maternity leave, sabbatical or sick leave, therefore the figures should be interpreted with caution.

I can confirm that the information provided with question 7300 included 10 GPs showing a total in excess of £100,000 for medical benefit claims in 2011 in respect of consultations. It also included eight GPs showing a total of less than £40,000 for 2011. The information identified 15 GPs with medical benefit claims in excess of £15,000 for referral letters in 2011, and a further 15 with claims of less than £5,000. These details are based on the information submitted by GP practices.

As noted previously, there will be significant variations in funding received for several reasons including:

- The total number of hours worked per GP;
- Number of consultations offered per hour
- Knowledge base – some GPs with a particular knowledge of some aspect of general practice may see more patients in that area
- Ancillary services offered – e.g. minor operations might reduce the number of claims for HIF benefit in comparison to other GPs as these procedures result in longer consultations
- Amount of annual leave taken (varies between practices and between individual GPs)
- Some GPs see patients with a higher morbidity index (i.e. are sicker than others) - and therefore will generate more rebates as their patients need more care.
- Characteristics of the patient list for each GP that will affect the number of consultations include
  - age
  - disease
  - co-morbidity
  - health-seeking behaviour (some patients are more dependent than others)
  - social situation
- Some GPs are more actively involved in providing population services such as screening and immunisations
- The proportion of work undertaken by the GP that receives funding from the Health Insurance Fund - some services provided by GPs do not qualify for health insurance rebates.

In addition to the above factors, referral rates can also vary for a variety of reasons including:

- Knowledge base of doctor (there is evidence to suggest that doctors who have more skills in a subject may refer more patients than a doctor who is less skilled). GPs are trained as generalists and they are responsible for making appropriate referrals.
- Clinical need - particularly with ageing population
- Patient expectation
- Obtaining access to secondary care medication or investigations e.g. MRI scans.

I can confirm that the high amounts attributed to doctor "41" in the previous answer result from an administrative error within a GP practice which led to claims from two separate GPs being submitted using a single code. This administrative error did not affect the total amount of money

claimed by the practice. The Department receives claims for medical benefit in batches from GP practices, and not from individual GPs. These claims are checked as described above, and then a payment for the whole batch is made to the practice. The Department does not make medical benefit payments directly to individual GPs.

The Department has been working closely with the Primary Care Governance Team, the Primary Care Body and individual GP practices over the last few months, since the appointment of the Primary Care Medical Director, to improve the information available in respect of GP governance. This is part of a major project which began in 2010 to ensure that GPs in Jersey are working within a well regulated environment and able to meet the revalidation requirements of the UK General Medical Council.

The Primary Governance Team (PCGT) is working with GPs and practices to introduce a comprehensive governance programme. This will allow GPs to demonstrate to the UK General Medical Council that they are up to date and fit to practise. It will also provide assurance to Jersey patients that GPs are continuing to work to the highest standards.

A programme of practice visits has been introduced by the PCGT. GPs will continue to have an annual appraisal (and have done so for the last 3 years). They will now also produce information to show how they are improving the quality of their practice. They will need to show how they keep up to date and ask for feedback from patients and colleagues and agree an annual personal development plan.

Patients will not want doctors to be taken away from the time they spend with patients, so the governance framework will focus on those issues that are most important for patient care and will seek to ensure that all GPs are reflecting on their practice.

There is a close connection between clinical and financial governance and the improvement in the clinical governance of local GPs will allow enhancements to be made to the existing financial governance structure.

## **2.17 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE MINISTER FOR HOME AFFAIRS REGARDING A RECENT COURT CASE:**

### **Question**

Will the Minister explain the apparent contradiction between the Supreme Court's criticism of the actions of the three police officers involved in the recent Curtis Warren bugging case and their exoneration by the Disciplinary Panel? Is the Minister satisfied that the public retains faith in our police force and the judiciary?

### **Answer**

These are two different sets of proceedings with different burdens of proof and with different sets of evidence being presented. The public can be fully confident that the issues were properly investigated by an outside Police Force, that the recommendations of that force were acted upon and that a disciplinary hearing was conducted in accordance with the current law.

The public may also take some comfort from the fact that independently of this case, the States of Jersey Police leadership and I have commissioned a review of the current law in relation to police disciplinary matters and that I intend to make improvements in this area.

The results of recent Jersey Annual Social Surveys of public opinion have shown a high and increasing level of public confidence in the States of Jersey Police Force and I believe that the vast majority of the public of this Island have faith in our States of Jersey Police Force and particularly in its senior leadership.

In the context of this matter I do not understand the reference to the judiciary as this disciplinary matter was presided over by the Chief Constable of another British Police Force.

**2.18 DEPUTY M.R. HIGGINS OF ST. HELIER OF THE CHIEF MINISTER REGARDING A BREAKDOWN OF EXPENDITURE OF THE DATA PROTECTION COMMISSIONER FOR LEGAL ADVICE AND PROSECUTIONS:**

**Question**

Will the Chief Minister break down the expenditure of the Data Protection Commissioner for (a) legal advice and (b) prosecutions over the last five years, and explain how much money has been budgeted for legal advice and prosecutions during 2013?

Will he also explain whether the Data Protection Commissioner's office is entitled to or has received any funds from the Court and Case Costs Fund and if so how much it has received?

**Answer**

Deputy Higgins has already raised the general issue as to monies being spent by the Data Protection Commissioner in Supplementary Questions to a question asked by Deputy Tadier on 9th October 2012. As I explained at that time the budget for the Data Protection Commissioner is published as a non-executive Ministerial department which is approved by the Assembly and an annual report is produced from the Data Protection Commissioner's office. For information, the relevant link to the States website is [www.statesassembly.gov.je/Pages/Reports.aspx](http://www.statesassembly.gov.je/Pages/Reports.aspx).

Deputy Higgins has, on 20th November 2012, asked a question regarding the number of prosecutions brought by the Data Protection Commissioner under the Data Protection (Jersey) Law 2005. The answer I provided to this question clearly stated that prosecutions for offences contrary to the law can only be brought by, and require the consent of, the Attorney General. Details of the costs incurred arising from prosecutions under the law would be a question more appropriately directed to the Attorney General.

At the last States Sitting Deputy T. Pitman asked an Oral question relating to money spent on actions under the law. The answer my Assistant Minister gave then explicitly stated that where there are proceedings that are on-going, disclosure of information, including comment on any costs incurred which have been funded from the Court and Case Costs budget, would be sub-judice.

The Data Protection Commissioner is able to request funding for particular cases from the Court and Case Costs budget but where proceedings are on-going the disclosure of information risks being sub-judice.

**2.19 SENATOR S.C. FERGUSON OF THE MINISTER FOR HEALTH AND SOCIAL SERVICES REGARDING THE CAPACITY OF ORCHARD HOUSE:**

## Question

What is the total capacity of Orchard House?

Of the current occupants, what is the length of time each occupant has been detained?

What is the longest period for which occupants have been detained?

## Answer

The current capacity of Orchard House is 15 beds.

As of 22nd January 2013 there are 6 patients in Orchard House. Their length of stay to date is:

Patient	Length of stay in days
1	17
2	72
3	15
4	16
5	112
6	102

The longest period of detention is not a simple concept. A person can be detained in hospital under Article 6 of the Mental Health (Jersey) Law 1969 for observation, Article 7 for treatment, or Article 10 for an emergency placement. In addition, an Article 20 can also be applied, allowing a person to return home for a leave of absence whilst still remaining under Article 6, 7 or 10, and hence therefore, still under detention.

An Article 20 can apply for up to 6 months, hence a person detained under Article 6, 7 or 10 could, under Article 20, have spent a significant part of the 12 month period at home as opposed to being in Orchard House.

Of the 6 people currently in Orchard House, the longest period of stay has been 112 days, but included in these 112 days have been extended periods of home leave.

The longest period of detention in 2012 was 91 days, without home leave.

## **2.20 SENATOR S.C. FERGUSON OF THE MINISTER FOR ECONOMIC DEVELOPMENT REGARDING CHANGES MADE ON PARCELS TO THE UK:**

### Question

Would the Minister explain how the charge now made on parcels being sent to the UK by the Jersey Post Office is made up – is it effectively UK VAT? What is the procedure to forward this to the UK, and to whom is it payable?

What plans are there to improve the collection of GST on incoming parcels, given that ParcelForce parcels are not all checked?

### Answer



This matter falls outside my direct remit, but I will endeavour to answer the Senator's queries.

As the Senator correctly identifies, the charge made on parcels (over and above standard postage rates) is the UK VAT payable on such parcels. This is collected by Jersey Post as a prepayment service in order to minimise delays for local customers posting to the UK. In addition, this also prevents the addition of a VAT collection charge of £8 which is levied by the Royal Mail if it is necessary to collect the tax due from the recipient. The VAT collected by Jersey Post is remitted to HMRC on a monthly basis. The costs of providing this service are currently absorbed by Jersey Post. Further details are available on the Jersey Post website.

With regard to the collection of GST on incoming parcels, I am informed that Customs Officers attend the Post Office on a daily basis to examine ParcelForce parcels. This led to the collection of £37,000 in GST in 2012.

Should the Senator wish to have any further information on this matter, she should contact the Customs and Immigration Service.

## **2.21 SENATOR S.C. FERGUSON OF THE MINISTER FOR EDUCATION, SPORT AND CULTURE REGARDING THE LENGTH OF RESIDENCE IN THE ISLAND OF HIGHLANDS STUDENTS:**

### **Question**

Would the Minister advise members of the length of residence in the Island of students studying at Highlands, broken down into the following age groups - those under 16; those between 16 and 18; and those over 18?

### **Answer**

The Minister is currently unable to provide the precise data requested.

Highlands does not retain records that show the length of residency of individual students who have previously been educated in Jersey schools.

Full-time students aged over 16 who have not been educated in Jersey are required to provide length of residency and to meet additional criteria on application. This data is used to determine whether applicants qualify for free or subsidised tuition.

However, as this data is retained in individual records and not currently in an electronic format, it is not easily collated to provide the information requested by the Senator.

The current admissions procedures will be reviewed by the College and its governing body.

## **2.22 SENATOR S.C. FERGUSON OF THE CHIEF MINISTER REGARDING JERSEY'S POSITION IN THE U.K.'S MEMBERSHIP OF THE EUROPEAN UNION:**

### **Question**

The Assistant Minister for External Affairs recently stated that it is better for Jersey if the UK remains within the European Union.

Would the Chief Minister please explain when this became part of Jersey's policy and what is the evidence for this statement?

### **Answer**

Jersey's relationship with the European Union (EU) is covered by Protocol Three of the UK Act of Accession to the European Communities. If the UK were to leave the EU then Protocol Three would fall away. The Council of Ministers' Common Policy on External Relations, as reported to the States Assembly on 23 November 2012, does not include the desire to seek a renegotiation of Jersey's relationship with the EU, but that we will seek to be a good neighbour, on the basis of reciprocity, to both the UK and other European Member States, and also to ensure that the Island is prepared for external change. The Assistant Chief Minister's comments are consistent with this policy.

I have noted the speech made by the UK Prime Minister in London on 23 January stating his belief that Britain should want to remain in the EU and that Britain's national interest is best served in a flexible, adaptable and open EU.

### **3. Oral Questions**

#### **3.1 Deputy J.H. Young of St. Brelade of the Attorney General regarding the review of appeals made against decisions of the Minister for Planning and Environment by the Court of Appeal:**

Will the Attorney General inform the Assembly whether Royal Court judgments in appeals made against decisions made by the Minister under the Planning and Building Law are subject to review by the Court of Appeal, and if so whether the appeal procedure is available to litigants in person under the modified planning appeals procedure which protects appellants from costs being awarded against them?

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

Yes, the Court of Appeal has jurisdiction to hear and determine appeals from any judgment or order of the Royal Court when exercising jurisdiction in any civil cause or matter. The modified planning appeals procedure was introduced under the Royal Court Rules 2004 for certain planning appeals. The award of costs, even for appeals under the modified procedure, is at the discretion of the court, however the Practice Direction of the Royal Court for such appeals indicates the Royal Court will only make an award of costs in exceptional circumstances. The modified procedure does not apply in the Court of Appeal. The costs of and incidental to all proceedings in that court are at the discretion of the court. The court has full power to determine by whom and to what extent the costs are to be paid. I think it likely that the Court of Appeal would pay regard to the fact that an appeal arose out of the modified procedure in the Royal Court.

#### **3.1.1 Deputy M.R. Higgins of St. Helier:**

Could the Attorney General please explain to me the difference between the appeal that Deputy Young was referring to on the Planning and Building Law; is that a case of the court looking at the procedures adopted by the Planning Department or is it a full hearing? Can he just clarify the situation between the 2 courts? Is the overall Appeal Court looking at all matters to do with the case?

**The Attorney General:**

There is a right of appeal to the Royal Court from any decision made by the Minister under the Planning and Building Law. The court will apply the normal judgment in determining whether or not the appeal should be allowed. The appeal is, I recall, on the basis of whether or not the decision was unreasonable in all the circumstances of the case. The court will examine the decision and will determine whether on accepted principles it could be characterised as unreasonable or not.

**3.1.2 Deputy M.R. Higgins:**

In that case the court when it is looking at it will not review, for example, the Island Planning Law and whether, for example, the building should or should not be built, whereas the ultimate Court of Appeal, in this sense, would review everything; is that correct?

**The Attorney General:**

No, that is not correct. The Royal Court would indeed have regard to the statutory environment in which the decision was made. It would have regard to the policies and procedures under the Island Plan and it would use those factors in determining whether or not the decision was a reasonable one. It would be an unreasonable decision if it was not done in accordance with the law.

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

Building on what Deputy Higgins has mentioned. Would the Attorney General say that recent cases and indeed public disquiet suggests that if we had a merits-based planning appeal system it would open up the appeal system in a way that would be much more useful to people who are seriously aggrieved about some of these issues?

**The Attorney General:**

I am not entirely certain what the Deputy means by “a merits-based planning appeal system”. The court will determine whether or not in its view the decision of the Minister for Planning and Environment was reasonable in all of the circumstances of the case. It cannot avoid, in doing so, forming a view as to whether or not it was a reasonable decision. That seems to me to go without saying. I am not sure what improvement there could be on such a process.

**3.1.4 Deputy R.G. Le Hérissier:**

If I could give a little explanation? Would the, for example, Attorney General feel that the appeal system would be much strengthened were people within perhaps constraints, so that every decision was not open and taken to appeal so that the court could, in the end, substitute its decision for the decision, for example, of the Minister or a Planning panel.

**The Attorney General:**

The court can do that.

**The Bailiff:**

Do you wish a final question, Deputy Young?

**Deputy J.H. Young:**

No, Sir, just to thank the Attorney General for his answers.

[9:45]

**3.2 Connétable P.J. Rondel of St. John of the Minister for Economic Development regarding a new freight area, associated car park and access roads for Hanger8:**

Would the Minister give estimated costs of providing alternative provision for a new freight area, associated car park and access roads to enable Hanger8 to establish operations in Jersey on the existing freight buildings and car park site, and advise whether the funds are inscribed into the department's current capital or revenue budgets or whether the works will be deferred until after the incorporation of the Harbours and Airport?

**Senator A.J.H. Maclean (The Minister for Economic Development):**

The cost estimate for the proposed work that the Connétable refers to is commercially sensitive due to the pre-qualification and tendering processes. The tendering process, when approved to commence, will utilise the Procurement Unit e-tender portal. The project will be funded entirely from the Airport's Trading Fund and not from the budget of the Economic Development Department or central reserves and is not dependent upon incorporation.

**3.2.1 The Connétable of St. John:**

Is the funding then allowed for over the next 3-year business plan and, if so, where will I find it in the business plan please?

**Senator A.J.H. Maclean:**

The funds for this project are contained within the Airport Trading Fund. The project itself in terms of this cargo facility was intended to be refurbished. There are funds available for refurbishing. That project, of course, will not go ahead if this proposed build goes ahead. A Shadow Board have looked at it and as far as they are concerned it is moving to the next stage, which is ensuring that due process is followed and that a maximum return on capital employed is secured.

**3.2.2 Deputy M.R. Higgins:**

Can the Minister explain how it can be commercially sensitive if it is a States department that is carrying out the removal works? Surely the Airport is accountable to this Assembly through the Minister's department, so could the Minister explain how it can be classed as commercially sensitive. What we are talking about are the movement of existing buildings ...

**The Bailiff:**

I think you have put the question. How can it be qualified as commercially sensitive?

**Senator A.J.H. Maclean:**

It is commercially sensitive quite simply that we do not want to announce, and I certainly would not wish to announce in a public forum, the expected costs of such a project when we are going out to tender, hopefully, which would give advantages to tenderers. We want to maximise return for the public on funds invested and we cannot do that if that type of public statement is made at this stage.

**The Bailiff:**

Do you wish a final question, Connétable?

**The Connétable of St. John:**

Only one, Sir?

**The Bailiff:**

Yes.

**3.2.3 The Connétable of St. John:**

Given that we cannot get the information from the Minister because he is trying to hide behind confidentiality, which in my view is totally corrupt, is the Minister ...

**The Bailiff:**

No, no, no.

**The Connétable of St. John:**

That is my view, Sir.

**The Bailiff:**

You cannot allege that he is corrupt, now you know that.

**The Connétable of St. John:**

That is a view I am expressing.

**The Bailiff:**

No, you may not.

**The Connétable of St. John:**

In my mind, I said.

**The Bailiff:**

You may not express such a view under Standing Orders. Please withdraw it.

**The Connétable of St. John:**

Well, I do not know, Sir.

**The Bailiff:**

Please withdraw it, Connétable.

**The Connétable of St. John:**

Can I give that some thought?

**The Bailiff:**

No, you may not give it some thought. I am directing you now to withdraw it.

**The Connétable of St. John:**

Well, if you are directing me to withdraw it, then I will follow the lead of the Chair but I do so with regret.

**The Bailiff:**

Very well, thank you. That is all you need to say on the subject. **[Laughter]**

**The Connétable of St. John:**

That being the case, is the Minister prepared to send this item to Scrutiny so it can be properly reviewed by a Scrutiny Panel?

**Senator A.J.H. Maclean:**

Quite naturally we have discussed this matter with Scrutiny. The Connétable has asked a number of questions in this area before and I know the chairman and members, possibly, of his Scrutiny Panel have attended upon the Group Chief Executive of the Ports to discuss this matter. It is with

Scrutiny. As far as I am aware they are satisfied but if they are not I am sure they will raise their concerns in the appropriate way.

### **3.3. Deputy M.R. Higgins of the Chief Minister regarding the Historic Child Abuse Redress Scheme:**

Will the Chief Minister advise the Assembly the current position regarding the Historic Child Abuse Redress Scheme and, in particular, the number of claims accepted, rejected and in dispute, and in the case of the latter will he outline the nature of the disputes and the current position regarding the extension of the scheme to cover people who were abused while in foster care or abused by persons who either lived in the care homes or were visiting them?

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

A total of 131 claims have been received by the scheme to date. As at 24th January 2012 a total of 27 offers have been accepted by the claimants. At the present time no applications have been rejected. The remaining claims are still at various stages of the process. The issue of claims which concern foster care is a matter which is to be referred to the Council of Ministers in due course. The Council of Ministers has previously decided that the claims received, which involve visitors to any care home, as well as certain cases involving abuse which happened away from the premises of the home are to be considered as part of the scheme.

#### **3.3.1 Deputy M.R. Higgins:**

Is the Minister aware that many of the claimants are being, to put it mildly, messed around by the scheme lawyers who appear to be acting as judge and jury in this case? Many people are being referred to psychiatric assessments and also many of the claimants are being disputed in terms of lost evidence by the police and other considerations. Is the Minister aware of these difficulties and would he advise the States of what he does know?

#### **Senator I.J. Gorst:**

I absolutely refute that any claimants are being messed around by the scheme lawyers. The scheme lawyers are acting on behalf of the States in a very professional manner. As we have said on previous occasions in this Assembly, these are not necessarily straightforward cases, extra evidence has to be gathered and brought together. Where there is not perhaps sufficient evidence then psychological reports can be undertaken. There is by nature a negotiation between the scheme lawyers and the lawyers representing potential claimants. I do not see it in the light that the Deputy portrays it.

#### **3.3.2 Deputy M.R. Higgins:**

It is a related point, and I hope you will allow it. On a previous question I asked the Chief Minister whether victims who were in financial difficulty could obtain some funds from the scheme in anticipation of a final settlement from it. The Chief Minister assured the House that that would be the case. In the case that I put to the scheme lawyers no such attempts have even been made to even contact the people. What does the Chief Minister have to say about that?

#### **Senator I.J. Gorst:**

Unless the Deputy, and I have not trawled Hansard to see whether that is the case... but it is my understanding that there has never been an interim payment available.

### **3.4. Deputy M. Tadier of St. Brelade of the Attorney General regarding a recent prosecution case:**

Given the criticism of the States of Jersey Police and a lawyer in the Law Officers' Department by the Privy Council in relation to the Curtis Warren prosecution and the alleged involvement of the Attorney General in the subsequent police disciplinary case, would the Attorney General make a statement clarifying the situation?

**The Attorney General:**

The events referred to by the Privy Council took place over 5½ years ago. The facts have been litigated at length in the Royal Court, the Jersey Court of Appeal, the Privy Council and more recently in private police disciplinary proceedings. At the last sitting I explained that I had no involvement in the police disciplinary proceedings. I am happy to repeat it. I was not the complainant in those proceedings. I was not a party to them nor involved in them in any way. It was not my decision nor upon my advice were the disciplinary proceedings brought. That much is already in the public domain as I made a statement in response to a question for a comment from the *Jersey Evening Post* which was reported. I see no value in a further statement.

**The Bailiff:**

Deputy, do you wish a supplementary?

**Deputy M. Tadier:**

Not at the moment, Sir.

**3.4.1 Deputy M.R. Higgins:**

Perhaps the Attorney General can clarify a question I was asking of the Minister for Home Affairs in a written answer, and that was could he possibly assist us by explaining the apparent contradiction between what the Supreme Court said in this matter and about a law officer's conduct and the disciplinary case in the police which came to totally different conclusions. Could he possibly explain how that could happen?

**The Attorney General:**

No, as I said, I was not a party to the disciplinary proceedings. I do not know what evidence in detail was deployed before that. They were private proceedings and I am not able to account for the decision that came out of those proceedings.

**3.4.2 Deputy T.M. Pitman of St. Helier:**

I understand the Attorney General cannot really answer the last question, however could he throw any light on the fact that ... I think the confusion seems to arise that the Detective Chief Officer says the Attorney General did lodge the complaint. Could the Attorney General then explain that contradiction? Is it another Attorney General if it is clearly not himself - he has told us that, and I accept it - could he clear up that matter for us?

**The Attorney General:**

I am not sure what statement or what observation the Deputy means when he says a Chief Officer or a Deputy Chief Officer has said that an Attorney General was behind it. I certainly can do no more than repeat what I have said and I do not believe that my predecessor had any involvement in the matter at all. The matter I suppose started at the time of the Privy Council hearing when it was decided there should be a general review. That was not in the time of my predecessor. It was during my own time.

**3.4.3 Deputy M. Tadier:**

Can the Attorney General confirm that no police officer was required to give evidence at the Privy Council during their hearing or provide a statement for the purpose of the hearing and that

furthermore no police officer was allowed to attend the hearing being told not to do so by the Law Officers' Department at the time?

**The Attorney General:**

It would not be the normal procedure for anyone to give live evidence before the Privy Council although it does not at all surprise me that that would include evidence from police officers. I am afraid I cannot recall what statements were before the Privy Council at the time, so I cannot assist further in it. As to what might have been said to police officers, I am afraid I have absolutely no information about that either.

**3.4.4 Deputy M. Tadier:**

I thank the Attorney General for the information. Would he be able to perhaps seek information on that latter part as to whether or not they were explicitly told not to attend rather than not told, if that makes sense?

**The Attorney General:**

The Privy Council is an open sitting of the court. It is not open to anyone to refuse to let a member of the public from anywhere else to attend upon it. I cannot see that there would be any point in me making further inquiries.

**3.5 Deputy J.A. Hilton of St. Helier of the Minister for Planning and Environment regarding vacant glass-house sites and their use for social housing:**

Can the Minister explain whether any discussions have taken place between him and the Minister for Housing on the vacant glasshouse sites and their use for social housing? And, if so, can he explain the outcome of those discussions?

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

The Minister for Housing in a recent letter to me did suggest that vacant glasshouse sites might be used to provide social housing. This is not a new idea and was thoroughly investigated and rejected by this House as part of the Island Plan review. My department continues to monitor the situation with regard to housing supply and demand and is presently reviewing the latest information from various sources to ensure that the Island Plan remains able to respond to the Island's needs. In this respect it is my intention to bring forward a proposed amendment to the Island Plan to review policy H3 of that plan during this year. In doing so, however, I will be seeking to ensure that the spatial strategy of the plan that has been approved by the States is upheld and that we continue to meet the Island's development needs through the regeneration of the built-up area while protecting Jersey's countryside and coastline. I will also be working with other Ministers to ensure that all avenues for the delivery of affordable housing, such as the use of States-owned land and the regeneration of existing States housing sites are explored and pursued as appropriate to meet the need.

**3.5.1 Deputy J.A. Hilton:**

This all sounds very good and we went through a very lengthy debate in 2011 when we debated the Island Plan. One of the reasons the glasshouse sites were rejected on that occasion was because I believe Members wanted to give the Minister for Planning and Environment a chance to deliver the homes that are desperately needed on States-owned sites. I am not convinced we are going to do that. As far as I am aware there are very few applications coming forward for social housing, in particular, and affordable housing. I am not convinced that this Minister is doing enough. Those ...

**The Bailiff:**



You are coming to your question, Deputy?

**Deputy J.A. Hilton:**

Yes, the question is: the Planning Inspector at the time said those glasshouse sites that were removed from the Island Plan were perfect sites for social housing. I understand exactly why that did not happen but what I want to know from the Minister is when is he going to take action and bring forward sites, for the desperately needed social housing that we require, to be actioned?

**Deputy R.C. Duhamel:**

The planning amendments that I am hoping to bring forward are due to be discussed by the Council of Ministers on 20th February.

[10:00]

**3.5.2 Deputy J.G. Reed of St. Ouen:**

Could the Minister advise us what progress has been made in advancing the development of States-owned land in order to meet the rising demand for social housing?

**Deputy R.C. Duhamel:**

As I said, the policies that were relating to the States housing land are clearly defined under policy H1. The States at the time, when we discussed the Island Plan, considered that it was a sensible course of action to allow this Minister to bring forward amendments in order to define affordable homes and to bring forward a mechanism to ensure that we had a sensible plan for delivery. This is what I am undertaking to do, I have been in lengthy discussions with the industry and with other parties, but there is light at the end of the tunnel and, as I mentioned, we are approaching the final hurdle.

**3.5.3 The Deputy of St. Ouen:**

I thank the Minister for his answer but has the Minister had specific discussions with the Minister for Housing and the Minister for Treasury and Resources to ensure that we utilise the States-owned land for social housing?

**Deputy R.C. Duhamel:**

There have been such discussions but there need to be more discussions and, as I said, at the meeting that is to take place with the Council of Ministers very shortly, all these issues will be properly aired.

**3.5.4 Deputy J.H. Young:**

Would the Minister explain why he has not brought forward the reserve option identified in policy H1 in the Island Plan and which said in the event of affordable housing not being delivered within the timescale set out in that policy, that those glasshouse sites would be included in a further review. Would he please explain why he has not done so and would he also just confirm or advise the Assembly whether it is correct that he has advised the Scrutiny Panel in March 2012, in June 2012 and in September 2012 that this policy was coming very, very soon?

**Deputy R.C. Duhamel:**

In dealing with the last parts of the question first: yes, I did advise that but the Deputy will know - as indeed other Members of this House will know - there has not been specific support or great support for the policies that were being mooted at that time by the construction forum. It is only right and proper that any Minister carrying forward his portfolio brief engages with the public, particularly on their land, in order to determine what might or might not be possible and these discussions have taken place. In respect of the fall-back situation, in a review of the glasshouse

site, it quite clearly was decided that these sites feature in Policy H1 of the approved Island Plan, which provides for their potential rezoning if planning permission for 150 homes on States-owned land has not been granted and the sites are released before 29th June 2013. Any rezoning would remain to be considered by the States as an amendment to the Island Plan. I do have within the department a planning application for 150 homes on one of the States-owned sites and indeed consideration of that site will take place, I would assume and hope, before 29th June this year. If indeed that takes place and there is a favourable outcome, then I would consider that the tripping of the condition to bring about a reconsideration of the glasshouse sites would not be met because we would have found the original tranche of houses from States-owned land that was originally agreed when we discussed the Island Plan.

### **3.5.5 Deputy J.A. Hilton:**

Even if the police station is agreed when we debate it in a couple of weeks' time, that means there is absolutely no chance of housing being delivered on that site for people who are in desperate need at the present time for a good 3 or 4 years. I am not convinced that enough is being done; 150 houses on the Summerland site is not enough. Can the Minister do more?

### **Deputy R.C. Duhamel:**

Indeed, this Minister is doing more but, as the Deputy will know, Rome or indeed Jersey or St. Helier, was not built in a single day. It took at least a week. I have had quite a few weeks so far but indeed we do have hiccups. There will be policy changes, as I have suggested to the House, that will be brought for States consideration and part and parcel of those considerations is exactly what the Deputy is suggesting, which is to increase the number of houses that might be built on States-owned land as a mechanism for bringing forward the much needed affordable homes.

### **3.6 Deputy S. Pitman of St. Helier of the Chairman of the Privileges and Procedures Committee regarding a separate referendum question on the Bailiff's role:**

Will the Chairman advise whether any consideration has been given to having a separate referendum question on the same day as the proposed electoral reform referendum, namely on the Carswell recommendation that the Bailiff should cease to act as President of the States and if not, why not?

### **Connétable A.S. Crowcroft of St. Helier (Chairman, Privileges and Procedures Committee)**

The simple answer is no. P.P.C. (Privileges and Procedures Committee) was required by the States, according to the fourth term of reference when the Electoral Commission was set up and I quote: "To present the Commission's proposals to the States for approval prior to the submission of the proposals to the electorate." It was not discussed by P.P.C. and it does not seem to me to be P.P.C.'s job to do that in the current proposed referendum.

### **3.6.1 Deputy T.M. Pitman:**

Given that the reality is that we have had 2 reports that have said that this antiquated and undemocratic process needs to stop, both Clothier and Carswell, and that the Chairman, in taking his position of P.P.C., did promise to bring it forward within a year, yet he has done nothing, could he give us an answer as to when he is going to do something or if a Back-Bencher brings it forward, will his committee support that and try and establish democracy?

### **The Connétable of St. Helier:**

Yes, it might have been helpful if that question had been put to me rather than the one that was put. I can confirm that P.P.C. has considered the Carswell Report on 20th June and it concluded it

would give further consideration to the recommendations of Carswell once the findings of the Electoral Commission were known. Now that the Commission has published its final report, P.P.C. will revisit Carswell as soon as possible and in order to be helpful to the Deputy, I can say that I will add this matter to our agenda of our next meeting which is a week on Thursday.

### **3.6.2 Deputy R.G. Le Hérissier:**

I wonder, broadening the question slightly, could the Minister advise the House if his committee are working on the actual terms of the referendum?

#### **The Bailiff:**

No, you may not. That has nothing to do with the question at all. [Laughter] [Approbation]

### **3.7 Deputy R.G. Le Hérissier of the Minister for Home Affairs regarding a Police Disciplinary Tribunal:**

Given the verdict of the Police Disciplinary Tribunal, is the Minister satisfied that the police acted with complete authority in the matter of bugging a vehicle in the case *Re Curtis Warren*?

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

I do not feel able to express an opinion at this time. Of course, there will shortly be further legal proceedings concerning Curtis Warren at which these issues may be raised. I would, however, refer the Members of this Assembly to the judgments of the Court of Appeal in Jersey dated 5th May 2010 and of the Privy Council dated 28th March 2011, which in my view would represent the definitive position on the facts.

#### **3.7.1 Deputy R.G. Le Hérissier:**

I wonder if, for ease of reference, the Minister could summarise those particular views or opinions which he has just cited.

#### **Senator B.I. Le Marquand:**

I have not prepared a detailed summary but it is quite apparent that there was very heavy criticism of the actions of police officers in relation to the way in which certain aspects of the matter were dealt with.

#### **3.7.2 Deputy M.R. Higgins:**

Can the Minister for Home Affairs confirm whether the bugging of the vehicle was in accordance with the Regulation of Investigatory Powers Act in that it was duly authorised and can he tell us who authorised the bugging of the car, not just the tracker, but the ability to record conversations?

#### **Senator B.I. Le Marquand:**

It is my understanding that all the actions that took place within this jurisdiction were lawful but the bugging of the vehicle in France, and it travelled to other countries, was unlawful in those countries and unauthorised.

#### **3.7.3 Deputy M.R. Higgins:**

How, then, can the officers be totally exonerated and perhaps the Law Officers' Department be totally exonerated if it was lawful in this country but it was unlawful doing it elsewhere?

#### **Senator B.I. Le Marquand:**

Although it may to a layman appear that there was a direct correlation, in reality these are different sets of procedures, different burdens of proof, different facts to be proved and different evidence

available. If I may give to the Assembly an example which may surprise them, a parallel example; the fact that a person may be convicted of driving without due care and attention, which is a criminal matter requiring a higher burden of proof, is not evidence in itself in a civil case for negligence. It is different proceedings and what has happened here is we have gone through the procedure and it has come out with the result it has come out with.

**Deputy M.R. Higgins:**

If I may say so, that was a non-answer. It was not explanatory at all.

**3.7.4 Deputy T.M. Pitman:**

Obviously we want all our police and the Law Officers to be singing from the hymn sheet so in fairness to his officers, the Detective Chief Inspector, I believe, stated that the complaint about all this did arise from the Attorney General. The Attorney General has assured us - and I completely accept his word - that it was not him. Could the Minister for Home Affairs just clarify that the officer in question is not misleading anyone and who did make this complaint?

**Senator B.I. Le Marquand:**

I am unusually grateful to Deputy Pitman for his question because it does give me an opportunity to clarify something which has been puzzling me. There appears to have been a mistake made by the Deputy Chief Officer, either in his understanding of the question or in the way in which he expressed the answer, which has given the impression that what he was saying was that the disciplinary proceedings were initiated by the Law Officers. The Attorney General is correct, that is not so, but what did happen was this. There were discussions with the Law Officers' Department at an earlier stage and the Law Officers' Department were of the opinion that there should be a general review of procedures. I have not looked at what the exact question asked was but it depends what the exact question was and what the understanding of the Deputy Chief Officer was. It is clear that they were of the opinion that a general review should take place. That was the first stage and if Members would care to look at the written answer which I have given to the question of Deputy Tadier today, they will see I explained the first stage, a general review. Subsequently, as a result of that general review, the matter then led on to a detailed investigation of potential criminal matters and of potential disciplinary matters. Subsequently it led on to disciplinary charges but the Law Officers had no involvement in those latter stages, simply in initial matters. So I do not know whether the Deputy Chief Officer misunderstood the question or whether he had a wrong understanding of it but the correct position is that there was some advice from the Law Officers initially in relation to there being a review but nothing subsequently.

**3.7.5 Deputy T.M. Pitman:**

I am grateful to know that I always help my colleague, the Minister for Home Affairs. Perhaps he will help me on this occasion. Can he just clarify for me, not being a lawyer, that what he is saying is that a complaint was somehow generated in a past Attorney General's term of office and it sort of mushroomed? It all became part of a general review. It was not a complaint by anyone. Is that what he is saying?

[10:15]

**Senator B.I. Le Marquand:**

I think that is my understanding. Clearly, from the judgments, which had already occurred, of the Court of Appeal, there was very heavy criticism of certain officers in relation to this matter. There was going to be subsequently a judgment from the Privy Council in which there was a significant risk that that criticism would be repeated. There was even a risk that indeed the entire convictions might be overturned at that point and a decision was then made by the Chief Officer of Police to

proceed with there being a review and if the review threw up things then to go on to other stages. The decision to start with the review was also in accordance with advice received.

**3.7.6 Deputy M. Tadier:**

Does the Minister agree that there is a perception in the minds of many of a perceived contradiction where on the one hand the Privy Council has allocated misconduct to the police officers and to at least one of the Law Officers and on the other hand we have, at the moment, the secret Police Disciplinary Tribunal, the findings of which have not been released apart from the fact to say that they have been cleared. Does the Minister acknowledge that there is an apparent contradiction?

**Senator B.I. Le Marquand:**

I think that is what was puzzling people but from my perception, realising these different procedures on different days, it is perfectly possible for them to have different outcomes. That is not surprising to a lawyer. Can I just, if I may, comment on the issue of secret proceedings? In a later answer that I will be giving to another question, I will be pointing out that it was conducted in accordance with law and it is a requirement of the law at the moment that such hearings are conducted in private so there is nothing sinister about that whatsoever. It is the law.

**3.7.7 Deputy M. Tadier:**

I am not inferring that there is anything sinister, simply that it is not verifiable but hopefully at some point the findings will become public when it has all died down. Does the Minister think that perhaps the reason for the apparent difference in the verdict is that at the Privy Council hearing, the States of Jersey Police were not represented and that it was a case of Curtis Warren versus the Attorney General? It was not a case of Curtis Warren versus the Attorney General and the States of Jersey Police. Therefore the police had no say in what was presented to the Privy Council, had no way to put their side of the story whereas at the disciplinary hearing in Jersey, there was a chance for them to put their side of the story and therefore defend themselves. Is that the reason for the actual difference in verdict?

**Senator B.I. Le Marquand:**

That could be part of the reason. It is very unusual for evidence to be heard at any stage of the proceedings beyond the trial. It is sometimes heard before the Court of Appeal with special leave but it is virtually unheard of at the Privy Council but there are different burdens of proof involved. I am not sure in my own mind what the burden of proof would have been in relation to these issues in the original trial. I am not saying there is now because I am not sure, I have not researched it, but sometimes there is a situation where the burden of proof lies upon the prosecution to prove things beyond reasonable doubt and that sometimes goes to disproving allegations of misconduct and things of that nature. I do not know what the burden of proof was in this case but that is why I said different proceedings, different occasion or different evidence perhaps.

**3.7.8 Deputy J.M. Maçon of St. Saviour:**

The Minister failed to answer Deputy Higgins' question. I will pose it again. Who authorised the bugging of the vehicles in this and other jurisdictions?

**Senator B.I. Le Marquand:**

I think there was an authorisation for bugging of vehicles in Jersey but it never happened so that is irrelevant. There was no authorisation other than by police officers according to the judgments in relation to the bugging of the vehicles outside but those would not be governed by our law but by foreign law because they are outside the jurisdiction.

**3.7.9 Deputy M.R. Higgins:**

Is it possible to seek clarification of that because ...

**The Bailiff:**

I am sorry, Deputy, it was Deputy Maçon's question and I think you have already asked a question and I have the Constable of St. John next. Deputy Maçon, do you wish a supplementary?

**Deputy J.M. Maçon:**

I will defer to Deputy Higgins.

**The Bailiff:**

No, you will not. [Laughter]

**3.7.10 The Connétable of St. John:**

Who instigated the investigation into the police officers? We know it was not the Attorney General so who instigated this inquiry into the behaviour of the police officers?

**Senator B.I. Le Marquand:**

This may be where the issue lies because the Connétable has just used the word "inquiry". If we are talking about the initial review of procedures and so on, it was of course the Chief Officer of Police but he also received advice to that effect from the Law Officers. That is the initial stage that I am talking about.

**3.7.11 The Connétable of St. John:**

Therefore, if that was the case, when the inquiry was eventually held - or the investigation - it was done from off-Island, would it not have been better, Minister, that an independent group of people carry out the inquiry than another police force?

**Senator B.I. Le Marquand:**

I am not sure I have understood the question. The normal practice in relation to any police matter where there is involvement of an officer beyond a certain seniority is that it be conducted by a police force from off the Island. What happened here started with the review of matters. It then led to an investigation for potential criminal matters or for disciplinary matters. I am not sure if I have understood the question.

**The Connétable of St. John:**

Can I come back in? Yes, would it not have been better if the police authority had been involved in any inquiry so that it could be seen as being totally impartial?

**Senator B.I. Le Marquand:**

The Police Complaints Authority did get involved in relation to this matter at a certain stage in the process. Indeed, I have discussed the matter and what happened at the hearing with the Chairman of the Police Complaints Authority but it is normal for investigations to be done by police officers from forces outside. Indeed, as I have said before, the outcome of that investigation was a recommendation for disciplinary matters.

**The Connétable of St. John:**

I will put it in a written question, thank you.

**Deputy T.M. Pitman:**

Sorry, Sir, could I just seek your guidance? The Minister speaks very quietly. Could you just tell me did he say when Deputy Higgins tried to intervene that effectively no one authorised this?

**The Bailiff:**

I am sorry, you cannot have another question, Deputy.

**Deputy T.M. Pitman:**

We cannot hear, Sir, that is what I am saying. I do not want another question. I just could not hear.

**The Bailiff:**

I see, all right. You will have to speak up, Minister.

**Senator B.I. Le Marquand:**

I apologise. Deputy Higgins has his own question. I have also got questions without notice so there should be plenty of time for further review of this matter.

**3.7.12 Deputy R.G. Le Hérissier:**

In order that there be no lingering doubts which the officers will have to deal with, can the Minister assure us that having ultimate political responsibility for the police and having now undergone this inquiry having been cleared, that he is now satisfied that they acted with complete authority?

**Senator B.I. Le Marquand:**

We are back to where we started. I am not prepared to because of the fact that there are further proceedings pending. I am not prepared to express a view outside of what was said in the judgments of the senior courts.

**3.8 Senator S.C. Ferguson of the Minister for Health and Social Services regarding the size of population upon which the size of the proposed new hospital was being based:**

Would the Minister confirm the size of population upon which the size of the proposed new hospital is being based?

**Deputy A.E. Pryke of Trinity (The Minister for Health and Social Services):**

The hospital pre-feasibility spatial assessment project uses a bed model generated from the most recent activity data plus a projected population growth of additional 150 households per year. The base data was an analysis of actual inpatient data from a 3-year period which incorporated key assumptions about demographic change and service change. The 150 additional households per year is a population growth projection endorsed by the States Statistics Unit.

**The Bailiff:**

So what was the answer to the question? **[Laughter]**

**The Deputy of Trinity:**

As I said, on base data already given and base data on the 150 heads of household per year.

**The Bailiff:**

The question was what the size of the population was. Ministers really should focus on the question. What was the size of the population upon which the proposals for the hospital has been based, 100,000, 110,000, 95,000?

**The Deputy of Trinity:**

I have not got that exact figure.

**The Bailiff:**

Ministers should concentrate on the question and answer it.

**3.8.1 Senator S.C. Ferguson:**

The new hospital must have been planned for a range of population numbers. What is that range?

**The Deputy of Trinity:**

Some of the key assumptions were mostly on demographic change as we know that we are an ageing population and that was part of it and key assumptions too.

**3.8.2 Deputy G.P. Southern of St. Helier:**

For the Minister to suggest that the Statistics Unit has endorsed a figure, whether she likes it not, is misleading the House. The Statistics Unit will endorse any projection that you like, 150, 100, 200, 500, and say this is what the population will end up looking like. Will the Minister retract the statement that that figure is endorsed by the Statistics Unit because that is misleading?

**The Deputy of Trinity:**

The 150 households is a States decision and that number was put into the base analysis plus - very importantly - on our 3-year recent data because that data is very important because we are seeing a significant increase in the number of people using inpatient care.

**3.8.3 Deputy G.P. Southern:**

In the absence of an up-to-date population policy, will the Minister engage in urgent discussions with the Council of Ministers so we can have a debate on what is the appropriate population in this Island so that decisions like this can be made?

**The Deputy of Trinity:**

I understand that has already been processed and it is coming back towards the end of the year in the spring.

**3.8.4 Deputy J.H. Young:**

The Minister has informed us that the scale of the hospital will be based on existing clinical practice plus growth but could I ask the Minister to give us her opinion on how is it possible to plan for the future site of the hospital and look at available options if we do not know what the size of the clinical space is that we need?

**The Deputy of Trinity:**

As I said the current activity based on the 2011 data clearly demonstrates there is a considerable pressure on bed complements but also at present we are at 95 to 98 per cent capacity which is too high when thinking of infection control. For a safe level, that number needs to be in the region of 85 per cent. The number of beds will increase if we also do not put community strategies, which we passed in P.82, in place.

**3.8.5 Deputy J.H. Young:**

Could the Minister just tell us what is the size of the existing hospital in terms of square footage, on which we could make sense of that answer?

**The Deputy of Trinity:**

The current hospital size is approximately 38,000 square metres and we need to increase that because current hospital standards fall short of what are the recognised national standards within the H.O.S. (Hospital Operating System) of bed spacing for infection control, *et cetera*. The projected size will be approximately 64,000 square metres.



### **3.8.6 Deputy M. Tadier:**

We know the square meterage of the hospital but not the population for which it will cater. Will the Minister confirm when she received notice of this oral question and does she not think that by failing to provide an answer to this Assembly, she is showing contempt for this Assembly?

[10:30]

### **The Deputy of Trinity:**

As you know, the oral questions come in on Thursdays so as I said, it is on current data and the actual number of our current use and the bed occupancy, I can easily give that to States Members.

### **3.8.7 Deputy M. Tadier:**

If she can so easily give it to us, why has she not been able to prepare it between Thursday and today, Tuesday, which I think is 5 days and if it is so easy, will she at least prepare it after the Assembly has withdrawn and circulate it by email?

### **The Deputy of Trinity:**

Yes, I have just said that.

### **3.8.8 The Deputy of St. Ouen:**

I am well aware that the Chief Minister and other Ministers are on a particular oversight group supporting the Minister as she looks at the hospital and other matters. Would she confirm that the Chief Minister has publicly stated that he would seek to maintain the population levels at 100,000 and that that is the figure that has been used to determine the future size of the hospital?

### **The Deputy of Trinity:**

It is very difficult for me to confirm what the Chief Minister said but I shall ask him.

### **3.8.9 Deputy G.C.L. Baudains of St. Clement:**

I believe my question was partly at least covered by that from Deputy Tadier. I am disappointed with the Minister's non-answer to what is a very straightforward question. Would she agree to circulate the correct answer - a straightforward answer to a straightforward question - as soon as possible?

### **The Deputy of Trinity:**

I think I already said that.

### **3.8.10 Deputy M.R. Higgins:**

Can the Minister tell us what population figure was used to determine the size of the hospital? Was it based on the existing 97,000? Was it based on some projection forward when our population policy fails and we get up to 110,000, or what figure was used to calculate the size of the hospital?

### **The Deputy of Trinity:**

As I said, on our 3-year recent data because that is an important figure because we know that there is an increased number - and I will get the inpatient numbers to you - but the present capacity of inpatient numbers is running at 95 to 98 per cent. Sometimes it goes over the 100 per cent which is not right in this day and age because it raises the risk of infection control, and also we know that the hospital with 6 bays to a ward, does not allow the flexibility. But as I said, I will get that information.

### **Deputy M.R. Higgins:**

With respect, the Minister waffled on about something that was not even related to the question. The question was quite specifically what population figure for the Island did the Minister base the size of the hospital on?

**The Deputy of Trinity:**

I said I will come back with some more information.

**3.8.11 Senator S.C. Ferguson:**

The cost, as we know, of the new hospital is now projected to be £430 million. Will the Minister explain why the new hospital being planned is for a high-end range size of 300,000 in population?

**The Deputy of Trinity:**

I do not know where she got that figure from and I would like to know where she got that figure from.

**3.9 Deputy G.C.L. Baudains of the Minister for Transport and Technical Services regarding the bus service to the northern part of Le Squez:**

Will the Minister advise why the number 18 bus to Le Squez and Le Marais was discontinued and whether he will be reinstating a service for residents of the northern part of Le Squez who at present either have to walk to Le Marais to catch the number 15 or rely on the Inner Road bus, which is every 2 hours?

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

Construction on the latest phase of the Le Squez housing redevelopment master plan is due to start shortly and will require the northern section of Le Squez Road to be closed. Once this has been completed, it is planned that motorised traffic will no longer be able to travel south from Marina Avenue but bus access to the area will be maintained through School Road. Therefore it was felt that the extended service 15 should follow its new route via School Road from the first day of the new bus contract rather than follow the previous 18 route via Marina Avenue to then have to be permanently diverted after a short period. As service 15 uses School Road, a new bus stop has been marked opposite Samares Primary School so that residents can board/alight there rather than walk towards Le Marais or the Coast Road. The old bus stops on Marina Avenue and Le Squez have now been blanked out in advance of the building work commencing. Regrettably it would not be practical to re-route a bus service via Marina Avenue and Samares Avenue due to the tight turns and high number of parked cars making it difficult for buses to manoeuvre safely. However, I am pleased to announce that Liberty Bus plan to increase service levels on a St. Clement Inner Road from the end of March and, if passenger numbers indicate, further enhancements will follow.

**3.9.1 Deputy G.C.L. Baudains:**

A complete shambles. The Coast Road is well served by bus every half an hour and now we have the number 15 bus that comes along every 20 minutes as well whereas what I am referring to is the northern part of Le Squez and the Inner Road, Marina Avenue and the 2 other housing estates nearby. I have just learned that now Green Road is not well serviced. The number 18 bus service was very well taken up, especially by elderly people. Has the Minister been in contact with the Minister for Housing to maintain an access through so that the number 18 bus could be reinstated or am I in the position of having to bring yet another proposition to this Assembly?

**Deputy K.C. Lewis:**

I have not discussed this with the Minister for Housing but my officers have been discussing it with the housing officers and that is the situation at present, but it is a work in progress and the service is still being tweaked to get the optimum result.

### **3.9.2 The Connétable of St. John:**

Is there any possibility, Minister, that if there are too many buses on the route to St. Clement, as they have them every half an hour and every quarter of an hour, that we in St. John and northern Parishes could have more than 2 buses in the morning, one of them being usually a school bus? So is there any possibility that the Minister could move some of these buses to the northern Parishes please?

#### **Deputy K.C. Lewis:**

Indeed, but if we can concentrate on this particular question, I am up for questions without notice later on so Members can sharpen their pencils or knives.

#### **The Connétable of St. John:**

Can he answer the question, Sir, please?

#### **Deputy K.C. Lewis:**

I will put that through to Liberty Bus and see what can be achieved.

### **3.9.3 Deputy T.M. Pitman:**

I guess I must declare I have got a sort of vested interest, having relatives there. Surely the key drive to replace one contractor with another is to enhance the service. Now, when you have got, for example, 82 year-olds - and there are quite a lot around that age down there, I have got one suffering with cancer - is it really fair or practical to have someone trying now to struggle from the bus stops that have been blacked out, as the Deputy says, all the way down to the school or all the way up to the Inner Road? Is that the best that Liberty Bus can do because buses have gone through there for 40-odd years and it has not been too much of a problem.

#### **Deputy K.C. Lewis:**

As I said previously, if the road is blocked, then the road is blocked, but I will put this through to Liberty Bus to see what can be done to enhance the service further.

### **3.9.4 Deputy M.R. Higgins:**

Is the Minister aware that ... I think the bus company are now on their third set of timetables or schedules? Drivers are given a sheet every day and their timetables differ to what is published to the public. Does he think that is a satisfactory situation because people are waiting for buses which are coming to a different schedule than the published one?

#### **Deputy K.C. Lewis:**

Indeed not but, as I say, it is a work in progress. The service is still being tweaked to iron out all the gremlins.

### **3.9.5 Deputy M. Tadier:**

It follows on very much from the last point. We all appreciate that there will be transitional teething problems while the new timetables kick in and there will be perhaps winners and losers initially but will the Minister perhaps consider a formal process of feedback whereby residents who think that they may be able to suggest improvements to the bus service, because I have certainly been contacted with people who have raised issues with regard to this question no point in listing

them all here, will there be a method whereby they can leave feedback and the Minister will sit down with CT Plus and look at a holistic way of improving the service across the Island?

**Deputy K.C. Lewis:**

Absolutely. One officer is working full-time on this and another officer is working part-time just liaising with Liberty Bus, as I say, to iron out all the gremlins and that will be coming forward very shortly. There is a website which I believe is libertybus.je where people who are on the net can send their views in. There is also an information line and also we have the office at T.T.S. (Transport and Technical Services).

**3.9.6 Deputy M. Tadier:**

Just to confirm, if those emails are sent in, they will be responded to and will they be seen by the Minister in due course?

**Deputy K.C. Lewis:**

Absolutely and Liberty Bus assured me that all complaints or all observations are taken very seriously.

**3.9.7 Deputy G.C.L. Baudains:**

If you will allow me a 2-part question. First of all, I would like to know why the new bus operator did not simply take over the existing Connex routes without making changes at the same time, which has caused a lot of confusion. Secondly, the Minister did suggest he would discuss this issue with the new bus company. Could he advise me if that is going to be in the near future and could he give those details to me as soon as he has them?

**Deputy K.C. Lewis:**

Yes, indeed. That will be within the next few days.

**The Bailiff:**

The other part of the question, which was why they did not just take over the existing routes?

**Deputy K.C. Lewis:**

I cannot argue with that. It was a very ambitious project. There was disruption when the previous contractor took over and we have had obviously a lot of disruption on this one. It would have been far easier in hindsight to have taken over the existing routes and then tweaked at a later date so it was an ambitious project.

**3.10 Deputy T.M. Pitman of the Chief Minister regarding the basis for the conclusions of the Electoral Commission:**

Does the Chief Minister consider that option B of the Electoral Commission meets international standards outlined by the Venice Commission in that it proposes the votes of those in urban areas such as St. Helier, for example, would be worth less than others? If so, how does he believe this to be compatible with the Council of Ministers' commitment to promoting fairness as part of a strong and successful Island?

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

The Privileges and Procedures Committee has invited the Assembly to submit the Commission's recommendations in a referendum in the form suggested in their final report. It will then be for Islanders to decide upon. Islanders may or may not wish to have regard to the Venice Commission's code of good practice in electoral matters, which I understand recommends the

principle of equal voting power while also advising that geographical criteria and administrative or historical boundaries may be taken into consideration.

**3.10.1 Deputy T.M. Pitman:**

I do not know if Members have read the written answer to question 12 because frankly it is embarrassing and it is well worth reading in this context. As, I believe, having an accountant background, could the Chief Minister clarify something for me? St. Helier basically makes up around one-third of the Island's population I think it is fair to say. So let us suppose all the good people of St. Helier get up on referendum day and they all vote to say: "No, our equal vote is more important than keeping the 12 Constables in a job." Does the Chief Minister not concede that as a minority, they still cannot win that vote? They are relying on people whose votes are worth more. If so, will he be campaigning with his Ministers against option B as it is completely undemocratic? It is a loaded question and frankly it is embarrassing, almost rigging of a referendum.

**Senator I.J. Gorst:**

I would refute the Deputy's allegations. I do not see how. This Assembly has got to approve those questions but the Electoral Commission have worked very hard to come up with them and therefore I hope that the Assembly will approve those questions going to referendum across the community. Every individual, as I understand it, on the Electoral Roll will be able to vote and give their preferences with regard to those questions and I see no problem with that. The Deputy is well aware of my longstanding position, which is supportive of the Connétables remaining in this Assembly.

[10:45]

**Deputy T.M. Pitman:**

With due respect, the Minister has not answered that part of the question. People in St. Helier cannot influence this even if they all vote against it. Does he not understand that as an accountant? It is just numbers. Sorry to push it but it is so important.

**The Bailiff:**

No, Deputy, I think the Chief Minister says he does not agree with you.

**Senator I.J. Gorst:**

Yes, I do not understand how the Deputy can suggest that the people of St. Helier cannot influence the referendum decision. One could make the argument for every single other Parish but it will be an Island-wide vote so it will be up to each individual to vote their preferences.

**3.10.2 Deputy M. Tadier:**

Without getting into the substantive rights and wrongs of the changes which will come, will the Chief Minister perhaps expand on the fact that he said it does not really matter whether or not option B is compliant with the Venice Commission because members of the public may not put much store by the Venice Commission. Does he not agree that there is a problem here? If one of the options being proposed is not viable because it may well be illegal insofar as it contravenes our international obligations, for example, if we had a referendum on would you like to bring back the death penalty and there may be a resounding yes, but we would not be able to enact that because it is not legal under international law, so does the Chief Minister not think that this is an issue that needs to be addressed to make sure that all the options on the table are viable outcomes, not simply theoretical ones which some Members of the States or the public would like to see?

**Senator I.J. Gorst:**

I am not sure on what grounds the Deputy believes that the second question that the Electoral Commission is asking the Assembly to approve for referendum is illegal. As I said in my opening comments, the Venice Commission is a code of good practice in electoral matters and therefore it is not written in law. Of course, as I also said, it does recommend the principle of equal voting powers but it also recognises that there might be exceptions for geographical, administrative or historical boundaries. The other thing I think I should just say is it seems to me that one or 2 individuals who do not wish to see the Connétables remain in this Assembly, and that is obviously their political prerogative, are suggesting that voters within a large district will be represented by the Connétables of the other Parishes in their district. I do not see how that will be the case.

### **3.10.3 Deputy M. Tadier:**

It is not a case of whether historical boundaries are represented. I myself provided a submission to the Commission which enabled one to keep the Constables and to keep Parish Deputies with perfect or near perfect distribution so it is not a case of the boundaries. Nonetheless, there was advice taken from the Commission by experts which talked about the 10 per cent rule which is an international norm and does the Chief Minister not think that it is strange that our finance industry quite rightly does all it can to take precautions to make sure that our international image is kept as high as possible but when it comes to politics in Jersey, we seem to put little store by making sure that we meet internationally agreed norms when it comes to political representation, either to do with the separation of powers or to do with the distribution of voter equity with regards to our urban and rural districts?

### **Senator I.J. Gorst:**

I am not really sure that is a question for the Chief Minister (I am just one Member of this Assembly) about these issues. We will be having a debate in due course and that is absolutely right and I have no doubt that Members of this Assembly will be going out and about across the Island arguing for their particular approach on what they wish to see. The Deputy is right with regard to the 10 per cent and the 15 per cent and that is quite clear within the Venice Convention code of good practice and I will not reiterate what I just said about that code. I disagree. We have, I believe, arrived at where we are today with regard to the makeup of this Assembly through a long history and I believe that we should consider very, very carefully before we wish to interfere with that history.

### **3.10.4 Deputy G.P. Southern:**

Does the Chief Minister accept almost universal dictum on referenda that a single straightforward question is the way to get a yes/no answer and a clear decision? At the moment, we appear to be heading towards 3 boxes on the paper, 3 options, and that is likely to produce a third, a third, a third, and no resolution whatsoever. Will he use his good influence on his neighbour to make sure that we have a clear result from the referendum by insisting on a single question?

### **Senator I.J. Gorst:**

The Privileges and Procedures Committee have brought forward for debate in this Assembly the final report of the Electoral Commission. I do not think it would be right for me to try and influence the Electoral Commission in that regard. They have made their report. They have published it. They have been quite clear. They have gone out to consultation on it and the Privileges and Procedures Committee, as I understand it, have accepted it and are asking this Assembly to approve those questions for a referendum.

### **3.10.5 Deputy G.P. Southern:**

In the light of the Chief Minister's desire to retain the Constables in the Chamber, would he be happy with a no result from the let us keep things the same result from the referendum?

**Senator I.J. Gorst:**

I am conscious that I have been answering hypothetical questions all morning but perhaps that is one that I will not answer.

**3.10.6 Deputy J.M. Maçon:**

I notice Deputy Southern quickly bit his lip because the Chief Minister said that there will be the opportunity for the public to vote against, to say no, but the problem is that in ranking the different options, there is not an option to say no. There is only the ability to rank preference and so an endorsement of the status quo is not the same as a no. Does the Chief Minister acknowledge this?

**Senator I.J. Gorst:**

I suppose it could be argued that I would see quite clearly that an endorsement of the status quo is saying no to the reforms suggested.

**3.10.7 Deputy T.M. Pitman:**

I am sorry to say I think we have seen 2 Ministers today embarrass themselves with their answers. The Chief Minister talks about good practice and he seems to dismiss it as if Jersey should not be following good practice. So could he just at least tell the people of St. Helier why he and his Government think that their vote is not worth as much as some in the country Parishes? Perhaps the media will pick up on it. They have not done so yet.

**Senator I.J. Gorst:**

I do not accept that. Once again, the residents of St. Helier, the residents of all the 12 Parishes, will all as individuals be able to vote in the referendum and therefore I do not see that the Deputy's argument stands up.

**3.11 Deputy S. Power of St. Brelade of the Minister for Economic Development regarding tariffs and charges for non-commercial freight:**

Would the Minister confer with Condor Ferries Limited and seek clarification on the recently changed tariff policy on its online booking site, in particular how charges for non-commercial freight are levied in (a) 2013 compared to 2012 and (b) compared to charges on commercial freight, whether a clear list of tariffs for non-commercial freight may be published on the website to assist the travelling public, especially for recreational vehicles and I am referring to motor homes, vans that are not used for commercial vehicles, boat trailers, luggage trailers, motorbike trailers and so on.

**Senator A.J.H. Maclean (The Minister for Economic Development):**

This matter has already been referred to Condor Ferries and I have received a comprehensive reply from the new Chief Executive. In summary, the changes were made in the way non-commercial freight is charged in March 2012. I understand the changes were attempting to reflect the space required by larger vehicles in comparison to the opportunity cost of another car filling that space on a per metre basis. I am also informed that there has been stricter administration of pre-existing rules to prevent ferries being over capacity when if the rules were being adhered to, there would be sufficient space to accommodate all vehicles. The new Chief Executive Officer of Condor accepts that better communication is required and I am told that the company has started an initiative to improve the navigation and transparency of the website and to ensure that prices are fair and more transparent. I am also more than happy to make the full reply that I have received from Condor Ferries available to the Deputy.

**3.11.1 Deputy S. Power:**

I thank the Minister for the content of his answer and I will supply to the Minister a sheaf of quotes from the online website. I am glad to hear that the Minister has had this commitment from Condor. Can he tell us when this will happen because at the moment the online price for a 5-metre trailer has jumped to £78.52 per metre from £10 per metre in 2012. Could he give me an indication as to his preferred timescale as distinct from Condor's and what he is likely to do about it?

**Senator A.J.H. Maclean:**

The new Chief Executive of Condor has only just, in fact, taken up his post. I have only just met him in the last 10 days. I am sure, certainly from the response that I have had, that it is a matter that is going to receive his full and early attention and I would hope that there is clear clarification on the website for passengers in short order and I am happy to keep the Deputy informed on progress.

**3.12 Deputy R.J. Rondel of St. Helier of the Chief Minister regarding the proposed delivery of affordable homes:**

With reference to a written question I asked of the Minister for Housing at the last Assembly on 15th January 2013, is the Chief Minister satisfied with the present proposed delivery of just 51 affordable homes for purchase over the next 5 years? Furthermore, is he content that all of his Council are working satisfactorily together in order to deliver an appropriate level of affordable housing as quickly as possible?

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

We absolutely need to increase the affordable housing provision and the Council will consider in February a range of policies for presentation to the Assembly as a matter of importance, including a Strategic Housing Unit, to co-ordinate housing policies, the Housing Transformation Programme, H3 Island Plan policies and other Island Plan policies, the development of a housing strategy for the Island. This reflects a collective and firm commitment as a Council of Ministers to putting in place measures to improve housing affordability and conditions in our Island.

**3.12.1 Deputy R.J. Rondel:**

Thank you, Chief Minister, for that sort of answer but the identity of States-owned sites for affordable housing was extremely urgent during the last Island Plan debate and indeed the Strategic Plan which we all signed up to, states that: "Identify opportunities for using States-owned sites to provide more housing is a priority" and the States said in the Strategic Plan that we would bring forward schemes to support first-time buyers. Does he not agree that we are not doing this?

**Senator I.J. Gorst:**

I agree absolutely with the Deputy that more needs to be done and that is why I have been saying to colleagues that February will be a month of housing and Deputy Hilton made some very important points earlier today about the provision of housing on States-owned land and the length of time that it would take to deliver housing on the Summerland site. Of course, we are slightly more advanced in the Girls' College site but more must be done. We have got to recognise the decisions in this Assembly and deferral, for example, of the police station means that those houses on the Summerland site are taking longer than we would have wished. There are also some other unintended consequences which are now coming to light from the Island Plan debate.

**3.12.2 Deputy J.H. Young:**

Would the Chief Minister confirm that the discussions that the Council of Ministers are going to have in February that he has just advised us of will address the Island Plan target, which is 4,000



affordable homes over the plan period of 10 years and will he also be addressing the shortfall, bearing in mind the answer that Deputy Rondel referred to showed that of the 51 homes which are planned in the next 5 years, at present 2 of them have no applications in and the other has not started. So would he confirm that he will be looking at those matters in his review?

**Senator I.J. Gorst:**

Absolutely. When we debated the Island Plan, the department had initially brought forward sites for rezoning and said that those rezoned sites would deliver affordable and social houses in the short-term period while the department could work with industry to deliver the new H3 policy. Of course, what this Assembly decided at that point was that we take out those rezoned sites and we work on the H3 policy and therefore delivery in the short term has not happened and we perhaps need to consider whether that should be addressed.

[11:00]

**3.12.3 Deputy J.A. Hilton:**

As the Chief Minister has said, the 150 units on the Summerland site cannot be delivered within the next 3 or 4 years. The earliest it can happen is 3 or 4 years' time. The question I wanted to ask was is the Chief Minister in agreement with the shortfall of social housing that we are experiencing at the current time - I am talking about social housing - should be delivered on vacant States-owned sites in the immediate term?

**Senator I.J. Gorst:**

I think we need to have some difficult debates because there are problems, as I have just outlined, with the timing of delivery on those sites although Girls' College is coming forward and we are going to have to perhaps revisit and re-discuss whether there needs to be some zoning changes to the Island Plan in the short term until those other sites come on line and they are not going to be easy decisions, but we absolutely have to do that because we are aware of a rising waiting list and we are aware of people who want to buy homes but cannot afford to and Government should be helping.

**3.12.4 Deputy K.L. Moore of St. Peter:**

To follow on from Deputy Hilton's point and given the problems with timing, are any efforts being made to look at other alternatives that can achieve very short-term objectives?

**Senator I.J. Gorst:**

Yes, I hope and know that that will be part of our conversations during February, although I would just be wary that it does not always seem that Government's short-term is quite perhaps what might be considered by the public at large.

**3.12.5 Deputy R.J. Rondel:**

Would the Chief Minister ensure that he will come back to the House as soon as possible once those talks have taken place in February with a clear strategy on identifying sites and how many units of sites for the next 5 to 10 years because this has been the problem? There is no clear timeline on what is going to be delivered.

**Senator I.J. Gorst:**

Yes, a number of work streams will be lodged in this Assembly for debate as well and I would imagine that we would be able to put a timeline and delivery of numbers when we bring forward those propositions.

### **3.13 Deputy G.P. Southern of the Minister for Economic Development regarding recently registered companies:**

Will the Minister inform Members how many of the companies registered in Jersey by foreign owners in 2012 listed in his Invest Jersey press release are trading or conducting business on the Island and is he aware how many other companies listed in 2012 have made arrangements or are preparing to trade or conduct business in Jersey in 2013 and beyond?

#### **Senator A.J.H. Maclean (The Minister for Economic Development):**

The Deputy refers to Invest Jersey of which I have no knowledge but I assume that he is referring to our inward investment arm, which is known as Locate Jersey. In this regard, Deputy Southern will be aware from previous answers I have given to his questions on this subject that we will not have full information for 2012 with regard to the commencement of trading and the job opportunities created versus those filled until after the December 2012 manpower returns have been published.

#### **3.13.1 Deputy G.P. Southern:**

The Minister for Economic Development makes much of his wish to diversify the economy. Does he recognise that a quarter of employment in Jersey is in the finance sector but that the employment figures, the job opportunity figures that he gives in his documentation, show that he is not promoting diversification because 30 per cent of the job opportunities are in the finance sector?

#### **Senator A.J.H. Maclean:**

I disagree with the Deputy. In 2012, in fact, the figures show strong diversification. Of the 44 business licences that were approved in 2012, 14 were for finance but 30 were for non-finance businesses, that is mining, oil and gas sector, which I know the Deputy has concerns about. There are 5 for the I.T. (Information Technology), there are 5 for retail, sports management, H.R. (Human Resources), payroll, and I could go on.

#### **3.13.2 Deputy J.M. Maçon:**

In the categories that the Minister just mentioned now, will he also include within those statistics, if able, a table showing the number of positions lost or deleted within the industry so that we can provide a fair comparison?

#### **Senator A.J.H. Maclean:**

The Deputy asks a very good question. I assume he is talking about monitoring as we go forward the success of the businesses that we have brought to the Island and indeed that is going to be a key constituent part of the enterprise strategy which will indeed - well, it is almost complete now - will be coming before the States for consideration in due course but it is a very important point and the answer is yes, we will be putting proper monitoring in place.

#### **3.13.3 Deputy J.M. Maçon:**

The Minister said while they will go on, but I have asked him specifically to publish that information when he publishes the other information because we need to be able to compare the number of jobs made against how many are lost to see if the whole situation is static. Will the Minister give the undertaking that that information will be published?

#### **Senator A.J.H. Maclean:**

If the Deputy is referring to jobs lost across a specific sector versus jobs created, yes, we can look at analysis like that and I will have to get back to him on that.

#### **3.13.4 Deputy G.P. Southern:**

Surely the Minister for Economic Development can do simple maths; 14 out of 44 licences are 32 per cent, 14 referring to finance sector. That is increasing the ratio of finance sector to non-finance sector and 442 of the employment opportunities out of 1,442 which is 30 per cent of the job opportunities also specialise in finance. So it is increasing the dependence of the Island on finance rather than diversifying. Is that not the case? The numbers say that.

**Senator A.J.H. Maclean:**

The numbers clearly say certain things to the Deputy and other things to everybody else. Quite clearly, I have made it plain in my earlier answer that 30 of the businesses that were brought into the Island were non-finance and those are businesses that we are seeking to grow and have full intentions of growing. So the opportunity there for growing greater jobs, which is what the Deputy is referring to, is existing and diversification is being applied to everything we are doing with inward investment, but I do not think the Deputy should be diminishing the importance of finance. It is an important sector. It is a high value sector and inward investment in that area is still important.

**Deputy G.P. Southern:**

The Minister for Economic Development is accidentally, because he cannot handle the figures, misleading the House.

**3.14 Deputy J.M. Maçon of the Chairman of the Privileges and Procedures Committee regarding the participation threshold in referenda:**

Can the Chairman explain whether the proposed referendum will carry a participation threshold before the results will be deemed credible as there is no provision for this in the Referendum (Jersey) Law 2002 or in P.52/2013 and if not, why not?

**The Connétable of St. Helier (Chairman, Privileges and Procedures Committee):**

The Referendum (Jersey) Law 2002 is essentially an enabling law and does not make provision for the setting of a participation threshold. P.5/2013 could technically have introduced the participation threshold but I am advised that the Electoral Commission agreed after careful consideration that it would not be constructive to propose one.

**3.14.1 Deputy J.M. Maçon:**

Can the Chairman please give further details of the reasoning as to why it would not be constructive given that many countries throughout the world, when it comes to constitutional change, do have a participation threshold?

**The Connétable of St. Helier:**

It is perhaps a question that should be put to the Electoral Commission but it may be helpful if I direct the Deputy to the debate on the referendum law which was adopted in 2002 without amendment by 37 votes to 2 and in its accompanying report, it dealt with the question about participation thresholds and whether a certain majority should be required and in the report, it is suggested that, as the outcome of the referendum is not binding anyway, it would not be helpful to have a participation threshold.

**3.14.2 Deputy G.C.L. Baudains:**

If the Chairman of P.P.C. could remind me, I thought Senator Vibert brought in a 75 per cent threshold to pertain to any reform of government, does that apply in this case?

**The Connétable of St. Helier:**

I do not believe it does, certainly not as far as the referendum goes. It will be up to the States to decide what to do with the results of the referendum because it will come back to the Assembly and clearly it is in everyone's interests, whatever their view of the referendum, that we encourage a large turnout and I think our energy should be focused on ... certainly from P.P.C.'s point of view, we will be doing all we can to make sure that the referendum is widely participated in.

**3.14.3 Deputy J.M. Maçon:**

Does the Chairman not agree that we might be able to quash many arguments in the future given for exactly the reason that it has got to come back to the Assembly, that if you have a participation threshold reflecting a significant turnout of the public, then that will help States Members to be able to cast a vote accordingly when it comes back - granted it will still be on their conscience - and that would provide better foresight than having none whatsoever?

**The Connétable of St. Helier:**

I personally do not have any strong views on this matter but if I can quote the report again from P.40/2002, it does raise a problem in having a threshold. It says, and I quote: "If a preponderance of the Island's elected representatives wishes to pose a question to the electorate, it will be difficult in the opinion of the committee to justify law that could thwart the will of the majority of those representatives." In other words, it certainly seemed to a previous committee, that was a legislation committee, that it would not be right to interfere with the wishes of the States by putting this essential threshold.

**3.15 The Connétable of St. John of the Minister for Transport and Technical Services regarding the recent snow disruption:**

On 18th January during the snow disruption, how many miles of States roads were gritted or salted and when was it decided to remove grit boxes from major junctions or hills across the Island?

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

I can confirm that all priority roads, hills, A, B and C roads were salted during Friday, 18th January between the period of 0300 hours and 1800 hours which equates to approximately 143.44 miles. The grit boxes were removed prior to 2006 as they were constantly being broken into and the stocks of grit salt depleted or totally emptied by various other parties and therefore they became redundant. Since that time, T.T.S. has doubled the number of salt-spreading machines that it operates.

**3.15.1 The Connétable of St. John:**

Will the Minister please give a list of what he considers are the priority roads within the Island?

**Deputy K.C. Lewis:**

Yes, the priority roads would be as follows. West: commercial buildings and underpass, Victoria Avenue, Beaumont Hill, Airport Road, Airport Terminus, St. Aubin's Inner Roads, St. Peter's Valley, Mont Les Vaux, the whole hill; and east: New St. John's Road, Queens Road, Trinity Hill, St. Saviour's Hill, Wellington Hill, Mont Millais, Mont Felard and Grouville Hill; Liberty bus routes, Liberty Station to St. Aubin's via Inner Road, Liberation Station, Gorey via Coast Road.

**3.15.2 The Connétable of St. Helier:**

While not wanting to diminish the sterling efforts of his staff, could the Minister confirm that his staff was also assisted by other manual workers around the Island, particularly those of St. Helier, who were up very early to help clear the roads? **[Approbation]**

**Deputy K.C. Lewis:**

Yes, indeed. I was going to mention that when I was out walking around St. Helier, I did in fact see the St. Helier workforce doing sterling work salting roads, *et cetera*, so well done to them.

**3.15.3 The Connétable of St. John:**

Given the amount of roads that the Minister mentioned, he mentioned hills like Queens Road and the like, but a big percentage of the population do live out in the country areas, probably one-third of the population, and we have centres like Sion, in our case, St. John's Village, *et cetera*, and other villages in St. Ouen. Can the Minister say why these areas were not covered in his 140 plus miles that he quoted where we have clusters of maybe 500 or 700 people living in a very close area?

[11:15]

**Deputy K.C. Lewis:**

Yes, the whole Island was covered but these are the priority routes. Obviously all the equipment is stored at La Collette so everything branches out from St. Helier. Obviously the Harbour and Airport, Victoria Avenue and roads going east and west are the priorities, working our way north but I will take the Constable's comments on board. While I am on my feet, may I congratulate the T.T.S. workforce who were up from 3.00 a.m. salting the roads and did an absolutely sterling job and also Liberty Bus and indeed the bus drivers who were driving in very challenging conditions.

**3.15.4 The Connétable of St. John:**

Given that the Minister in his reply eventually finished up in the north of the Island, will he try and reverse things around and let the outer Parishes have a little bit more of the tax money that is used when they are gritting to make sure that people who live in places like Bonne Nuit, *et cetera*, can at least get out of the traps that some of them find themselves in?

**Deputy K.C. Lewis:**

Yes, indeed. I am more than happy to look again at the rota.

**3.16 Deputy M.R. Higgins of the Minister for Home Affairs regarding the decision of a recent disciplinary tribunal involving police officers:**

Due to the important public interest issues involved, will the Minister publish the written decision of the disciplinary tribunal involving the 3 officers involved in the Curtis Warren car bugging case and if not, why not and if so, when?

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

The Minister for Home Affairs should follow the terms of the relevant law which is the Police (Complaints and Discipline Procedure) Order (Jersey) 2000. Article 24(1) of that order reads: "Except as provided in Article 23 and the following paragraphs of this Article, a disciplinary hearing shall be in private." The written decision of the Tribunal is part of the hearing and should therefore be treated as private. This is no different a situation to the situation where this Assembly may sit in camera and thereafter that people should not say what happened at the meeting in camera. So the answer to the question is no for the reasons given.

**3.16.1 Deputy M.R. Higgins:**

The Minister for Home Affairs has already set a precedent for this in the case of a former Chief of Police where he published the Wiltshire Report which was not only exempt from freedom of information but was also confidential and should never have been disclosed until the outcome of

the disciplinary hearing that he had instituted against the former Chief Officer. So will he not publish this one? He is showing double standards, inconsistent standards. Will he please explain?

**Senator B.I. Le Marquand:**

No, I am not showing inconsistent standards. I operated each case according to the rules that appertained. In this case there is a statute. In that case, it was clear as part of the disciplinary code that it was a matter for the discretion of the Minister for Home Affairs as to what he did at the end of the proceedings. That is what the code said. I acted in accordance with that and on that occasion, acted in favour of the general public having access to the matter. In this case, I am bound by the terms of the statute.

**3.16.2 Deputy M.R. Higgins:**

The officers in the case I believe are quite aggrieved and they feel that they have been badly done by. If the 3 officers request the report to be published, will the Minister publish it or if not, why not?

**Senator B.I. Le Marquand:**

No, I will not, for the reasons I have already given. It is clear in statute that it is in private. I must abide by that.

**3.17 Deputy T.M. Pitman of the Minister for Treasury and Resources regarding a reduction in taxation for certain electors:**

Given the Electoral Commission has put forward option B which suggests that votes of those in urban areas such as St. Helier, for example, would be worth less than others, would the Minister be able to balance this discrimination by reducing taxation for such electors?

**Senator P.F.C. Ozouf (The Minister for Treasury and Resources):**

Other Ministers have answered questions about the Electoral Commission and I do not think that I can really add from a Treasury perspective on anything to do with the democratic issues and the electoral numbers. In relation to whether or not I am considering any reduction in taxation, the answer is no.

**3.17.1 Deputy T.M. Pitman:**

Could the Minister for Treasury and Resources just clarify for the Assembly that the reason that he does not feel he could do that is that it would not be best practice?

**Senator P.F.C. Ozouf:**

Frankly, I assume that the Deputy is asking these questions with somewhat of a tongue in cheek. I am not aware, after having conducted a little bit of research over the weekend, of any jurisdiction in the world that varies taxation in relation to the amount of vote per electorate and I recall, just listening to the radio this morning that indeed even the U.K. (United Kingdom) Parliament in their reduction in their Boundaries Commission has issues about electoral issues and I do not hear them having falling foul of any international conventions.

**3.17.2 Deputy M. Tadier:**

Of course, it may well be tongue in cheek but the Deputy raises a very serious issue about no representation without taxation or *vice versa*. So does the Minister for Treasury and Resources agree that what we are seeing here in option B is a blatant attempt at gerrymandering, even worse than what we have now, to entrench the political power of the wealthy elite who live in the rural areas of Jersey and would he consider gerrymandering the tax system perhaps back in favour of the

little people so that they may be able to pay proportionally less than their wealthy counterparts, given the fact that they will be disenfranchised under option B?

**Senator P.F.C. Ozouf:**

That is well outside the brief of the Minister for Treasury and Resources and I think there were 5 supplementaries in that. I am not involved in the Electoral Commission matters and, as such, I do not frankly think that I should answer the questions from Deputy Tadier which are clearly inflammatory. Clearly, it is up to this Assembly and ultimately the people of Jersey to decide on their representation of this Assembly and whether or not they want to keep the historic linkage with the Parishes, *et cetera*, which are important issues in our democracy. In relation to whether or not we have a proportional or indeed a progressive tax system, I am very proud of our tax system with the marginal rate which the Tax Department is now communicating very much better. It is clear that people on lower incomes pay a lower proportion of their income in taxes than higher earners. The answer to the question that I gave Deputy Southern a few moments ago shows that people with higher incomes pay a higher rate of tax and that is the Treasury brief.

**3.17.3 Deputy T.M. Pitman:**

Could the Minister for Treasury and Resources just confirm what I think he is saying, that for one jurisdiction to have people living in certain areas having a vote not worth someone who lives in another Parish is absurd but okay but with taxation, it would be completely unrealistic?

**Senator P.F.C. Ozouf:**

Somehow there is an issue of conflating the representation no taxation without representation to somehow a proportional system of taxation according to the representation. I am not aware of any democratic system in the world that deals with that. There are electoral issues and how Parliaments elect their Members and there are issues of taxation. I deal with taxation and I cannot be clearer in relation to the no I gave Deputy Pitman earlier.

**3.18 Deputy R.G. Le Hérissier of the Minister for Treasury and Resources regarding the Gigabyte Jersey Project:**

Given from information released last week that only 737 home connections have been made between August 2012 and now in the Gigabit Jersey project, how does the Minister reconcile this with his answer to Senator Ferguson on 26th June 2012 that: “the rate of connections was anticipated to rise to 2,000 per month.” How much of the budget of £41.5 million remains to be spent?

**Senator P.F.C. Ozouf (The Minister for Treasury and Resources):**

I am grateful for the Deputy’s question in relation to this. Gigabit Jersey is obviously an exciting and important 5-year programme, which has been supported by the Treasury by a loan to J.T. (Jersey Telecom). The Board of J.T. set itself an extremely tough internal challenge of connecting 2,000 homes per month, a target well in excess of which was originally designed to achieve the planned project over 5 years and indeed that ambitious target was the subject of my answer to Senator Ferguson in June. Gigabit Jersey has effectively 3 important components. Firstly, the core infrastructure. That was completed in 2012 on time and to budget. The second component, homes passed, was tracking slightly but currently I am advised is slightly above budget. It is run physically considerably ahead of schedule with some 26,115 homes passed by the end of the year as opposed to the plan of 9,600. The homes connected component is the third issue and that is the issue that is proving more of a challenge. This is complex because of the difficulty in predicting accurately the time to connect each home and there are indeed tens of thousands of homes to

connect. I am advised that J.T. contractors have taken longer than expected to deliver the programme into an effective production line and this is the reason why only 1,737 broadband homes were connected at the end of December. J.T. is dependent on performance of a third party contractor and I am advised that there are commercial discussions and a resolution is attempting to be made between the parties. I will ensure that Members are briefed in the start of the first quarter next year so that they have an update of the briefing. Finally, of the budget question, I am advised that £18.5 million of the budget has been spent, leaving a total of £23 million of the original budget. I am advised by the J.T. Board that in order to meet the 5-year target and remain within the budget, J.T. is going to now prioritise the connection of broadband customers over those only voiceover. That seems to me a sensible solution. I will attempt to answer supplementaries.

**3.18.1 Deputy R.G. Le Hérisier:**

Would the Minister acknowledge that perhaps at the beginning, the plan was over-ambitious and would he also outline to the House why the relations between the contractor and J.T. appear to have partially broken down?

**Senator P.F.C. Ozouf:**

I agree that it is indeed an ambitious project and indeed the very fact that we have done Gigabit has now unleashed a wave of new activities in relation to the digital space, the setting up of Digital Jersey, the new e-government initiatives. All this has been based upon the programme and I know that the Deputy supports that. I am disappointed but I have been fully briefed by the Board of J.T. in relation to the subcontractor issue. I am somewhat constrained by what I can say currently about that dispute because obviously it is a subcontractor issue with J.T. but the Deputy can rest assured that I have asked both the Treasurer to monitor developments closely and the Board to keep me informed and I want to see connections regain their momentum and as many homes connected, which now can be because the spine and the infrastructure has been put in place, but I will advise Members as soon as I have more information about the resolution of the contractor.

**3.18.2 Deputy G.C.L. Baudains:**

The Minister champions the Gigabit project. I believe he has underestimated the magnitude of the problems involved and overestimated the benefit but could he confirm or otherwise that the contractors are, in fact, owed £5 million by Jersey Telecom and as a result, some of the employees are looking for alternative employment?

**Senator P.F.C. Ozouf:**

Just so that we are completely clear, I do understand that the Deputy's son may be involved in relation to this subject and I just think it is very important that we are absolutely clear about the source of information so I would just be grateful if perhaps he could confirm that. Yes, there are issues in relation to the contractor and I have advised Members that I am fully briefed by the J.T. Board and I want those issues dealt with but it would be wrong, I think, to cast any aspersions on J.T. I am satisfied with J.T. I have full confidence in them and I want them to resolve this issue but let us be clear about some information and the information flows where obviously different people there will always be different stories on a different issue. I have the absolute story from J.T. I was with them until 10.00 p.m. last night getting a briefing for today.

**3.18.3 Deputy G.C.L. Baudains:**

Could I, for the avoidance of doubt, point out that my son is not looking for another job but if the Minister had answered the question about whether the contractors are, in fact, owed money and is this not a problem which is causing a great disturbance to the rollout of Gigabit?

**Senator P.F.C. Ozouf:**



I asked whether or not the Deputy had a family member involved in it and I think it is just important that we are completely clear. There is a contractual dispute. I am advised of that and J.T. is going to deal with that and that is unfortunate. I am disappointed by the fact that homes have not been connected at the speed that they are and I have asked J.T. to report to me, because there is public money at stake, on the value for money of the project and invoices issued so far and I am fully confident that J.T. is going to deal with the subcontractor issues which are real and problematic and need resolution.

[11:30]

**3.18.4 The Connétable of St. John:**

When the Minister is talking to his colleagues at Jersey Telecom, will he please make a note that on a daily basis I have got roads which are ... because of the vehicles parked in the roads pushing cables through, I have many of the arteries coming into St. Helier, whether it is St. Lawrence, St. John or via the Trinity area right across ... we have delay after delay, been going on now for many months where manholes are opened up, closed again and then further up the road. Will the Minister find some way... because it is totally unacceptable over the next 4 years to see the Island upside down because of this particular Gigabit scenario?

**Senator P.F.C. Ozouf:**

I know I need to get the Connétable of St. John up into the digital age and somewhat it is almost disappointing. He is a champion of infrastructure investment and I am afraid to say that he cannot have it both ways. He cannot have drains, ducts, infrastructure done without some degree of hassle. The only good thing I can say to the Deputy is I refer him to the answer that I made a few moments ago, which was the spine of homes passed which is getting the fibre near to people's homes, that is ahead of schedule and indeed is not going to last for 4 years. It is the last 100 metres on average which is the issue and I do not think his Parish is going to have too many difficulties. In fact, I hope not, and I hope he gets his fibre connection as soon as possible so we can do our iPad trial together.

**3.18.5 The Connétable of St. John:**

Co-ordination, co-ordination, co-ordination. That is what is all about. Will the Minister make sure that things are properly co-ordinated because I do not want to see roads daily ...

**The Bailiff:**

That was your question, Connétable.

**The Connétable of St. John:**

Yes, Sir.

**Senator P.F.C. Ozouf:**

Yes, but he cannot have it both ways. You cannot have road laying, drain improvement, infrastructure, without some degree of hassle. So I would just ask him for some understanding of this important and exciting, ground-breaking policy for Jersey which is really exciting.

**3.18.6 Deputy G.P. Southern:**

It is my understanding that J.T. outsourced their connection service to contractors CH2M Hill some years ago. Does the Minister not consider that it might have been better to keep the connection service in-house?

**Senator P.F.C. Ozouf:**

No. In fact I have had reported to me by all utilities... and particularly I recall the discussions with Jersey Water who successfully outsourced some of their arrangements. So sometimes outsourcing arrangements will be better. On this occasion outsourcing contracts have been signed, as I understand, and it is up to the subcontractor arrangements to deal with these issues and I hope they will. I hope there will not be too many difficulties. There may be some short-term issues that we will have to deal with in the failure of some contractor, potentially, and I will advise Members associated with that. I am determined that the Gigabit project is delivered on time and within budget.

**3.18.7 Deputy M.R. Higgins:**

I will state from the beginning I am a supporter of this particular project. I am disappointed in the speed of the roll out because I would very much like a faster connection myself and I cannot wait to get it. However, I am concerned about the contractor dispute and the amount of information we are getting. Could the Minister just clarify, because he gave me concern then, in his final answer he almost implied that there could be questions about whether the contractor would be able to continue, meaning financially or some other reason? Can you elaborate on what the nature of the dispute is? Because I think it should be out there, there is a lot of public money in it and we want to get this project going.

**Senator P.F.C. Ozouf:**

I am grateful for the Deputy's support and I am perfectly willing to brief, and I will brief Members, but it is really not appropriate, if I may say to the Deputy. I am happy to brief Members confidentially but it is really not, I think, wise for me to discuss contractual issues between a subcontractor and J.T. in public when clearly there is a dispute going on that needs resolution. But I will take the Deputy's point, I know he wants a better connection and I want this issue resolved, and I will advise Members as soon as I possibly can. It may be in confidence while this issue is being resolved, but I take the Deputy's point.

**3.18.8 Deputy R.G. Le Hérisier:**

Would the Minister not acknowledge the Constable of St. John, for example? I have had an email from St. John where it is stated that contractors are arriving to do one house on an estate, going away, coming back later to do another house. There appears to be no co-ordination. Secondly, would he comment on whether the pricing structure for connection was the right kind of pricing structure to get people connected?

**Senator P.F.C. Ozouf:**

What I will do is I am going to arrange a briefing with J.T. for Members as soon as these issues are resolved, because I know that Members are widely interested in this and they need to know exactly what is going on. Clearly there has been an issue with a subcontractor and that is commanding the attention of the board and, as I said, I met with J.T. - as I have met 3 times in the last week in resolution of this issue - and I expect them to resolve it. But certainly the project must be delivered, it must be delivered within the budget and I want an acceleration of connections and I am pressing J.T. to achieve that.

**Deputy R.G. Le Hérisier:**

The change to the pricing structure I asked about?

**Senator P.F.C. Ozouf:**

I am advised by J.T. that while there are issues with the contractor, certainly there is a fixed price contract in place with J.T. and the subcontractor needs to perform.

**Deputy R.G. Le Hérissier:**

The pricing to the public?

**Senator P.F.C. Ozouf:**

The pricing to the public, that is going extremely well. Because so many people want fibre and want better speeds, the actual take up is going ahead for those people who are connected, of which I am not one of them, sadly, yet.

**3.19 Deputy J.A. Hilton of the Minister for Planning and Environment regarding standards for parking, amenity and storage space on new developments:**

In what circumstances, if any, would the Minister reduce the standards for parking and amenity space on new developments, and does he believe there is a need to provide storage space in application for apartment blocks?

**Deputy R.C. Duhamel (The Minister for Planning and Environment):**

I am aware that some permissions have been issued with the reduced parking provision. Typically this was when the site had a particular difficulty in providing the required spaces, possibly due to an unsafe access, or where a development was located very close to the centre of town where residents could be expected to walk or cycle to most destinations. In respect of amenity standards, these are rarely compromised. Members will be aware that the 2011 Island Plan focuses new development in the existing built up area. We cannot expect to raise densities in these areas without providing adequate public and private amenity space and, therefore, I consider it important that space standards are upheld and improved. Finally, I agree that there is a need to provide storage space for residents in apartment blocks. These requirements are set out within the department's standards for new residential development.

**3.19.1 Deputy J.A. Hilton:**

The reason I asked this question was because I looked at an application last week which was a very large development in St. Helier and I was surprised to be told there was no provision for storage whatsoever. The Minister, in answer to my question, said that where developments happen near to town that they expect people to walk. Well, people may choose to live in St. Helier but they also have a right to have access to a vehicle and just because we live in St. Helier does not mean to say that we do not want to drive out of St. Helier, so I do not think that is a good enough reason in my opinion. Has the Minister inspected other developments by this developer to give him a thorough understanding of what it is like to live in minimum standard space housing and, if not, why not?

**Deputy R.C. Duhamel:**

If the Deputy would like to approach me through the department and to point out which particular development we are talking about then I would be happy to speak to her. But I do have some information which suggests that in relation to 2 large developments, Westmount, 256 spaces were provided or have been asked for, for 242 units, but additionally 245 cycle spaces. With Le Coin I am told there are 18 spaces for 23 units and also a store for cycles. As I mentioned, it is absolutely vital that people do have enough amenity space for the storage of their goods and ...

**The Bailiff:**

I think you have given that answer, Deputy.

**3.19.2 Deputy M.R. Higgins:**

I would like to follow up on Deputy Hilton's questions about space. Dandara, I went and looked at one of their developments and they counted the floor space of the balcony outside as part of the overall floor space of the apartment. They had specially fitted furniture that was cut down, compared to what you would normally have in a property, and there were absolutely no cupboard spaces. I would like to know if the Minister thinks that is an acceptable thing because those people, finally they move into a house, they have to buy totally new furniture that fits the size of the building, and there is not sufficient space. Is that acceptable?

**Deputy R.C. Duhamel:**

Quite evidently, no, it is not acceptable. Buying undersized furniture for oversized people is not something that I would support.

**3.19.3 Deputy J.H. Young:**

Would the Minister confirm that where those parking standards are relaxed, particularly in town, that the likelihood is that will impact on the need for public car park provision, and would he please comment on the impact potentially on the threshold of 4,000 public car parking spaces in town of these parking standards?

**Deputy R.C. Duhamel:**

The thresholds for the amount of car parking space as set out by a different Minister, the Minister for Transport and Technical Services, in terms of the Sustainable Transport Policy, and Planning do have a lot of regard for that document. In relation to the space standards, perhaps if I just read out a short part of the guidelines where it says: "It will not always be practical or environmentally acceptable to implement normal parking guidelines where it is proposed to extend or redevelop certain existing properties or subdivide large houses into small units. In such cases it will be necessary to balance the need for the proposed accommodation against the environmental cost of not providing adequate onsite parking." The whole process at Planning is one of balancing those 2 competing aims and needs, and in some instances there will be decisions on one side of the middle point and in other cases decisions on the other side.

**3.19.4 Deputy J.A. Hilton:**

The Minister just said it was all about balancing the needs. I am talking about the Westmount Quarry site, about the lack of storage space. There are, I believe, 245 units and 256 parking spaces but when you consider a lot of those units are 2 and 3 bed units, I do not believe the provision is enough. St. Helier - especially in the centre and west - has a big problem with lack of parking for residents and visitors and so any lack of parking provision in private development impacts very unfairly on residents who are already living there. So I would ask that the Minister does not relax the conditions on these large town developments.

**Deputy R.C. Duhamel:**

Every case will be taken on its merits and I must observe that the Westmount Quarry site is due to be determined, so those will be material factors to whoever decides on that.

**The Bailiff:**

Very well, I am afraid that brings questions on notice to an end.

**Deputy G.P. Southern:**

Could I request that Ministers circulate the answers to 20, 21 and 22?

**The Bailiff:**

Yes, that is standard practice. I think it was agreed that Ministers would circulate their answers questions have not been asked, was it not?

**Deputy G.P. Southern:**

Is surely is, yes.

**The Bailiff:**

You have requested that your question ...

**Deputy G.P. Southern:**

21 in particular, yes.

**Deputy M. Tadier:**

May I ask the same of 22, which I am sure is normal.

**Deputy J.H. Young:**

I am happy to withdraw 20 because I think it was covered by the Chief Minister's undertaking to bring this to the Council of Ministers.

#### **4. Questions to Ministers without notice - The Minister for Transport and Technical Services**

**The Bailiff:**

We now come to questions without notice and the first period is to the Minister for Transport and Technical Services.

##### **4.1 Connétable L. Norman of St. Clement:**

The Minister is aware of the severe flooding which occurs in Rue de Samarés caused by a landowner refusing to clear the drainage ditches which cross his land towards Le Marais. I wish to ask the Minister, will he be responding positively to my request to utilise his powers under the drainage law to require the owner to clear these ditches and, thus, clear the flooding problem?

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

Article 31 of the Drainage Law, Repair of Other Flood Defences: this Article does not apply to designated water courses or designated flood defence works, but does apply to all other water courses and flood defence works. It is a slightly grey area and my officers are investigating this as we speak. There is a common law which says that fields may drain to the lower areas, but where that is causing congestion my officers will certainly look into it.

##### **4.2 Connétable S.W. Rennard of St. Saviour:**

At the last sitting we were given a list of roads that were going to be resurfaced, and very commendable. I just have a couple of issues.

[11:45]

I cannot see why we have to resurface Rue des Prés. What I would like to have resurfaced is the road that leads from St. Helier, the dock area, right through up Mont Millais, right the way through on La Grande Route de Saint-Martin, and I would also like the road that goes from Five Oaks to and beyond Queens Valley to be considered because that is a mess. An absolute mess if you are going along La Hougue Bie, right the way through. As I say, very commendable to have roads in

St. Helier - and I cannot see why Rue des Prés has to be mentioned - but I would like to have these ...

**The Bailiff:**

Your question is whether those ones be mended?

**The Connétable of St. Saviour:**

I would like to have these put on the Minister's list, yes, please.

**Deputy K.C. Lewis:**

Some are on the list. Hougue Bie is definitely on the list, part of that has been done and the rest will be completed. I am more than happy to take that up with the officers, which roads are done. The Rue des Prés Trading Estate has suffered a lot of root damage from nearby trees and is on the list to be done.

**4.2.1 The Connétable of St. Saviour:**

The Rue des Prés is suffering from the roots of the trees but I understand that a preservation order has now been put on these trees, so I cannot see the point in resurfacing if these roots are going to be allowed to continue to mess up the Rue des Prés.

**The Bailiff:**

Does the Minister agree?

**The Connétable of St. Saviour:**

Yes, does the Minister agree? Thank you, Sir. [Laughter]

**Deputy K.C. Lewis:**

The roads will not be touched until such time as the tree problem is resolved.

**4.3 The Connétable of St. John:**

Given that there is a likelihood of a new police headquarters to be built in Green Street, or off Green Street, which will abut the Green Street car park, and given that any new police headquarters has to have blast proof walls because of terrorism, will this affect the number of vehicles that are permitted to park on the south end of the Green Street car park on every floor, given the preferred way - as we know - worldwide for any terrorist act is usually car bombs?

**Deputy K.C. Lewis:**

Not to my knowledge. This has all been taken into account by the architects.

**4.3.1 The Connétable of St. John:**

Given the Minister's response, is he not aware that he is responsible for car parks and the like and, therefore, should not be expecting architects, *et cetera*, to be defending his position?

**Deputy K.C. Lewis:**

I take care of the car parks. The thickness of the walls, *et cetera*, will be taken care of in the planning application, surely.

**4.4 Deputy G.P. Southern:**

Is the Minister aware of, and what response does he have, to the decision by Unite the Union to take a formal complaint to the States Complaint Board over his decision and actions in failing to deliver clause 18.3 on the transfer of staff on the same terms and conditions in the award of the new bus contract to CT Plus?

**Deputy K.C. Lewis:**

Yes, a complaint has been received and forwarded to the law officers to assist. The complaint refers to the wording of clause 18.3 and the events that occurred when Connex were successful and does not relate to the changeover to CT Plus.

**4.4.1 Deputy G.P. Southern:**

Does the Minister accept that he had a duty to adhere to the previous committee's commitment to transferring staff smoothly on the same terms and conditions, and that he failed to do so?

**Deputy K.C. Lewis:**

No, everything was adhered to as per the contract.

**4.5 Deputy T.M. Pitman:**

Can the Minister confirm or deny that mechanics in the CT Plus depot were working shifts of 12 hours and over, in breach of employment law, and are required to spend hours on call without remuneration?

**Deputy K.C. Lewis:**

I am not aware of the details of the mechanics' contracts but I am happy to look at the issues raised.

**4.5.1 Deputy T.M. Pitman:**

Can we take from that response that the Minister will investigate and then report back to the Assembly?

**Deputy K.C. Lewis:**

I am more than happy to do so.

**4.6 Deputy J.H. Young:**

Would the Minister advise the Assembly what steps he is taking within the solid waste operations activity area at La Collette to facilitate the services provided by private skipper operators for storage of skips and to assist their sorting of and recycling of materials in accordance with the waste strategy of the Island Plan?

**Deputy K.C. Lewis:**

It is very difficult to allocate space at La Collette to private operators. This would be better suited for private tracts of land where these can be sorted, otherwise we have to open up the whole of La Collette to all operators.

**4.6.1 Deputy J.H. Young:**

Could the Minister explain what would be the problem there, is he short of space at La Collette? My recollection is a vast area of land there. Would he sooner see those operations sited dotted around in unsuitable locations in the countryside?

**Deputy K.C. Lewis:**

Many skip operators are operating throughout the Island and not necessarily from La Collette. This is more suited to private industrial estates than to La Collette.

**4.7 Deputy M.R. Higgins:**

What steps has the Minister taken to monitor earnings by bus drivers and others employed by the new bus operator, CT Plus, to ensure that the terms and conditions are substantially the same, and

also the fact that new drivers are also being paid less than the drivers who were transferred from Connex?

**Deputy K.C. Lewis:**

The bus rotas have taken a while to bed down and are currently under review to resolve any issues. That is ongoing and I am more than happy to report back to the States on that.

**4.7.1 Deputy M.R. Higgins:**

Does the Minister accept the figures that Deputy Southern circulated today which demonstrate substantial reductions in earnings when the CT Plus 2013 terms are compared directly with the 2011 terms?

**Deputy K.C. Lewis:**

As I say, the terms need to bed down, but I am more than happy to discuss that with CT Plus.

**Deputy M.R. Higgins:**

Although he said he is prepared to talk about it, did he accept the figures, was the question I asked.

**Deputy K.C. Lewis:**

I need to check and verify them.

**4.8 Deputy S.G. Luce of St. Martin:**

Could the Minister confirm the status of Rue des Prés Trading Estate, is it a public or private estate?

**Deputy K.C. Lewis:**

There is an investigation ongoing. Much of the estate belongs to the State, some administered by T.T.S. and a lot of it is in private ownership and some administered by Property Holdings.

**4.9 Deputy M. Tadier:**

In a similar vein to a previous question, is the Minister aware that the new rotas established by CT Plus have resulted in drivers working shifts of over 12 hours, and to the detriment and potentially the safety of the public?

**Deputy K.C. Lewis:**

No, but I am more than happy to investigate that. It was a T.T.S. decision to reduce hours, not increase them, so I will look into that.

**Deputy M. Tadier:**

Look into them and report back to the Assembly?

**Deputy K.C. Lewis:**

Absolutely.

**4.10 The Deputy of St. Ouen:**

Would the Minister confirm when the long awaited liquid waste strategy will be shared with this Assembly, and whether the strategy will include extending the mains drains network to the more built up rural areas?

**Deputy K.C. Lewis:**

The mains drains issue is ongoing. We have the north of St. Helier flood alleviation scheme well underway. It would be my wish and desire to extend main drains to all parts of the Island, if and



when the budgets allow, which I am sure will please the Constable of St. John and the Deputy of St. Ouen. But obviously money is very tight and there are various other issues involved regarding private land ownership, *et cetera*.

**4.10.1 The Deputy of St. Ouen:**

I did ask the Minister would he confirm when this Assembly will be able to see the liquid waste strategy. Could he confirm exactly when that might be?

**Deputy K.C. Lewis:**

I will get back to the Assembly with a date.

**4.11 Deputy R.G. Le Hérisssier:**

Would the Minister be prepared to put in the public domain the before and after earnings based on common criteria re the bus operators? Secondly, could he tell us what lessons he has learned from this transfer of bus operations?

**Deputy K.C. Lewis:**

Yes, indeed, I will get the department on that. Lessons have been learned. It was a very ambitious project to bring in a new bus operator and change routes simultaneously and that was a big ask, so obviously we have learned from that. But, yes, more than happy to circulate that to Members.

**4.12 Senator A. Breckon:**

Could the Minister confirm whether he has any sanctions he can take against the bus operator for poor service level, what they are, and when he intends to use them?

**Deputy K.C. Lewis:**

Yes, there are several options open to me. No intention of using them at present but my officers at T.T.S. are working very closely with CT Plus at Liberty Bus to iron out any problems they may have, albeit it that with routes, timing, workforce, *et cetera*. My officers will be working with them for the next few weeks.

**4.12.1 Senator A. Breckon:**

Could he say what the sanctions are he has?

**Deputy K.C. Lewis:**

I beg your pardon. Yes, there are sanctions there. In the contract we have KPIs, which are key performance indicators, so that there can be reductions or improvements in the length of contract.

**4.13 Senator S.C. Ferguson:**

Can I ask the Minister to look at the parking arrangements for entrance into the Accident and Emergency unit on the Parade? Because at the moment, if you are being taken to attend A. and E. (Accident and Emergency), you have to get out of the car on the busy side and you are lucky if you do not get run over on the way into A. and E. Can I ask that this is looked at please?

**Deputy K.C. Lewis:**

Absolutely. Excellent question from the Senator. In fact that is already being looked at, the entrance way to the General Hospital. Certain road alignments are being planned to make temporary parking safer there and to move the 2 lanes of traffic further over to the left as you come down. Also the possible the realignment of the pelican crossing to further down the road.

**4.14 Deputy C.F. Labey of Grouville:**

In the Minister's answer to written question 3 he refers to the States Sustainable Transport Policy. Could he indicate if that ever came to the States for debate and, if so, when?

**Deputy K.C. Lewis:**

Yes, it did, I think it was about a year and a half ago.

#### **4.15 The Deputy of St. Martin:**

The Minister has informed us that Rue des Prés Trading Estate is in what might be described as mixed ownership. Could he confirm that he has sought contributions from all the various parties concerned to pay for the resurfacing?

**Deputy K.C. Lewis:**

Not as yet. We need to establish exactly who owns what and the Assistant Minister for Treasury and Resources, with his Property Holdings' hat on, is taking care of that as we speak.

#### **4.15.1 The Deputy of St. Martin:**

Could I seek an assurance that we will not be resurfacing somebody else's road?

**Deputy K.C. Lewis:**

No intention of resurfacing anyone else's road apart from our own.

#### **4.16 The Connétable of St. John:**

Given the skip scenario, and Deputy Young's question this morning, is the Minister aware that this House gave instructions to find a site for this skip operator and, if so, what has happened between the Minister and his Ministry and the Treasury and Resources Department who are responsible for Property Holdings?

**Deputy K.C. Lewis:**

I thought that was a Planning issue.

**The Connétable of St. John:**

What has this Minister done along with the Minister for Planning and Environment and Property Holdings to make this happen?

**Deputy K.C. Lewis:**

I do not recall the original question put to the Assembly regarding this. Perhaps the Constable could enlighten me.

**The Bailiff:**

Time has run out. I think, Connétable, you will have to take this one up on a future occasion. Now we come to questions to the Minister for Home Affairs.

[12:00]

## **5. Questions to Ministers without notice - The Minister for Home Affairs**

### **5.1 Deputy M.R. Higgins:**

I would like to return to the earlier questions regarding the legality of the bugging operation. Under the regulation investigatory powers authority must be given by someone responsible. I would like to know who that was. Please explain the legality of the bugging.

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

It is my understanding that the statute that is being referred to applies within the jurisdiction. I thought in my previous answer that I had made it clear that nothing unlawful had happened within this jurisdiction, the issues related to matters which happened outside this jurisdiction.

**5.1.1 Deputy M.R. Higgins:**

Is that a good enough reason? For example, if I went out of the Island and killed someone I would not be breaking the Island's laws but I would certainly be breaking someone else's laws. Is it sufficient for the officers to claim, as they have done, the Nuremberg defence: "I was only obeying orders" in which case, after all, we hang the Germans for the same defence at Nuremberg. How can the officers claim they were only obeying orders if the thing was unlawful?

**Senator B.I. Le Marquand:**

I am simply not going to be drawn into answering questions on the merits or demerits of a matter which took place and should, according to statute, in private.

**5.2 Deputy T.M. Pitman:**

Is the Minister aware that somehow he appears to have misled the Assembly when he stated that he was entitled to make public the case against the former Police Chief once there was an outcome to disciplinary investigation? I refer, of course, to the fact that there was no outcome to any disciplinary process.

**Senator B.I. Le Marquand:**

If I used those words that was inexact. It is once the process was concluded and the process was concluded once there were no longer any disciplinary charges pending. If I said something which applied to something different, then I apologise for that.

**5.3 Senator S.C. Ferguson:**

Why is the Minister only just now bringing the question of police wages to the public attention when this is something which both the former Comptroller and Auditor General and my P.A.C. (Public Accounts Committee) have highlighted some years ago?

**Senator B.I. Le Marquand:**

Because hitherto I viewed this as being a matter for the States Employment Board to deal with. It so happens that in recent times in a discussion I had with the Chief Minister he indicated that the States Employment Board would need active assistance from my department in a fair, appropriate assessment of what were appropriate levels. This is an issue that I have had concerns about for some time, but I left it to the States Employment Board to deal with.

**5.3.1 Senator S.C. Ferguson:**

A supplementary. Is it correct that as part of their wages policemen also get private health insurance?

**Senator B.I. Le Marquand:**

No, it is potentially worse than that. There are certain allowances that they get for medical and dental matters, which frankly are very much outdated. As part of a recent process it was agreed that those would cease for new officers, but those rights still exist. I find that those belong in a very far and bygone age.

**5.4 Deputy J.A. Hilton:**

Can the Minister inform Members how many prisoners have been repatriated under the Repatriation Law?

**Senator B.I. Le Marquand:**

Yes, I can. The answer is zero because we do not yet have in place the international arrangements. I believe that they will be in place by the end of this month. There will then be a 3-month moratorium period before we can start to be active, but we cannot move until such time as the convention has been extended to us, which should, I am informed, be by the end of this month.

**5.4.1 Deputy J.A. Hilton:**

Supplementary, please. Can the Minister give Members any idea of what sort of numbers this involves?

**Senator B.I. Le Marquand:**

That is difficult to be certain about. I am not anticipating that the numbers will be huge, partly because of the difficulties relating to the situation in Poland, which has not been currently accepting prisoners back. However, I am anticipating a larger number in relation to the other related issue - or related to a degree but they have made it a related issue - which is the changing of status of prisoners going back to the U.K. from restricted to unrestricted. That is being given effect from next month. I would guess that the numbers we are going to see in all will be of the order of 25 between both, but that is a guess and it will be over a period of time.

**5.5 Deputy M.R. Higgins:**

When will the disciplinary judgment be published as it must be to meet Article 6 requirements of the European Convention on Human Rights? Is the fact that it is not mean that the presiding Chief Officer does not agree with the police officer's advocate that they were completely exonerated?

**Senator B.I. Le Marquand:**

I do not know how many times I have to tell the Deputy I am not going to publicise something in breach of the statute. I am certainly not going to comment on what is the opinion of the current Chief Officer in relation to a disciplinary matter.

**5.5.1 Deputy M.R. Higgins:**

Supplementary. Is it not the case that any decision, whether you give the full details or not, the decision must be published? The hearing has been in private but the decision must be made public.

**Senator B.I. Le Marquand:**

That is not my opinion. It would be a complete nonsense to have a situation in which you by statute said that there had to be a hearing in private and then the outcome of that, a decision, was public. That would be totally inconsistent. I have not taken legal advice on this apart from myself because it seems to me to be almost self-evident.

**5.6 The Connétable of St. John:**

Under the new building of the police headquarters it is correct the Home Affairs Department are tenants. That being the case, how much input has the Minister had in the needs of any new headquarters or has he left that requirement to others?

**Senator B.I. Le Marquand:**

I have essentially left the requirements to my senior police officers to deal with in conjunction with the architects who have particular expertise in this area. It seemed to me that is a matter for officers. If there had been any particular issues of difficulty I would expect them to refer them back to me, but I have left that to officers. It seems to me that is the appropriate thing to do.

**5.6.1 The Connétable of St. John:**

That being the case, why did the Minister not bring his briefing officers to the Scrutiny hearing last Friday to answer many of the questions that were put to him, which has now necessitated probably a delay in the hearing or in the debate on police headquarters because we now have to call for the evidence from the owners of the property?

**Senator B.I. Le Marquand:**

To be honest, I thought that what the Scrutiny hearing was about was in relation to parking arrangements generally in the area and it did not seem to me that my officers would have any specialised knowledge in that area over and above my own knowledge. In fact, we started to go into questions which probably would have required detailed answers from officers. I think some of those could be given by my own officers, but others would have had to have been given by Property Holdings. So it may be that I misunderstood the nature of the review and the sort of questions that were going to arise.

**5.6.2 The Connétable of St. John:**

On the back of that, will the Minister accept that there could be a slight delay in our reports coming forward when the time comes due to the additional information we require?

**Senator B.I. Le Marquand:**

I accept that it is quite reasonable that the Scrutiny Panel seek evidence of a more detailed nature than that which I was given and if that causes some delay then so be it.

**5.7 The Deputy of St. Martin:**

Could the Minister confirm that goods entering the Island with a value over the *de minimis* level should not be delivered to Jersey homes before the Customs have sanctioned that and the G.S.T. (Goods and Services Tax) has been paid?

**Senator B.I. Le Marquand:**

Yes, that is correct. If they are over the *de minimis* level they should be declared to Customs and the appropriate G.S.T. paid on them.

**5.7.1 The Deputy of St. Martin:**

Is the Minister aware that this practice of goods being delivered without G.S.T. being paid is becoming more frequent and will he look into the matter?

**Senator B.I. Le Marquand:**

I am not aware of that. I have had no indication of that from officers and most certainly if the Deputy or any other Member of this Assembly or any member of the public has any such information then I would certainly ask them to provide that information to the Customs and Immigration Service, but not to me as it will be dealt with much faster if they go directly there.

**5.8 Deputy R.G. Le Hérissier:**

Given the constant almost predetermined debate that goes on about police disciplinary procedures for ever and ever, would the Minister be prepared to push for a total review of how we handle these issues? Because given the enormous cost put against departments struggling with cutback programmes, for example, it strikes me that we have a totally dysfunctional system. What are his views?

**Senator B.I. Le Marquand:**

Well, that is the best question that I have had in this area today, if I may say so. I am conducting such a review currently. I have in answer to previous questions over some period indicated that we

were employing the services of an expert in this area to do a review. That has been a little bit slow in coming through. The way in which this particular case ended up being handled by the lawyers involved, I am not criticising them but I am just saying that there were issues relating to that. The comments which I have now received from the new chairman of the Police Complaints Authority in relation to the methodology of the procedure and the time I have already spent myself looking at it indicate that we are very much in need of a review and this we are going to conduct.

**5.9 Deputy T.M. Pitman:**

Can I give the Minister for Home Affairs an even better question and an opportunity to put all questions on police disciplinaries to bed? We have established, I think, between the Minister and the Attorney General how reviews were initiated. Could he just answer us the \$6 million question and give us the title of the individual or individuals who initiated the disciplinary allegations against those 3 officers, as I am sure the Minister would agree they could not have just brought themselves?

**Senator B.I. Le Marquand:**

Well, that was not quite as good a question as the last one, which I did congratulate the Deputy on. I think it is rather confusing the issue again. I did explain that this went through definite phases. The first phase was a decision that there should be a review of processes and procedures. That then was conducted by the Hampshire Police Force. That then led to a situation in which there were issues of potential criminal matters or potential disciplinary matters which were thrown up. That then led to an investigation. The only involvement of the Law Officers was at the first stage that they were of the opinion jointly with the police chief that there should be the review. Thereafter, the matter took its natural course in relation to that leading to recommendations for disciplinary proceedings. I hope that has answered the questions.

**5.9.1 Deputy T.M. Pitman:**

I am sorry to appear pedantic or foolish, but could the Minister just clarify for me, finally, having reached that conclusion who initiated that this should be a disciplinary investigation? It is a big step from just a review to where we ended up.

**Senator B.I. Le Marquand:**

It was part of the terms of reference of the initial review that if matters were thrown up which would warrant moving on to a next stage that that would happen, but the decision in relation to that happening was made by the Chief Officer of Police.

**The Bailiff:**

Does any other Member wish to ask a question of the Minister for Home Affairs? Very well, that brings questions to him to an end.

**PUBLIC BUSINESS**

**The Bailiff:**

Then we come to Public Business. The first matter on the Order Paper is the appointment of the Comptroller and Auditor General, Projet 138. That has to be *in camera*. I am just testing the mood of the Assembly. Would it be convenient to take that shortly before we adjourn and deal with some other matters first? Very well, we will take first the Draft Civil Partnership (Consequential Amendments) (No. 2) (Jersey) Regulations, Projet 128, lodged by the Chief Minister. I will ask the Greffier to read the citation.

**The Greffier of the States:**

Draft Civil Partnership (Consequential Amendments) (No. 2) (Jersey) Regulations. The States, in pursuance of Articles 71 and 72 of the Civil Partnership (Jersey) Law 2012, have made the following Regulations.

[12:15]

**Senator I.J. Gorst:**

Sorry, Sir, you have rather caught me off guard. I would be grateful if we could just defer this. I had thought that we were going to be taking the Comptroller and Auditor General item first.

**6.. Comptroller and Auditor General: appointment (P.138/2012)**

**The Bailiff:**

All right. Does the Assembly agree to revert to the Comptroller and Auditor General then? Very well, we will take Projet 138 and I will ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether they are of opinion to appoint, in accordance with the provisions of Article 41(1) of the Public Finances (Jersey) Law 2005, Ms. Karen McConnell as Comptroller and Auditor General with effect from 1st February 2013 and until 31st December 2014.

**The Bailiff:**

Very well. Now, under the relevant law this matter has to be discussed *in camera*, so I would ask the media and all members of the public gallery to withdraw, please.

[12:16]

**[Debate proceeded in camera]**

[12:33]

**The Bailiff:**

Very well, now we come to the vote on the proposition, Projet 138, of the Chief Minister, Comptroller and Auditor General: appointment. All those in favour kindly show?

**Deputy M.R. Higgins:**

The appel, please.

**The Bailiff:**

The appel is called for in relation to the proposition. I invite Members to return to their seats and the Greffier will open the voting. If all Members have had an opportunity of voting, the Greffier will close the voting.

<b>POUR: 45</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 1</b>
Senator P.F. Routier				Deputy M. Tadier (B)
Senator P.F.C. Ozouf				
Senator A. Breckon				
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 P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
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 R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of St. Ouen				
Deputy of Grouville				
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.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
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)				

**7. Draft Civil Partnership (Consequential Amendments) (No. 2) (Jersey) Regulations 201-(P.128/2012)**

**The Bailiff:**

Very well, so now we come next to Projet 128, Draft Civil Partnership (Consequential Amendments) (No. 2) (Jersey) Regulations, lodged by the Chief Minister. I will ask the Greffier to read the citation. No, you have already, have you not, Greffier? Yes, so we will take that as read.

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

Could I ask my Assistant Minister, who is Chairman of the L.A.P. (Legislation Advisory Panel) where these amendments originated from, to act as rapporteur for this item and the following 2 as well, please?

**The Bailiff:**



Very well, Assistant Minister. Oh, that Assistant Minister, I am sorry. I do beg your pardon. Senator Bailhache.

**7.1 Senator P.M. Bailhache (Assistant Chief Minister - rapporteur):**

The Civil Partnership (Consequential Amendments) (No. 2) (Jersey) Regulations give effect to necessary changes to the Civil Partnership (Jersey) Law 2012, which came into force after the original enactment of a number of laws which had, however, not been approved by the Privy Council at the time when the Civil Partnerships Draft Law was debated. The purpose of the Regulations is, therefore, to add in a number of pieces of primary legislation where it is necessary to amend the provisions of those laws so as to allow civil partners to be treated so far as possible in exactly the same way as married couples. I move the principles of the Regulations.

**The Bailiff:**

Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles? All those in favour of adopting the principles kindly show? Those against? They are adopted. Senator Ferguson, do you wish this matter referred to your Scrutiny Panel?

**Senator S.C. Ferguson (Chairman, Corporate Services Scrutiny Panel):**

No, thank you.

**The Bailiff:**

Do you wish to propose the Regulations *en bloc*, Senator?

**7.2 Senator P.M. Bailhache:**

I would with your leave propose the Regulations *en bloc* and, as I said in relation to the debate on the principles of the Bill, there are a number of laws which are amended. The Control of Housing and Work (Jersey) Law 2012, the Gambling (Jersey) Law 2012, the Gender Recognition (Jersey) Law 2010, the Long-Term Care (Jersey) Law 2012, the Trusts (Jersey) Law 1984. Each of those laws is amended in the manner in which I described in the debate on the principles. I move the Regulations *en bloc*.

**The Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to speak on any of the individual Regulations? All those in favour of adopting Regulations 1 to 6 kindly show? Those against? They are adopted. Do you propose the Regulations in Third Reading?

**Senator P.M. Bailhache:**

I propose the Regulations in Third Reading.

**The Bailiff:**

Is that seconded? **[Seconded]** Does any Member wish to speak in Third Reading? All those in favour of adopting the Regulations in Third Reading kindly show? Those against? They are adopted.

**8. Ratification of the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income between the Government of Jersey and the Government of the Republic of Singapore (P.129/2012)**

**The Bailiff:**

We come next to Projet 129, Ratification of the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income between the Government of Jersey and the Government of the Republic of Singapore, lodged by the Chief Minister. I will ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether they are of opinion to ratify the agreement between the Government of Jersey and the Government of the Republic of Singapore for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, as set out in the appendix to the report of the Chief Minister dated 23rd November 2012.

**8.1 Senator P.M. Bailhache (Assistant Chief Minister - rapporteur):**

In 2002, as Members will know, the Island entered into a political commitment to support the O.E.C.D. (Organisation for Economic Co-operation and Development) tax initiative on exchange of information and transparency and a number of tax information exchange agreements have been concluded since that time. The policy of the Island has been where it is possible to do so to negotiate a double taxation agreement, which embodies within it the same kind of provisions relating to exchange of tax information. A double taxation agreement contains certain benefits for the Island, greater benefits I think than what are obtainable under the tax information exchange agreements, and it has been possible to negotiate an agreement with the Government of the Republic of Singapore. This follows the similar pattern of other double taxation agreements which have been negotiated in the past with Malta, Estonia, Hong Kong, China and Qatar, and most recently last week with Guernsey and the Isle of Man. I therefore move the adoption of the proposition.

**The Bailiff:**

Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the proposition?  
Deputy Le Hérissier.

**8.1.1 Deputy R.G. Le Hérissier:**

I have asked it before and I will ask the rapporteur. He gave a list of countries, of course, where we have made such agreements, but the question still remains there are countries with whom the Island and Islanders have enormous links and where for commercial and personal ease it would be much better if we had double taxation agreements, places like Canada, France have been mentioned. I know the reasons; the Minister for Treasury and Resources has alluded to them. But there are other areas where there are real workaday reasons why there should be links as opposed to this rather eclectic but somewhat distant collection of states he has just identified.

**The Bailiff:**

Does any other Member wish to speak? Then I invite Senator Bailhache to reply.

**8.1.2 Senator P.M. Bailhache:**

Deputy Le Hérissier is, of course, quite right. This is an eclectic collection of countries with which we have managed so far to negotiate double taxation agreements but it takes 2 to tango. Whereas it would certainly be in the Island's interests to have a number of double tax agreements - in particular, if I may say so, with our closest neighbour France - it has not been possible to persuade those countries to enter negotiations for the creation of such an agreement. But the Chief Minister's Department continues to try to bring particular parties to the table. I accordingly move the adoption of the proposition.

**The Bailiff:**

All those in favour of adopting the proposition kindly show? Those against? The proposition is adopted.

**The Deputy of Trinity:**

Before we move on, can I request that Draft Motor Traffic, P.135, is deferred for a couple of weeks, please, because a few issues have come up which I wish to clarify.

**9. Draft Taxation (Double Taxation) (Amendment) (Jersey) Regulations 201- (P.130/2012)**

**The Bailiff:**

Very well, so Projet 135 is deferred until the next sitting. Then we come to Projet 130, Draft Taxation (Double Taxation) (Amendment) (Jersey) Regulations, lodged by the Chief Minister. I will ask the Greffier to read the citation.

**The Greffier of the States:**

Draft Taxation (Double Taxation) (Amendment) (Jersey) Regulations. The States, in pursuance of Article 2(1) of the Taxation (Implementation) (Jersey) Law 2004 and following the decision of the States, taken on the day these Regulations are made, to adopt P.129/2012, have made the following Regulations.

**9.1 Senator P.M. Bailhache (Assistant Chief Minister - rapporteur):**

These draft Regulations are in the customary form and give effect to the decision that the States has just made to ratify the double taxation agreement with Singapore. Singapore is added to other countries with which double taxation agreements have been concluded. I move the principles of the Regulations.

**The Bailiff:**

Are the principles seconded? **[Seconded]** Does any Member wish to speak on the principles? All those in favour of adopting the principles kindly show? Those against? They are adopted. Senator Ferguson, do you wish this matter referred to your Scrutiny Panel?

**Senator S.C. Ferguson (Chairman, Corporate Services Scrutiny Panel):**

No, thank you.

**The Bailiff:**

Do you wish to propose the Regulations together, Senator?

**9.2 Senator P.M. Bailhache:**

Yes, Sir, with your leave I will propose the Regulations *en bloc* together with the schedule and they, as I say, give effect to the ratification of the double taxation agreement with Singapore that the States have just agreed. I move the Regulations in Second Reading.

**The Bailiff:**

Are they seconded? **[Seconded]** Does any Member wish to speak on any of the individual Regulations? Very well, all those in favour of adopting Regulations 1 to 7 kindly show? Those against? They are adopted.

**Senator P.M. Bailhache:**

I move the Regulations, if I may, in Third Reading.

**The Bailiff:**

Yes, moved in Third Reading. Are they seconded? **[Seconded]** Does any Member wish to speak in Third Reading? Very well, all those in favour of adopting the Regulations in Third Reading kindly show? Those against? The Regulations are adopted in Third Reading.

**Senator I.J. Gorst:**

I wonder, after a slightly shaky start, if I might be permitted to just before lunch take P.137, the appointment of chairman of the Statistics User Group?

## **10. Statistics User Group: appointment of Chairman (P.137/2012)**

**The Bailiff:**

Are Members happy to take that one? Very well, so I will ask the Greffier to read Projet 137, Statistics User Group: appointment of Chairman, lodged by the Chief Minister.

**The Greffier of the States:**

The States are asked to decide whether they are of opinion to refer to their Act dated 17th November 1999, in which they approved the establishment of a Statistics User Group, and to approve the appointment of Mr. Martin Richardson as Chairman of the Statistics User Group for a period of 3 years.

### **10.1 Senator I.J. Gorst (The Chief Minister):**

Perhaps before I just make the proposition I should make Members aware, as I am sure they are, that I know Mr. Richardson in a personal capacity and worked with him at Rawlinson & Hunter, but that has no effect upon his role as Chairman of the Statistics User Group. Mr. Richardson has been a member of the user group since 2009 and was reappointed last year. This is a proposition for him to become Chairman of that group for a period of 3 years from the date of approval of this proposition. Members will see from the proposition he is eminently qualified and suitable for this post and, therefore, I propose him as Chairman of the Statistics User Group.

[12:45]

**The Bailiff:**

Is the proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition? All those in favour of adopting ...

**Senator S.C. Ferguson:**

Yes, Sir.

**The Bailiff:**

I beg your pardon, Senator Ferguson.

#### **10.1.1 Senator S.C. Ferguson:**

Yes, I think this is a new appointment, is it not, of this particular gentleman? We do not appear to have, taking note from Deputy Le Fondré earlier, thanked the previous occupant of this post. So I think perhaps it is incumbent upon the proposer to do that small thing.

**The Bailiff:**

Does any other Member wish to speak? I invite the Chief Minister to reply.

#### **10.1.2 Senator I.J. Gorst:**

I do just that, thank the previous chairman for their work. It is unsung work and individuals who put their name forward for these voluntary bodies provide a very important service to the Statistics Unit. They find them invaluable. I believe they meet around 4 times a year and I am very grateful not only to the previous chairman but for all people who put their names forward for this work. I maintain the appointment.

**The Connétable of St. John:**

In asking for the appel, could the Minister tell us who the previous Chairman was, please?  
**[Laughter]**

**Senator S.C. Ferguson:**

I could perhaps help there. **[Laughter]** I believe it is a Mr. Charles Clarke who has worked very hard on this. He has been supportive of Dr. Gibaut and it means that we now have a Statistics Unit that is worthy of the name.

**The Bailiff:**

Very well, the appel is called for by the Connétable of St. John. I invite Members to return to their seats and the Greffier will open the voting. If all Members have had an opportunity of voting, the Greffier will close the voting.

<b>POUR: 42</b>	<b>CONTRE: 0</b>	<b>ABSTAIN: 0</b>
Senator P.F. Routier		
Senator P.F.C. Ozouf		
Senator A. Breckon		
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 P.M. Bailhache		
Connétable of St. Helier		
Connétable of Trinity		
Connétable of Grouville		
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 R.C. Duhamel (S)		
Deputy R.G. Le Hérisssier (S)		
Deputy J.A. Martin (H)		
Deputy of St. Ouen		
Deputy of Grouville		
Deputy of Trinity		
Deputy S.S.P.A. Power (B)		
Deputy S. Pitman (H)		
Deputy K.C. Lewis (S)		
Deputy M. Tadier (B)		
Deputy A.K.F. Green (H)		

Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
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				

[12:47]

## **LUNCHEON ADJOURNMENT PROPOSED**

### **The Bailiff:**

Yes, the adjournment is proposed ...

### **The Deputy of St. John:**

Before we rise, may I take the brief opportunity of just reminding Members that there is one of the regular departmental presentations over lunch. It is the turn of my department. We will be providing a working lunch while we present on the work of the Education, Sport and Culture Department. It will be taking place in the Société Jersiaise.

### **Deputy M. Tadier:**

Can I also seek maybe some direction from the proposer of P.134? I do not want to speak out of turn; I am only a member of the Education and Home Affairs Panel. It is my understanding that we will be wanting to look at the higher education grants holistically. We have concerns about the grant system that is being proposed but we also have concerns about the current system as it stands, so just to ask the intention of the proposer of this proposition will he be maintaining that or would he be willing for scrutiny to look at this and not have this debated this afternoon.

### **Deputy G.C.L. Baudains:**

My understanding from the Chairman was that the Scrutiny Panel is not going to look at it at the present time but will, as the Deputy has said, look at it more holistically at a later date unless the Chairman would want to add to that.

### **The Bailiff:**

Can I suggest that the Chairman and the Deputy get together over the luncheon adjournment and see whether there is common ground or not?

### **Deputy J.M. Maçon:**

If I may, my panel has already spoken with Deputy Baudains on this particular matter. We did attend the Minister for Education, Sport and Culture's presentation to all States Members and arising from that we have given an undertaking to bring forward our review of the entire higher funding system, but this particular aspect is perhaps too refined to look at the whole issues that did come out of that presentation. So an executive decision I had to make and I propose that we do a whole review of the higher education system and it is left then for Deputy Baudains to decide how he wishes to proceed. We were always in favour, though, of the Minister proposing this in his own name.

### **The Bailiff:**

I think we will adjourn until 2.15 p.m. and see what transpires.

**The Connétable of St. John:**

Is this not the only item left on the agenda? Depending what the proposer of 134 says, we might deal with it and all leave to get on with our other work.

**The Bailiff:**

If the Deputy is willing to indicate one way or the other, but I got the impression that perhaps discussions had not been seen through. Deputy Baudains, do you wish to indicate the position?

**Deputy G.C.L. Baudains:**

I am not quite sure what the Constable of St. John is seeking to do, but I think it is fairly clear that the debate will go ahead and I would estimate it would take an hour or so, so if the Constable wants to carry on now ...

**The Bailiff:**

Very well, so we will adjourn until 2.15 p.m.

[12:50]

**LUNCHEON ADJOURNMENT**

[14:16]

**11. Higher Education Grants: methods of assessment (P.134/2012)**

**The Bailiff:**

Very well. The matter we next come to is the Higher Education Grants: method of assessment, Projet 134 lodged by Deputy Baudains, and I will ask the Greffier to read the proposition.

**The Greffier of the States:**

The States are asked to decide whether they are of the opinion to request the Minister for Education, Sport and Culture not to implement changes he has proposed to the method of assessment of income when calculating means-tested grants for university students and to retain the current provisions that the income of the natural parents of the student is used as the principal basis of assessment.

**Deputy J.H. Young:**

Sir, I wish to declare an interest and withdraw from the Assembly as I have got a stepdaughter who will be affected by these arrangements.

**11.1 Deputy G.C.L. Baudains:**

I thought just before we start that maybe the proposition was not interesting enough and that is why there were not enough Members in the Assembly, but I am glad more have come in now. I was intrigued by the *J.E.P. (Jersey Evening Post)* article of a few days ago, Saturday, I think, when the Minister for Education, Sport and Culture was interviewed on this subject, because above the picture of a very young-looking Deputy Ryan (I think it must have been taken way back in his rallying days) there was a headline which stated: "University fee systems open to abuse" on which my first assumption was that the U.K. were up to something again, but then I found out what he was referring to was these proposed changes to the system. So what is this all about? It is quite a narrow issue, as Members were discussing just before lunch. There is a whole wider range of grant and educational fees issues which I do not want Members to go off on tangents into; this is the very narrow issue of discretionary grants where the Education Department assists families who have insufficient funds otherwise to allow their children to go to university and have further education. In the majority of cases, this is not a problem, because evaluating the income and assets of a family

is normally fairly straightforward, but the difficulty arises when families split up and the student wishing to go to further education resides with only one parent. Here, I can fully understand the difficulty which the department finds itself in. Some absent parents may refuse to co-operate, some might even arrange their affairs so that their wealth will not be taken into account by the Education Department. This is a problem and it is certainly one that does need to be addressed, however, what bothers me is that rather than seek a reasonable solution, such as ferreting out those avoiding their responsibilities, perhaps via income tax returns or even if that means a change in the law, the Minister instead has chosen, in my view, to take the easy way out. His solution driven also, we must not forget, by a need to find half a million savings for his department's contribution to C.S.R. (Comprehensive Spending Review) is, rather than go to the trouble of assessing those absent parents, to means test whoever happens to be living in the house, whether or not they have any connection with the potential student. I must admit, I was quite taken aback by the Minister's assertion that this new plan was fairer, that it removed an inequity. In my view, it creates one. It is because of this and the fact that the Minister intended to introduce this new measure by order - something I found out by a question - means that the first we would know about it would be after it had been brought into force. That is why I have lodged this proposition. I believe that the Minister's intentions create a potential injustice, and it does deserve a greater analysis by this Assembly. In the report accompanying my proposition, which is about two-thirds of the way down, I think, I gave an example of how unfair the new system would be, it is an excerpt from an actual correspondence I have received. I had other similar concerns brought to my attention, one stating that they had only recently started a new relationship but, because of the threat of the Minister's new policy, they were now considering splitting up again. I wonder if this is really what we want: yet more family upheaval. This proposed new policy is unfair, immoral and very possibly illegal, and there is no uncertainty about the Minister's intention, he spelt it out in his statement he gave to the Assembly on 6th November last year. He stated, and I quote: "Where the student's parents have separated or divorced, and the parent whose income will be assessed now lives with a new partner, the assessment will be based on the gross household income of both partners." He then goes on to make what I consider an absurd statement that these new arrangements will be fairer. Notwithstanding the fact that in answer to a question by Deputy Vallois on 20th November of last year, the Attorney General stated that Article 4(1) of the Education (Discretionary Grants) (Jersey) Order 2008 does not allow the department to directly take into account a new partner's income. In answer to a question by Deputy Young on the same date, the Minister stated the new arrangements did not exclude natural parents; they can opt to have their income taken into account. Had the Minister been a man who smoked, I might ask if he had been on a new batch, because that really is quite incredible. I will be brief because, as I say, it is quite a narrow issue. At present, the Minister in determining discretionary grants, assesses the biological parents of the potential student. In future, he intends to assess the parent the student lives with plus his/her new partner and, in so doing, the Minister hopes to save about £500,000 a year. I know he has rated the saving at potentially £2,000 per household, so this new scheme will potentially affect at least 250 households. Of course, the assumption that a new partner may have a higher disposable income than the absent parent is pure speculation; what if a new partner flatly refuses to support a child that is not his own? Presumably it will then all end in tears and the student will not be going anywhere; completely contrary to the underlying principles that the Minister claimed to uphold, namely, that no student who could benefit from higher education should be denied it due to financial difficulty. In my view, what the Minister should be doing, instead of taking the easy option, is investigating his options under the Children's Law. I had a conversation yesterday with the Registrar of the Family Division, and he informs me that not only is he quite unhappy with what the Minister is proposing but, under the Children's Law, it is quite possible for a parent or a student to gain access to the information of the absent parent. So I really do not see what the problem is; it is possible to get the financial details of the parent who is not there. I have to say, it is quite unfair for a new



partner to have to pay for somebody else's child when the biological parent could well be living down the road and going to work in a Bentley. It is really not on. It is a pig's ear, and I hope Members will send a clear message to the Minister that his new strategy is quite unacceptable. I make the proposition.

**The Bailiff:**

Is the proposition seconded? **[Seconded]**

**The Deputy of Grouville:**

Sir, may I declare an interest? I have 2 children at university so I would like to withdraw.

**The Bailiff:**

It is not really a relevant ...

**The Deputy of St. John:**

Sir, before you agree to that, could I please make a point to those Members that wish to declare interests? With the discretionary grant system, the grants are paid to the adult student, so the direct pecuniary interest is to the student; it need not necessarily involve the parents in any way. Now, it may or it may not, I do not know and it is not really the point, the point is that if you are going to declare interests, it should be clearly understood that the grant system is to help students, and that is the point.

**The Bailiff:**

I think it is quite clear that Members who have children who are going or may go to university, that in itself is not an interest at all because this only impacts on where there is a stepparent whose income may be taken into account. It is only in those limited circumstances, if you think it is going to directly affect you, then you may well consider it ...

**The Deputy of Grouville:**

I do, Sir. I am the one that pays the bill so, yes, I am going to withdraw.

**Deputy M. Tadier:**

Sir, on that, can I ask, although I think it is quite right that people declare an interest, presumably it is an interest which could be deemed to be shared by a large group of people and that therefore Members may not need to necessarily withdraw simply to declare an interest.

**The Bailiff:**

I think it is a matter for Members. It could be certainly shared with people other than Members, that is certainly true, so yes, it is probably one where, provided Members declare the interest so everyone is aware they may benefit or be prejudiced by it, I think then probably they can stay, but it is a matter for Members.

**Deputy M.R. Higgins:**

Can I declare an interest, Sir. Thank you.

**The Connétable of St. John:**

Given that I have 5 children from 3 marriages **[Laughter]** I think we need to ...

**The Bailiff:**

But are yours young enough to be going to university? **[Laughter]**

**The Connétable of St. John:**

Well, unless they decide to go at a mature age, and they could do, and they are entitled to, because I know one of my sons went at a mature age.

**The Bailiff:**

I am sure you are all right, Connétable.

**Deputy G.C.L. Baudains:**

I think the Constable of St. John was the cause of all our problems. [Laughter]

**The Bailiff:**

Very well. The matter has been proposed and seconded and I call upon the Minister.

### **11.1.1 The Deputy of St. John:**

At the moment, free education is offered by the States to all children under 16 and also, if they qualify, between the ages of 16 and 18 as well, and more than 90 per cent of children opt to continue into education or training after the statutory school leaving age of 16. After that, it is a student's choice whether or not to continue into higher education by going to university, but there is no free access, either on or off-Island, and ultimately the student is responsible for the costs of attending university. I think that is a very important point that Members should note. Of the 90 per cent that are in further education or sixth form education, a further 44 per cent, and rising, choose to go on to higher education at university, and all of those people reach the age of at least 19 years in their first year. However, in recognition of the social and economic benefit that highly-qualified people bring to the community, the States has for a long time provided a substantial budget to assist students in the cost of attending university, either through tuition fees or for maintenance of living standards. This is done through a discretionary grant system, but there is no right to receive a grant. The adult voluntarily applies for financial help, the department asks for information to enable it to assess need and then voluntarily awards a grant in proportion to the total budget it has available. In other words, the department uses its discretion as stewards of public money. To distribute that pot of money to those most in need of it, the department follows 3 key principles, and these are shown in the second paragraph of my written comments.

[14:30]

But there are problems, and they are becoming more acute, specifically, the use of parental income as the basis for assessing need, and that brings me to where we are today. This is potentially an emotive subject. Some of us here today will have fierce personal experience of divorce or separation and, if not, then it is highly likely that they will know of a friend or relative that has had that experience. I am quite pleased that Deputy Baudains referred to an *Jersey Evening Post* article, because it also, as well as the report attached to the Deputy's proposition, highlights many of the misunderstandings around grants to students that want to go on to university. If I look at the *Jersey Evening Post* article first aside my picture; we can argue about whether I looked quite youthful or not, but nevertheless alongside it is a headline written by a sub-editor, presumably, which reads: "Bid to make student's household pay rather than parent." I am afraid that is just simply factually incorrect. The department cannot make any student's household pay or any parent pay towards the cost of a student's university education. So it is the use of the words "make" and "pay" rather than "parent" that I am afraid are factually incorrect. So let me now refer to the report attached to Deputy Baudains' proposition. He states that, when assessing the financial liability for the education of the child of a single parent, I am seeking to take into account the financial circumstances of that parent's new partner rather than the child's other biological parent. The department does not assess a parent's liability. The costs of higher education are primarily the responsibility of the student and/or the dependant student's family. The department assesses the contribution that the taxpayer will make. The Deputy also in this statement uses the word "child"

to describe a student in these circumstances and, regrettably, this further opens the door to an emotive debate about the moral responsibilities of divorced and separated parents, but we are not talking about children. Students reach 19 years old in their first year at university and therefore fall outside the scope of mandatory child support or maintenance arrangements. They are, in effect, adults in their own right. Then Deputy Baudains asks: "How can the new arrangements proposed be fairer than the existing system?" I recognise that my proposal is not perfect, nothing will be in these circumstances, but there will be greater equity and less opportunity for abuse of the system. Because it is not perfect, and when governments are forced to put into place policies that could have unintended side effects, it is essential that there is a properly-constituted appeals process to mitigate this risk. The department has a well-developed tried and tested and longstanding appeals process. Appeals are chaired by one of my Assistant Ministers, there is a further recourse to a review of any appeal decision directly to the Minister and, finally, students can apply for a referral to an independent administrative review panel on the process itself. So, clearly, appeals are important and they will continue. So what are the problems with the current system? At the moment, students may apply for a grant to help with the costs of tuition and maintenance. Under these arrangements, the amount of any grant awarded to a dependant student is based on the income of their parents. The award is discretionary and is made to a 19 year-old. The parents, whether married or not, cannot be compelled to disclose their income. However, if they do not supply the information required, the student may not receive any financial assistance. More often than not, where families have separated, only one income is declared on the forms and the grant assessment is based on that. In genuine circumstances this is right, as otherwise the student may not be able to go to university, however, the one-parent income assessment for grants has become widely known and it has become the norm for only one income to be disclosed where there has been a divorce or separation. Even where a new partner resides in the home and brings in a significant income, the grant application can only be assessed on the income of the single parent. At this point, I would ask Members to turn, please, to appendix 2 of the written comments and in appendix 2 there are some examples of how the current system works and how the proposed new system would rectify some of the problems, not all, but some of the problems. There are 2 examples: the income levels in example 1 are based on Jersey's average income as given approximately by the Statistics Unit. Example 2 is pitched to illustrate the situation at higher incomes and, in fact, just above the point at which a grant is normally payable because means-testing income levels for grants finish at £89,960 currently. I am just going to take a moment for Members to look at those 2 examples and I hope they are self-explanatory. I have tried to make them as clear as possible. In each case, and under the current system, if the natural parents decline to disclose one income, and there could be many family-related reasons for this, then the department has no option in the interests of the student other than to assess the taxpayer's contribution based on the income of the one parent living at the same address as the student. The result in example 1 is a student grant of £11,636, some £6,581 per annum more than to the student from the married family with the same gross household income. This is true, regardless of how much the new partner earns. In example 2, the inequity is even higher and results in a grant award of £12,150 per year versus a zero grant for the student from the married family with exactly the same household income. Is this fair, either on the married couple or on the taxpayer? Under the new proposals, the differences are either minimised or equalised. Of course, Deputy Baudains and Members may be concerned about how fair the revised arrangements will be on new partners. My proposal must assume that new partners contribute financially to a new household in which they live as opposed to a previous financial commitment to the previous household. It also assumes that the total income levels in the new reconstituted home should be taken into account when assessing how much the taxpayer should contribute towards higher education for a student that lives there. So it is quite simple. In terms of fairness, who should contribute first: the taxpayer or the newly-reconstituted family partnership, in whatever form? There is no perfect solution to this, otherwise other jurisdictions that have also wrestled with the

complexities would have found it. My proposal is not perfect, but it is fairer; in fact, it offers a flexibility that is not available in many other jurisdictions. In circumstances where the natural parents are separated yet wish to use their joint incomes for the purposes of a grant assessment, the department will accept that option, even if it is lower than the household income where the student resides and therefore will result in a higher taxpayer contribution. The last part of example 2 illustrates this last point so that, based on the joint parental income of £80,000, because of the reduction in the maintenance, a student grant of £2,017 can be assessed under that circumstance. Deputy Baudains suggests that this is absurd. It is not absurd; a number of divorced parents already choose to provide information about their respective incomes. In most cases, this is because there is a separation agreement in place that covers university education, however, some parents still opt voluntarily to do this, even without a written agreement but, regrettably, the number of these cases are dwindling. The Deputy cites a response by the Attorney General to a written question from Deputy Vallois that the current legislation does not provide for the implementation of this proposal. It has already been stated on several occasions by me that the appropriate modifications to the law will follow to give effect to this policy change. Of course, I have taken advice. Deputy Baudains goes on to describe the distressing story of a resident's family circumstances, and I can only sympathise with the resident and his family, however, the issues described in relation to parental rights and guardianship do not apply to 19 year-old adults and, I submit, without wishing to be dismissive in any way, that they are therefore not relevant to this decision. The fundamental question is whether it is fair to expect the taxpayer to meet the cost of higher education for students from divorced and separated households regardless of the income of the household in question. It is not considered fair in England, Wales, Scotland, Northern Ireland, Guernsey or the Isle of Man; what makes it fair in Jersey? The Deputy says I am driven by financial pressure. All States departments are facing financial pressure in the current climate and so are individual families. My department currently has a budget of £8.9 million to support students studying at university. I want to ensure that the money is directed to where it is most needed. It is true that savings that will come from this change have already been given up as part of the Comprehensive Spending Review, but this is hardly hastily contrived, nor is it an ill thought through solution to a financial problem, as has been suggested by some. If Members would like to refer to appendix 1 of my written comments, it can be seen from the consultations that are detailed there that this proposal has been under consideration since 2005. The main reason for the change is simply that the current system is not fair and the passage of time will only make the leakage of taxpayers' money worse. I have been accused of taking the easy option. The easy option would have been to do nothing. It is said that this measure will create more work in administration for my offices.

[14:45]

It may reduce it, as all students, whether living with their natural parents, a single parent or in a household where there is a new partner, will be required to provide the same information: household income. Deputy Baudains states that it is possible to ensure both natural parents contribute. He has made that point again in his speech. Again, this is incorrect. There is nothing to compel parents to contribute anything to the upkeep, or pay tuition fee responsibilities for an adult of 19 years of age. There is nothing that can compel anyone to do that. Attempting to force disclosure of financial information from any parent through the courts in order to better assess natural parents' ability to pay is simply not possible. This is slightly technical, but I am going to say why. Fundamentally ... sorry, Sir, there are conversations going on. This is slightly technical, but I am going to explain why. Fundamentally in law, a debt must exist first in a discretionary grant system. Both the request for a grant and the awarding of it are voluntary, so a debt cannot exist. The States are being asked to agree, finally, that I should not change the current system. It has been suggested that there is another alternative that might fix the leakages and inequities in the current system, and this is that the department should take a universal, no-income-disclosure no-

grant stance. The expectation from those that suggest that is that this would result in a change of attitude from absent natural parents. The Isle of Man tried that and it resulted in a miserable and costly failure. If I were to do it then many genuine cases of students needing help could be overlooked. Many of them would not go to university. Would that provide more equity? In the new system, that risk of adversely affecting the chances of students needing help will be lessened because, before turning down a grant request from a student from divorced or separated parents living in a reconstituted home, it can be seen quite easily that it will have been necessary for both the absent natural parent and the new family partner to have refused to disclose incomes so that we can assess the ability of the total family to pay. Nevertheless, if the States are minded to keep the old system and request that I take a much tougher stance, then to do that I would also have to bring to the States a review of a key principle that underpins the taxpayer support for university study. It is on the front page of the written comments: "Financial considerations should not preclude any qualifying student's access to higher education." That would need to be fundamentally reviewed. I ask States Members: is this really what we want for our young adults and would this really be in the long-term public interest? Before closing, can I respectfully ask Members to try to be dispassionate in this debate. I hope that Members will understand and accept that it is impossible for the department to attempt to arbitrate financial arrangements within the myriad of family circumstances that exist during divorce or separation and afterwards, and the reconstituted or extended family life. It is simply not possible for the department to get involved in those areas. This should not be an emotional decision; it is simply about the department trying to be equitable in its distribution of a fixed sum of money to those young adults that need it most and to be prudent in its stewardship of taxpayers' money. **[Approbation]**

#### **11.1.2 Senator S.C. Ferguson:**

There is an underlying assumption in the Minister's comments that everyone should go to university, but that is a question for another day. I do wonder what a "reconstituted family" is; it sounds a bit like a new version of sandwich, but anyway. The Minister comments that the student is responsible for their expenses. I do wonder what happens if the student is under 18. Surely the parent is still responsible and surely the whole thing underlying what we are discussing is the concept of parental responsibility. If you decide to have children, you have a duty of care and support for your child. We should not be substituting government choice for parental choice and we should not substitute the taxpayer for the natural parent. There is a duty of support by natural parents. There are cases, of which I think most of us know, of divorced couples where the mother on maintenance asks for a grant, or the student with a mother on maintenance asks for a grant, and the father, who is earning a significant salary, is not included in the assessment and yet, if he was, then no grant would be payable. These are the unfair cases and this is something where the department could do more. As I say, there is a duty of responsibility; if you have got children, you have a duty to support them. Not many children, quite frankly, when we talk about debt, under 20 have the resources to pay for education and yet we are dumping these loans on them from a dizzy height. Why should the natural parent be able to escape their responsibility? Frankly, I find this quite indescribably obtuse. There are means by which the department can pursue natural parents and to say it is not possible it taking the easy way out, perhaps. I will be supporting Deputy Baudains.

#### **11.1.3 Deputy T.M. Pitman:**

I am pleased to see Senator Ferguson swinging more to the left; not nearly far enough. I should probably explain that because some of the things I do not agree with. However, it is not completely to the left. I have got some sympathy for the Minister, but I will be supporting the proposer because all we have heard here is really excuses, and I understand to a degree, because what this comes down to is this key issue of fairness that we keep hearing about, but it is because successive

Jersey governments have only paid lip service to fairness. We have seen it today; people's votes are not going to be valued the same, and we see the Chief Minister tried to wave it away as if it is unimportant. We have a justice system with huge flaws in it. We see taxation where it is quite acceptable for those who have the most to pay the least. It seems that some people do not really understand fairness or do not want to understand it. But if we go to education and we are not going to have fairness, I have to say to the Minister, if you cannot get passionate about education and young people, then we should all probably give up, because they are the future. Whatever he says, he is tied, buffeted by financial constraints. He might think, and I am sure he does think that he is doing the best he can in the circumstances, but with this proposal, I do not think anyone would agree that 2 wrongs make a right. I entirely agree with Senator Ferguson that to suggest that we cannot pursue if the parent goes missing is absolute nonsense. It should be done. Of course, if that parent is on some such pitiful income, then that is quite a different matter. How can it be right that someone who starts a new relationship, whether they are divorced or their partner has vanished, we do not know where they are, has to then pick up the tab? The offshoot of such things could be that those adults think: "Well, I would rather just kick the child out." The cost of that will then go on to the state and the taxpayer. The Minister is right in one way, this is a hugely complicated area, but I think what he is doing is taking the easy option. It cannot be right that someone - as I say and Senator Ferguson said - has to pick up the tab for someone else's child, and then to make the excuse that it is all down to the child, is ludicrous. What this comes down to is priorities, and that is where government in Jersey, I believe, fails. What we need to improve on are 3 interrelated things, I think: that principle of fairness, prioritising and joined-up thinking in government. We hear all the time that Ministers all work together; surely this is a time for the Minister for Education, Sport and Culture to be going to his colleagues, if he has not done already, and saying: "Come on. I need help here. I need real help because if I go on this route, the only people I think that will likely suffer in the end will be students." Because when you look at it, fairness, there are countries that we probably unfairly dismiss as third-world who manage to send young people to higher education to a much higher degree than we do. How do they do that? It must be about their ability to prioritise and use what little they have. Does that not say that something has gone wrong in our society? We keep hearing about how we need young people to come back highly skilled to the Island so we do not have to keep importing labour, and that is right, but I think that what the Minister is doing is running the risk of making the problem worse. I have got a lot of sympathy with him, as I say, but I think what he has got to do is take a much tougher stance with his Ministerial colleagues. I will leave it at that, just to say that I will support the proposer because I do believe in fairness and I do not believe in 2 wrongs making a right.

**Senator F. du H. Le Gresley:**

Sir, I wonder if I could seek clarification from the Attorney General, because the last 2 speakers have made exactly the same comment: that it is quite possible to pursue the absent parent legally, and Deputy Pitman said it is nonsense, that you cannot pursue the absent parent. I would be grateful, before we have too many arguments on this basis, that we hear from the Attorney General.

**The Attorney General:**

Yes, Sir. The grant regime is created under Article 51 of the Education (Jersey) Law. It is always going to be a voluntary scheme and therefore I do not think it can create a debt. I think if there were to be an obligation for payment which was capable of being enforceable, it will require primary statutory change in order to achieve that.

**11.1.4 Deputy G.P. Southern:**

How appropriate that is, because the third set of words on my list to say is "statutory grant system." I was quite impressed by the Minister for Education, Sport and Culture; he exercised quite a few of

the powers of oratory which I did not think he had. He started off with a wonderful piece of hair-splitting sophistry that was really quite impressive in that the phrase that the proposer had used was completely wrong; he said: "We do not assess the income of the household, but we assess the contribution of the States by assessing the contribution of the household." Wonderful sophistry - that was hair-splitting. He then misdirected his audience quite wonderfully and ended up with a false dichotomy whereby he suggests that he has only got one option and the option is the hardline: "There will be some students not getting a grant if I cannot get the information and that is the only way forward" and that is what we are voting on.

[15:00]

All the way through he kept repeating: "Is that fair? Is that fair? Is this fair?" He can produce some obvious evidence of the lack of fairness, but he also said: "I have not got a perfect scheme; nothing is perfect" and certainly I do not expect perfection from the Minister for Education, Sport and Culture but, really, he cannot get away with replacing one unfairness with another unfairness, because that is what he has done, and he has tried to take attention away from the unfairness that he already has and that is maintained by not doing something at the moment but, nonetheless, he cannot let that be an excuse: "This is more unfair than this system and there is unfairness all through the system." There is unfairness through the system, and we have just heard from the Attorney General what is wrong. Here we go; we have got here a change of policy. Policy is not legislation, policy is not law, policy is not regulation; it is policy. Time and time again I have heard Ministers come to this Chamber and say: "That is a policy. We made the policy up, effectively, and that is what we use." In this case, the policy is that all awards post 19 are discretionary, hence it does not create a debt and it does not create something you can change. But the principle underlying that the missing parent, the absent parent, the separated or divorced parent should be pursued to help with a contribution to his/her child absolutely still remains the right principle. What is required not either/or: "Either I do this or I come in hard and some people do not get grants" that is a false dichotomy. The Minister has been accused of taking the easy option, and it is the easy option, it is also, I believe, the wrong option, when he could go back to basics and say: "Right, the time has come for me to put this into the statute book to make it statutory, after which I can chase the missing parent and I will in some cases/in most cases/in all cases, secure that money. Hence the Government's contribution will be reduced, and that is what I need to do, and that is the hard way." that time and time again, Ministers do not do. That is what, I think, the Minister should do in this case: he should take the hard route, change the law, make it statutory and then chase the parents for the missing contribution. The sophistry of saying: "This is an adult" at 19; no, this is a student at 19, and that is what we are talking about. He or she may well technically be an adult but, nonetheless, the parental responsibility still, I believe, continues. I look for comparisons between what has been proposed here by the Minister, status quo, and I look at the issue of maintenance within income support, even those at that level are asked to pursue maintenance from the missing parent. I think about people leaving care homes at 18 and, increasingly nowadays, there is a duty of care on the people who have been caring for those people to make sure that between the ages of 18 and 21, they do not come off the rails, and providing some kind of ongoing support, and that has become the accepted way forward for people leaving care homes, for example. In this case, what we are doing is we are saying: "You are 18, you are an adult, look after yourself." because this Minister cannot be dealing with drawing up the proper legislation to make sure he can deliver better ... again, perhaps not perfectly, but better, what he wants to deliver, which is support for students. I will be voting with this proposition.

#### **11.1.5 Deputy J.A. Martin of St. Helier:**

It is good to follow Deputy Southern, because he is coming from exactly where I am coming from. The Minister has told us: "Let us not get emotional in this" and he quoted: "Should I really, as the

Minister for Education, Sport and Culture say: ‘no income disclosure, no grant’” and then he has told us we need to get real because we are spending millions of pounds on students who do need these. How do we know they need them? Because, as Deputy Southern and the Attorney General has just told us, there is nothing in the law. What is the difference between this family and that other family who are going down to Senator Le Gresley for Income Support? They have to jump through every hoop to get anything. In the comments, it says right at the beginning: “The States contribute means-tested financial support where appropriate”; how is it means tested? It is not in the law, so do not ask me not to get emotional; this is starting at the wrong premise. We are talking about taxpayers’ money and if any of it is going to the wrong families, whether they be absent, whether they be living there, whether they are not, because one parent decided: “I am not going to disclose” ... as I say, if you go to Income Support, you have to sign your life away. You have to get your bank statements, you have to agree that the taxman can look at your last 2 years’ income, social security contributions, everything, to get sometimes £40 or £50 a week towards your rent being paid. So do not tell me this is fair. I think where Deputy Baudains is coming from, the “new family”; are we going to stop at their partner? What about if you have got a stepsister who is earning or a brother earning a lot of money? It is household income. But you have got the father. We are not talking about sensible families here, because the Minister said “divorced and separated” and we know that you can rarely keep the emotion out of that, can you not, when you asking them to pay a bit of money? My child would go and live with the separated parent ... and he says one-third thought this was the best system. Obviously the other two-thirds are married people who think that they are contributing more than the other; there is still only one third out of two-thirds. It is an absolutely bad system and it reminds me of our old poll tax: “Who is in the house this week?” and people did move around very fast then. He has already given people a year’s notice. It will not fundamentally work. They consider in Guernsey these people have supposedly put up ... these are the good families who would, yes, contribute. That person who is moving into the new household probably would have children in the next family. Are they going to be disclosing that? So if they are the ones that were going to pay for their stepchildren and their own children from a previous marriage, these would be the ones that would say yes. The ones who are not going to contribute because they think it is nothing to do with them ... as the man says: “I have no right in deciding even what education my stepchild has or my cohabitee” because it does not just apply if you are married. They could have moved in a week ago, could have lived with the family for 20 years, same contribution. He has picked it out of the air. It will not work, and to where he is fundamentally promising the coffers back at £600,000 when this is working in a full year, it is absolutely mad. He has got to go back to fundamentals, he has got to change the law. Because I am very unhappy to find out today that there is no disclosure, it still goes back to discretionary. Of course it is emotive; you have got a very intelligent youngster who wants to go to university that they cannot get one or either of their parents to say how much they are earning, so they sit round a board and discretionarily give away taxpayers’ money. Absolutely mad. Sorry, if you can do it down at Social Security, you can do it in Education. The Minister wants to go away and do his work and then come back with a system that works and is legal.

#### **11.1.6 Deputy M. Tadier:**

Just to give the context of this, because this is not a new issue. I am not going to call it a political football, but certainly the political issue of how we fund higher education for our students in the Island has been on the table for a long time, and the Minister referred to that. When I first joined the Scrutiny Panel back in 2008, we were set to look at this policy. It was a policy area which attracted a great deal of attention from the public, which is not always the case for Scrutiny reviews, and it was essentially led, in many ways, by public concerns over the current unfairness with the system and the policy as it is being applied. We were at the brink of reviewing it and we were told: “The department is reviewing it so, if it is all right with you, hold off for now and when



we come back with a proper overarching policy to do with higher education, then is the time for you to look at it.” Our panel, which I am now on again, is very keen to look at this issue holistically. In some ways we are a bit bemused as to why we are debating this ... that is not reflecting badly on Deputy Baudains, but we are bemused; I think there is clearly a consensus here that first of all the current solution is not the best one that we have, the proposed solution is also one which may have many unintended consequences as well as the ostensible intended consequences that the Minister is talking about. Let us put this in context. There is a paradox, perhaps, in our system which we do not always realise. Notwithstanding the comments of Senator Ferguson, who was essentially saying if people have children then it is up to them to make sure that they can be funded to university; I think that is probably a view which not everyone would agree with because, of course ... sorry I will give way if she ... but I think what she said is if you have children, you have a duty to support them, is that correct?

**Senator S.C. Ferguson:**

That is correct, but I think the Member’s translation of it is slightly slippery.

**Deputy M. Tadier:**

The point I am making, I just recorded the words: “If you have children then it is your duty to support them” and so that is largely true, I think people do not necessarily think about having children sufficiently before they do, but the point is the world changes and also if you do have children, you do not necessarily know what kind of jobs you are going to have, and simply because you might have a low-paid job, does not mean that you should not be able to send your children to university to inspire them to have a better future. I think that is hopefully something we all agree with. But the paradox in the system is that we do not currently - and I do not think we would ever, certainly in this political reality - insist on primary school education being means tested. We would not insist on secondary education being means tested, or A levels or vocational post-16 education being means tested; that is all paid for by the taxpayer through general taxation. The irony is it is only when young people are old enough to no longer be the responsibility of their parents, that is the time when we ask the parents to contribute. That is the fundamental paradox, and I will repeat that: we wait until children are old enough no longer to be the legal responsibility of their parents in order to ask the parents to contribute. There, of course, is a simple solution to this: it will not necessarily be popular with most Members, and that is to say that you pay for everybody’s university education and you fund it somehow, and I say through progressive means. But that is not the political reality of the majority in this Assembly; as well, it would be very expensive. I believe money could be found in a very wealthy Island to do that; of course, notwithstanding the fact that we do not have control over the legal fees. The other alternative which has been mooted is a loan, which the U.K. has gone down as a kind of third way, which recognises the fact that students should no longer have to rely on their parents, who may be unwilling or unable to pay, and a loan scheme is perhaps an imperfect way in the sense that it saddles students potentially with a large amount of debt, but we are told that they only pay it back when they can afford to. But Jersey at the moment does not have access to a meaningful loan scheme. I think the current one is virtually meaningless. If the local students, for example, could get access to the U.K. loan scheme, that is something I would be very keen to support, because it would open up the potential a great deal, and that is perhaps an area where more ongoing talks with Education in the U.K. could be made. So we are left with means testing, which is, by its very nature, imperfect and often unfair. So there are issues that need to be looked into, and I hope I speak for the panel, but I certainly speak for myself as a member of it, that we are very keen to start looking at some of these issues. I am concerned about the argument that is given for the change, though, which says basically at the moment we cannot chase the absent parent, and we are put into a situation where if the absent parent does not want to contribute, or if they are simply not around and cannot be traced, then we

are obliged to give the student a full grant because we can only take into account the income of one parent, provided that one parent's income is fairly low.

[15:15]

But there is a problem under the new system is that what they would be saying is no income disclosure, no grant. But that is the actual reality of it. So we have a scenario where a new family would be reconstituted. It is entirely possible that one of the parents says: "I am not going to fund your daughter or your son to go to university. I have no intention of doing that. That is not what I signed up to when I got into this marriage. I married you. I did not marry your son and your daughter." That individual would then, of course, say: "I am not going to give you any money." The Education Department would then turn around presumably and say: "Well, seeing as you have not disclosed anything to us, we are not going to give you a grant." In that circumstance who is it that loses out? It is not the taxpayer. Congratulations to the Minister for Education, Sport and Culture in that circumstance. He has boldly defended the rights of the taxpayer. We are not going to fund the student with taxpayers' money. The absent parent, in the meantime, does not have to fund any of the student's fees, because that student is not now going to university or if they are, certainly, he or she are not paying for that. The new parent is not paying any money towards that. So the student does not go to university. That is in spite of point 2, which is on the comments of the Minister, which says: "Financial considerations should not preclude any qualifying student access to higher education." In fact, in this scenario, which is not one of the listed scenarios in the Minister's comments, strangely enough, that student does not go to university, the taxpayer has been saved some money, but ultimately we have a personal tragedy there waiting to unfold. There are many circumstances like that which already occur in families, perhaps, which are not divorced, because parents perhaps earn too much. So what I would like to look at is how is this means testing going to work. We know that there are other examples of means testing in our system. The 2 that immediately spring to mind for me are income support and legal aid provisions. Both of which are horrendously complicated, of which there are many examples of unfairness in them. I can, for example, give one case of legal aid where one family member is going through a divorce. They have been asked to take the new partner's income into account, even though they are not married and the partner has said, quite rightly, in her context: "This is not anything to do with me. I am not disclosing my income." Therefore, ultimately, they will not give any assistance with that. Even though a court order said that there is no legal requirement for the individual to disclose her income. I question the legal basis for this. All this essentially needs scrutiny. We need to know that whatever policy we are bringing forward needs to be tangible, it cannot simply be a Ministerial decision. I hope that the Minister has already given a tacit agreement to bring something to the House which we can analyse, that we can scrutinise and I do also ask the question, which echoes Deputy Southern's point, is that why are we having a system which is discretionary. We have so many things in the States that are discretionary rather than statutory. One of them is housing provision. But we are told that with housing provisions there is no obligation legally for the States to provide housing for the population. The department take very seriously their duty and best practice to provide housing. But the consequence is that if somebody has an issue and they are not housed in Jersey there is absolutely no legal recourse for them, because after all it is just discretionary. It is our gift to you. There is no legal recourse. I think that we should be looking perhaps at the merits of making a statutory. What I am asking here is making a case for this to be scrutinised and for some real detailed policy to be put on the table. I do not think that by supporting the Deputy's proposition today we do that. It simply leaves us as we are. I do not think the current system as it stands is very good either. There are a whole raft of issues which I know the Deputy is keen for us to address collectively, as a panel, and for the Minister and his department to go away and think about.

#### **11.1.7 The Deputy of St. Martin:**

Can I start by saying that I was a little bit disappointed when the Minister stood up and made his case? Inasmuch while he is legally correct that students are responsible for the grants, in reality we all know that that is not the case. I personally, like many others in this Chamber, will bear testament to that. That really is the basis for the conundrum that we find ourselves here. I might well agree that what we need is a statutory change, but the debate in front of the Assembly this afternoon is whether we retain the status quo or we allow the Minister to move to something else. I too have attended the presentation that the Minister gave and asked some questions. I do not believe that the Minister has chosen the easy way out. I think we all know that the current arrangements are at times woefully short of equitable or fair. It may well be that it is unfair to burden a new partner with university fees for the child that he or she have recently inherited. But it also seems extremely unfair where a married couple may well have divorced before even the birth of the child in question to then burden that biological parent with fees for university. In actual fact, the real unfairness is seen most from the eyes of genuine parents who, through all the trials of life, have managed to get to 18 or 19 years of marriage and they see other parents, whether biological or non-biological, with equal incomes consistently paying significantly less into a system. I do not think what the Minister is proposing is perfect and I am glad he has admitted to that, but I personally think it is better than what we have at the moment. It is not perfect, but it is better and I will not be supporting the proposition of Deputy Baudains.

#### **11.1.8 Deputy R.G. Bryans of St. Helier:**

I think Deputy Martin is right to say this is an emotional matter. Whenever you deal with children, our own children or the children of the Island and you start talking about money it becomes emotional. But, we need to start focusing on what the issues are. This is not about the 68 per cent, who at the moment are married and doing the right thing by declaring their incomes. It is not even about the 32 per cent. It is about a percentage of that 32 per cent. It is about a small percentage. One thing that has not been discussed is the quantum shift in the way in which we see the lives of people happening across the world. The U.K. now has the highest rate of divorce in Europe. I believe that Jersey has a higher rate of divorce than the U.K. So we have to be very circumspect about where we take our money from and where we put it to. In fact, it was Deputy Baudains himself that said this is a sort of thin argument and it is about those people who do not co-operate and those people who change their affairs to hide their wealth. So where you were saying this was not a moral argument: "Where is the immorality?" that is where it lies. For a married couple who declare their income there is no change. For a divorced couple who declare their income there is no change. For a divorced couple where one parent wishes to pay and lives on their own there is no change. It is back to this small percentage, 2 people have decided to live together, both incomes will be taken into account and, as has already been said, this potentially could give us a return of £650,000. Where a divorced person lives with another and claims a full grant because they do not declare the second income, as has rightly been said, who should pay? This is where the issue of the taxpayer comes in. There is another issue as well, which is the matter of hindsight. We are always looking for it in this Assembly. We always wish we could look back and see what somebody else has already done and benefit from that. Here we have it. England, household income; Scotland, household income; Wales, household income; Northern Ireland, household income; Guernsey, household income; Isle of Man, household income. The very thing that has been requested of the Education Committee is that they should look for those divorced parents that have even moved away. The Isle of Man tried to do that and dumped it. It did not work. It was too expensive. This is not about those who abide by the rules, but those who choose to abuse them. As has already been said, this is an investment by the Government of this Island in the lives of our children. We want to make sure that the right money is given to the right people at the right time. Most parents adopt a responsible attitude towards their children, recognising their moral obligation to provide for their children's education. This has already been stated by Senator Fergusson. That usually

includes college costs, because we, as a Government, recognise our need to invest in our own children, as I have already said. This is a grant to help them. The U.K. has already moved away from this system, as Deputy Tadier said, has moved to a loan system. There was a possibility, and we did look at it, to increase the situation that we had here. But, unfortunately, we are down to, at this moment in time, one bank that is willing to consider a loan situation. We went to the Treasury and they equally looked at that situation and came back and said no, it was unworkable. So we return to where we are. As I said before, this is about giving the right person the right money at the right time and I will not be supporting this proposition.

#### **11.1.9 Connétable M.P.S. Le Troquer of St. Martin:**

I would like to thank the Minister and his officers for the explanations they have given to Members in recent months through the Education Department statements, interviews and presentations, and indeed even the press releases. I have found them very useful and the Minister has again today explained the dilemma that he finds himself in. The situation has not been easy for the Minister and the department. I can understand his attempts to make savings from the Education budget while attempting to maintain the underlying principles that no student who could benefit from higher education should be denied access due to financial difficulty. However, I also applaud Deputy Baudains for bringing this proposition, which too has much common sense and with principles with which I very much agree. This is a difficult topic and one which is obviously viewed differently depending on which category, which camp, you happen to fall into. The husband and wife who have had to skimp and save just to ensure the best for their children and furious that they have to pay so much, while seeing families that may have split up and are paying far less because of that split, yet maybe having double the income, maybe even higher. That cannot be right and the Minister is now trying to right that wrong. Of course, the couple that live together, cohabit, think the current system is perfect, because the possibility that they are receiving a larger grant, because they are assessed as single assessed income. The worse thing about the whole issue, however, is that a natural father or natural mother, failing to contribute their fair share of the cost of further education at university or college in the U.K. of their child or their children, while expecting the States to pick up much of the bill, money from those law abiding, hard-pressed families who have religiously paid their own bills, their taxes and are paying the costs, or more than others, for further education in the U.K. I am surprised we have not seen public protest marches up and down King Street and in the Royal Square from those hardworking families with youngsters at or about to go to university. I can understand and I think we must all accept the real frustration of the 62 per cent of the working families, the mums and dads, husbands and wives, struggling to bring up their children and wishing the children the very best for the future in these difficult times by having to fund the university and associated costs in the U.K. or elsewhere. Those families who see the remaining 38 per cent, the figures that we have at the moment, may be in a better financial position than themselves. I say “financial position” because they might be facing other problems associated with a break-up, but who will possibly, most probably, be paying fewer contributions for their children at university. I too, like many here today, I suspect, have experienced that same feeling, that same frustration with having had 2 daughters who both went to university and the very tough and tight budget controls that my wife and I had at home despite an element of grant support. I think the wording of the Minister’s statement in this Assembly on 6th November identified an important point. In that statement the Minister said: “The level of grant is determined by an assessment of parental income in the calendar year proceeding the year in which the course commences.” My interpretation of parental is a natural father and mother, as seems to be exactly where Deputy Baudains, Senator Ferguson, Deputy Pitman and others are coming from this afternoon as well. Article 4 of the Education (Discretionary Grants) Order also states is the income of the student’s parents, again the natural father and mother, surely. The Minister’s comments

paper clearly agree that more often than not where families have separated only one income is declared and the grant is assessed on that alone.

[15:30]

The comments paper goes on: "In terms of fairness, should the taxpayer or the new partner be the first to contribute?" I believe the comments paper missed the third option that the only correct answer to that question is the natural parents. It seems that we have gone wrong in the past in that we have allowed a situation to develop whereby an increasing number of young people now go to university or other U.K. training. There were never those sorts of numbers when I was younger... blackboard and chalk. Unfortunately, greater numbers of families than maybe they used to. But, most importantly, we seemed to have allowed split families to be identified as such and allowed one party to evade their responsibilities, because it has been just too much bother to chase them up. I might be being unfair to the department, because the department would have always been following their own policy of trying to avoid preventing a student who would have benefited from higher education to be denied that education because of financial difficulty. Maybe the way forward should be that the Minister and the department proposals should only be applicable where the new partner agrees to support and agrees to remove the responsibility of the natural parent. But, that is there in any case too, because there appears to be this either/or option. We all know that probably the majority will go for not supporting the child into the family that they have moved. I have concerns with the Minister's decision. A new partner may have moved into the household where the prospective university student was aged 16 or 17 years of age. The natural parent will have to remind his or her new partner that they have children and that one of them is just about to go to university and that they might be expected to contribute for the next 3 or 4 years or more - a bit of a passion killer. **[Laughter]** Maybe a new partner will feel somewhat different if he or she had moved in and brought the child up, maybe from a baby. Other scenarios may come to light in the Minister's proposed method and he may be able to answer them, but of course he has not brought this proposal forward today and has already spoken. How will the Minister ensure that the department knows if there are joint incomes and will it require the department to have their own enforcement team to investigate home circumstances and that false information might be being supplied? What if the child or indeed children are being brought up by aunts or uncles or grandparents, because neither of the parents wish to contribute? Is it the household income of the aunts and uncles or maybe the grandparents who have taken it upon themselves to look after the young person? I suppose the discretion aspect of the department then comes in. Is there an option that may be explored that young people go to university will find the loophole with this split parents by going to live with those grandparents or aunts who are worse off than their parents and therefore get a better grant. The Minister's statement of November stated parental income and really that is what it should be. It is, however, a far easier option for the department, the States, to aim at the household income and save a lot of work, while at the same time one parent to avoid his or her moral responsibilities. However, in saying all that, I cannot support Deputy Baudains proposition merely because the decision of the department is better than what we have at the moment. It shows an understanding by Government to save money, to support the 62 per cent of those families that are paying their share fairly. Even what Deputy Tadier said this afternoon that this is not a new problem and it has been going on for so long, let us do something to move forward, at least move forward today. I support the Minister, because it allows the absent natural parent to contribute and have his or her income assessed if they so wish. An alternative option and one that is best for them. But, as this option was not available of the choice then I am not sure I would support the department's views. But, I support the department too, because it seems to be a tried and tested system in other jurisdictions, because it makes significant savings to the taxpayer and it will also save those that might be considering separating or changing their lifestyle just to get a greater grant. I ask, if the change is approved, that it be monitored by the Minister and amended

if it is shown not to work or to achieve the gains envisaged and if necessary during that time work at changing the law. Thank you, Sir.

#### **11.1.10 Deputy A.K.F. Green of St. Helier:**

I think that I am fairly well placed to speak on this having chaired, in a previous role as Assistant Minister for Education, Sport and Culture, the Grants Appeals Panel. Ideally, of course, as everyone says, the natural parents would support and wish to support. I cannot understand, I have to say, any man that does not want to support his children in any way. But the fact is that they do not. The fact is that in law we can do nothing about it at the moment, it may be that there is to be a change of law at some time. It is exactly the same way, and I am sure the Minister for Social Security will correct me, as if you go down to Social Security and make an application for a grant but fail to provide the bank statements and disclose the other information you will not get a grant. The same happens with the divorced or separated parent who refuses to participate, refuses to provide information, very often it is the mother who is the one on the low income that has to come to the panel because she could not support her young person, because we are not talking about a child, through the system. It has been said before and I will not labour on it, the Isle of Man, Guernsey and others, a whole list of them, tried the system that Deputy Baudains is suggesting that we maintain, that we keep, it did not work. So, why do we want to continue to keep it? In slightly different vein, and I accept that we are not talking about children, but even in the U.K. the Child Support Agency with all the legislation around it failed to get natural parents, particularly fathers, to contribute what the court had very often ordered them to contribute and yet we want to continue with some sort of system along the same lines, although we are not talking about children. The current system is unfair, it is open to abuse and it is abused. There is no doubt about that, I can tell you, having chaired the panel. I would like to put a slightly different emphasis on this, because I met with a young person last week, a constituent, on an issue. This young person - I am being very careful that they cannot be identified - is a single parent, they come from very humble background, but they have worked very, very hard and they have studied and they have gained management qualifications and they are now going up their chosen career ladder, receiving no States support nor seeking any; a model citizen. As this person continues to work hard, it is likely by the time their child is old enough to consider university that this person will have a more senior post, plus a greater income and will either not be eligible for the grant or just a very small grant. Now, let us just imagine, living next door is a couple with a child the same age, in the same type of house, on the same estate, the only difference being they are not married. The child is the mother's from a previous relationship. Mum works only part-time with a relatively small income. The income of the new partner or the established partner is very good. Could we even say £100,000 per annum? Under the current system, only the mum's income is considered and they are likely to get a full grant. Our hardworking, single parent will get no assistance or little assistance. That cannot be fair. There are sufficient safeguards in place if the partner is supporting a previous family and a real robust appeal system. On that basis I ask the Assembly to reject this proposition.

#### **11.1.11 Deputy R.G. Le Hérisier:**

Yes, a very difficult one and I thank Deputy Green. I was going to bring up the Child Support Agency, because if ever there was a case where people tried to be rational and the Government said at the time, the very things that Senator Ferguson said: "Parents must bear their responsibility. We are going to go after largely errant fathers, blah, blah, blah." Apparently it has ended up with a situation where, I think, 70p in every £1 gained by the agency is used in the exercise of collection from a very small minority of parents. I have struggled with this one, because as the Minister has said and as Members have said, there is not a perfect solution. Certainly Deputy Martin spoke, as did Deputy Pitman: "Change the law, everything will be great." It will not be. It will be why the Education Department should be engaged in massive man, and sometimes woman, hunts around the

U.K., for examples, after fathers or mothers who have jumped the Island, which is often the case, of course, with maintenance in any case, if we are going to get into that situation. Based on the experience of the Child Support Agency, we will be spending hours and hours doing that. Okay, morally, it is not a perfect situation. It would be so nice to confront these people with the situation and say: "This is your biological child. You be responsible." But the reality is we have to be pragmatic and we have to make sure in the process of doing so that the child does not suffer. Deputy Green mentioned also the appeals body. I chair it at the moment. We meet nearly every 2 weeks, because we have an awful lot of appeals. A lot of them now are to do with business failures, as well as to do with ambiguous relationships of the kind outlined by the Constable of St. Martins. I would say, we discussed this, should we have brought a list of these results? The vast majority of appeals are conceded. In the sense that if the department sees an ambiguous situation arising, and the Constable of St. Martin mentioned them all, how on earth you would embrace those situations in law, I just do not know. He did a very good analysis of, in a sense, why we have to seek some kind of pragmatic solution. The officers will try and intercept the application and it generally does not go to a "no", it will come to the appeal panel and will assess the person's situation. Is there alienation between the stepchild and one of the partners, for example? Although, as I have said, oddly enough a lot of them are about business failures and about people, for example, not able to declare large profits and should they or should they not declare their profits. They are arguing: "Well, we have to put them back in the business" and so forth and so on. Anyway, the point being because of this ambiguity that has been mentioned, we try and deal with it with our sense of discretion. I can say, and had we produced a list it would have been obvious, that the vast majority of appeals are conceded. So, that there is no child ... we have some people who tell us: "Oh, you never told us the rules." We had one of those the other day. It was a single parent - interestingly enough the single parent who came to the hearing was not the guardian parent, it was the other parent - about a student who had not declared the kind of difficulties that they were going through at the time medically and we had moved to charge them full rate. So, we have asked the person: "Go and search out that information and we will make a decision, probably a positive one, on the basis of that information." I could go on and on about disclosing that. In a way it does not do us credit, because what it suggests is we have to run the system with a lot of discretion. But we do have to do that because of the factors that the Constable of St. Martin said and because pragmatism tells us that the Education Department, no matter how toughly the law is enacted ... if we look at other jurisdictions, if we look at experience here at people who jump ship from the Island and people who disown families and so forth, if we were to push it to that extent we would end up in incredibly embarrassing situations and the Education Department would end up doing a job for which it is not suited. Just briefly, and the Constable of St. Martin will know this because he has been through the system, it is taxable income that is looked at. Again, there is a big debate about should it be all disposable income, should it be capital assets, *et cetera*. There certainly is, as Deputy Tadier indicated, a case for a large reform. The problem is if you bring in these large reforms, you will bring in big bureaucracies. Have no doubt about it. You will end up, ironically, with an income support situation. That is the dilemma that you are always faced with. I have always thought it is not perfect, it does not include full disposable income, as Deputy Tadier reminded me the other day.

[15:45]

It does not include capital assets, but I have always thought the tax form is workable, because it is a form that has been invalidated by another States department and which we can use with confidence. We do not have to go into all those searches mentioned by the Constable about aunts and uncles and everyone else who is whipping in and out of the household. On balance, and it is an on balance decision, because in order to get a workable system and a fair system ... Deputy Pitman mentioned about fairness as did Deputy Southern. But, the fairness ... I have been approached by several of

the 62 per cent for the reasons that the Constable of St. Martin and Deputy Green said. They have asked us: “Where is the fairness towards us? We are having to declare. We are having to declare fully. We cannot manipulate the system. They say [they cannot put figures on it] there are people manipulating the system and it is not fair on us. We want to see a fairer system.”

**The Deputy of St. John:**

Before the Senator starts, if he would not mind, I need to ask for a clarification from the Attorney General. I know he is not in the Assembly and I would just like to give him fair warning that there is a clarification that I would ask.

**The Bailiff:**

Very well, the Greffier will ask him to return. Thank you.

**11.1.12 Senator F. du H. Le Gresley:**

I was also hoping that the Attorney General would be here to answer a question that I will be posing [Aside] ... as if by magic. A number of Members have made the point that we need to change the law if we are going to be able to do this. I have a copy in front of me of the Education (Jersey) Law (1999) and looking at Article 51. It says: “The Minister may by order make a number of provisions.” Then it goes on to list them from (a) to (f). The one that I would like to ask the Attorney General is if the Minister can do this by order, under (d) it says: “The grounds to entitlement to assistance, including the age, educational qualifications and financial status of the applicant and the financial status of the applicant’s parents.” So, I read, and I am sure the Attorney General will confirm if I have it right, that the Minister can by order change that particular term of the grant, the grounds for entitlement. Of course he does that under the Education (Discretionary Grants) (Jersey) Order 2008, which is the order which he wishes to change to bring in these new rules. I would like the Attorney General to clarify that the Education (Jersey) Law 1999 allows the Minister to do this by order by amending that order that he intends to do and has told us in his statement.

**The Bailiff:**

Can I just clarify, you are asking whether he can force information from the natural parents?

**Senator F. du H. Le Gresley:**

Yes, Sir. What I am saying is that by order he can put in whatever he thinks is appropriate to get the information from the natural parent and also from the cohabitee. I do wish to make a speech as well.

**The Attorney General:**

I wonder if I may just take a moment or 2 before I answer, sir? Thank you.

**The Bailiff:**

Yes. There was going to be another question, was there not, from the Minister? Perhaps we can take both questions and you can think about them.

**The Deputy of St. John:**

It has been suggested that we should go for primary legislation in order to force parents of ... I am not sure if people mean children or in fact adults. That is the basis of the questions to the Attorney General. One question is what are the implications of changing this primary law to force parents to disclose? When does a child become an adult? So many other primary laws would need to reflect this change of status from a child to an adult in law. Is that the case? Does he know of another jurisdiction that follows this route?



**The Attorney General:**

I am sorry, Sir, I must ask the Minister to repeat the question about changing laws relating to children and definitions of child.

**The Deputy of St. John:**

Would it require changes to other pieces of legislation, in addition to the grants law, because we are effectively going to be saying that a child remains a child until the end of university or higher education where this grant would apply? It may, it may not, I am not sure.

**The Attorney General:**

I think I can deal with that particular point. If there is a change to primary legislation, whether there is a separate stand alone piece of primary legislation or whether there is an amendment to the Education (Jersey) Law of 1999, it seems to me that the States theoretically, subject to usual human rights considerations can put into effect whatever regime they want. There is, for example, the child support regime in the United Kingdom. I do not think a stand alone piece of legislation could be just that. It does not need necessarily to give rise to the amendment of any forms of legislation. It can simply provide for the circumstances in which a grant system will be carried out and provide for the measures of compulsion that have been anticipated. Whether that would be a human rights compliant piece of legislation is something that I would have to give much more consideration to. But, in theory, I do not think one would need a large amount of statutory amendment. A single piece of statute would, I think, suffice.

**The Deputy of St. John:**

The second question, if he is aware of any jurisdictions that have followed that route.

**The Attorney General:**

I am not aware of any other jurisdiction.

**Deputy M. Tadier:**

Sir, may I ask the Attorney General a question? It is not related to the ability to chase parents who are no longer with the original other half of the relationship, but would the Minister confirm whether he thinks that it would be easy just to simply have a grant system which was statutory rather than discretionary. I am sorry if he has just answered that, I am not sure if it is the same question.

**The Attorney General:**

I am not sure it is a question that calls for a legal answer. I do not think it is for me to say which one would be easier. It depends entirely on how they are administered and what kind of form they take.

**The Bailiff:**

Senator Le Gresley then, your speech.

**Senator F. du H. Le Gresley:**

I think I have forgotten what I was going to say. I wanted to perhaps pick on a number of Members who mentioned income support benefit and the comparisons to income support. Some made correct statements. Some made rather wild statements that I need to correct. Deputy Southern made reference to the fact that an income support household, where there is a single parent, is required to seek maintenance from the absent parents. That is absolutely right. Of course, this only happens when the child is under the age of 18. Today we are dealing with, as the Minister has pointed out, students who will be 19 in the first year of their university course. So, it is not correct

to say that the income support system would require a parent to seek maintenance for a child over the age of 18. Income support: we currently have somewhere in the region of 6,734 income support households, which include pensioner households. So, we have a system whereby we do look at all the income coming into the household when we assess what level of income support entitlement the household will receive. Quite clearly we have had this system in place now for 4 years. States Members should be quite familiar with this fact that any income that comes into the household is assessed. Therefore, it includes investment income, obviously earnings, pension income and rental income if there is some, any income. All income coming into the household is assessed. Now, we have always had the concept, within income support, of cohabittees. That could be either sex. It does not have to be the same sex. We have always said that if somebody moves into the household at any time we take their income into consideration. Therefore, that means that when we are talking in terms of providing basic living facilities or provision for children in the household the new cohabitee does provide support. Absolutely be clear on that. If they are working and they are bringing in a wage, they will be providing support for the children in the household, even if those children are still over the school-leaving age, but perhaps attending courses, such as Advance to Work or courses at Highlands. They are still providing food, lodging, *et cetera* for the children. Therefore, we have that concept already in Jersey. We should not really be struggling with what the Minister is now proposing, because we have had income support now for 4 years and we are all used to it. I would like to remind Members that it was only last year that I brought a proposition that anybody who was in the household who had not been resident for 5 years or 10 years in the past, their income would be taken into consideration even though we were not going to award them the personal component in their own right. Therefore, that person in that household is making an even greater contribution, arguably, because their income is not being offset by any components that they may be entitled to. We have that system in place. We are all aware of that. Now the Minister for Education, Sport and Culture, understandably, wants to bring in something similar for the maintenance grant system for further education. I think we have been somewhat confused by Deputy Baudains comments in his proposition. We quite clearly are dealing with adults here. We are not dealing with children. Any reference - and Deputy Baudains made this in his speech - to the Children (Jersey) Law 2002, the Children (Jersey) Law 2002 does not apply to a child over the age of 18. Any arrangements made in divorce or maintenance arrangements through the courts relate to children under the age of 18. As the Minister has himself said, there are times when both parties in a divorce will agree arrangements in the event that a child should go on to further education, perhaps at university level. That is fine, but that is a private arrangement between the 2 parties. Anything to do with a child over 18 is purely contractual or agreed between the parties. It is nothing to do with the Children (Jersey) Law 2002. So, we are dealing with adults. We are quite clear that the grant system is an application by a student. It is not by the parents, it is by the student. Therefore, we have to look at where the student is living, in what household and what is the household income. Also, it is absolutely clear from what the Minister for Education, Sport and Culture has told us and it is in his report, that where the natural parent who is not living with that child is willing to reveal their income, even if that income is lower than the income of the new partner, then that income will be taken into consideration. Absolutely fair, quite right and proper. That is what the Minister is seeking, a much fairer system. Of course, there will always be people who feel that this is not the right way forward, but I do not think there is anywhere else we can go. I think, hopefully, the Attorney General will pick up on whether the Minister can do this by Order, but he will tell us in a minute when I sit down. Thank you.

**The Bailiff:**

Attorney General, are you ready to respond?

**The Attorney General:**

Yes, Sir, if I have properly understood the question. I understand the question was to be whether Article 51 and in particular Article 51(d) would enable a regime to be put in place which required by compulsion the disclosure of assets from a parent in the family. Have I understood the question correctly? In my view, no it could not. Article 51 provides obviously for the creation of, among other things, a grant regime. Sub-paragraph (d) is the kind of the things that can be taken into account. But, there is a big, it seems to me, step from that to say that merely because you can provide that certain things are taken into account you can also then create a regime under which they compulsorily have to be disclosed by someone who is not personally seeking the advantage of that grant for themselves. Article 51 provides the Minister will do whatever he does by Order. An Order is subordinate legislation and will need to be human rights compliant as a result. If it needs to be human rights compliant, it seems to me, there are significant difficulties under Article 8, the right to respect the private and the family life that would prevent that Article being used to create a compulsory disclosure regime.

#### **11.1.13 Senator P.F.C. Ozouf:**

I do not want to rehearse any of the arguments of the substantive issue of the proposition apart from the financial considerations, as I think these issues have been well explained by the Minister and his assistants and others.

[16:00]

I do want to, if I may, just address the importance of the issue of sticking to the Medium-Term Financial Plan and the C.S.R. targets, because I do think that a number of Members perhaps appreciate the importance of this. I do appreciate that savings are difficult. I am grateful to the Minister for Education, Sport and Culture and Ministerial colleagues and indeed this Assembly for having signed up to the M.T.F.P. (Medium-Term Financial Plan), which did include the schedule of C.S.R. savings. Savings are needed and we need to stick to our overall plan to make savings reductions in order to balance our books and also find the areas of growth of which education has been to some extent also a recipient of some growth money. I am sorry if this is going to sound, over the next few months, like a broken record, but it is important that we do recall that, while completely understanding Deputy Baudains' right to bring a proposition, I respectfully do remind him that the M.T.F.P. was substantially consulted upon, including all the C.S.R. reductions. In supporting Deputy Baudains proposition we are inflicting a problem for the Minister for Education, Sport and Culture, because effectively the M.T.F.P. did remove all these budget allocations. I do not think that it would be fair, as just a stand alone issue, quite apart from the substantive issue, to inflict that problem on the Minister for Education, Sport and Culture. Spending reductions are difficult, but they are required. We really do need to stick with this and the other commitments that have been made. I will make 2 final points, one current and one slightly looking ahead, which perhaps, to some extent, may help the Scrutiny Panel, the Minister for Education, Sport and Culture and others in the months ahead. I do think the general issue, while absolutely supporting this issue that the Minister for Education, Sport and Culture is doing, I do agree that there does need to be the wider review of education dealing with the wider issues. So, if I may, just on the current issue, as Members will be aware, yesterday I was in the Isle of Man and I was briefed by my opposite number of their issue, lest there be any doubt that we are not alone in having to deal with this issue. The Minister for Treasury and Resources there is having to make a £3 million to £4 million reduction in terms of higher education. Their Council of Ministers is out on the road and going to be facing the public on their spending reductions. Indeed, we are not alone in this regard. I know the Isle of Man is mentioned in the paper that they are having to make difficult decisions just as other Governments and other Assemblies are. In relation to the future issue, I have committed to the Minister for Education, Sport and Culture that we will be looking at the tax allowances for higher education costs and education issues. We are currently examining that issue. I do think that

is something that is, if I can go as far as this, going to receive the most very careful consider of the Treasury, working with the Minister for Education, Sport and Culture. I am grateful for his co-operative work. I urge Members, while it is difficult, to stick to our plans.

**The Bailiff:**

Does any other Member wish to speak? Then I call upon Deputy Baudains to reply.

**11.1.14 Deputy G.C.L. Baudains:**

I thank Members who have spoken and mainly stuck to the narrow subject involved, for which I am grateful. Having listened to the Minister in his speech, I was going to make the comment that I made at his presentation the other day and I was glad I understood the subject before I came. I did find he wandered around the issues a lot without approaching the issue of, is this fairer than the previous system. Also, I am afraid, he did not offer any explanation as to why he assumes a new partner is either more likely to pay than an absent one or might indeed have a higher income than the absent biological parent. It is pure conjecture. In my view, the end result is that a student's ability to go to university might well be compromised by these new proposals. Senator Ferguson, I thank her for her support and Deputy Pitman and Deputy Southern as well. Deputy Martin asked the question that income support requires total disclosure, why not with education. I will come back to that in a minute when I address the comments of Senator Le Gresley. She also raised the issue that a new partner may well have children of his or her own. Are they expected to pay for their own children and someone else's? I think the new proposed system is quite unfair and probably the present system is not fair and not good: the new one is worse. Deputy Tadier suggested that perhaps we should look at the U.K. loan system. I am not sure I agree with him on that, because starting out in life, earning a wage with that amount of debt around one's neck, I am not sure is a good thing. I wonder whether some of these people will ever be able to pay back the loans that they have. The Constable of St. Martin, I thank him for his contribution. I do wonder if he slightly confused himself, because he relies on an absent parent offering to give support. I have to ask him, is a new partner any more likely to offer? I somehow doubt it. Changing one unfair system for an even more unfair one really, to me, does not make sense. To some extent the comments I make there apply equally to the Minister for Housing, Deputy Green. Deputy Green has suggested we should follow the new proposals because they are used elsewhere. My understanding is they are not working terribly well elsewhere either. What is the point of moving from one system that does not work to another system that does not work? I think my good friend Deputy Le Hérissier fell into a similar trap. It is too difficult to trace the absent parent, so let us grab whoever is standing nearest and we will have them. I suggest that it might be more difficult to get money out of a new partner, even though, obviously, the partner will have a greater idea of where he or she is. It does not mean to say that his or her assets are any greater than the absent parents or that they are even willing. We have heard much about how the problem is that the absent biological parent is unwilling to pay. I would suggest that the current new partner is going to be even less willing to pay. So, I really do not see progress being made here. I do not think the department is going to be saving money. I think it is going to be costing more. I said I would get to Senator Le Gresley. He made reference to what was assessed in determining income support. He will no doubt be disappointed to hear I believe that the previous welfare system worked better. **[Laughter]** You will excuse me if I am not persuaded by his argument. He spoke of the Children (Jersey) Law 2002 not applying to children of university age, whereby a student or a parent can access the information relating to the absent parent's assets and that. Of course, that may be true, but people do not decide to go to university on the spur of the moment. These are plans made well in advance. I do not see any reason why a student or the parent that the student is living with could not apply to get this information while they are still within time to do so. Finally, the Minister for Treasury and Resources made comment about the fact, not so much on the issue of fairness or

otherwise or the likelihood of it even working better than the present system, but purely on financial issues, that this will save the Island money. As I said a few moments ago, I do not think it will. You may know where the new partner is, whereas you may not know where the absent parent is, but I think the chances of getting money out of the new partner are going to be less than getting money out of the biological parent. I think Senator Ferguson hit the nail on the head, because what I am seeking is that parents take responsibility for their children, where families have split up, the absent parent should not be able to avoid his or her income being taken into account. If that requires a change in the law, whatever law, surely that is something the Minister should be pursuing. I believe it is immoral and unfair to expect a stranger to pay for somebody else's child's education. I certainly would not be too excited if, having moved in with a new partner I found that I was expected to pay for the education of that person's child. I would most probably refuse to do so. Then what happens? The child does not go to university. Judging by the comments that I am hearing from the Minister for Education, Sport and Culture, which is not necessarily... what is the difference between that and the biological parent refusing. Nothing, as far as I can see. As I have said, what the Minister should be doing is seeking to tweak the present system. Because, in my view, replacing a system which I agree is unfair ... Members may be saying: "Why retain an unfair system?" The reason I am asking Members to agree to do that is because the proposal is even worse. It is the cleanest dirty shirt syndrome. Neither system is perfect, but the one we have at the moment is better than the one that is proposed. The one that we have at the moment needs tweaking, I do not deny that. I am not saying it is perfect. Of course it is not. But, starting up with a new one which, in my view, will have greater problems ... I do not believe there are financial savings to be made. I believe it is quite unfair, morally unacceptable and is going to lead to tears and probably going to lead to students ending up not going to university. There I make the proposition.

**The Bailiff:**

Very well. Is the appel called for? The appel is called for then in relation to the proposition of Deputy Baudains. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 10</b>	<b>CONTRE: 34</b>	<b>ABSTAIN: 0</b>
Senator A. Breckon	Senator P.F. Routier	
Senator S.C. Ferguson	Senator P.F.C. Ozouf	
Connétable of Grouville	Senator A.J.H. Maclean	
Connétable of St. John	Senator F. du H. Le Gresley	
Deputy J.A. Martin (H)	Senator I.J. Gorst	
Deputy G.P. Southern (H)	Senator P.M. Bailhache	
Deputy S. Pitman (H)	Connétable of St. Helier	
Deputy T.M. Pitman (H)	Connétable of Trinity	
Deputy M.R. Higgins (H)	Connétable of St. Clement	
Deputy G.C.L. Baudains (C)	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 R.C. Duhamel (S)	
	Deputy R.G. Le Hérisier (S)	
	Deputy of St. Ouen	
	Deputy J.A. Hilton (H)	
	Deputy of Trinity	
	Deputy S.S.P.A. Power (B)	
	Deputy K.C. Lewis (S)	

	Deputy M. Tadier (B)		
	Deputy E.J. Noel (L)		
	Deputy A.K.F. Green (H)		
	Deputy J.M. Maçon (S)		
	Deputy of St. John		
	Deputy J.P.G. Baker (H)		
	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 Bailiff:**

Very well. That completes Public Business. We now come to arrangements of business for future meetings. I invite the Chairman of P.P.C. to speak.

**ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

**12. The Connétable of St. Helier (Chairman, Privileges and Procedures Committee):**

The arrangement for Public Business is set out under M on the Consolidated Order Paper with the addition of P.8/2013, which was added to 19th March in error, and P.135, which was deferred from today by the Minister for Health and Social Services. Deputy Martin has asked to defer the Police Station Relocation: review of decision, P.92, until 5th March.

**The Bailiff:**

Very well. Does any Member wish to say anything in relation to future business?

**12.1 Deputy R.G. Le Hérissier:**

What is the reason for the deferral of the Police Station proposition?

**12.2 Deputy J.A. Martin:**

Yes, because there is only me and I have transcripts of 2 reports. The second report is not even finished. Judging by some comments made this morning, they will have to bring back some people from Home Affairs. So we are cutting it to the wire and 2 weeks, I think, is quite lenient to be putting this debate back. Yes, that is why I have asked for this to be deferred.

**The Bailiff:**

Very well. Does the Assembly agree to approve the business for 19th February, therefore, which is not with P.92. It is the other matters shown, plus P.8 and P.135 with P.92 moving to 5th March. That is agreed. Very well. That concludes the Assembly's business. We will reconvene on 19th February.

**ADJOURNMENT**

[16:15]