

# STATES OF JERSEY

## OFFICIAL REPORT

FRIDAY, 11th SEPTEMBER 2009

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

### **PUBLIC BUSINESS – resumption**

#### **1. Custody Visitor Scheme (P.122/2009)**

##### **The Greffier of the States (in the Chair):**

Very well, the Assembly continues with Public Business. The next item is the Custody Visitor Scheme in the name of the Deputy of St. Martin. Minister, you have given me notice you do not wish to proceed with your amendment to this.

##### **Deputy F.J. Hill of St. Martin:**

That is right.

##### **The Greffier of the States (in the Chair):**

Very well; the amendment is withdrawn and I will ask the Greffier to read the proposition.

##### **The Assistant Greffier of the States:**

The States are asked to decide whether they are of opinion to agree that an independent Custody Visitor Scheme should be established in Jersey, to enable Custody Visitors to inspect the manner in which persons are detained in police custody and to request the Minister for Home Affairs to take the necessary steps to establish a scheme and appoint the Custody Visitors no later than 1st February 2010.

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

Following the Brixton riots in 1981, Lord Scarman conducted a review in which he made a number of recommendations about reforming the law, community relations and policing practices to help tackle the central problems which had caused the civil disorders. As part of these recommendations, Lord Scarman proposed a system whereby members of the public from local communities could inspect the way in which the policed were detained in police stations. One of the major concerns expressed to Lord Scarman was the way people were treated, not only at the time of their arrest but when they were being detained in police custody. I will not relay the many concerns but, clearly, they were sufficient for Lord Scarman to recommend that an independent lay visiting scheme be introduced, which would make the police more accountable for their actions, particularly when dealing with people in police custody. From that one small acorn, planted in Brixton Police Station, a mighty oak tree has now grown whereby, throughout the U.K. (United Kingdom), independent custody visiting schemes are now operating with the one exception, that being in Jersey. The Custody Visitor Scheme is quite a simple one. Responsible members of the public are appointed to make unannounced visits to police stations to ensure that police are providing the service that is expected of them. Experience has shown that the scheme has helped in the management of police performance by pointing out problems that may have occurred, which could have implications on policy, training, communications or just the daily running of the custody section at a police station. Very importantly, the scheme helps to ensure people in custody are getting the right standard of care. The scheme has increased the public's confidence in the police, as it demonstrates that the police are open to independent, outside scrutiny. The Custody Visitors Scheme works in pairs. They turn up, unannounced, to the police station, are taken to the custody area and are allowed to speak to people detained in cells. They do so in sight, but out of hearing, of police officers. There is no requirement for a detainee to speak to the visitor. Special care is taken to ensure that the safety of visitors is always to the fore, however there is very little record of anyone being attacked or endangered. Custody visitors are escorted by a custody sergeant, an officer, at all times during the visit. The officer will offer every detainee, being detained, the opportunity to speak to the custody visitors. The officer will explain the custody visitors' role to the detainees, emphasising their independence from the police. At the conclusion of the visit, the visitors complete a custody visiting report, an example of which Members will have seen at the back of my proposition. The independent custody visitors are members of the local

community aged 18 years or over and there is no upper age limit. Members are unpaid and they do not require formal qualifications. Very importantly, and to avoid any potential conflicts of interest and maintain impartiality, they should not be part of the criminal justice system. Suitable applicants are normally invited to attend an interview and, following appointment, the visitor will receive training. A national independent Custody Visiting Association has now been formed and has formalised a training programme. A full day's training is normal practice, which includes instructions on the codes of practice, the relevant parts of the statutory legislation in the criminal justice system, such as the Police and Criminal Evidence Bill, known as P.A.C.E., and related codes of practice, particularly Code C, the Police Complaints Law and the Jersey Human Rights Law or the Human Rights Law as it is in the U.K. Both Jersey laws have been adopted from the U.K. legislation and, indeed, the 1984 Police and Criminal Evidence Bill was one of Scarman's recommendations. Lay visiting, or Custody Visitor Schemes, are not alien to Jersey. There is a Board of Visitors to the prison, which is regulated by the 1957 Prison Board Visitors Regulations. As a result of the recommendation from the recent Williamson review, arrangements are now in hand to establish a board of visitors to the Greenfields Centre and members of both schemes are unpaid and the administration costs are minimal because they are recovered in-house. I am pleased that my proposition is being supported by the Home Affairs Minister, who told me that the scheme would be welcomed by his Police Chief Officer. I would have been most surprised if the Chief Officer had a negative view, because we both realise how important it is, that is the scheme, and of course its value, to the principles of openness and accountability. I have personal experience of processing people in custody and can assure Members that the scheme safeguards those who are doing their job to the best of their ability and only those who fail, or abuse their authority, have anything to fear. The manpower and financial implications are minor and should not greatly impact on the States' finances. I believe the scheme could operate with a panel consisting of 8 to 10 people. A co-ordinator and trainer would need to be appointed from within the group. I am aware that the scheme will require people to give freely of their time, but I am of the belief there will be no shortage of public spirited people to volunteer, and I believe it will be an ideal opportunity for members of our minority communities, such as the Polish and Portuguese connections, or those with those connections, to participate. There will be an initial start-up cost but certainly would not be more than £5,000. This should cover advertising, printing, training and affiliation fees to the Independent Custody Visiting Association. Once the scheme has been established, its annual cost will not exceed £5,000. These estimates are based on the costs incurred by Guernsey. I should also add that, while on holiday in Suffolk last month, I took the opportunity of meeting members of the Police Authority and the custody visitors, who arranged for me to visit the Ipswich Police Station, where I was able to speak and visit with people in the custody area and I was informed that our £5,000 would be well within the budget, so it possibly will not cost £5,000 a year. It will be for the Minister to arrange for the collation of the visiting reports and ensure that any recommendations are addressed without delay. This should not be too onerous a task, because we only have one police station and visitors are unlikely to make more than one weekly visit. There will, of course, be ongoing costs but, because the scheme is run by volunteers, as I mentioned earlier, costs will be minimal. Once trained, visitors will be required to attend refresher courses however, as it is common for trainers to be trained locally to run the initial courses, the new members, of course, will be trained by those particular trainers. I believe it will be useful and, indeed, desirable for Jersey to be a member of the Independent Custody Visiting Association; membership is £500 per year. While visitors will be unpaid, there will be justifiable incidental expenses incurred, which they should reimburse for but, again, this is catered for within the estimated running costs and I believe the scheme can be managed in an efficient and cost effective way and will be a credit to the Island. The independent custody visitors scheme has proved to be invaluable in improving the trust and an understanding of the difficulties that sometimes are experienced both those in custody and the police. As mentioned previously, the scheme is supported by the Minister and his Police Chief Officer and Home Affairs will be able to fund it within the existing funds. Members will have noted that I asked for the scheme to be set up on 1st February this year, which give the Home

Affairs 5 months to do so. There will be sufficient time and I have spoken to the Home Affairs Minister, who we heard now is withdrawing his amendment and I am grateful. So I am also grateful to the *J.E.P (Jersey Evening Post)* for its report, on Saturday, about the proposed scheme. However, I would just like to correct one small part of a very good report. I have been a States Member for many years and the one thing one never says that: "I am certain that this proposition will go through." **[Laughter]** I am confident, I am hopeful, as always, but I am optimistic so, with that enthusiastic, optimistic tone, I make the proposition and answer any question that may come of me.

**The Greffier of the States (in the Chair):**

Is the proposition seconded? **[Seconded]**

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

I want to pay tribute to the Deputy of St. Martin for his work in this area. This is a small measure but, nevertheless, an important measure. He has done a great deal of work on it and it is because of that, and the fact that he has agreed to work in co-operation, I am very happy to work in co-operation with him in putting this into place, that in fact I withdrew my amendment which was seeking an additional 3 months. Home Affairs is under a lot of pressure, and particularly its Minister at the moment, for a variety of reasons which are known to Members. I am wholeheartedly supportive of this and I have set out 3 brief reasons in my report. First, it will assist the police by helping to ensure that they are providing the service that is expected of them. Secondly, it will help to ensure people in custody are getting the right standard of care and, thirdly, it will increase the public's confidence in the police, as it demonstrates that they are open to independent, outside scrutiny. I think the latter is quite an important issue. By the very nature of their work, much of what the police do has to be confidential and, at times, secretive and properly so, but in matters like this, to have members of the public going in and checking that part of the system is working properly can only be healthy, both from the public's point of view and also from the viewpoint of individual officers, who can say that they are accountable, perhaps in a gentle way through the scheme, but nevertheless so. I want to make one or 2 minor comments. We do have problems and we will continue to have problems at Police Headquarters, in our custody area, by reason of accommodation failures and those will not be solved. I am afraid, reports will come back early, from the scheme, to say that there are issues there. I am well aware of those issues. Unfortunately, the proposals for building a new police headquarters have been delayed for a very long time. We are now actively going ahead with those and there is money available and a site, whether that is the right site or not I know not. But we will not get things perfectly right until we get that. The second point I need to just correct, very gently of course, is that the Deputy of St. Martin referred to the Police Chief as being in favour of this. Of course I do not know the view of the Police Chief; it is the Acting Police Chief. That is a correction I always have to make for obvious reasons. There are some details which have become already clearer than they were in my report. For instance, it is clear that Home Affairs Department will need to do the administration aspects of this, so that this is seen to be independent from the police force. The one concern that I have in relation to this - I hope it will not be fulfilled - is are we going to get the people. I sincerely hope we are. We are having difficulties in getting people to work on things such as the Police Complaints Authority but, nevertheless, I am hopeful that there will be publicly spirited people who will be willing to come in and perform this useful service and, therefore, I support this proposition.

**1.1.2 Deputy P.V.F. Le Claire of St. Helier:**

I support the proposition. I do not have any experience of processing prisoners, although I do have experience of being processed **[Laughter]** as an arrested member of the public. I remember arriving in front of the custody desk not feeling very well, bleeding from the head and asking to see a doctor, request refused, asking to see a lawyer, request refused and put in a cell for over 45 minutes on my own, and I would be treated exactly the same way as the rest of the public, even though I was a Senator, I was told. I found that that was rather enlightening because I thought it

was rather worrying that the rest of the public would be treated in that way. I then contemplated whether or not I should make a complaint about that to the Police Complaints Commission and thought, as most people do in these instances, you are just inviting trouble for yourself to do that and also, in saying this, this morning, I have also been cautioned about whether or not I need to, because this proposition is going to go through and whether or not I am just causing trouble. I do not have any problem with the police at all. I accept that they sometimes make mistakes, as I have made mistakes, and we all have to live up to those mistakes. Sometimes you regret things that you have done and sometimes you face the consequences. It was right, perhaps, for me to mention this today, but I do not want it to go without being said that the reason for saying this is not because I have some grudge about the police, but to say that those 24 hours reduced my confidence in the police and perhaps, in those 24 hours, the public had a reduced confidence in me for being there in the first place; quite rightly so. So, let us all put our hands up. But the reason why I am saying this is because I do think things have progressed. I do think there is a more professional approach with the new Home Affairs Minister. I have every confidence in the States of Jersey Police and the Acting Chief of Police. I will not comment upon the Chief of Police, but I would say that one of the reasons why I have stood to my feet to say this is not to highlight my particular instance, but to ask the Deputy of St. Martin, how does he feel that this system will work, when the vast majority of people are introduced into police custody in the evening time, over the weekends, probably between Friday and Saturday, for the most part, after 9.00 p.m. Does he envisage that the work of this independent body will be taking action at that time, when there are people in those cells that have had too much to drink and there are issues about safety? Because there are 2 sides to that; they do need to go in at that time and see that the custody issues are being handled correctly, for the protection of the police as well as the protection of the individuals, but we also need to be aware that if they are going to go in at that time, they are going to be in that situation where, really, trained police officers find it quite challenging on their own, with no assistance, to handle those drunken individuals and we have had, as we have noticed in the media recently, a staggering rise in the amount of violent crime in this Island, alcohol related violent crime and I think that we do need to address that, but we also need to focus on the fact that that is the vast majority of the reasons and we do not have to tell the Deputy of St. Martin to suck eggs. I am also going to say, once again for the avoidance of doubt, I have confidence in the police, I do hope that they get their new police headquarters sooner rather than later, because I do know what its like to be put into a cell with an illegal immigrant, when there is nowhere to sit and you are in there for 2 hours and you are forced to sleep on the floor or lie on the floor, because you do not know when you are coming out and you cannot stand indefinitely in a small room. So that is just not acceptable. So, congratulations to the Deputy of St. Martin. I do not want to upset people by saying what I have said, but it is my experience.

### **1.1.3 Deputy T.M. Pitman of St. Helier:**

I follow on from Deputy Le Claire and he raises some very good points. Like him, I really congratulate the Deputy of St. Martin for bringing this and I am very pleased to see that the Home Affairs Minister is supporting it. Having just sat on the panel that reviewed the Prison Visitors Board, I have to say this is only a positive thing. It protects both sides. I really hope there will not be any objections, but I cannot imagine there will within the House, but I hope the police are fully supportive of it throughout their ranks. As Deputy Le Claire said, it is very important to acknowledge when we get things wrong, make mistakes, as we all do, and I would end by saying that yesterday, on that note, I made a mistake. I had raised the issue of, what I felt was, the disrespectful treatment of the Deputy of St. Mary and Deputy Tadier and I have noted the term “harangue” on my pad. I used that in the excitement of the debate on reform, relating to a journalist who had grilled me for questions. That was entirely wrong and I would like to apologise to that journalist, Gillian Martindale, because she is a very good journalist so, sorry.

### **1.1.4 Deputy J.A. Martin of St. Helier:**

I will be brief. It was the point that the Home Affairs Minister made about getting volunteers to do this job. I would like to put in a plea that where it says: "independent custody visitors are members of the local community aged over 18 years", it is my experience that a lot of these prison visiting boards and everything else are people over the age of 60 or 70, which may be the only people who are doing it, but I do not think that Education, I do not think Social Security and people who are actively seeking work and Highlands and people like that are going to the people that might be interested, if explained exactly what this is. Because of the youth we do have in custody at the moment, not many of them would thank you for some old boy or me, my age, going in to see them; they really would not associate with that, but a clued-up 22 or 23 year-old would be very appreciated. So, I appreciate where the Home Affairs Minister is coming from, but I do think, for all these positions, we keep seem to be looking in the same old pool, and I do not mean that as age, but the pool of people **[Approbation]** and I really think we ought to be getting out there into our youth and where they are, as I say, Social Security, people who are actively seeking work, very intelligent people, they may want to do this voluntarily. So that is a plea that I would put to the Home Affairs Minister, that he works very closely to get the message out there that these people can be as young ... Obviously 18 is maybe possibly too young, but early twenties would be very appreciated.

**Mr. W.J. Bailhache Q.C., H.M. Attorney General:**

Speaking in the context of giving legal advice I have waited to take my turn, but I am ready to go now if you wish. The Attorney, as you know, is titular head of the Honorary Police, which is why I wish to ... just a couple of words on this proposition, which has my support. It seems a very sensible proposition. The Honorary Police involvement is this; persons who are arrested by the police and taken into police custody are sometimes questioned and released, sometimes questioned and then charged. The Centenier will come down to Police Headquarters, he is not wearing a police uniform, he is quite obviously a member of the public and those Members who have been Centeniers in the past will know that the Centenier routinely asks questions of the person who is about to be charged, as to whether they have been treated properly. This is something which Centeniers do and which, as I understand it from the Centeniers who talked to me, it is very much appreciated even by those who are being charged, because they recognise that this is not a policeman who is coming to speak to them, he is a Centenier who is charging them and is a member of the public and is in that "middle-ground", if I can put it that way, between policemen and a member of the public. So, 2 things come from that. The first is that the Centenier's involvement, of course, is only at the time of charge and it is not wide enough to cover the questions about how the person has been detained when they are not charged, and therefore it is right to support the scheme. Secondly, to give me an opportunity just to plug the merits of the Honorary Police, which I try and do, in this Assembly, as often as I possibly can but, thirdly, to make the positive suggestion, to the Minister, that when the panel is appointed, it probably would be very wise for it to be asked to liaise with the Comité des Chefs to ensure that there is that regular dealing, that their paths will cross from time to time and it is right there should be a liaison between them.

**1.1.5 Deputy J.B. Fox of St. Helier:**

I support this proposition. I think, at some stage in the future, it will probably be brought to be considered to be expanded to widen the scope of visitors to Greenfields and the prison, especially if you have a ready supply of people that are trained and are appropriate to do the duties. Initially, I think there will be some anxiety, from potential independent visitors, about the role that is being asked of them and I think this is where the importance is to find somebody that may be well-known to the public - it happens in other spheres like hospice and Samaritans - that can give the reassurance and people can come and talk to them, in an independent place, to gauge what is required, what has been asked of them and I think that, in that way, that you will get the volunteers come forward and not necessarily just the older people although, principally, there are lots of

people that retire around 50 that do have time on their hands, they have experience of life in many fields. So, I welcome it. As a retired police officer, obviously I cannot speak for the current police officers, but from the time when I was in the force, they would welcome such an independent ... and, especially looking at the conditions that the Home Affairs Minister has talked about, they have not changed much since I was a young policeman 30 years ago. I think it has some ... but it still does not have proper facilities, et cetera, and if it is either very hot or very cold, they try their best to alleviate it and, of course, in a confined space with sometimes the best and sometimes the worst of society, it can be very, very annoying to the other prisoners if someone is screaming and shouting or smells or whatever, and I do not intend to go into it too much, but I do welcome this. I think there is a lot of merit to it and I think the police officers, too, will see it as a positive.

#### **1.1.6 Deputy P.J. Rondel of St. John:**

Probably most Members know I was a Centenier for many, many years and have had the unfortunate job of locking up many hundreds of people, when I was a Centenier in St. Helier, for various offences and, at times, I did have one or 2 concerns at the way one or 2 of the prisoners had been treated and they did raise it with me. That being the case, I was more than happy this morning to second this proposition but Deputy Le Claire did so, because I think that this is the right way forward and I must take my hat off to the Deputy of St. Martin for all the work he has done on this particular report and proposition and, obviously given his background as a former custody sergeant, it is good to see that later on in life we can make a difference. Once we have finished one career and we move on to another, it is good to see that we have not forgotten our roots and these things can make a difference and with those few words, I am going to sit down because, in fact, I am going to the Royal Court, to see one of my Centeniers being sworn in, for a couple of minutes, if I may and, therefore, I will sit down.

#### **1.1.7 The Very Reverend R.F. Key, B.A., The Dean of Jersey:**

I want to say, of course, this has my total support. It seems to me that it is well worth the possibility that the occasional visit might be at a time that some folks might judge inconvenient but then justice is like that and a bit of inconvenience is well worth not only justice being done but, of course, being seen to be done. The more we can do to build a confidence in all those who administer the justice system, from the top to the bottom, from the judges to the lowliest and newest probationary police constable, then the better our society functions and the more confidence we have in one another. I did want to say something, following on from Deputy Martin's excellent intervention, which is about culture and community. We just returned from a couple of weeks in France and, a few days ago, about 5.00 p.m., sitting in the decked area of the waterfront tabac in Finistère, sipping my well-deserved Leffe blonde beer, I was struck by the people around us. There was a table just to my left where folks 20 years older than my wife and I were sitting, there was a table just to the right, where bright young things of 20 to 22 were putting the world to rights and there was Daphne and I in our mid-fifties in the middle. It was not that there was, as it were, a golden oldies pub, a middle aged pub and a youth pub, there was a culture that enabled and encouraged people, both to work and to relax in proximity with one another and it seems to me, therefore, that if we can build a panel of visitors where, whether the person in custody is somebody who has been in and out of care all their lives and perhaps reached their own 60s or 70s with an alcohol problem, or whether it is someone whose youth and immaturity has shown in the way they have behaved on a Friday night, that the pair of visitors might be a bright young 22 year-old and a sprightly retired person, therefore demonstrating that this Island seeks to build one community rather than many small sub-communities [**Approbation**] then it seems to me that this may well help us far beyond the particular issue that I congratulate the Deputy of St. Martin for addressing.

#### **1.1.8 Connétable D.W. Mezbourian of St. Lawrence:**

I arise, really, to echo the words of previous speakers while adding just a couple of my own thoughts. I must congratulate the Deputy of St. Martin on bringing this proposition. It shows the tenacity that he has, as a States Member. We read in his report that he had discussed this with the



former Home Affairs Minister but, of course, during our questioning of her on the Education and Home Affairs Scrutiny Panel, we became aware that she did not support the scheme before the introduction of a police authority and we know, of course, that that is still some way in the future. I must also congratulate the new Home Affairs Minister on his totally different approach to many of the issues for which he now has responsibility [**Approbation**] and, of course, the other point that I want to make, apart from echoing the plea that we have custody visitors of varying ages, nationalities and experience, is to remind people that, although they may be called out at unsociable hours, of course the many Centeniers who are called to the police headquarters, over the weekend, are also giving of their time and are called out, too, at unsociable hours. I will, of course, be supporting this and I hope other Members will also do so.

#### **1.1.9 Deputy M. Tadier of St. Brelade:**

I was pleased to hear the words of the Dean, who recognises the need to have a diverse board, be it of 22 year-olds or 70 year-olds, and I would just make this simple point in that I would hope that the Home Affairs Minister takes the same principle on board for the Board of Visitors. Members will be aware, as will the public, that the Board of Visitors report, recently carried out and completed by the Education and Home Affairs Scrutiny Panel, suggested that we open up the Board of Visitors, so it does not simply consist of jurats but that we also allow other members of the public to join [**Approbation**], even sprightly 22 year-olds and I do not think that there are many sprightly 22 year-old jurats, although there are certainly many sprightly jurats around.

#### **The Greffier of the States (in the Chair):**

I call on the Deputy of St. Martin to reply.

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

Can I thank all the Members who have spoken. It is an unusual issue to get so many people speaking for and no one against and it does not happen very often but, again, I am grateful for the support. Just to give some of the answers that are required to the questions that have been asked for the Home Affairs Minister, I think the Constable of St. Lawrence was quite right to congratulate him on his different approach, because I remember speaking to the Minister when he took office and I said that no doubt our paths will cross because I do have a keen interest in Home Affairs issues but, while I can have a keen interest, I can also have a keen interest in supporting as well as questioning and I think that is the role of all States Members. We should not take our personal issues there, but look at what the issues are rather than the personalities behind them so, again, I compliment him and I will correct my speech; I did say the Police Chief, it is indeed the Acting Police Chief but I know, certainly, that the actual Police Chief himself, the suspended Police Chief, would be 100 per cent behind this, because is the sort of thing that all policemen would want and that was echoed by Deputy Fox who is quite right that the only people who have anything to fear are those who cannot do their job properly and this scheme will ensure that the people that do stray from time to time are put right and I think that is the importance of this; it is seen to be someone keeping a watchful eye on proceedings, protecting the interests of the good policemen and the interests, personally, of those people who are in custody. Deputy Le Claire, I am grateful again for his support. He did ask how it worked. I did quite a lot in my speech but, basically, it is very important, I think, to know that people do work in pairs. If one goes on their own you cannot go into the police station on your own so what will happen, there will a rota put down and people will choose when they go as a pair and if one cannot go they will get back to the co-ordinator and say: "Look, I cannot keep that appointment we want to go", so someone else will go; if they cannot, the visit is aborted. Must be in pairs and that is so important and I think I can reassure Deputy Le Claire that it is a well-worked system. Most of the problems have been ironed out and, no doubt, there will be a few problems when we start out in Jersey and it may be because of lack of experience but, really, it is a try tester, the people will be trained and I could probably move on to Deputy Martin who raised the issue about the right type of people, in fact something picked up by the Dean and one or 2 other speakers, again, it is important we get a diverse group of people doing

it. I said I would like to see - this may be something very useful - people from a Polish and Portuguese background, but also we must try to get a spread of age, very important. At the same time one must remember - that is why it is important people work in pairs - ideally we would like to have someone maybe from a younger age group and someone from an older age group going as that pair, rather than having, as Deputy Martin said, maybe some rather aged people going in and speaking to young people who may not wish to communicate. I think the way it has worked in the past, there is no reason why it cannot work well here. Again, I thank Deputy Pitman for his contribution. The Attorney General was quite right to raise the issue about the Centeniers and the Centeniers would, naturally, speak to a prisoner as just a way: "Are things all right?" but it is very important to mention, the whole role of the scheme is that the visitors are independent of the police, independent of both the Honorary and the States Police. Their role is to go to see that the maintenance, et cetera, in the police station is right and they will then report to the Minister if there are any concerns. But I am grateful for the support the Attorney General is giving to it and, I am sure, the Honorary Police, as well, will support it. Deputy Fox is quite right to mention about the problems he had when he was in custody at the police station but, again, he said the police officers do welcome it and the Deputy of St. John has again said it will make a difference, it is a plus and, again, the support is from him as well. The Dean mentioned about some inconvenient times, et cetera. Again, the choosing of visiting the police station is down to the visitors. That is the whole purpose of the scheme. They go unannounced, but can I assure Members that - I think someone did raise the issue will they be in the way - there is a working partnership. In May, when I went to Canterbury, I made a visit there and, again, when I was on holiday, last month, I went to Suffolk and, again, there is this relationship; it is a good working relationship. The important word is trust. There is a trust between the scheme, the visitors and a trust between the police and a trust between the police and the detainees, so I think that is very important. I think I have covered everything else here except Deputy Tadier, who chaired the Prison Board review. No doubt he is going for diverse membership there at the prison as, indeed, I am looking for a diverse scheme here. I just congratulate and thank the Minister for his support. I have given him my assurance I will give him all my assistance to get this off the ground and what I would like to do, if we can get the support today, get that impetus going and who knows that within 5 months we can get the scheme up and running. Therefore, I ask for the appel, thank you.

**The Greffier of the States (in the Chair):**

The Appel is for the proposition of the Deputy of St. Martin. Members are in their designated seats. The Greffier will open the voting.

<b>POUR: 41</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator S. Syvret				
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Helier				
Connétable of Grouville				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				

Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérissier (S)				
Deputy J.B. Fox (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

## **2. Law Society Disciplinary Panel: appointment of lay member (P.124/2009)**

### **The Greffier of the States (in the Chair):**

We come to the proposition of the Chief Minister relating to the membership of the Law Society Disciplinary Panel and I ask the Greffier to read the proposition.

### **The Assistant Greffier of the States:**

The States are asked to decide whether they are of opinion to appoint, in accordance with the provisions of Article 18(2) of the Law Society of Jersey Law 2005, Mrs. Margaret Anne Rondel as a lay member of the Law Society Disciplinary Panel for a period of 5 years.

### **2.1 Senator T.A. Le Sueur (The Chief Minister):**

The Law Society Disciplinary Panel is there in the event that a complaint is lodged against a member of the profession and the panel itself is made up of a mixture of people who are both lay people and lawyers, with the balance being in favour of lay people so, as the report says, there are up to 7 lay members and 4 members of the legal profession, a quorum being 2 of the lay members and one of the professionals. I am grateful for the services of Captain Nibbs as a lay member of this panel but, unfortunately, he had to resign due to ill health. We, therefore, did advertise openly for a replacement and I am pleased to say that of the respondents Mrs. Margaret Rondel has been nominated. Her C.V. (curriculum vitae) is attached to the report. I believe she will make a worthwhile addition to the lay members of this panel and I have pleasure in proposing her appointment.

### **The Greffier of the States (in the Chair):**

Is the appointment seconded? [**Seconded**]

### **2.1.1 Deputy R.G. Le Hérissier of St. Saviour:**

I would like to commend Captain Nibbs for the work he has done. I know he was very enthusiastic. I wonder if the Chief Minister - slightly off the point - could tell us how often has the Disciplinary Committee met and does he have some kind of analysis of its findings? It is a very important body.

It brings a lay element - which I think we could strengthen, but that is perhaps for another day - into what is sometimes seen as a secret and closed society and I wonder if he could answer.

**2.1.2 Senator T.A. Le Sueur:**

It is a panel which is there and hopefully does not have to meet very often. The legal profession itself sets high standards and it is very rare that those standards are transgressed and so, while this body has been set up since 2005, I have to say they have not met very often so far. To my knowledge it has not met in recent years but, certainly, if it has it has been quite infrequent. That is, perhaps, an indication of how well regulated, themselves, the Law Society and the legal profession is. Nonetheless, this panel is necessary and I am pleased to be able to have continuing volunteers able and willing to serve on the panel. I maintain the proposition for the standing vote.

**Deputy R.G. Le Hérissier:**

I did ask because I happened ... when he was in the company of the Constable of St. Clement, I happened to meet the departing lay member and he did tell me of the interesting work he was doing. So, either he was under some self-delusion or ... If, at a later point, the ministry could give the figures.

**Senator T.A. Le Sueur:**

I will undertake to do so, yes.

**The Greffier of the States (in the Chair):**

Very well, I put the proposition. Those Members in favour of adopting kindly show and against. The proposition is adopted.

**3. Public Employees Contributory Retirement Scheme Committee of Management (P.125/2009)**

**The Greffier of the States (in the Chair):**

We come now to a further proposition of the Chief Minister relating to the membership of the Public Employees Contributory Retirement Scheme. I ask the Greffier to read the proposition.

**The Assistant Greffier of the States:**

The States are asked to decide whether they are of opinion to approve, in accordance with Regulation 3(5) of the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989, the appointment of Ms. Barbara Ward and Mr. Mark Johnson as employee representatives on the Committee of Management, for the period ending 31st December 2009, in place of Mr. William McPhee and Mr. Francis Greene.

**The Greffier of the States (in the Chair):**

In the interests of transparency, I would notify Members I am a member of the scheme.

**3.1 Senator T.A. Le Sueur (The Chief Minister):**

The Public Employees Contributory Scheme Committee's management is comprised of representatives of employers and employees. Of those representing the employees, 2 members of the committee management have now retired and that is Mr. William McPhee and Mr. Francis Greene. The appointment of successors to them really is based on the wishes of the employees themselves and those employees, themselves, have nominated and I am pleased to put forward the nomination, the names of Ms. Barbara Ward and Mr. Mark Johnson to replace the 2 retiring members for a period of office which will expire, in fact, quite shortly. The C.V.s of the 2 new incoming people are shown briefly there and I am pleased to propose their nomination.

**The Greffier of the States (in the Chair):**

Is the nomination seconded? **[Seconded]**

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

I know this is a formality and I know most of us except, I remember for a long period, Deputy Le Claire who was on the panel, consign this to the “too difficult” or “too boring to understand category” but we do know that pension schemes are meeting enormously troubled times at the moment and that the only thing that disguises the problem, in the public sector, is that we apparently have this bottomless pit provided by somebody called the taxpayer. I wonder if the Chief Minister could comment - and I do try and read the report with difficulty - that the scheme is totally up to speed in regard to the enormity of the problems which it is facing and that he has confidence, not in the individuals who clearly are doing an excellent job, but he has confidence that we are dealing with the problems that are, quite frankly, piling up.

### **3.1.2 Senator T.A. Le Sueur:**

Slightly off the proposition but, nonetheless, I am happy to reassure the Deputy and, more importantly, reassure the public about the financial stability of the Public Employees Contributory Retirement Scheme. It was some years ago that the terms of the scheme were amended, much in the way that the U.K. Government is now thinking of amending the U.K. operation, in a way which limits the contribution payable by the employer. That means, in fact, that the taxpayers’ obligations and the taxpayers’ commitment to this scheme is, in fact, limited and, to that extent, I have absolute confidence in the scheme. It means that, although there will be problems going forward, as with any such pension scheme, those problems have to be resolved by the members of the scheme themselves and not by the taxpayer. So, with those reassuring words, I would add that I am also in discussion with the chairman of the committee management as to how the committee can be strengthened and improved in its work, recognising the problems that are facing pension schemes here and elsewhere and I have every confidence in the chairman and that committee to take those matters forward. Meanwhile, this proposition is simply to replace 2 members for a period of a few more months and I maintain the proposition.

### **The Greffier of the States (in the Chair):**

I put the proposition. Those members in favour of adopting it, kindly show. Those against. The proposition is adopted.

## **4. Jersey Law Commission: re-appointment of Chairman and Commissioner (P.127/2009)**

### **The Greffier of the States (in the Chair):**

We come to a further appointment, the Chairman and Commissioner of the Jersey Law Commission. I will ask the Greffier to read the proposition.

### **The Assistant Greffier of the States:**

The States are asked to decide whether they are of opinion to refer to the Act, dated 30th July 1996, in which they approved the establishment of a Jersey Law Commission and to reappoint Mr. David Lyons as Chairman and Advocate Kerry Joy Lawrence as Commissioner for a period of 5 years.

### **4.1 Senator T.A. Le Sueur (The Chief Minister):**

We are fortunate in Jersey to have members of the legal profession prepared to give up a substantial portion of their time analysing some weird and complex legal issues. That commission has been in operation for some time now and I am pleased to say that the current chairman, Mr. David Lyons, and one of the commissioners, Advocate Lawrence, are both prepared to serve for a further term. I point out that the budget for the Law Commission is relatively small but, even with that relatively small budget, the members always live well within their budget and, indeed, have usually considerable under-spends because a lot of the work is done voluntarily by them and their firms. So I pay tribute to those firms who support the Law Commission, I pay tribute to the members of that Law Commission and I particularly pay tribute to the 2 people that I now nominate for re-appointment.

**The Greffier of the States (in the Chair):**

Is the proposition seconded? [**Seconded**]

**4.1.1 The Deputy of St. John:**

I just look at the term, it is for 5 years and then looking at the date of birth of one of the proposed holders, it would take him well over 70 and I just wonder if a 5-year term is the right period of time, given people's ages.

**4.1.2 Senator T.A. Le Sueur:**

Without going into particular personalities, I can reassure the Deputy of St. John that the proposed Chairman is a very sprightly 66 and I have no doubt that he has many more years of active life left in him and I am pleased, despite the attractions of retirement, is prepared to continue and put his name forward. I maintain the proposition.

**The Greffier of the States (in the Chair):**

I put the proposition. Those Members in favour of adopting it kindly show. Against. The proposition is adopted.

**5. Verita Investigation: extension to cover exclusion of Consultant Obstetrician and Gynaecologist (P.131/2009)**

**The Greffier of the States (in the Chair):**

We come, now to the proposition of the Deputy of St. Martin: Verita Investigation: extension to cover exclusion of consultant, obstetrician and gynaecologist. Deputy, it is a relatively long proposition. Are Members happy for it to be taken as read? It will save the Assembly's time and the Greffier's voice. Very well. I invite you to propose the proposition, Deputy.

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

Before I start, I will just alert Members that I will speaking for about 30 or 40 minutes. The issues I have to bring up are very complex and I think they need to be brought up. I am a bit concerned about the number of people not in the Chamber at the moment, because I feel that what I am delivering today is almost as if one is making an appeal before a jury who should listen to all the facts before reaching their verdict and it is a bit difficult here to be giving a speech, with very complex issues in, with a number of people who are not in the Chamber. However, I would ask that those people who are in the Chamber are listening attentively to what I have to say. Last week the media ran a number of interviews with a retiring police officer who had taken over the responsibility for historic child abuse inquiry. He spoke about the abuse of process and noble cause corruption and said there was no place for such practices in the Jersey of today. While I will not comment on what he had to say, I will agree with him 100 per cent that there is no place for noble cause corruption or abuse of process in Jersey. Unfortunately, such practices are still alive and kicking in Jersey and the reason why I believe this will become clear during the course of my speech. My proposition is to request the Minister for Health to instruct Verita to include, in their current investigation, the events relating to the exclusion or suspension of a consultant, obstetrician and gynaecologist in October 2006, almost 3 years ago. For the benefit of everyone, I will call him Dr. D. In my proposition I have laid out a number of areas which I would like to be included in the investigation however I will, from the outset, state that I believe that the suspension, the exclusion issues should already be part of the review because Verita's terms of reference is, and I quote: "Review the main actions taken by the Health and Social Services Department in response to the death of Mrs. Elizabeth Rourke, including its own interim internal investigation. This includes establishing whether or not there are significant omissions to the investigation and, if so, exploring them." So, one of the first main actions taken by the Health, in response to the Mrs. Rourke, was to terminate, with immediate effect, the contract of the locum consultant who performed the operation. For convenience I shall refer to that consultant as Dr. M. A few days later Health took another main action when it inexplicably suspended or excluded Dr. D who 3 years later, as I said,

is still suspended. In July 2006, the Health Department placed an advert in the *British Medical Journal* for a locum consultant in Obstetrics and Gynaecology to cover the duties of a consultant in the department who was going on leave. Dr. M applied and was appointed. Part of Dr. M's proposed duties was to perform operations similar to the one she later did carry out on 17th October. Dr. M had been on the General Medical Council's Specialist Registrar for Obstetrics and Gynaecology since 2003. This means she had demonstrated the relevant knowledge, experience, expertise and qualifications to hold consultants posts in this speciality. To be included on that register, she would have had to demonstrate competence in a wide range of operative procedures, including hysteroscopic. The operation went tragically wrong in Mrs. Rourke's case. I repeat, that while working in Jersey, Dr. M was contracted as a locum consultant, a fact Verita are clear about. But this is not what we are being told by Health. Unfortunately the Health Minister, in her written answer on Tuesday, misinformed Members about Dr. M's status. The Minister has, in turn, been misinformed by senior management at the hospital. The same misinformation about Dr. D's status has been relayed to the police, the coroner, the press and, presumably, the patient's family. Now, why the misinformation? Why do senior managers at Health want us to believe that Dr. M was a locum middle-grade doctor, as the Health Minister suggests, when, in fact, she had been working at the hospital, in the senior post of locum consultant, for 9 weeks before the fatal incident in October 2006. To give an example of Dr. M's qualifications I will use a football analogy. Dr. M was the equivalent of a premier league referee, although Health portrays her, more or less, as a ball boy. As we know there are assistant referees and fourth officials. Sometimes the referee is asked to take the flag and run the line or be the fourth official. Just because they act as a linesman, assistant referee or the fourth official does not mean that they lose their status. Their match needs a team of officials, as does the operating theatre. On 17th October, Dr. M was acting as a locum registrar, who took over the role of surgeon for the last 2 operations on the list. Following completion of her initial 2 week contract, Dr. M was offered another locum consultant contract to cover a different consultant's annual leave. In subsequently describing this event, the hospital's senior manager or human resources manager's records show that Dr. M had successfully completed her first term in office and one of Dr. D's consultant colleagues had directed the human resources that Dr. M was to be offered any available locum posts in his department at any grade. Dr. M was offered further contracts to cover further leave periods, which was to extend beyond 17th October. Presumably the reason why the contracts were renewed was that the hospital was satisfied with Dr. M's performance. On 17th October 2006, a hospital nurse, Mrs Elizabeth Rourke, died at the General Hospital while undergoing a minor operation, on her uterus, being performed by Dr. M. During Dr. M's 9 weeks at the hospital, I understand that she performed several similar operations. Indeed the fatal operation was the second of the 2 she performed that day. One of the main actions to take, in response to the death, was to terminate Dr. M's contract with immediate effect. In Tuesday's written answer, the Minister stated that Dr. M's contract was due to terminate on 19th October. What the Minister did not tell Members was Dr. M was due to cover the leave for other consultants under further locum contract posts up to 29th December 2006 and if the Minister does not want to believe me, I can show her the evidence. Dr. M's actions were investigated by the States Police, who later charged her with manslaughter. She was subsequently tried for that offence and acquitted on 29th January 2009. Now, the fact that it took so long for the Crown to bring the case to trial was extremely unhelpful to all concerned and we have not been told the reasons for the delay. Maybe some time, during the course of debate, the Attorney General may be able to tell us the reasons why it took so long for this case to come to court. As we know, a few days after Mrs. Rourke's death, Dr. D was also suspended. His actions in relation to Mrs. Rourke's death were also investigated by the police, along with the actions of others involved with Mrs. Rourke's care that day. However, this is important, no charges were brought against him or any of his other colleagues. Unlike some of his colleagues, Dr. D was not called to give evidence at the trial of Dr. M, either by the defence or the prosecution, a surprising circumstance which was questioned by the judge, Sir Richard Tucker. I conclude from this that neither the Crown nor the defence thought that their respective cases would be helped by allowing Dr. D to give evidence. As a result, we heard the defence

attempt to deflect blame from Dr. M on to Dr. D without giving an opportunity for Dr. D to give his testimony, explain his decisions, or describe his findings at the second operation, which he was involved with, that was the attempt to repair the damage caused by Dr. M. Nor was he able to defend himself against the attacks made on him by the defence. This circumstance, apart from being perplexing to the judge, jury and the public, seems extremely unfair to Dr. D and was not served the purpose of justice at any level. To date there has been no attempt to reinstate Dr. D who has still not received anything in writing to state why he is excluded. Members may recall that during question time on Tuesday, the Minister declined to give the reasons for Dr. D's exclusion in her written answer and, in an oral question time, declined to say yes or no whether Dr. D had been given reasons for exclusion; I can tell Members that he has not. Is it that the Minister does know that Dr. D has not been given reason or is it she does not want to own up to the truth? Apart from a single meeting with the Medical Director, I understand that Dr. D's concerns could not be dealt with. So how can the States Employment Board - and its chairman is not in the Chamber now - in its comments, claim that the exclusion process was handled appropriately by the Health management. I hope another member of the States Employment Board is going out to fetch the chairman of the States Employment Board, because I am just looking for the other members of the States Employment Board. I am glad that Senator Le Main is one of the 4, the only member of the States Employment Board in the Chamber at the present time. It has been mentioned that Dr. D has not been suspended but has been excluded. To a layman there appears to be little difference between exclusion and suspension because Dr. D is still on full pay and is allowed to continue to see his private patients. However, because as the hospital is the only location where the operations can be carried out and as Dr. D is denied access to the hospital facilities, he cannot operate on his private patients and, importantly, he cannot maintain his operative skills. This is prejudicial to his medical career and contrary to standard practice. It is a hindrance to his continual medical education. So Health is failing in their duty to ensure that Dr. D, or Mr. D, does not become de-skilled. The Royal Marsden Hospital would have been content for Dr. D to do some clinical attachment with them. This means he would have been able to have practiced those skills under their supervision, but the hospital managers refused to give permission. It has been claimed that Dr. D's exclusion is a neutral act, whereas a suspension is not. Members may recall the words "neutral act" being mentioned in other debates of late. I think Members are now wary about those words. How it can be a neutral in this case; being denied the right to work for almost 3 years on end is not a neutral act for anyone, nor was the damage to the reputation and self-esteem that the treatment causes. We have a situation here where someone is being presumed guilty and punished without a hearing. This bizarre position is still the case today, yet it is apparent that no one seems to care or accept responsibility for the situation where a distinguished consultant, who has been responsible for the care and safety of thousands of our residents, has seen his lifetime's achievements ruined. How can this be just? And we, the States, are ultimately responsible for the treatment of Dr. D. I will now give some detail about the procedural errors which have been made by the employer in handling Dr. D's case. As we know, the misinformation, that Dr. D had left some type of junior doctor in charge of the operation, was widely put around and no doubt the public still think this is the case. This, of course, is detrimental to Dr. D's professional reputation. Then there is the error of not giving Dr. D the reasons for suspension, in writing, initially or subsequently. The Health Minister's failure to answer my question as to the reason says it all; she does not know or she does not want to tell us the truth. I have researched the procedure which the Health Department should adopt before it excludes or suspends any medical practitioner. The procedure to be followed is to be found in a document produced by the States of Jersey Health and Social Services, called *The Policy for Handling of Concerns and Disciplinary Procedures Relating to Doctors and Dentists*. This is their own "bible", so to speak. It is clear, and one should remember - if anyone wants to see the evidence, I have it here. I have it on hand - that the hospital senior management team, some of whom were conflicted, failed at the very first fence when handling Dr. D's suspension or exclusion. This is because we have a formal arrangement with N.C.A.S. (National Clinical Assessment Service). This is a statutory U.K. body, set up to advise



the National Health Service for the very reason of preventing unnecessary exclusion of doctors, which then drag on and on and could not be resolved. It is clearly stated, in the health procedure that I have just mentioned, that Health must seek the advice of N.C.A.S. before excluding any doctor. The purpose of this is to enable N.C.A.S. to give guidance to the employer, to ensure that no unnecessary exclusions are made. Now, I have made contact with N.C.A.S., who have given me the relevant documentation, and it is clear that Health failed to contact N.C.A.S. before making the exclusion. It should be noted that Dr. D was excluded or suspended on 23rd October 2006, which was 6 days after the fatal operation. There had been ample time to contact N.C.A.S. who, anyway, operate a 24/7 telephone advice service to employers. So why did they not do so and why the abuse of process? Unfortunately, the Chief Minister is not correct in claiming that the appropriate suspension procedure was adopted. It is a pity that the Chief Minister did not let me see his comments before lodging them, because I could have told him the difference between fact and fiction. It was some 17 days after the exclusion that N.C.A.S. was contacted and then only because of pressure brought to bear on the Medical Director by the hospital consultants. Then N.C.A.S. were misinformed by the Medical Director who had briefed N.C.A.S. I have read some of the correspondence between Health and N.C.A.S. and it is clear that there a number of critical inaccuracies and omissions in the medical doctor's information to N.C.A.S. and I have these documents, again, if Members wish to study them. The other serious error made by Health, at the time, was to allow the Medical Director any part of the process, because he was seriously conflicted. Firstly, he has overall responsibility for clinical governance, which means ensuring that health professionals at the hospital practice to a high standard. But somehow Dr. M was still operating on patients, despite the fact that other doctors and nurses had apparently raised serious concerns about her competence. These, presumably, would have been expressed to the managers, both verbally and in writing, and I believe there are at least 2 instances of staff submitting written complaints. This was relayed by Senator Perchard in his statement to Members on 3rd February this year. But Health continued to employ Dr. M. Further, did they warn Dr. D, or his consulting colleagues, of any risk and, as I have stated, this is a dangerous state of affairs that was ultimately the responsibility of the Medical Director. Secondly, the Medical Director happened to be the consultant anaesthetist on call that day, so he performed the anaesthetic for the second operation. That was the attempt to repair the damaged blood vessel. So how could he reasonably take part in a decision to exclude other doctors involved in the fatal incident? Why was this allowed? Dr. D and Dr. M were excluded by someone closely involved in the same incident. These matters should have been picked up and corrected by the Head of Human Resources or any one of the 4 Health Ministers and the States Employment Board, which I see are still outside the Chamber, which claims the appropriate procedure was adopted. I will not go into all the subsequent events but will summarise these by saying that no attempt was made to reinstate Dr. D, he has still not had the reasons in writing from his employer for his suspension and twice he has been advised by the Medical Defence Body to bring grievances only to prepare these and then be told by his employer that they cannot be heard. It is worth noting the Medical Defence Union continues to be vigorous in their defence of Dr. D. As a result of this failure of so many people, the near 3-year exclusion has cost the taxpayer well over £1.3 million in salaries - and still rising - plus legal and other professional fees. These figures were confirmed - if we can believe them - by the Health Department on Tuesday. The amount of money spent on the suspension was described by the present Health Minister during question time on 2nd June as "scandalous" not only to the cost of the taxpayers, unfair on the employee but also to the family of the patient that died. Unfortunately, those appear to be hollow concerns. I believe that Dr. D has become the innocent victim of a department that wants a scapegoat and it is evident that people who should know better are just allowing the matter to drift aimlessly without any concern for Dr. D or the taxpayer. One must ask: "What was the States Employment Board doing over this lengthy period and why did the Board not intervene in some manner which it is now suggesting?" After the trial finished in January of this year, the then Health Minister announced that the hospital's internal investigation would be re-opened. Such investigations follow a set policy and are called Serious Untoward Incident

investigations. They are designed to look at whether the systems, procedures and safeguards were in place and working satisfactorily. They also examine the actions, conduct and the movements of those involved in the incident. Then later in February, the Minister announced that, following advice, he had commissioned Dr. Sally Adams from Verita to lead the investigation of the incident. Things became confused. Initially, we were assured that the terms of reference for Verita's investigation had been drawn up by Verita and Senator Perchard. With reluctance, Health subsequently admitted that the terms of reference were written by Verita after discussion with the Minister for Health and the Social Services, the Health and Social Services Legal Adviser, the Medical Director and the Director of Nursing and Governance. As previously mentioned, the Medical Director should not have influenced the terms of reference as he happened to be an anaesthetist on call on the day that Mrs. Rourke died and was in charge of her care for the last 5 hours of her life. He was too closely involved in the operation and he should not have been involved either in briefing Verita or developing their own terms of reference because, clearly, he was conflicted. Also, the Director of Nursing and Governance had responsibility for ensuring the clinical care standard of the hospital was good. Senator Perchard had told States Members about the 2 reports which he claimed to be innocuous but we have not seen them. However, the reports, with their contents, would have been known to the Director of Nursing and Governance and it is believed that the contents, whether innocuous or not, were not forwarded in accordance with the proper procedure. This action could put the officer in a conflict of interest situation. Yet again, the officer was party to drafting Verita's terms of reference. This was the case, so how was it able to continue? We say the matter should have been properly investigated. Then we have the confusion of the terms of reference themselves. Somehow, Verita was to investigate the fatal incident without considering acts and omissions of individuals. This is nonsense. Members will recall that Senator Syvret spoke eloquently on these matters in bringing his proposition P.76/2009 calling for Verita to be dismissed and a Committee of Inquiry appointed in its place. I had serious doubts about Verita's credibility, impartiality and its terms of reference and, I am afraid, confidence in the Minister's ability to ensure that a thorough review would be undertaken. As such, I was minded to support P.76/2009. However, I was persuaded to change my view for the following reasons. Firstly, at their presentation to States Members at St. Paul's, we learnt that Verita had changed and strengthened its team with 2 members being replaced by a retired consultant gynaecologist and a lawyer specialising in human rights. Therefore, I felt they had adapted to what we saw as our needs. Secondly, assurances were given by the Minister: no stone would be left unturned and the investigation would be robust, independent and thorough and the terms of reference had been clarified and strengthened by making it fundamentally clear that Verita was investigating the details of what happened and the actions of others. Thirdly, Verita was now in a position to add an addendum to the report to include matters that might be outside the terms of reference but about matters which the Minister should be aware. This seemed to me to be very much a "catch all" phrase to cover the problem that the original terms of reference had been unsatisfactory so, in other words, here we have got a fully qualified body looking at every aspect. Fourthly, the team were to be physically moved out of reach of the hospital senior management team and interviews of witnesses were no longer to take place in the hospital. I felt that Verita were now in a stronger position because the terms of reference were now fully inclusive and I believe that if Verita was to review the main actions taken in response to the death of Mrs. Rourke, clearly, it would review Dr. D's suspension which was certainly a main action taken in response to the tragic death. This was confirmed by the Health Minister on Tuesday. Unfortunately, the Minister has declined to give details of the other main actions taken in response to Mrs. Rourke's death and although she admits that the suspension of Dr. D was a main action, she does not want Verita to report on it. However, as I discovered on 5th August, Verita are now saying that the suspension of the consultants was not within their terms of reference. I believe that Members would not have supported the retention of Verita if it had not been reassured by the Health Minister, like me, that Verita's investigation would be robust, independent and thorough. Upon that information which I received on 5th August, I emailed the Health Minister expressing my surprise at Verita's comments and saying: "I thought I

would speak for a number of States Members who, like me, were persuaded to give Verita the opportunity of continuing its review on the grounds that it would be thorough and acts and omissions of individuals would be investigated.” This, to me, meant the acts and omissions of managers including the Human Resources Manager as well as the health professionals. Important questions like: “Was the appointment of Dr. M correctly done and were her references satisfactory? Was it true that serious concerns about her ability had been raised and had managers adequately dealt with these concerns or at all? Why was Dr. D excluded? Were the agreed procedures correctly followed? Was the police investigation accurately briefed? Were there any conflicts of interest on the part of the managers undertaking their tasks, as evidence in the public domain suggested?” My correspondence with the Health Minister is available for anyone to read. Basically, the Minister suggested suspensions are not part of Verita’s terms of reference and that Verita should not be asked to examine suspensions because this could be a distraction from their task. We are supposed to have a thorough, comprehensive and robust report and this might be a distraction; someone suspended for almost 3 years. I totally disagree. The suspension was certainly a main action which is now conceded by the Health Minister and, therefore, unless investigated by Verita, its report will not be thorough and not comprehensive. Members may recall me asking them to retain the answers to the 2 written questions I asked the Health Minister on Tuesday. The reason why I lodged the questions was that the Minister had not supplied the answers to these questions when I put them to her by email 3 weeks earlier. In answer to the question asked of the Minister to give the main actions taken by Health in response to Mrs. Rourke’s death, the Minister makes a reply which completely omits this information. It is there in black and white, if people care to look at the answers given on Tuesday. During oral question time that followed, the Minister also declined to give the details and one must ask again: “Why not give us the information? What has she got to hide?” In answer to my request for the Hutchinson terms of reference, the Minister replied that the terms were private and confidential in that they relate to an employee and, following legal advice, Health was obliged to keep them private and confidential even though they had been mentioned in an Order of Justice and also published in the *J.E.P.* Thanks again to the *J.E.P.* We seem to find out more of what is going on in some departments than we get from the Ministers. So, therefore, the Minister also declined to give us details or the cost of that Hutchinson review. The Minister should be acting in an impartial and open manner. She has responsibility for both the Health Department and Dr. D who was still on the Health Department’s payroll and yet she was unwilling or unable to answer these important questions. Also, she could have easily asked Dr. D whether he wished for his terms of reference to be made available to me. Therefore, I submit she has failed to do so and, by doing so, she is not acting impartially and openly and, indeed, she is dodging the issue. I will speak briefly about Health’s proposed Hutchinson investigation. Mr. Hutchinson is a private, self-employed Human Resources practitioner. He was chosen by the Medical Director in his capacity as case manager of Dr. D’s long running suspension. This is the same Medical Director who was the anaesthetist in charge of Mrs. Rourke in the last 5 hours of her life and also the same person who assisted in drafting the Verita terms of reference. How can such a conflict of interest occur again and again and why was the conflict not noticed by, or even prevented, by the last or the current Health Minister? I do have a copy of the Hutchinson terms of reference and I can fully understand why Health does not want them to be made public. The terms require Mr. Hutchinson to investigate relatively minor incidents made by the heavily conflicted Medical Director about Dr. D’s movements during the time of the fatal incident. Dr. D’s actions and the decision on that day are matters for Verita, so why the duplication and why the additional expense? It should be recalled that in an exchange with N.C.A.S., Health has stated that it has no concerns about Dr. D’s capability and, indeed, the Hutchinson terms of reference make it clear that his investigation does not concern the exercise of Dr. D’s medical duties or clinical practice. That is permitted under paragraph 5(ii)(10) of the policy for handling the concerns and disciplinary procedures relating to the conduct and performance of doctors and dentists; the very document I was speaking about earlier. If one looks at paragraph 5(ii)(10) which deals with gross misconduct, there lists a number of examples which include bullying, assault, theft, fraud,

drunkenness and other such misbehaviours. However, it is clear from the Hutchinson terms of reference that the Medical Director wishes him to examine Dr. D's movement on 17th October during the time when Elizabeth Rourke was under his care. In my opinion, there are no allegations which fit into paragraph 5(ii)(10) of that policy and while Health might reasonably seek answers to some of the points raised within the Hutchinson terms of reference, those questions should have been asked immediately after the death because, had they been asked, satisfactory answers would have been given and had Health consulted N.C.A.S. right at the beginning and been given the true facts, N.C.A.S. would have been able to advise that, on Dr. D's answers, they certainly would not have recommended suspending Dr. D. In fact, at no time have N.C.A.S. ever made any recommendation about suspending him because Dr. D has been suspended without any reference to N.C.A.S. Again, I must repeat there were no grounds to suspend in the first place and no grounds for continuing the suspension. The Minister has confirmed that the suspension is a main action and therefore, again, I submit should be part of the review carried out by Verita. I now draw Members' attention to the proposition and, indeed, it is there for everyone to see but on 3rd March, in response to an oral question, the then Minister said: "All suspensions or exclusions within the Health and Social Services Department are undertaken in compliance with policies and procedures agreed by the States Employment Board." However, it is clear from my research that there were significant departures from that said procedure. For example, as mentioned previously, Dr. D has never received the exclusion or the reasons for exclusion so, again, are we to turn a blind eye to that injustice? As part of the safeguards, N.C.A.S. needs to be consulted immediately and before the exclusions are formalised. The exchange of correspondence between the Medical Director and N.C.A.S. clearly shows that contact was not made until 1.11 p.m. on 9th November which was over 2 weeks after Dr. D was suspended. Now in his comments lodged by the Chief Minister on Tuesday who, again, is still out of the Chamber and who is also the chairman of the States Employment Board, he states that he has been advised that the exclusion process was handled appropriately by the Health management supported by the senior Human Resources Manager in accordance with the relevant discipline procedures in conjunction with advice from N.C.A.S. It is apparent that the Minister has been misled and I have the evidence to show. The exclusion process was not appropriately managed and investigation is needed. Now, if Members look at paragraph (b)(ii), since lodging my proposition, I have conducted further research and can assure Members that N.C.A.S. was not consulted immediately or before the suspensions were implemented. In paragraph (b)(iii), there is clear evidence that when N.C.A.S. was consulted, the information provided by the Health Department contained critical omissions and inaccuracies. Again, if people want to see the evidence, I have it. In paragraph (b)(iv), there is overwhelming evidence to show that Dr. D should not have been suspended or excluded in the first instance, and to be in the same position 3 years later is unforgivable. It is evident that Dr. D is a victim of noble cause corruption and there has been an abuse of process. In paragraph (c), Verita should investigate the role played by the various Health Ministers, the senior Health management team, the Human Resources Managers and the States Employment Board. It will become evident that there have been conflicts of interest and a lack of knowledge and care displayed by so many members of this group. In paragraph (d), I believe Verita will have already discovered conflicts of interest and procedural errors in many areas of the investigation. They should be instructed to include those that have come to their attention in relation to the exclusion. In paragraph (e), I believe it is essential for Members to know how much the suspension has really cost the taxpayer. At a time when wards are closed because we are short of nursing staff because of funding issues, it is an absolute disgrace that so much money has been spent on paying to keep a valued and highly experienced consultant from work plus covering the cost of his absence and the unnecessary legal fees and payment to people like Mr. Jarvis and Mr. Hutchinson to conduct worthless reviews. I have to ask myself why I bother to devote so much of my holiday time to this proposition. The answer is simple. I cannot stand aside and see injustice taking place because, in a small way, I have been party to it because I had voted against Senator Syvret's proposition. In conclusion, I would like to summarise my speech by saying that Verita's investigation should be robust, independent and thorough. Verita are

well into their review and will already have much of the information relating to the issues I raise. They have a broad and experienced team well able to investigate the issues. What the States Employment Board is suggesting will cause further expense and delay. If there is any concern about the delay, there is no reason why Verita cannot publish an interim report on the circumstances relating to what occurred during the initial operation and the recovery attempt taken afterwards and then publish its full report including the main actions such as the suspension and exclusion. This could be a way of avoiding any perceived delay and certainly expense. The Minister and the States Employment Board are just making excuses and if they are really concerned about getting to the truth, they could have easily established the body months ago or even years ago which they are now suggesting. I suspect they do not want the facts about Dr. D's suspension to emerge at all. The suggestion that a whole new investigation should start from scratch trying to understand all the peculiarities of a small non-National Health Service General Hospital in a small Island and then trying to understand the fatal incident itself from scratch is just not sensible. It would take a long time, not a short time, as the States Employment Board suggests. The Health Minister has given the House her assurance that no stone would be left unturned and made great play of the scope of Verita's terms of reference. However, nowhere in her comments does she, or the author of her comments, make any reference to the parts of the terms of reference which requires Verita to review the main actions taken by the Health Department in response to Mrs. Rourke's death. I was appalled at the answers given to my written questions and Members will recall the difficulty the Minister had in giving a straight "yes" or "no" answer as to whether Dr. D was given written reasons for his exclusion. We have here a much respected and distinguished consultant who has been suspended for almost 3 years and there has been an apparent abuse of process in not only suspending Dr. D but also continuing that suspension without any justification or adherence to policy guidelines. Well over £1 million has been spent on salaries to cover the suspension plus no doubt many more, as I said earlier, on legal and consultation fees. Verita's terms of reference include reviewing the main actions taken in response to the death of Mrs. Rourke. The Minister has had great difficulty in providing straight answers when she conceded but - and this is very important - she has conceded that Dr. D's suspension was a main action and, therefore, I submit are already within the terms of reference. We are getting to the end. I began my speech by making reference to noble cause corruption and abuse of process. Mrs. Rourke was a valued and highly respected nurse who died while undergoing a relatively simple and minor operation. News of her death will have caused shock and disbelief. Understandably, emotions were high and a multitude of questions had been asked and fingers pointed as to who was to blame. However, when seeking answers, one should remember that proper procedures and safeguards are in place and it is imperative that noble cause corruption does not become the order of the day in an attempt to blame some innocent person for the tragic death. At present, the inquest is on hold because it is waiting for the outcome of the Verita review. The unnecessary Hutchinson review is also on hold as a result of a court injunction and is waiting, again, the outcome of the Verita review. Verita's terms of reference include reviewing the main actions taken by the Health in response to the death of Mrs. Rourke. The Minister cannot say what the main actions are and she has had great difficulty in providing factual and straight answers but she has conceded that Dr. D's suspension was a main action. She could hardly have avoided the omission. The suspension falls within the terms of reference whether the States Employment Board, the Minister or her senior management team like it or not. The Rourke family, the staff and the public all want the truth. They deserve nothing less and are looking forward to the promised thorough and comprehensive Verita report. On their behalf, I ask that we do not let them down and I propose my proposition.

**The Greffier of the States (in the Chair):**

Is the proposition seconded? [**Seconded**]

**5.1.1 Senator S.C. Ferguson:**

The Deputy of St. Martin has laid out the case extremely clearly. The terms of reference given to Verita enable them to review the terms and arrangements surrounding the suspension of Dr. D. He has also explained the errors in the issues to be investigated. I have concerns that the consultant engaged with the S.U.I. (Serious Untoward Incident) is a Human Resources consultant. He is dealing with a matter where we have a highly qualified and respected consultant in medicine whose only vice is his penchant for saying: "This is not good enough", particularly when we refer to comments made during the hearing on the injunction. Members will perhaps be aware that Dr. D's lawyers brought an action in the Royal Court for an injunction to hold the S.U.I. investigation until after the Verita investigation was completed. One of the comments in the injunction was from the Commissioner who was Sir Philip Bailhache and he drew attention to the surprising point that Mr. Hutchinson reserved the right to amend his findings of the S.U.I. investigation in the light of Verita's report if Verita's findings turned out to differ from his own, so Hutchinson would not report until after Verita did anyway. I query this. Can we really give any credibility to this S.U.I. investigation in light of that? Communications by the department with the suspended consultant have, as the Deputy of St. Martin said, been appalling. In fact, they have been virtually non-existent. He has had one face-to-face meeting and no written notice of the substance of the complaints which he has had to find out through the court hearing and the *J.E.P.* This really is not good enough. I hardly need remind Members of the report on the *Bellwood* case and the criticisms of the procedures contained in that. Do we want another *Bellwood* report? I think we are heading for one. We have senior management who are conflicted making misrepresentations in court; we have senior management saying they have received no written complaints about the locum consultant. Well, no, they have not received written complaints but they had had complaints. So much for transparency. As the Deputy of St. Martin said, the excluded consultant, on the advice of his lawyers, has tried to bring a grievance complaint twice and twice the employer has refused. The issues should have been given to the excluded consultant in writing immediately after the incident and not after the trial of the locum. If the department required guidance, if they did not consult N.C.A.S., they should have consulted the Royal College of Gynaecologists' regulatory section or an independent N.H.S. (National Health Service) practitioner and the latter would be a consultant unconnected with our hospital or any of the doctors involved in the fatal incident. I think they may have mentioned that they have consulted an N.H.S. consultant but, unfortunately, it appears he does have connections with the doctors in the hospital and that should not have occurred. This is one of the reasons why my panel will be conducting a review of the operation of Human Resources Policy with regard to suspensions and dismissals but Dr. D needs justice now. He cannot wait. I have no idea why an extremely competent consultant - and I have no conflict of interest here since he has not had me under his knife - continues to be suspended. What does concern me is the lack of justice. It is quite Kafkaesque. The accused is being investigated on inappropriate grounds by an inappropriate individual and has no official notification of what he is accused of. The S.E.B. (States Employment Board) say they have a duty of care and the Minister says also but I would remind them that justice delayed is justice denied. The consultant has been denied justice. Both the Minister and the S.E.B. have claimed the necessity for confidentiality. I think most people now know more of the story and certainly the gentlemen himself would favour the removal of the veil of confidentiality and for the truth to be exposed. As I have said, we learned in the *Bellwood* case that confidentiality can conceal complete incompetence. The whole episode is shameful and reflects very badly on the States as an employer and particularly on the senior management team. The sooner there is complete transparency, the better. The cost of the Verita investigation is escalating. Far be it for me to say that Senator Syvret was right but I did vote for it because I thought he was right at the time and I now think that his proposed action would have been much cheaper than the incremental increases in the Verita investigation. It would have been very much more cost-effective to have had the correct agency doing the report in the first place. However, we are where we are. I am sorry for the Minister because she has been catapulted into the middle a very bad situation. I think she has been extremely badly advised by her officers and I think action is indicated but not against Dr. D. I do think it is essential that a spotlight is shone on all this

incredibly poorly managed incident and I will support the proposition and I ask Members to support it as well.

**5.1.2 Deputy A.E. Pryke of Trinity:**

On 30th June, the States began a debate spanning 2 days into discontinuing the Verita investigation into the care, treatment and management of Mrs. Elizabeth Rourke who tragically died at the Jersey General Hospital in October 2006. The States agreed that the Verita investigation should continue in accordance with the terms of reference that were agreed between Verita and myself as Commissioner. For my part and that of my Assistant Ministers, the overriding issue has always been, and continues to be, patient safety. To be clear, the Verita investigation is looking at what happened to Mrs. Rourke. It is not specifically looking into disciplinary matters or into what subsequently happened to employees in her care. It is examining the facts surrounding the care, treatment and management of Mrs. Rourke and it is these facts that I wish to be presented with as soon as possible.

**Senator S. Syvret:**

If the speaker may give way a moment, I have a genuine question or point of clarification.

**The Greffier of the States (in the Chair):**

Minister, are you willing to give way?

**The Deputy of Trinity:**

Yes.

**Senator S. Syvret:**

It seems to me that the Minister just re-asserted the original terms of reference, as it were, which were derived by Verita in conjunction with the management team at Health and Social Services but in the course of the Verita presentation to Members and, indeed, previous debate on the subject, we were told - and some Members were reassured - that in fact the Verita investigation would be examining the acts and omissions of individuals and things of that nature relating to the whole situation.

**The Deputy of Trinity:**

Can I just finish and come back to that? The main terms of reference still stands as the terms of reference is looking into the care, treatment and management of Mrs. Rourke that day. Indeed, the States have a duty to investigate the death of any person that occurs while in its care. Verita are undertaking that task and I would not wish them to be diverted from that. I also believe that I have a duty to ensure, as far as possible, that any mistakes or actions of the States, its agents or employees are not repeated. The Deputy of St. Martin's proposition seeks to introduce a specific human resource issue about one individual into the Verita investigation but I, as commissioner of the investigation, do not believe it is right and proper at this time and do not want to see it included for these reasons. Firstly, it will delay the Verita report and possibly the introductions of initiatives to prevent the occurrence of similar incidents. Secondly, any delay in the Verita investigation is unfair to the family of Mrs. Rourke who are entitled to some emotional closure. Thirdly, the introduction of the internal management of an employee situation belittles the tragedy that occurred. Fourthly, the relationship between the employee and the employer requires that the employee is entitled to confidentiality in the exclusion process. Mrs. Rourke's death raises many fundamental issues that need robust investigation which should not be muddled or confused. The Verita investigation will give us a factual timeline of the circumstances that led to her death. An investigation brought as part of the process affecting an employer as a result of a death is quite different. I would have to ask Members to not support this proposition as it stands. It may seem that the Deputy of St. Martin and I are complete adversaries on this issue. I have met with the Deputy of St. Martin and I do not believe that this is the case. In essence, we have a different idea

of what should be investigated by Verita. However, there is, in my view, some strong merit in the thrust of the proposition on the exclusion but it is not for Verita to examine it at this time. I have to say that while the length of time taken is regrettable, much of the delay can be accounted for by the criminal proceedings and legal proceedings which have been outside of my control. I am told that similar cases in the U.K. can take even longer but that does not mean that a review of processes in Jersey cannot be undertaken and I am fully supporting a review to be done. Having said that, employment issues relating to the suspension and exclusion of public employees are matters for the States Employment Board. I understand that the Chief Minister is considering the commissioning of a review of this exclusion process and its ongoing monitoring process by an external, independent person with health management experience to assure the States Employment Board that the process is being done correctly. I fully support the setting up of that review which would answer many of the questions and concerns that have been openly expressed. Given the length of time taken, States Members and the public concern, together with the cost to the taxpayer, I hope that we can find a way forward of this. I cannot emphasise too strongly to Members that the extended investigation proposed by the Deputy of St. Martin would lead to further delay and should be kept completely separate in the ongoing Verita investigation. It would introduce a human resource issue related to a single employee that occurred that day rather than concentrating on the fundamental facts and issues that led to Mrs. Rourke's death. The 2 must not be muddled and, to this end, I fully support the Chief Minister's review into this issue by an independent, competent H.R. (Human Resources) professional as a separate inquiry. I would hope that the Deputy of St. Martin and I could agree to this independent inquiry being set up by the Chief Minister and not delay any further the Verita report.

**The Deputy of St. Martin:**

I did not want to interrupt the Minister when she was speaking but maybe if she would like to read out the full Verita terms of reference because there are 4 parts and the Minister only gave us the first part. If either the Minister would care to read them out or she would permit me to read them out but I think they are very, very important. They are the crux to this proposition. **[Approbation]** Could I ask the Minister if she would agree to read them out?

**The Greffier of the States (in the Chair):**

I was wondering if it may be convenient to Members if that was photocopied and distributed to Members. **[Approbation]**

**The Deputy of St. Martin:**

I have got a few drawings on it but I would have thought the Minister would have had that to make her case.

**The Deputy of Trinity:**

I did have.

**The Greffier of the States (in the Chair):**

Do we have a clean copy?

**Deputy M. Tadier:**

Can I suggest it is no good to members of the public if it is circulated to Members? It would be preferable if it was read out.

**The Greffier of the States (in the Chair):**

Very well. I am happy for it to be read out.

**The Deputy of St. Martin:**

Would the Minister like to read them out or would she like me to read them out for her?



**The Deputy of Trinity:**

I think I have got it here or in my other file. It is in my other file.

**The Greffier of the States (in the Chair):**

The Deputy appears to have a copy he is willing to lend you if you ignore his scribbles.

**The Deputy of St. Martin:**

Could I say the copy is the one that was given as a result of Senator Perchard making the statement on 19th February, so they are still the same.

**The Deputy of Trinity:**

I have done an up-to-date one. No offence to the Deputy of St. Martin. I just want to check that one.

**The Greffier of the States (in the Chair):**

Very well. Let us take the next speaker and perhaps come back to this.

**5.1.3 Deputy A.K.F. Green of St. Helier:**

Most of the people involved in this case are known to me and I suppose, as such, although I have no personal gain from this, I must declare some interest but I still feel the need to talk. My office requires that I apply my acts and decisions without favour and make no bones about this, this is not going to go away. Now, we need to investigate it fully. Dr. D, if he is guilty of professional error or misconduct, deserves to be punished in accordance with Health and Social Services policies and the law. Equally, if he is innocent, then he deserves to have that fact publicly acknowledged and allow him to get on with the profession in which he has worked for so many years. There is a need for a full investigation. I cannot see what could be gained by delaying this. Why not look at the whole picture? In fact, the H.R. bit, whether he was given appropriate notice, is a small part of the investigation. It is everything that happened on that day and leading up to that day that should be checked. So what could be gained by delaying it? Nothing. Is open and transparent government not going to be applicable if we delay it? No. We need to get on and investigate it. The Minister states that it will delay the report. Well, ask for an interim report and allow the rest of the work to continue after. I will be supporting the proposition in the interests of openness, transparency and fairness in the hope that we get a full report which will allow us to move forward and prevent this from ever re-occurring.

**5.1.4 Deputy D.J. De Sousa:**

I really cannot believe that the Health Minister cannot back this proposition. Already, for far too long, it has been delayed. We did not back the proposition brought by Senator Syvret which we should have done some time ago. We need, as a House, to fully back this and get behind it and get this sorted out once and for all and I implore my fellow Members to back this now.

**Deputy A.E. Jeune of St. Brelade:**

On a point of clarity, could I ask probably the Attorney General, in relation to the information that we are getting, there are sort of 2 things and one is that the continuation of the Serious Untoward Incident was stopped on the advice of the Law Officers, so why would they stop trying to deal with something internally at the time? Secondly, if the exclusion does not relate in any way to the events leading to the tragic death of Mrs. Rourke, then why has the exclusion not been dealt with before now?

**The Greffier of the States (in the Chair):**

I am not sure if they are both questions for the A.G. (Attorney General). Attorney General, are you able to assist the Assembly with either or both of the questions?

**The Attorney General:**

The death of a person in the care of the authorities always raises a serious issue for the States as a whole under Article 2 of the European Convention on Human Rights and it is essential that there should be a proper investigation into all those circumstances so that the lessons can be learned, if there are any to be learned, and the mistakes, if there have been mistakes, are not repeated. How the States goes about making those investigations will vary. The important thing is that, taken in the round, there has been a proper and full investigation and there are different issues which arise at different times. There is obviously an inquest and that deals with some of the investigation but it does not, by any standards, deal with all of it. In this case, there has been a criminal investigation and a criminal prosecution which resulted, as it turned out, in an acquittal. Those 2 investigations - the criminal investigation and the inquest - together provide some of the contribution towards the States obligation to investigate fully the death. I am talking as a matter of law rather than as a matter of ethics because I am quite sure everyone wants to investigate it anyway and that is not an issue. The Verita investigation, as it were, completes the obligations which the States has to investigate into the circumstances of Mrs. Rourke's death and the existing terms of reference, as I have read them, meet that obligation. That is therefore what the package is about that there has been a criminal investigation, the inquest, as far as I recall, is currently adjourned and there is a Verita investigation. Between those 3 limbs, you have a proper investigation into the circumstances of her death and of course inevitably, in carrying out the Verita work, they will be examining the actions of individuals up to the time of the death. Of course, they will have to do that because, otherwise, you could not examine properly what has taken place and learn the lessons that have to be learned. When I said that things happened at different times, the criminal investigation in all these things does take a priority and it is quite important that when the police are carrying out an investigation, they do not have what is called "cross-contamination of evidence" where some people's evidence is affected by things that they have heard other people say and, therefore, an internal investigation into a Serious Untoward Incident could work counterproductively to a police investigation. That would be the reason why, I think, the Serious Untoward Incident investigation stopped. I say "I think" because I was not involved in giving that advice at the time but that is consistent with the principle and with commonsense and I am sure that is the way it would have happened. I am sorry, the Deputy had a second question which I was going to come on to and I have not made a note of it.

**Deputy A.E. Jeune:**

The second question was if the exclusion of Dr. D did not relate in any way to the events leading to the tragic death of Mrs. Rourke, is there any legal reason why the exclusion was not dealt with? Why has it had to drag on please?

**The Attorney General:**

Again, I have not been close enough to the facts of this and, therefore, I think probably it is more for the Minister to answer than for me to answer because I have not been concerned with it. If Members would take this as an element of conjecture because there is an element of conjecture to it, if I were dealing with it at the time, I would not know what had caused the death of the patient and one possibly might have been the actions of Dr. D and the exclusion is a perfectly natural course to follow when one did not know what those facts were. Now, the facts are in the course of being established, not only by the criminal investigation which we have had but of course also by the Verita investigation. No doubt it is for that reason that it was Dr. D himself who went to the Royal Court and asked for the disciplinary process which covers his exclusion and covers his relationship with the States Employment Board to be put off pending the completion of the Verita investigation because he thought that his disciplinary process might be affected by the Verita investigation and the court was clearly persuaded that that was right and so it had made that particular order and that is the sequence that has been followed. Perhaps I could just add that, at the moment, one does not know precisely all the circumstances that led to the tragic death and the

exclusion still may or may not have been correct. I think it is too early to tell as far as that is concerned because that is one of the facts which led to the death, as I understand it, that Verita will be looking at. The issue which Members are facing at the moment is a rather different one which is whether or not the Verita terms of reference should be expanded and I am conscious this is very much a matter for Members but perhaps I can just let Members have, as I am on my feet, a lawyer's examination of the proposition so that you may or may not feel that is useful and it is obviously entirely a matter for Members.

**Senator S. Syvret:**

Is this a political speech really that the Attorney General is going into here?

**The Greffier of the States (in the Chair):**

The Attorney General is entitled to address the Assembly in any way he wishes, Senator.

**Senator S. Syvret:**

Well, as long as it can be noted that this is in fact a political intervention.

**The Greffier of the States (in the Chair):**

Senator, please resume your seat.

**The Attorney General:**

I did not hear the Senator's contribution and I am not inviting him to repeat it. The inclusions which the Deputy is proposing, if you pick up the proposition, the first one at (a) is investigating the reasons for the immediate exclusion of the consultant obstetrician and gynaecologist and the locum consultant obstetrician and gynaecologist and it seems to me that this would require Verita to look back at the actions of those 2 medics and that is something that they are already intending to do, as I understand it, in the course of their investigation. This expanded terms of reference, however, might also require an examination of the actions of the hospital management because it is aimed at the immediate exclusion and so it is asking Verita to look at the management as well as the actions of the medics up to the time of the death. That is emphasised, if one then looks at paragraph (b), which is asking Verita to look at whether the procedures have been correctly followed and a whole lot of matters which are relevant to the process involving the consultant obstetrician. (b)(iv) seems to me to look in part at the criminal process and what factors led to the consultant being excluded on full pay for almost 3 years and whether any of these were avoidable. That seems to me to be looking at the criminal process and if I may just say that the Health Minister said that these things do sometimes take time and that the experience in this case in Jersey was no worse than frequently happens on other occasions in the U.K. and as far as I understand it, that is entirely right. The difficulty - if I can put it that way - with the criminal process is that the defendant must of course have a fair trial. The prosecution believed that there was a case to be brought and the defendant was entitled to be given time to find the professional evidence which she wanted to have to put before the court to explain to the jury why she should be acquitted and not convicted. Of course that is exactly what happened but these things unfortunately do take time and the delay came in 2 tranches. The Deputy of St. Martin asked me why it had taken so long to come to court. The investigation required the finding of evidence by the police who were investigating as to whether the degree of medical negligence was more than just - if I can put it this way - ordinary negligence but was criminal negligence because it takes you beyond a civil mistake into something that is so bad that society ought to treat it as being criminal. That obviously does take some time because you need to establish what the facts are and then you would have to go to the experts who would give evidence in court. In a similar fashion, the defence does the same, so investigating these cases does take quite a long time. When it came to the court, the defendant did exercise her right on a number of occasions to say: "I am not ready for trial and I want to go and get further information." So just dealing with the Deputy's point, that is why it took so long to come to court. If I may just return to these terms of reference, if you look at (c), (d) and (e) ...

**The Deputy of St. Martin:**

Could I just intervene before the Attorney General goes beyond and clarify part (iv) because I think this is maybe not intentionally misleading Members but I think the inference is that it was the defendant that has been excluded. It is not the defendant. Dr. D was never charged with anything. He has been suspended for 3 years. I think the implication that the Attorney General has given is that we are dealing with Dr. M. It is not. It is Dr. D. Here we have a man who has never been charged with anything and been suspended for 3 years. Could you just clarify that situation and that we are talking about the right person?

**The Attorney General:**

I am very grateful to the Deputy and he is quite right. I was not intending to suggest in any way that it was Dr. D that was being prosecuted because of course that was not correct, but it was the criminal process and criminal investigation which no doubt meant that if the exclusion was rightfully adopted in the first place, then it would continue for a long period. It is a necessary concomitant of the criminal process. That is the only point I would make. If one looks at (c), (d) and (e), these are investigating the roles of Ministers and officials and procedural errors. All these look forward from the death to what happened afterwards and really that seems to me the heart of the matters which Members have to consider today. You have an investigation which is looking at the causes of death, the factors which led to the death and which completes this tripartite investigation which the States has to perform as its duty under Article 2 of the European Convention so that it knows what has caused the death. There is, Members may think, a wholly separate thing which is the disciplinary process which may not have worked very well and which may certainly need to be investigated and looked into but the issue is whether or not that should be taken separately and whether it would confuse the existing Verita investigation. If I may just add this. The question of disciplinary process is a private process between an employer and an employee and when the Deputy of St. Martin said that Verita could do a preliminary report and publish full details later, it just would not be normal to publish full details of a disciplinary investigation as between an employer and an employee. That just would not be normal. The employee is entitled to have some privacy and respect for his employment position. Now that is not to say you should not have an inquiry into the way in which the disciplinary processes work. That is a completely different matter and Members may well think that is a good thing to do but it is not part of the sort of public examination which Verita has been asked to do so far.

**The Deputy of St. Martin:**

I must stand up and question the Attorney General because, again, I think it is so important that Members know what the terms of reference are because, unfortunately, the Attorney General - and it is not intentional, I am sure - is not aware of the full terms of reference because had the Attorney General read out the terms of reference, the second part - which is the part this is all about - is to review the main actions taken in response to the death. This is the very thing and I do not think the Attorney General intentionally did not tell Members but would he accept the fact that part and parcel of my proposition is for Verita to inquire into the second of the 4 parts of this terms of reference. If the Attorney General would care to look at the terms of reference, he probably may well agree with me.

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

Could I just ask a question of the Attorney General please? I think it would be very useful to know why Dr. D who has been suspended as a direct result, it seems, of Mrs. Rourke's death was not asked to give evidence in court, to the surprise of the judge Sir Richard Tucker.

**The Attorney General:**

I was not involved in dealing with the prosecution case. I deliberately distanced myself from dealing with that case because I had met Dr. D socially and, therefore, deliberately stayed well away from it except in a management context of ensuring that I knew that the investigation was

going forward and the right steps and principles were being taken. My understanding, however, is that Dr. D was not called because he had no relevant evidence to give as far as the prosecution was concerned in the prosecution of Dr. M. Had it been thought that he had any relevant evidence to give, he would have been called but it was thought that he did not and I cannot express any judgment about whether that was right or wrong because I simply have not seen the papers.

**Senator S. Syvret:**

The Attorney General seemed to be implying in his remarks that the investigation into the disciplinary matters and what happened post event somehow ought to be regarded as a separate issue from the Verita investigation. The logical consequence of what the Attorney General is arguing is that you have an incident of some kind, whatever it may be, an accident or a crime and you only investigate the events that led up to that crime. You do not look at any evidential value of the actions of people after that crime in order to determine the facts of what in fact happened and what their *mens rea* may have been. The Attorney General's argument is simply utterly spacious and completely untenable.

**The Greffier of the States (in the Chair):**

You said this was a question, Senator. It sounded like a speech to me.

**Senator S. Syvret:**

Is the Attorney General saying that the events that may take place after, for example, a crime have no bearing on the analysis, investigation and factual evidence gathering of the crime and what may have led up to it?

**The Attorney General:**

No, obviously not, but there is not a crime here. If you are investigating a crime, then you would look at what took place immediately after the incident in question to see whether or not that might bear upon the conduct of the people beforehand so of course that is possibly true. I have no doubt that in the course of the investigation which Verita are conducting for the purposes of deciding the relevant circumstances around the causes of death of the patient, they will look at what happened immediately afterwards. But that is completely separate from looking at a disciplinary process and the structure and integrity of the disciplinary process which may well require careful examination. I certainly am not to be taken as saying it does not. It may well require it. It is just different. That is the only point I would make.

**Senator S.C. Ferguson:**

I am a little confused, Sir. You say that, obviously, you cannot comment directly because ... I am sorry, through the Chair or am I allowed to address the Attorney General directly?

**The Greffier of the States (in the Chair):**

No, you are not, Senator.

**Senator S.C. Ferguson:**

He is spared. The Attorney General made a comment that he felt that Dr. D was not called because he had nothing of value to add to the prosecution. Is he not as surprised as Members are then that Dr. D has been suspended for his involvement in an incident when he is not valid for the prosecution? I am a little confused, Sir.

**The Greffier of the States (in the Chair):**

I am not sure it is a valid question for the Attorney General. It sounds to me like you are asking the Attorney General to express a comment or an opinion on that matter.

**The Attorney General:**

I think it is quite difficult to respond to it because I do not wish to go into the full details of the criminal investigation as they were explained to me. I think the question of the exclusion and the question of the criminal investigation of the prosecution are different questions.

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

The terms of reference was going to be circulated. Can it be circulated to Members? I think that is central to a number of Members' contributions.

**The Deputy of St. Martin:**

I was going to ask a similar question because I had offered to read them out. I have offered the Minister to read them out and I think it is very important because, again, with no disrespect to the Attorney General, I think it would have been helpful if Members had had the copy.

**The Greffier of the States (in the Chair):**

I think the Health Minister is trying to track them down, I understand.

**Deputy M. Tadier:**

Can I suggest that, in the interim, they are read out? We are wasting time here so that the Constables and the others in the tearoom can ...

**The Greffier of the States (in the Chair):**

The query from the Health Minister, Deputy, was whether what was to be read out was the current version. Are you satisfied, Minister, that what the Deputy has is the current version that should be used?

**The Deputy of Trinity:**

I apologise, Sir, because I thought I did have a copy but I have a couple of files and it is in my other file and I do not have it with me. I have just sent a copy for it to be circulated now. If you would just bear with me for 2 minutes.

**The Greffier of the States (in the Chair):**

Very well.

**5.1.5 Deputy T.M. Pitman:**

I had almost forgotten that I wanted to speak. I thank the Attorney General for his comments. I appreciate his difficulty and I have to say if I was Attorney General - and obviously I am not - I would be surprised. I think Senator Ferguson's question is a very good question. Many of us often say that we will not repeat what others have said already, yet we rarely stick to that promise. I, however, will do so. I think Senator Ferguson made a really concise speech and really hit the nail of the head very well. Deputy Green and Deputy De Sousa likewise. I would simply add the following that I have supported Senator Syvret's proposition at the time due to my significant concerns. I have to say what I have heard today has only confirmed how right I was to do so. I nevertheless had a lot of sympathy for the Deputy of Trinity, being a new Minister and effectively thrown in at the deep end. I still have sympathy for her and yet I feel that I must say that if she really cannot bring herself to support this, then from what I am hearing this morning from other people, she may find herself facing a vote of no confidence and that would be a shame. I would urge her not to let that happen for what appears to be the machinations of others. Again, I would repeat that I urge her not to put herself in that position. I am afraid, finally, all I wish to say is - and it is at the risk of offending the Minister - I have to ask her to confirm that she wrote the speech that she made in answer to the proposal because, again, there are suggestions that it was not written by her and if that is the case, then I think we all demand and deserve an explanation.

**The Greffier of the States (in the Chair):**

I think the longstanding rule in this Assembly, Deputy, is that Ministers are responsible for what they read out. Who happened to give them advice is really neither here nor there. If they read it out, they are presumably happy with what they are reading. Does any other Member wish to speak?

**5.1.6 The Deputy of Grouville:**

Could I just ask a question to the members of the States Employment Board that are present? I do not know how many of them are here but are we going to hear from them and hear their take of this because I think it would be extremely useful at this stage?

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

I was going to speak but I saw 2 other lights that were previous and I fully intend to speak. I want to do so after I have heard the contribution in order to respond to Members.

**The Greffier of the States (in the Chair):**

Deputy Jeune, I think your light was on.

**5.1.7 Deputy A.E. Jeune:**

I feel, with this particular proposition, that I am walking through a fog. I do not have any real clarity, which was why I was asking the Attorney General, and I am very grateful for his responses. It is almost like it is a mess. We have got N.C.A.S., we have got the colleges that we can go to when there is a need to get help and I am not sure just how well we have done that so far. Somebody mentioned there is an abuse of process. Yet there does not appear to have been a considered process. I still have a problem with: "The exclusion does not relate in any way to the events of that day." Therefore, I do not see how Verita's inquiry really has anything to do with it but I am guessing that is not quite right and I will support this proposition because I want things to be made clear and they are not. There is clearly - from the sound of it and the evidence we are being given - folk involved who are conflicted and that in itself should never, ever occur. I will be supporting the proposition.

**Deputy S. Pitman of St. Helier:**

May I just ask a question of the Deputy Chief Minister?

**The Greffier of the States (in the Chair):**

Well, it is not question time, Deputy.

**Deputy S. Pitman:**

I just wanted to know, as Chairman of the Employment Board, where the Chief Minister is.

**The Greffier of the States (in the Chair):**

I am not sure that is his responsibility but he will perhaps address that in his speech.

**5.1.8 Deputy R.G. Le Hérissier:**

I was not going to contribute but I have many of the feelings of Deputy Jeune. I would like to congratulate Deputy Hill but as things have gone I have got more confused. There was no doubt that the Committee of Inquiry as proposed by Senator Syvret was a much cleaner and comprehensive approach [**Approbation**] and we are now getting this battle of what should or should not be included in the inquiry which is fogging issues. In a way, we are trying, on the hoof, to carry out our own little inquiry about an inquiry and, because he gave a very robust defence at earlier stages, I was hoping the Minister for Health at the time, Senator Perchard, might revisit why he went for the Verita approach because there is no doubt some of us are quite confused about why that happened but I do recall his very robust defence of that particular approach. I also would ask the Minister whether there is any way of running an inquiry into the exclusion almost concurrently

with this particular inquiry, but one thing has to be said because, and I go back to that famous Irish saying, if we wanted to get here, we would never have started there, because there are so many inquiries apparently, or aspects of inquiries, running, people are getting thoroughly, thoroughly confused. Let us revisit why we went the Verita route and that may clear up some of the fog.

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

I should start by saying that the Chief Minister very much regrets that he is not currently in the Assembly this morning. Notwithstanding the very important issues which the Assembly is considering, he and the Economic Development Minister have a prior engagement at the opening of the multi-million pound redevelopment of the departures lounge at the airport with guests coming over and a number of people. He is going to be back to the Assembly as soon as he can and he does regret that he is not here, and has asked me to convey his apologies to Members. He will be back as soon as ...

**The Greffier of the States (in the Chair):**

It does seem a slight curious prioritisation, if I may say. [Approbation]

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

I accept your observation. I will not go into any detail. The States was not expected to meet this morning. There are always conflicts, but I will not go any further than that.

**The Greffier of the States (in the Chair):**

It is a scheduled continuation day.

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

I know. I should start also by saying that the Chairman of the S.E.B. and members of the S.E.B. are, in some respects, more constrained than the Deputy of St. Martin and other Members in what we are able to say in the Assembly and what we may know in terms of matters concerning personnel matters concerning an individual. We have to be more circumspect. We are bound by confidentiality. I think that I would speak for all members of the S.E.B. and maybe the Health Minister too when I would say that we wish we could perhaps explain to Members some additional information that we have. It would perhaps go some way to explain why we have to take the positions that we do. It should also be said that the S.E.B. and the Health Minister believe that the most important issue must be, notwithstanding the criminal investigation, for Health to have in place the independent review of Verita to look at the issues of clinical and care issues so that there can be recommendations and lessons learnt that such a tragedy never happens again. No life should be lost when somebody is in the care of the State and it is the care and the clinical issues which must remain in absolute upper mind of the Health Minister in any matter of this whole very sad state of affairs, notwithstanding, and I also wear the hat as Treasury Minister, in respect of the cost associated with exclusions and other matters. I think that I have to say that there is a large measurement of agreement between both the Health Minister and the members of the S.E.B. that there needs to be independent investigation of all matters concerning the death of Mrs. Rourke and also an independent review of the actions taken and the actions not taken, by the management of Health. It seems to me that there are 4 issues which may be running in parallel, but there are 4 separate issues, 4 separate strands, that needed to be looked at. First of all, there is the criminal investigation which is now dealt with. Its passage and its review has clearly delayed other matters. The Verita investigation, the disciplinary process, all have not been able to be completed while the criminal investigation was underway. Once that criminal investigation, the matter that I have just referred to, the second most perhaps overriding importance is to look at the lessons learnt and to review the care issues concerning the whole circumstances of the case. Thirdly, there is, which is separate, and I think goes to the heart of the reasons why I do not think that we can support the proposition of the Deputy of St. Martin is the issues of the exclusion and the personnel issues. That is a separate issue as a number of Members have suggested. Finally, I will say that there are clearly



other general issues concerning the review and the performance of Health generally. That must be now reviewed by the new ministerial team and S.E.B. I will say, and I will be as constrained as I can be, that I am concerned at the scale of issues which the new Health Minister and myself, as Treasury Minister, and Council of Ministers colleagues are having to deal with at Health. There are massive issues, there are massive unknown issues which we must deal with and I want to say to the Assembly that in that last issue we are having to rightly take an enormous amount of our political bandwidth in order to get to the bottom of some of the issues that our health service has. I do not want to, in any way, suggest to Members that we are not concerned by these issues and determined to see change happen. I have looked at the Deputy of St. Martin's proposition again sitting here this morning and I have to say that I am trying, and have tried, but I cannot find a way that we can agree this. What the Deputy of St. Martin is wanting to do is to extend effectively the Verita review into the investigation of the exclusion or suspension of the consultant gynaecologist and that is really the problem. Verita must be, and has been commissioned, and I am more than happy to read out the terms of reference of the Verita inquiry, to look at the care and clinical issues. I will read it out: "The Health and Social Services Minister of the States of Jersey has commissioned this independent investigation as part of his general obligations to ensure the safety of health and social services and to improve the quality of care for patients. The investigation has no disciplinary remit and will not consider the acts or omissions of individuals. Rather it will provide a narrative explanation of the incident and consider organisational systems and processes." The terms of reference were 5 bullet points, firstly to examine the care, treatment and management of Mrs. Elizabeth Rourke from her related G.P. (General Practitioner) referral up to the start of the police investigation. Secondly, to review the main actions taken by Health and Social Services Department in response to the death of Mrs. Elizabeth Rourke including its own interim internal investigation. This will include establishing whether or not there were any significant omissions to the investigation and if so, exploring these. Thirdly, review progress made against the recommendations of the interim internal investigation, fourthly identify any further actions that the Health and Social Services Department should take to improve the safety and quality of health services and fifthly, provide a written report with recommendations to the Minister. There are 4 subsequent paragraphs that just deal with the investigation team, time payable, publication and approach.

**Deputy D.J.A. Wimberley of St. Mary:**

Would the Minister give way? I just want to insist that we do have a written copy of this and I just wonder whether this is on its way.

**The Greffier of the States (in the Chair):**

We have been instructed by the Minister not to copy it yet. She is still looking for a bit of paper, I understand.

**The Deputy of St. Mary:**

Can we not have a copy of what has just been read out? Really, I tried to write it all down, but it went pretty quick and it is very, very important what we are talking about.

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

The difficulty is, of course, the terms of reference changed,

**The Deputy of St. Martin:**

With respect, can I just make it clear I have just given that copy to the Senator which is directly from the Health Minister's response or comments on P.76. They are the latest ones, they are the original ones.

**The Greffier of the States (in the Chair):**

It is not the same document the Senator is reading, I do not think.

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

They are, I think, fundamentally and the document, the final draft of the commissioning report will be circulated to Members. From what I have just read out, irrespective of whether or not there were some changes, the central issue is that Members will be quite clear that the report is designed to review all the issues of clinical and other matters concerning the care that the hospital put in place and was ... the issue, separately, that I think the Deputy of St. Martin has put forward to the Assembly, is asking for effectively a review of the circumstances and the actions of the exclusion of Mr. D. I have reread the terms of his proposition. He is clearly in part (a) saying he wants the investigation, the reasons for the immediate exclusion. He goes on at (b)(i) and b(ii). All of the issues relate in (c), (d) and (e) and he uses the word "exclusion". That seems to me to be entirely within the remit of the disciplinary process and if he is trying to suggest that the actions of Mr. D are somehow excluded by these terms of reference, then they are not. They are fully covered because all of the actions, if there were any, and we are not a courtroom, this is not an issue which we can discuss in detail and receive evidence of the individual circumstances, and the Deputy of St. Martin said he thought that this is a courtroom. We are not a courtroom. What we are here to do is to make a decision as to whether or not effectively the Verita investigation should become also a review of the disciplinary process and the exclusion by Health. If there was an issue that related to the excluded consultant of his care, of his actions, that were taken as part of Mrs. Rourke then that will be covered. What is clear is that Verita cannot, and should not, extend their investigation into effectively a personnel investigation of the circumstances and the circumstances of the suspension et cetera. What I can say, and the Chief Minister in his comment has made very clear, is that S.E.B. is going to commission, and I think that is absolutely critical, an independent report into, which will be published, to the extent that it can without dealing with personnel issues which cannot be put into the public domain, there will be a separate review about the suspension. There are concerns about suspensions policy generally. S.E.B. accepts that and there certainly is going to be an independent review of the suspension and the personnel aspects. I am not going to give way at the moment. It seems to me that that is a completely separate matter from the matters that Verita are covering. If Members read and look at the Deputy of St. Martin's proposition he is asking for effectively Verita's review to be extended into the H.R. and personnel issues. While we agree that matter is important and should be independently investigated, and it should not be health management that should be solely responsible for reviewing that, that is not a reason for extending Verita's review. I will give way to Deputy Shona Pitman if she wishes to ask a question before I conclude.

**Deputy S. Pitman:**

The Treasury Minister has just said that the Employment Board will be commissioning an independent review on the suspension of Dr. D. I just wanted to know what work has the Employment Board done on this subject in the 3 years since his suspension?

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

As the Deputy will know, I cannot speak for previous S.E.B.s, I cannot speak for previous Health Ministers. All I can do is speak to what S.E.B. wishes to be carried out today and what S.E.B. has carried out in the very recent past. What I can say to the Deputy is that there is a review and there is confirmation acceptance of a need for an independent review of the suspension issue and we want to be convinced that the suspension process, that the exclusion process, has been properly handled. I understand and I have been briefed on the fact that the internal disciplinary process could not continue because of the court process that has been remarked to earlier and there are a number of issues that S.E.B. want examined. That is as far as I can go, but I give Members the absolute assurance that the matter of the suspension and the personnel issues are going to be independently investigated, but I would urge Members to not support the Deputy of St. Martin in his extension of the Verita review because that review will be extending it into personnel issues, will delay it and the whole lessons learnt, the whole improvement process, is going to be delayed as

a result of it and I have to say as far as a Treasury Minister is concerned, I also accept that there is going to be additional costs in commissioning further work on the personnel issues, but they are personnel issues and H.R. issues which extend, I am afraid, further than simply the matters concerning the death of Mrs. Rourke. We need to have a proper, independent investigation about the H.R. and personnel issues which extend further than simply the matters concerning Mrs. Rourke. That is all I am going to say.

**Deputy S. Pitman:**

May I ask a supplementary clarification on what the Treasury Minister just asked? He says that he cannot answer for previous Employment Boards. I ask firstly why has he not consulted, why has he not spoken to those previous members? It is now a year into his membership of the Board. He seems he has done nothing, no review. It seems like the Board has nothing on the subject.

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

All I will say is that the Deputy should be aware that there has been a criminal investigation which has been ongoing and members of the S.E.B. Board have not been able to do anything. I can see the Deputy of St. Mary acknowledging this. It has been impossible for anything to be done until the conclusion of the criminal investigations. That is the reason why we have not been dealing with it, but I have to say there is now generally work going on with reviewing Health, et cetera, in the remarks that I have made. I do not believe that the case has been made and the Deputy of St. Martin needs to explain very clearly why he believes that Verita should be effectively extended into an H.R. and personnel issue and does he not, in his concluding remarks, think that the issues that we need to deal with on exclusion and H.R. issues deserve and merit a proper independent investigation on solely dealing with the H.R. and management issues?

**Deputy A.E. Jeune:**

Just on a point of clarity, given that we have heard this morning that the actual sort of disciplinary process has been delayed because of the court case, which is completely understandable, if the exclusion is related rather than what we are being told is not related. If I could have clarity on that please.

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

I do not think I understand the question. Whatever the actions of the excluded consultant, if they relate to the care issues, then that will be investigated by Verita. Mr. D is not excluded from Verita's remit, but there is a separate issue concerning, and it is impossible for me to go into details in public, matters of personnel issues. There is a separate personnel issue which I cannot comment, as I am sure the Deputy will know, whether it is related or linked or joined or part of, but there is an exclusion and there is a disciplinary process which needs to be properly carried out.

**The Deputy of Grouville:**

The Minister has just said that the exclusion of Dr. D is not excluded from Verita's remit. It is excluded. This is the point of this proposition brought forward by the Deputy of St. Martin.  
**[Approbation]**

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

This is not question time, but let me be absolutely clear. Any actions by Mr. D, as I understand it, in relation to the care and clinical matters concerning the death of Mrs. Elizabeth Rourke are covered. What is not covered are the actions of the Health Department in excluding Mr. D and any other personnel issues which relate to Mr. D. That is separate. I repeat again, and I think this is where the Assembly is in difficulty in approving or wanting to approve the Deputy of St. Martin's proposition, Mr. D is not excluded, but the personnel issue is separate. It is concomitant.

**The Deputy of St. Martin:**

Before we begin, I gave the Minister a copy of the terms of reference which come from the Health Minister's own proposition. Could I ask that I have it back and I could circulate it to all Members because that is the Health's own terms of reference and I cannot understand why Health is delaying [Approbation] Members having a copy of that which I got for him.

**The Greffier of the States (in the Chair):**

Minister, are you able to inform the Assembly when Members will have the terms of reference on their desks?

**The Deputy of Trinity:**

Yes, it is a ministerial decision which I made and it is in the process of being printed now and it will be circulated within the next couple of minutes.

**5.1.10 The Deputy of St. Mary:**

That has answered my first point which was precisely that, when were we going to have the terms of reference. I am going to say 3 things. One is a small point, but I hope that the Deputy can clear it up in his summing up and the second is about what we have to learn from all this and the third is about this question of main action. Right, now the small point just to get it over is the question of the cost of the exclusion and I think it is not material to this debate because it is part of the driver for getting the right answer and is part of the concern of the public and of course of this Assembly. My interpretation of the various figures, although this written answer is less than complete, but taking the written answer 16 on Tuesday the Health Minister has told us that the cost of covering the work to date, the work that would have been done by Dr. D, has been calculated at £634,000. In addition to that, there is his pay when under exclusion and I understand that to be £1.3 million but I am not clear because that sounds an awful lot and I think there is an error there. Could the proposer just clarify that for Members in summing up because I am certainly less than clear on that matter? That was the first point. The second is obviously of perhaps greater importance, which is this question of what we have to learn and the Minister in her comments used the phrase that we are doing this investigation, we are doing the Verita, so that mistakes are not repeated. She further said that we have to avoid the occurrence of similar incidence. If we are going to do that, we really have to be thorough and we have to take on board all the circumstances. We have to look at this in the round or indeed we may find ourselves in the same place in the future. Here are some of the things that we need to learn that have come out of this conversation we have had today. On the proposition page 2, under paragraph (a), we have investigating the reasons for the immediate exclusion. Now, we have heard people say that Dr. D still does not know, and certainly did not know at the time, what the reasons were for his exclusion. Has the House not learnt this by now? We have had the same problem with the suspension of the Chief of Police. Exactly the same thing happened and a proposition was brought by the Constable of St. Helier, quite correctly, that we should take a look at that because that suspension also was contrary to natural justice. The person affected did not know the case against them. We cannot go like this. We do have to get that right and someone else mentioned delay. Justice delayed is justice denied and that too comes into this equation. At some point we have to grasp this and it is quite right to include that and to make sure that we do not do this again and so on and look at that question of giving reasons when people are excluded or suspended. Then we go on to the first sub-paragraph of (b) and we read there in the Deputy's proposition conduct of senior doctors, whether the procedure in place was currently followed. That too is another issue that this House often has problems with. We set procedures, we even set laws and then they go missing. We passed a waste management law and 3 years later, it still has not been implemented with respect to La Collette. I am sorry, but that is an important matter. There is another issue which is that we have a water pollution law and it appears that quite frequently, although in a couple of cases, this is not enforced correctly, it is not taken and acted on. It is just passed by this Assembly. So, there is an issue there and again it is right that in this case we look at that and we take our own procedures seriously as I am often reminded by the Chair of P.P.C. (Privileges and Procedures Committee). I think it is a case of sauce for the goose and sauce

for the gander there. The third is in the very next sub-paragraph whether N.C.A.S. has been consulted at any stage. Here we have the body that one would go to as I understand it in these cases. I am not an expert on the health scene, but this is the body that you would go for procedural advice and so on. I am reminded of Ramsar. I am reminded, in my field, of the fact that the body that was the titular to which we had signed ourselves up was not consulted with respect to potential effects from the La Collette saga and the incinerator. These things do need to be looked at. We do need to get to grips with these issues in this proposition and I really do think we would be unwise to try to narrow this down at this stage. Perhaps the most important single thing is ... ah, it is coming, we are getting the terms of reference. It is just what I need because my final point is the point about the main action. Let us hope that we can find this out. You see, the terms of reference have been clarified and strengthened and so on and so on, making it fundamentally clear that Verita are investigating the details of what happened and the actions of individuals. Will also be considering hospital procedures and practices. But the terms of reference like the original terms which have remained the same, as I understand it, in the second bullet point ... we are now on effectively page 3 although they are not numbered, so if Members would like to go to page 3 and it says, terms of reference at the top, and the second bullet there is ... no, let us read the first: "Examine the care, treatment and management of Mrs. Rourke from her referral until the start of the investigation." That is quite clearly the call of the terms of reference. The second bullet, however, is: "To review the main actions taken by the Health and Social Services Department in response to the death" in response to the death. It, therefore, forms part of Verita's investigation. The main actions which happened clearly after the death must shed light on what went before and we established that in the little conversation that we had with the Attorney General. That is why it is in the terms of reference: "The actions after shed light on what went before" and the terms of reference are quite right to include them and that is why they are there. So, I do wonder why we are debating this in a sense and I think the Deputy of Grouville sort of eluded to this. Why are we debating this? The reason we are debating it is because there is this kind of strange thing going on whereby it is in the terms of reference and it is out of the terms of reference. I do not quite understand that. It is clearly within the terms of reference, so why is there this resistance to allowing the main action or this particular main action to be looked at? Why is there this resistance? Members have to ask themselves, do we want an investigation which includes this main action or do we not? To conclude, the Treasury Minister in his comments just now mentioned the whole circumstances surrounding the case. I think I quote the Minister correctly, but it was certainly words to that effect. I wrote down: "Whole circumstances surrounding the case." That is what we should do. We should try and shed light on this appalling accident as much as we can and learn the lessons. There is a commitment from the Minister as spelt out in the Deputy's report and it is an excellent report. At the top of page 5, he writes: "I understood that these new terms of reference, i.e., as revised as we have seen from this ministerial decision, were fully inclusive and would cover the suspension of the consultant obstetrician and gynaecologist. I believe this was the Assembly's understanding also ... I also believe they would not have supported the retention of Verita if they had not been reassured that Verita would be addressing this matter." I think that is why this Assembly voted against having a different review and that Verita should continue. We now find that this particular main action has somehow slipped away and I believe that the Minister has gone back on a commitment made to this House and we should have insisted that the terms of reference were amended perhaps, physically in reality, and not just an undertaking made. I hope that we go with the spirit of the undertaking and I hope that we support this proposition because it is entirely well founded.

### **5.1.11 The Deputy of St. John:**

Given the Chief Minister is holding the Chamber in contempt by putting a glass of wine at a reception at the Airport over the wellbeing of the family of Mrs. Rourke and the suspension of Mr. D. for some 3 years...

**The Greffier of the States (in the Chair):**

I think we are calling him Mr. D, if we can.

**The Deputy of St. John:**

Mr. D, I will. I will take your comment. I see the Chief Minister fiddling while Rome burns. As we have seen the way the Minister is dealing with our employees, and just look at the rally at Fort Regent, I would ask which reception the Minister was at on that particular evening? Where are all our Human Resource officers in all this? As far as I am concerned, they have responsibility in these areas. I heard a Member mentioned that we should bring a vote of no confidence in the Health Minister. What must be remembered is the Health Minister is new in the job. She needs our support at a time like this **[Approbation]** not being threatened with votes of no confidence. It is a matter for all of us to resolve this. Votes of no confidence, in fact, will delay things even further and that is the last thing we need. We need an end to this. I will be supporting this proposition because as has been said by the previous speaker, the main action slipped away. We need to make sure that this is kept in the forefront, that we do get justice for all concerned and I do have reservations if we do not adopt this, that it will slip away. Therefore, I am asking all of you to support this proposition just to make sure that the House are up to speed and on top of what is going on. I sincerely hope it is taken in the way it is meant because no offence to Deputy Pitman when he made that comment, but I think it is important that we work as a team and the whole House puts their weight behind this so that get the right results for everybody. **[Approbation]**

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

I have, for some time, had concerns about the way in which the suspension of Dr. D has been handled. I think the use of the term exclusion which is sometimes used instead is misleading. I think you only exclude a person for a short period before you make a decision. He is effectively, in my view, suspended and has been for a very long time. In a recent Royal Court judgment, it was decided that although suspension proceedings were not subject to human rights principles, the person involved was, nevertheless, entitled to a fair hearing and also the decision had to be a reasonable decision. I am very concerned that it appears that Dr. D has not been given reasons for his suspension because reasons, in modern times, would normally be viewed as part of a fair hearing process. I would remind Members that we have previously, and not very long ago, as the Deputy of St. Mary said, been in a similar position where there were deeply held concerns in relation to a suspension process. I would also remind Members what happened on that occasion. The Minister involved undertook to conduct his own full review and rehearing effectively of the suspension process which is what I did. My view is that there urgently needs to be a proper review and rehearing of the suspension process **[Approbation]** in exactly the same way as I did it in a parallel case and I would ask the Minister and/or the S.E.B. to urgently ensure that that occurs. We do not need to wait for further reports for that to occur. It could occur very quickly indeed. The next thing that needs to happen in relation to the disciplinary process is a preliminary report. Now a preliminary report, as I understand it, and I am still waiting in hope after 9 months for one in the matter to which I have referred, is a report which is produced collating the statements and the evidence of a possible disciplinary nature, but specifically relating to the possible disciplinary matters relating to an individual person. The purpose of that is so that those who are responsible in this area and who might bring disciplinary proceedings in this area can consider whether there is a sufficient case. It has a parallel function, as I understand it, in the criminal court situation to a police report in which evidence is collated and a recommendation may or may not be made. It is my understanding that that had to be delayed for a lengthy period of time because of criminal proceedings against another person, but once that delay was out of the way that such a report commenced. Unfortunately it is also my understanding that Dr. D was not happy with the way in which that was set up and that resulted in court proceedings which have stopped that particular investigation going forward until the Verita investigation has been concluded. That is what has happened, but clearly and urgently as soon as possible that second stage needs to be completed so

that decisions can be made as to whether there is sufficient case against Dr. D to warrant going to a disciplinary hearing. What I think the Deputy of St. Martin is trying to achieve is essentially that second stage by extending the Verita investigation, but the problem that I have is that that type of report, which I have described as a preliminary report, is a very different type of report to the type of more general report which Verita are currently working on. Although I desperately want to see that report produced, to mix together one type of report for particular purposes and try to convert that into something different is simply going to create a complete confusion. At the end of the day, whatever may be said in that, there will still be a need to do the preliminary report in the way that I have described. For that reason and for that reason alone, with some regret, I find myself unable to support the proposition but I would, to sum up, urge urgently that a proper process be conducted to review the suspension process and that can happen quite soon and completion, as soon as possible, of the preliminary report. I fear that if we vote for this proposition today, it will, in fact, further delay that second stage rather than pushing it forward. **[Approbation]**

### **5.1.13 Senator J.L. Perchard:**

That was a very interesting contribution from the Home Affairs Minister and on the face of it, he is absolutely correct. Until you read the detail of the proposition which is not as penetrative as he implied with regard to the disciplinary procedure surrounding Dr. D. I think it is worth looking at the detail of the proposition if Members can turn to Deputy of St. Martin's proposition, page 2. I have got a couple of crosses alongside a couple of areas where I have difficulty, but ticks alongside most of it in the sense that I have no problem with this being added on to the Verita terms of reference because as far as I can see it is already in there. Much of what Deputy Hill wants to achieve is already in the Verita terms of reference. If I may point to (a): "Investigating the reasons for the immediate exclusion of the consultant obstetrician and gynaecologist and the locum consultant." That, it goes without saying, is a part of the Verita terms of reference. They cannot conduct their review without doing that. (b): "Investigating whether Health and Social Services procedures in place for dealing with the culpability and conduct of senior doctors were correctly followed." Again, if you look at the paper just provided by the Minister for Health and Social Services, bottom of page 2, she has chosen to make it fundamentally clear that Verita are investigating the details of what happened and the actions of individuals so we have got no problem as far as I can see with b(i). b(ii), why would we not want to find out exactly when the N.C.A.S. were invited to contribute into this? I suspect Verita will want that and I have no problem with that being added on. (b)(iii) whether N.C.A.S. had been consulted at any stage and if so, whether advice subsequently given was correctly followed in the case of this consultant. Why would we want to bury that? Dr. D will not be threatened by that. I have got a cross against (iv), Members and Deputy of St. Martin. I do not think this is an area of expertise that Verita have and I think that the Deputy of St. Martin may agree they are not accountants. They can employ an accountant, but this is an area that probably is outside their expertise and I suspect the cost, the full cost ... the Deputy of St. Martin is looking quizzically at me. I will read it: "What factors led to the consultant being excluded on full pay for almost 3 years and whether any of these were unavoidable?" It is not their area of expertise. The Attorney General has explained some of the factors. I do feel there are more competent people that could investigate that. (c), I have no problem, and I do not think Dr. D or any of the senior management team or the Health Minister would really have a problem with (c): "Investigating the role played by the various Ministers for Health and Social Services." That would also include Senator Shenton, Senator I and of course, Senator Syvret whose watch this all happened on and the senior management team of the Health and Social Services Department from the time of the exclusion to the present day. There would be no objection, I am sure, on behalf of the Minister, anybody at the Jersey General Hospital or previous Ministers. (d): "Investigating whether there had been any procedural areas or conflicts of interests on the part of the senior managers." There has been much innuendo, much suggestion this morning. I know bloggers are always suggesting that there has been conflicts of interest and I think it is very important that we get to the bottom of this and I should think those members of the senior

management team would like this to be explored fully so the truth is out. (e): “Investigating the cause of the exclusion and the funding arrangements to cover the cost of the exclusion.” Again I do not believe that is an area of expertise for Verita. I just think (e) and (b)(iv) are areas outside the scope of their expertise. On the whole, I do not see this as a threat to anybody and I think we are bound now to support this proposition [**Approbation**] because of the innuendo, untruths, version of facts that are peddled in this Chamber as being the facts. Deputy Hill started off his speech this morning by saying it is unfortunate the Constables are not here and they are in the Royal Court because they would benefit from hearing the facts. Well, whose version of the facts? The facts vary depending who you speak to. That is why we must now, because the hares have been set running, and there is such suspicion around this, that we have to accept this extension, more cost, but without conceding this, there will be more innuendo, more suspicion and it will go on and on. I am sorry for Mr. Rourke particularly who was quite satisfied with the original terms of reference and had every confidence in Verita as independents. As we do know there is a certain group, some of which reside in this Chamber, who are absolutely intent on destroying the senior management at Health and Social Services and I think we just have to go on this rollercoaster ride with this eccentric views of some. There are a couple of areas in the proposition where I do not think Verita have expertise. I will support it simply because I think I have no choice.

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

Can I just ask a clarification from the Chair just before lunch? Senator Perchard has said that he agrees with a number of the matters and there is, I think, a measure of agreement but it is the personnel issues. He did not say in his speech the fact that the recital at the start of the proposition says: “And the conduct of the exclusion and the other issues.” It is the personnel issues that I think the Health Minister has difficulty with. Perhaps over the luncheon adjournment we can find a way forward to confirm that those issues which I think everybody agrees should be part of it but not the personnel issues can be resolved. But in saying that perhaps I just make those remarks and propose the adjournment.

**Senator J.L. Perchard:**

There is a point of clarification, I believe, that I could just remind the Members to look at the first bullet point on the bottom of the second page of the document provided by the Minister a moment ago which, quite clearly, says that the terms of reference have been strengthened to investigate the actions of individuals. I do not see we are miles apart here and I again propose the adjournment.

**LUNCHEON ADJOURNMENT PROPOSED**

**The Greffier of the States (in the Chair):**

Very well. It is clear this is not going to be concluded before lunch so the Adjournment is proposed. The Assembly will reconvene at 2.15 p.m.

**LUNCHEON ADJOURNMENT**

**PUBLIC BUSINESS - resumption**

**5.1.14 Senator T.A. Le Sueur:**

I think I should begin by explaining my absence from the House for the last couple of hours. Unfortunately, the invitation was issued some months ago to various guests from the U.K. and Europe to attend the opening of the Airport departure lounge in its upgraded form. I think it would be discourteous to them not to attend that. I recognise that I also have a duty to this Chamber and in trying to balance those 2 I did ensure that both my Deputy Chief Minister was fully briefed and that I made some comments on the proposition. Nonetheless, if I got my priorities wrong I apologise to you, Sir, and to the Members of this House for any - certainly not intended - slight on the Assembly. I do believe that representing the Island and encouraging investment into the Island in activities which provide for employment for locals and the sale of local produce is something to be encouraged and I thought that was part of this Chief Minister’s duties. If I can turn to this proposition, I do believe that in fact there is not as much that separates myself and the Deputy of St.



Martin as some people may think because certainly I endorse the view of the Deputy of St. Martin that we need to have an investigation into the circumstances that he referred to in some considerable detail this morning. I think the only thing that distinguishes the Deputy of St. Martin's view from my own is that the disciplinary matters are primarily a matter for the Chief Minister through the States Employment Board to carry out; whereas the health-related matters are matters for the Minister for Health and Social Services for her to carry out. It is really maybe a matter of semantics, but perhaps important semantics, that the instructions to carry out disciplinary investigations into this situation should be issued by the Chief Minister rather than the Health and Social Services Minister, recognising that in neither event the outcome would be reported by that Minister to States Members in the normal way. It is a matter of responsibility and as Chief Minister and as Head of the States Employment Board I do have primary responsibility in respect of employment matters. There is then the second issue of whether that investigation, that particular part of the investigation, to be carried out into the disciplinary proceedings should be undertaken by Verita, as the Deputy of St. Martin suggests, or by some other professional whose forte is in employment matters rather than in health matters. I am a pragmatist and I accept that as Verita have got involved in this matter they may well have some advantage in terms of being up to speed with the situation. I do not believe, in fact, that is the overriding objective we should be considering in deciding this matter. I believe what we should be setting out an overriding consideration as who is the best person or persons to have an investigation into the employment matters relating to this particular situation. If it is that we decide that Verita should be that person, that to me is not a great difficulty, but I do believe in that particular respect Verita should be reporting to the States Employment Board rather than to the Health Minister. It may therefore be I should have put an amendment to the proposition to request the Chief Minister to instruct Verita, rather than the Health and Social Services Minister. That might have been a bit superfluous or a bit tortuous for them just to understand; it is really a matter of semantics. I do acknowledge and I do confirm to Members my willingness, in fact my urge, that this investigation should take place, should take place as quickly as possible, and should take place by the most suitable people to do such work. I say as quickly as possible it bears the implication that because Verita are already involved they will do it more quickly than anybody else. I think that implication has no great foundation; indeed, Verita themselves say they would not want to do that work until they had finished their other investigations, so they would do them separately rather than contemporaneously. That is a matter for Verita in terms of their terms of activity, should they be so appointed. In my comments, I therefore suggested that people should not accept this amendment from the Deputy of St. Martin, but rather accept the need for the investigation to take place, for the investigation to be carried out by the consultants reporting to the States Employment Board, and that the best people for the job should do it. I recognise, however, the view of the House and should the House decide that Verita are the firm that they wanted to choose to appoint unilaterally rather than maybe going out to tender to get the best people for the job, that is a matter for States Members to decide. I believe that Verita are very good at looking at health matters, but perhaps do not have the same expertise in respect of employment matters. I believe that we can get a better, more informed result by acquiring investigators with human resources expertise primarily rather than health expertise. Having said that, the important thing is to get on with the job to make sure that this investigation does take place. I would prefer that this amendment be rejected, but if it is accepted I would undertake, on behalf of the Employment Board, to ensure that this carried out in the swiftest possible time and at the lowest possible cost with the best possible outcome.

#### **5.1.15 Deputy P.V.F. Le Claire:**

It is rather peculiar the last statement of the Chief Minister that if Verita do this it is going to be carried out in the quickest period of time at the lowest possible cost for the best outcome, but yet one of the key principles of the proposition before us is that the body that is called into investigate, namely Verita being asked by the Deputy of St. Martin, looks at the conduct of not only the Health Ministers from the time of suspension, but also the States Employment Board up until the present

date. We have got a concrete example of a conflict of interest of whether or not the States of Jersey Employment Board has a role in this at all. If there is an issue, in my view, about the management of Health and Social Services - and there has been for decades - and if there is an issue about suspension in the States - and there has been for at least a decade in suspensions - then surely and certainly it must be right that the Council of Ministers takes that work upon themselves. Because even within the Manual Workers' Meeting at Fort Regent last Tuesday, the calls from the people there that were in attendance were the shocking waste of public funds in relation to States suspensions over the course of one year. When you are into millions of pounds of money, taxpayers' money, being spent on suspensions on a regular basis, and lengthy suspensions, then we certainly do have an issue. Sticking succinctly to the point, because much has been said, I would like to congratulate the Deputy of St. Martin for bringing the proposition. It has been widely known among States Members, those that have got an insight into this and have tried to pay attention, that there are issues about the Medical Director and his involvement. There are concrete issues about his involvement in the suspension of Dr. D, or Mr. D, and his own involvement in the last few hours of the tragic death of Mrs. Rourke. I know, having been to see Verita, and I have given them evidence and I have spoken to them, that they certainly, in my view, would like to look at the suspension. They certainly have had evidence about the case, they certainly do know the background. They are running out of time because they grossly underestimated the scale and complexity of the task initially and have subsequently had to beef up their team, interview more people and, at our insistence, consult the Royal College of Anaesthetists. The Council of Ministers ... I do not know if it is the Council, but some ... in fact, it is not because I did hear different views. Some speeches today have called for the States to have their own human resources experts or go out to tender for human resources experts to do this work, but to me it seems like they want to have their cake and eat it too because we have heard that Verita were the people to deliver on this proposal when Senator Syvret brought the Committee of Inquiry. It would be interesting to look at what people said during that debate and hold it up in context to this debate today because they certainly are chalk and cheese. The work that needs to be undertaken needs to be undertaken by Verita. Maybe there are resource issues, but Verita, at least - and it was made quite clear by the speech of the Chief Minister - know at least where Jersey is. They know the background to the case. They understand the nuances and the differences. Are we going to go another round of months before we have to separate this new team that is being proposed on Cyril Le Marquand House to give them independence? There does need to be independence. Verita have been given the officers and the support of the Greffier. The report, we are being told, is going to be tabled, unaltered, for us to examine. Let them finish the work they are doing, look into the work that is proposed by the Deputy of St. Martin, and let us have a thorough, open examination of what has been going on. Because you do need, in my view, to analyse what went on from a medical perspective to put the evidence before us. If subsequently then there needs to be disciplinary action against any individual within the States employment or otherwise, at that point it needs to go to the Council of Ministers and the States Employment Board for adjudication and decision. Let us not forget one of the main tenets of this proposition is to look at the role of the States Employment Board themselves, so they are hopelessly conflicted in trying to argue this one away, in my view. If the States decides not to support the Deputy of St. Martin and not to support Verita in this vote today then they will be duplicite in their mantras and they will be saying: "On one hand we do not want a Committee of Inquiry because Verita are the best people to do it and on the other hand we do not want Verita to do it because we want an independent body." To talk about delay and wasting money, if the Council of Ministers and the Employment Board were so concerned about delay and wasting money then they certainly would not have spent over £1 million on salaries and lawyers' fees and suspensions - probably nearing £2 million - on what they have done already on this matter. I do not know personally Dr. D - I do know who we are talking about - and I have not tried to get involved in the actual incidents of the case that we are speaking about. I certainly would not be satisfied as a public representative of Jersey with the proposal of the Chief Minister, to go off and get somebody else to start another round of looking at this now. Sorry, it is not going

to wash. I would like to congratulate the Deputy of St. Martin. I am just sorry the States of Jersey did not realise when the chance was before them to have a proper Committee of Inquiry put by Senator Syvret that that was the time, that was the mechanism, that is the strongest forum. At the end of the day, Verita and anybody else we get in cannot oblige people to attend, so all of this work may still have holes in it.

**5.1.16 Connétable S.A. Yates of St. Martin:**

I listened to my esteemed colleague from St. Martin this morning and I became slightly confused, and I believe other Members were complaining about a fog that was descending upon this Chamber. I was hanging on to the last threads of reality and I managed to hang on to 2 or 3. During the lunch period I recollected my thoughts on when we had the previous debate about the Committee of Inquiry or Verita and it was decided then that we were going to go with Verita because they were halfway into their work, or a quarter-way into their work. Their work was going to entail investigation of the facts concerning the death of Mrs. Rourke, the events prior to the operation, the operating theatre, what happened in the operation theatre, what happened during the attempts of resuscitation. In fact, I remember the words were: "We will find out who did what, where and when." There was going to be, obviously, no concern about disciplinary matters because this was not part of the terms of reference. I have checked on the terms of reference we were circulated with before lunch and I am quite happy with these terms of reference here. I have listened to words, complaints about the suspensions, the amount of money being spent on keeping the suspended employees on suspension. This Verita inquiry is not about disciplinary matters. It is not about human resources. It is not about suspensions or the cost of suspensions. All these matters are different matters. I accepted the terms of reference of Verita when we asked Verita to go ahead and it is very, very unfortunate that it has taken so long. We have been told that the Verita report will be available at the end of October or beginning of November. That basically is a matter of 6 weeks away, 6 to 8 weeks away. How long is it going to take if we add on the extra duties, or the extra investigations? We know we are going to have inquiries about disciplinary matters. We know we are going to have to find out about suspensions. These are all different matters. I am back fully in control of the reins of reality at the moment. I am going to stick with what we decided. I am sorry to say that I am not going to support the Deputy of St. Martin.

**5.1.17 Senator S. Syvret:**

I have been a Member of this Assembly for nearly 20 years and I have seen, during that period, quite a number of occasions when the Assembly has, frankly, made a spectacle of itself. It is running the risk of doing so once again today. I certainly think it did indeed make a spectacle of itself when debating the proposition I brought before the Assembly for a Committee of Inquiry into these matters. That would have been a properly statutorily-empowered, genuinely independent inquiry into all of these issues. It would have been completely objective and impartial. It was rejected because a majority of Members did not agree with it. Notwithstanding the fact - because it was a fact, as indeed it is a fact today - that I and others who supported it stood in the Assembly on that day, not in the words of Senator Perchard, peddling falsehoods, but making a case based on documentary evidence, actual documentary evidence in our possession which we have arrived at and accumulated through proper research and speaking to people. Yet notwithstanding that very clear, unambiguous, hard evidence that was put before the Assembly on that occasion, the Assembly chose to reject the proposition. I suspect a number of Members who might have perhaps wanted to support the proposition on that day allowed themselves to be swayed and persuaded not to support it because of the presentation by Verita and the wide variety of assurances Members were given, that in fact the terms of reference of the Verita investigation were indeed going to be sufficiently broad and wide to take in all of the relevant issues. Some Members may have been, in all good faith, persuaded by that argument. The question in the immortal words of The Who is "we will not get fooled again". Is the Assembly going to make the same mistake this time and listen to another lot of, frankly, defective and very poorly written and very unwise advice that has been

accumulated by various civil servants, produced by them and given to the unfortunate Minister for Health and Social Services? Or do we, the Assembly, finally decide that we are going to back the public interest in this matter and start holding our very expensive, very top-heavy Civil Service to account, rather than people like her, the Minister, being scapegoats? Some of the arguments that have been ... well, there is only one argument essentially that has been mounted against the proposition of Deputy Hill today, which is a new argument that was not used particularly last time. The phrase "clutching at straws" was used in a debate earlier this week and it seems to me that the argument we hear today is very much an example of clutching at straws. Suddenly we are told we cannot incorporate the requirements being suggested by the Deputy of St. Martin because these issues concerning the excluded doctor are an H.R. matter, a personnel matter. Somehow, that issue has to be compartmentalised away from the rest of the bigger picture. Of course it is utter rubbish. Total nonsense. How could any organisation investigate any serious failing, any serious disaster, any serious poor performance within its organisation without looking at issues that were personnel/H.R. related and may involve disciplinary matters and examining the acts and omissions of individuals? It simply is not remotely credible. I would point out another factor, which appears to have been forgotten by most people who spoke this morning, which is this: the disaster in question, which is at the heart of this and we must not lose sight of it, the avoidable death of a patient, was at root an H.R. failure. It was a human resources failure. It was a personnel/management failure that caused and triggered the cascade of events that led to the doctor, who was employed as a locum consultant, but should not have been - she should have been employed as a locum registrar - being there, not being properly mentored, not being adequately overseen, because her colleagues thought she was a consultant, quite reasonably. The failures of the H.R. and the reporting systems within the hospital who alert all of the colleagues who may have been working with that locum that in fact serious concerns had been raised about her competence. Those issues, at the very heart of this, are human resources/management/personnel issues. If we are being told that the Verita investigation cannot and will not investigate H.R. issues that might involve looking at the acts and omissions of individuals then, in reality, what we are being told is that Verita's investigation cannot, in fact, look at the reality of the issues at the heart of all this at all, which surely cannot be the case. The argument that we heard this morning, that somehow the Verita investigation was expected only to look up to and across the events leading up to the unfortunate incident and somehow would stop there and that any subsequent events and conduct and performance by the organisation would have to be a separate issue looked at on a later occasion. Again, that is completely nonsensical. It is an insult to the intellect of Members to run such an argument. Let us imagine, hypothetically, you are faced with a murder. You only discover this murder some weeks later. The police set about investigating it. Do the police only look at the events leading up to the murder and the incident itself? Do they not look at the actions of individuals afterwards, the people that might have been there washing the blade and burying the body and conspiracy to hide it all up, to cover it all up? Do they not look at those kind of subsequent issues in order to try and form a full, accurate picture of what took place? Of course they do. It is utter rubbish to suggest that the Verita investigation, somehow it just stops at the moment of the unfortunate incident. It is simply an insult to Members' intelligence. I certainly hope that Members will take the view that they are not going to get fooled again. I knew better when we debated my proposition because I learnt the hard way. Indeed, Senator Perchard was quite correct; the incident itself happened on my watch. Back then I was naïve enough and foolish enough to accept what the civil servants told me. I was foolish enough to assume they knew what they were doing, they would act competently, professionally, ethically, and would pursue the correct policies and keep me appropriately and adequately informed and would give me the truth. Well, we live and learn, do we not? I make the point again that both on that occasion when I took that proposition to the Assembly, and today, now Deputy Hill is trying to get the issue looked at more effectively, it was not on the basis of innuendo, rumours, falsehoods. In fact, I cannot think of a controversial matter such as this, looking back over nearly 20-years' experience, where the facts, plain and obvious proof of the situation, have been so well evidenced with hard evidence.

For example, a tremendous amount of it emerged during the trial; not all of it, but some of it did. Other pieces of evidence have been found in other ways. One only has to take an honest, clear-sighted, open-minded look at the evidence available to see what has taken place here, which is an incompetent, failed system, a cascade of errors that arose from it, leading to a tragedy, and then - much like Watergate - the cover-up itself becoming the big scandal, the resultant thrashing around for weeks and months afterwards by the civil servants who had failed to do their part of the overall organisation's task properly to try and hide things and cover it all up. We cannot stand here and say that we are here genuinely trying to serve the public interest unless we, however uncomfortable it may be, face these kind of facts and start holding the Executive to account, holding the Civil Service to account. The public out there certainly are sick of this. They see all kinds of very expensive mistakes being made, disasters of one kind or another, bad advice and so on, and they see a senior Civil Service that costs millions upon millions upon millions of pounds each year. Apparently they are all armour-plated, bullet-proof, utterly invulnerable, no matter what disasters they make. Somehow the Executive politicians have got to protect them from any consequences, any kind of moral hazard for any poor performance on their part. Now, not only is that wrong in this particular case, it is wrong in broad terms for the public good of Jersey. The people of Jersey would be far better served if we had an approach whereby if we are employing somebody and paying them £220,000 a year for their supposed professional expertise, that if they manifestly get it wrong and demonstrate themselves to be utterly incompetent, and even unethical, then they get the sack. That is what the public expect us to do if we are starting to be serious about holding the public sector to account. Patient safety, as was mentioned by the Minister correctly, is at the centre of this issue. Absolutely correct. As I have already explained, at the centre of this issue it was a human resources and management issue. You therefore cannot say that issues such as patient safety are separated from and compartmentalised away from the performance of management, of senior management, of the systems and structures that they are supposed to oversee and make sure are working properly. Because if you did that then basically you are looking at a crucial part of the organisation, such as just, for example, its reporting systems, basic things, such as clinical governance. You are saying to all of that, because it is a managerial issue, it has no bearing to and no relation upon patient safety. The logical consequence of that is that when anything does go wrong in terms of patient safety the management is armour-plated from any consequence and the only people that are likely to get any criticism or blame for any such errors are going to be people like doctors, nurses, other professions allied to medicine; the poor people on the front line. That cannot be right. It simply cannot be. We do have to accept this is a management issue, it is a personnel issue, and that that has to be part of any competent and effective investigation. It would have been better - as I think a number of other speakers have said - had my Committee of Inquiry proposition been supported, but it was not. We have to deal with the issues that are before us today. The Chief Minister when he spoke alluded to the fact that he is also the chair of the Employment Board. He carries overall responsibility for the Civil Service in Jersey for the public sector workforce employees, including the senior civil servants, and indeed in overseeing and undertaking those duties. Absolutely central to the Chief Minister's ability to do these jobs, let me call it that, is of course the Chief Executive to the States of Jersey, who is also the key figure who works, in Civil Service terms, on and for the States Employment Board. We are looking at a situation where if we were to go with the suggestions of the Chief Minister, or the Minister for Health and Social Services, and perhaps one for other speakers, essentially we would not be getting Verita to look at this issue. We would instead be entrusting it, or at least the overseeing of it, to the States Employment Board. The question we therefore have to ask is how reliable, how robust, is the States Employment Board? How competent is it? How effectively does it do its job? Is in fact the Chief Executive of the States reliable? Or is there a risk that perhaps ... well, not perhaps. I think as is plainly evidenced - it is evidenced - like some senior managers in Health and Social Services, you might be less than frank with the actuality, less than honest and open and full and frank about the real issues. It is well documented, sadly, that certain people in Health and Social Services senior management have acted in that way. I am going to now quote to the Assembly

some evidence, which I am afraid, sadly, again proves the same in respect of the Chief Executive. This is very important because it does go to the very heart of how reliable the process is going to be, or the process would be, that the Chief Minister and the Minister for Health and Social Services would have us adopt. The information I am going to quote you begins with some communications from earlier in 2009. I approached the Constable of St. Helier and asked him if he could help secure me some information I needed in respect of the events of 2007 concerning the child protection controversies and my removal from office and so on. Eventually, after a lot of struggle, the Constable of St. Helier, dutifully doing his business, eventually extracted a note in response to his queries, a note written by the Chief Executive to the States. I have the email to me from the Constable of St. Helier here, dated 28th February, in which he informs me that: "The Chief Minister has given permission to release this info to you. Kind regards." The info in question was a set of notes emailed to him in response to the Constable of St. Helier's questions, written by the Chief Executive to the States. That is the email evidence there. I have those notes written by the Chief Executive to the States here. It deals, as I said, with the child protection issues. I will quote one paragraph initially of what he said. This is in answer to questions being put to him by the Constable of St. Helier. I am quoting the Chief Executive here: "Did a meeting of the Children's Panel take place on the same day?" Here he is referring to the date of 25th July 2007. "I do not know what the Children's Panel is. At that time there was the corporate parent, the meeting of the 3 responsible Ministers, the J.C.P.C. (Jersey Child Protection Committee), or there maybe is a different grouping that it is being referred to. I am not a member of any such panels or similar groupings." This is the crucial part: "In any event, I do not know if any of these meetings took place on 25th July 2007." I will just repeat that last phrase: "In any event, I do not know if any of these meetings took place on 25th July 2007." I will now quote from some minutes of the Council of Ministers of 26th July 2007 when the whole issue kind of erupted and B1 begins by saying: "The Council considered a report dated 24th July 2007 and produced by the Chief Executive concerning child protection arrangements in Jersey." I will not bore Members with reading out the entire set of minutes, but there is a particularly relevant paragraph and I will quote it: "The Chief Minister advised the Council that he had received a faxed letter from the Child Protection Committee, dated 25th July 2007, in which that committee had contended that the recent actions of Senator Syvret had: 'Very seriously damaged the good name of services and individuals' concerned in the delivery of child protection in the Island. The C.P.C. had also stated that it had lost political confidence in the Minister for Health and Social Services." Copies of the letter - the letter that arose from that meeting of 25th July - were circulated to all of the Ministers present at that meeting, at this meeting, on 26th July. So the letter from the J.C.P.C. dealing with their meeting and complaining about me, their meeting, which took place on 25th July, was discussed at the Council of Ministers the very next day. The letter in question, the facts of the letter in question, was in fact physically handed out to the Ministers by the Chief Executive himself who explained the background to it. How does one square that with the statement he put in his notes to the Constable of St. Helier asserting that he did not know of any such meeting having taken place, that he was not aware of the issues? Manifestly complete falsehoods. Simply unreliable. This is important because the welfare of the people of Jersey depends upon the good performance of the public sector. If politicians - no matter who they are or what their political views may be - cannot rely upon being given full, frank and honest information then we are never, not this Assembly, not any Assembly, going to properly serve the public interest if we are prepared to take things like that, for example, kind of false information that has been given, unfortunately, to the unfortunate present Minister for Health and Social Services, all that information I just quoted, false information provided to the Constable of St. Helier. I can just quote briefly another item related to these notes, which again further emphasises the issue. One of the things that I had asked the Constable of St. Helier to assist with was the nature of events that took place at that meeting on 25th July, and indeed the meeting of the Corporate Management Board, which also took place on 25th July. As a result of me making a formal, criminal complaint to the States of Jersey Police to the effect of conspiracy to pervert the course of justice and misconduct in a public office concerning the activities of those 2 meetings, the

Chief Officer of the States of Jersey Police Force wrote to me, responded to me, in an email saying some other things, but the relevant passage is this - this is, to me, following my giving of a formal criminal complaint to the police - I quote: "After some discussion with the other parties copied into this email, we have agreed that it is in the interests of fairness in respect of your possible complaint, and in the wider public interest, that we should disclose that both myself and Detective Inspector Fossey have evidence which may be relevant to the matters you complain of. The evidence is in the form of notes made following separate meetings which we both attended on the afternoon of Wednesday, 25th July 2007, at which matters relating to your position [me] were discussed. These notes have been preserved and can be made available to any competent inquiry or investigation." I have been trying to get hold of those notes, of course, ever since I was made aware of their existence. Notwithstanding the fact that they are of evidential importance in the prosecution against me, I just cannot somehow get them disclosed to me. I really, really wonder why that is. Anyway, the Constable of St. Helier did try on my behalf to obtain these notes. Again, this is what the Chief Executive to the States of Jersey had to say: "On 2 occasions Senator Syvret has said in the States that he had seen, been shown, or told of notes of a meeting of the Chief Officer prepared by its Senior Police Officer. On each occasion when I was made aware of these statements I asked the Chief Police Officer if he had made such notes. If so, what meeting was referred to, and whether he had shared them with the Senator. I was told he had not and I was not surprised by his response." I really cannot imagine for one instant the Chief Officer of the States of Jersey Police Force saying to the Chief Executive, no, he had not been at such a meeting and, no, he had not written such evidential notes because of the concern he had about the legality of what he was witnessing unfolding when in fact he had already written to me later that very year informing me of the existence of those notes. What we were looking at, in fact, on that occasion, just to summarise, that is effectively a *coup d'état*; frankly, an unlawful act by senior civil servants to involve themselves in politics, lie, deceive, engineer the dismissal of a democratically elected Minister because the Minister in question was beginning to uncover a lot of very nasty failings in the system. That is indicative of the true nature of the leadership of the Civil Service that we have in Jersey; the high levels of it. The vast majority of public sector employees are excellent and do a wonderful job. We have ample evidence - not only in the child protection stuff I have just referred to, but in the material we are considering today, the inquiry into the event that led to the tragedy, and indeed numerous other examples. We have absolutely mountains of hard, factual evidence of frankly a casual culture of simply lying, misleading, telling brazen falsehoods to politicians. Unless we are finally going to recognise that fact and stand up to it, we will never be able to do our jobs on behalf of the people of Jersey who put us here to look after their public sector and to look after their taxpayer's money. I said, when I began speaking, that there was a danger the Assembly was going to make a spectacle of itself if it were to reject the proposition of the Deputy of St. Martin. I sincerely hope that is not going to be the case because I think regardless of what political views one has, there no longer, surely, can be any credible argument against the fact that there is a serious problem here, a culture of failure, a culture of concealment, a Civil Service that is unaccountable and out of control at the highest levels and we finally have to start getting to grips with it and bring it under control. We can take the first step on that path today by saying: "No, we will not get fooled again and we are going to support the Deputy of St. Martin."

#### **5.1.18 Connétable J. Gallichan of St. Mary:**

Firstly, I would like to start by saying that I commend the Deputy of St. Martin for the work he put into this proposition. It is absolutely clear to me that Dr. D's situation in its entirety, including all aspects of his suspension, must be fully and, importantly, independently reviewed. It is unfortunately also just as clear to me that this proposition is simply not the way to do that. There are 2 clear, distinct issues here: (1) the events leading up to surrounding the death of a patient and what ensued from that and (2) there is the separate issue of the current suspension, which is dealt with completely by this proposition. The 2 do not hang together. Deputy Le Claire talked about chalk and cheese, referring to the difference between debates held for this proposition and the last

debate we had on P. whatever it was that we talked about the Committee of Inquiry. I am absolutely crystal clear why I did not vote for that Committee of Inquiry and a lot of it had to do with the fact that I was very clear we should not be delaying the results we were seeking from the Verita inquiry because it is fundamentally important that we review the situations that led to that tragedy. Also, because I had been contacted by the widower of the deceased. I had spoken to him several times and it was clear to me that his support for the Verita inquiry was undiminished and that he deserved the closure, he deserved that matter to be fully investigated and for his family's feelings to be spared any further delay. He is as much entitled to that as Dr. D is to his review of suspension, this proposition is simply not the way to achieve it. It is like realising that you are bumping into things and thinking: "I must need glasses" and then going to your dentist to get them. He might be very good, he might be very thorough but he is not going to guarantee clear sight at the end. This is not the way to do it. Senator Syvret brought us back to the event that started all of this and he was very powerful in what he said. He said it was a product of H.R. failings, so maybe have another look through this current proposition. This proposition deals with the suspension of the consultant, how that was handled and how that exclusion or suspension - however we are going to refer to it as - comes forward to the present day. All those things need to be reviewed. I think so and I share the concerns that there would not be a fully independent review if that was undertaken by the States Employment Board, but I do not believe that we should confuse that issue with the issue which Verita are looking into at the moment. They are very close to the end of their review. I think it is extremely important we have the results of that review and I think it is extremely important that we do not allow the intentions of seeing a review for Dr. D to cloud and to muddy the waters of that review. It must quite clearly, if it is going to mean anything, be kept separate. I fully endorse and echo the comments of the Minister for Home Affairs. He had it absolutely down to a T; we need a preliminary report on the suspension. We need that, it is long overdue. This should not be happening; the suspension should not be going on unchallenged or unvindicated. There must be either a reinforcement of the reasons for the suspension or it must come to an end. But this should not be part of the Verita review, I am quite clear on that, and I am sorry there are so many people who feel that they have not got clarity. We had massive confusion this morning about the terms of reference yet we were all here when we had the debate. We have all seen or, at least, I have seen the ministerial decision, I knew exactly where to find the revisions. It was quite clear to me what we had decided at that last proposition, time was of the essence. Time is still of the essence for Mr. Rourke, there is absolutely no getting away from that and, I am sorry, this is looking at the right thing but finding the wrong solution. I am sorry; I will not support this proposition.

#### **5.1.19 Deputy S. Power of St. Brelade:**

I have become very uneasy in this Chamber when this Chamber discusses matters such as this death (a) when there is an ongoing investigation by Verita and (b) when this family have still had the opportunity for an inquest that would bring closure to this 3-year tragedy. I remind Members that this Chamber has, on at least 3 occasions recently, involved itself in debating matters which are open and ongoing investigations and I have really got big problems with this. This is not a court of law, this is a political Chamber. We should not be getting involved in areas that we have absolutely no expertise and we have no right to discuss it. That is my personal opinion. I am very uncomfortable with the fact that Mrs. Rourke's name has been brought into this Chamber again and again, that the Rourke family have to listen to us discussing this again all day in another day. I think that is wrong. This debate today does raise a number of questions about the competence and management of Health and Social Services; it raises some questions about the management of the States Employment Board and about the Human Resources Department. Again, it is outside the scope of this Chamber to discuss these matters because we do not have the competence, there are people that can do that. It is inappropriate and too early for us to get ourselves involved in these matters. The Deputy of St. Martin's presentation was very well prepared, very well rehearsed, but it worried me also because I felt that for a large part of his presentation he was presenting, not so



much the facts relating to the death of Mrs. Rourke, but a lot of subjective information relating to Mr. D and his suspension. I had a problem with the way he presented that. I did for a time this morning feel that perhaps there was something incredibly wrong with this ongoing suspension of Mr. D and swung towards favouring the Deputy of St. Martin and then I became very irritated with some other parts of the debate. Again, I feel that we should not be discussing this. There is an open investigation which is being completed by Verita and then there has to be an inquest and those 2 pieces of work are not done. We are debating this prematurely. There must be other factors and other information available to help in Social Services, to the Health Minister and previous Ministers, to Human Resources, to the States Employment Board, that our causing this ongoing retention of this Mr. D. There have to be other reasons and I have to say to myself that there are factors that we are not aware of that we should not be aware of until all of these investigations are complete. I agree with the Constable of St. Mary that there should be no further delays because of the family and that is why I also voted the way I did on the debate of the Committee of Inquiry. I have listened to a great number of speeches this morning. It has been a shambolic debate. There was a great deal of confusion. I was completely confused myself at times and, I think, waiting for the ministerial decision on the terms of reference. To be honest with you, it did not inspire me with confidence in the management of Health and Social Services because I do not think the Health Minister should have been in that position. I was aghast this morning that she had to wait and I felt she had not been sufficiently prepared. Again I concur with Senator Syvret, it was not her fault, she has inherited the situation. This is the fourth Health Minister since the summer of 2007 and there is obviously something very wrong with something in Health and Social Services. I was appalled this morning that the Health Minister was put in the position she was in and I hope it is never repeated again. I want to refer briefly to the speeches by the Home Affairs Minister and I also felt that he made the shortest, clearest summary of what is going on at the moment and I felt anyone who had listened to the Home Affairs Minister got a very good snapshot of what is going on. I also paid particular attention to Senator Ozouf's criticism of what is going on in Health and Social Services. Obviously it appears to be a great deal of work that needs to be done to sort out this department. I would say that there are 2 departments that will need investigation once Verita comes out and that is the whole management structure of Health and Social Services, how it has conducted itself and also the operation of the Human Resources Department because that obviously has got a massive problem as well, as Senator Le Marquand referred to, the way these suspensions have not been properly managed and we are not just talking about this one today. So there are massive problems to be dealt with. I listened to the Attorney General who had some very clear comments on how the police investigation took something approaching 2 years. We had no closure on that until the court case started at the end of 2008 and we had an acquittal on 27th January 2009. So from 17th October 2006 until 27th January 2009 any further investigations were frozen until the police decided what they wanted to do, presented the evidence and then in the Royal Court the locum was acquitted. So since the end of January this year things have been able to move forward again. We are where we are today with the appointment of Verita by Senator Perchard, the endorsement of that decision later on in the year, and now we are about to get a result. That basis of that result then means that there may be further investigations into Health and Social Services, into Human Resources and, most likely, into Mr. D himself. The Attorney General was quite clear on the difference between medical negligence and criminal negligence and we do not have the information to hand in this Chamber to judge anything right now. Finally, I would say that I do know somebody in the hospital who works in this area. They were not on duty on that particular day but I have had a number of discussions with this person and I do know that other consultants in the hospital have said that their position would be untenable because of individual concerns within the consultants to do with issues, concerns and professional standards associated with this whole incident back in 2006. So we do not know what is going on and I would suggest to Members that we trust and rely on the investigations that are being carried out, the Verita one which is about to conclude and then we wait for the inquest and then we see what happens. But certainly I will not be supporting the proposition.

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

Before we go to the next speaker, there is just a little misunderstanding between the Usher and myself, I asked if he would copy these out so I could have them distributed. He has distributed them without me knowing, with all the best intentions. There is not a name on them. I am one of those who always complains that we ought to know who is sending these out. So just a misunderstanding, they were given a copy of the quality of the Verita team. It has not got my name on it but they have been distributed by me and I apologise for my name not being on it.

### **5.1.20 Deputy M. Tadier:**

I am pleased to follow on from my colleague of St. Brelade. I too am very uneasy that we are all debating this today in the sense that certainly I do not feel like I am in any position to do so. I am not an expert and I have not necessarily been following what has been going on very closely and I am sure there are other members in that position. Also, I am uneasy about the inconsistency. We have been naming some people by initials, such as D, or whatever, and then we have been naming Mrs. Rourke and obviously that makes me slightly uneasy, there is an inconsistency there. It seems that we have had debates in camera for much less reason. In hindsight this maybe should have been done in camera if only for the aspects of sensitivity that we should have been showing. I do want to comment briefly on the analogy we heard from the Constable of St. Mary a moment ago, which I think was, well, just not appropriate to say, that what we are asking here is the equivalent of bumping into things because we have not looked at eyesight and then going to the dentist. I do not think that is true. What we are doing here, I can perhaps offer a better analogy, it is like putting your car into the garage to get the engine fixed and then at the same time as doing that saying: "There is a problem with the clutch. Can you also look at the clutch?" That is all we are doing and the result of that being that there is a risk that it will take longer to get the car back but you will get both of them done at the same time. The reason that is a better analogy, if I may offer the fact that it is, is that we heard from the Chief Minister only a few moments ago that as a pragmatist he has no problem with Verita carrying out the review. So clearly Verita are quite capable of doing the review into the H.R. implications. So the analogy of dentists and opticians, I would suggest, is not an appropriate one. This is simply a political decision. The consequent question, therefore, is is the delay worth it? That is not necessarily something I can answer now. Much has been said about the delay for the family of the victim, that they have been waiting long enough and that certainly I am sure is true. But one also has to ask the question what about the doctor involved in the case who has been suspended and who has not been charged either? Is it fair on that person and that person's family, presumably who also are suffering in not the same way but also in a very real way, I am sure, due to the fact that this doctor, who has not been charged, is apparently suspended as a neutral act, is being prevented from carrying out a job and a job which I am sure he loves and is very good at. That is the argument I would put forward and including it in the Verita terms and conditions. Now we have made a spectacle of ourselves, this proposition has been lodged since 18th August, I believe. That is roughly 4 weeks. We all agree here that we need to have some kind of independent inquiry into the situation with the doctor involved. We all agree that it is not satisfactory he has been suspended for 3 years on full pay and without any closure. So my question really is why were amendments not brought if people are not happy with this particular proposition but are happy with the spirit of the proposition? Why did none of us have the foresight, particularly those who are maybe involved as I look across at the States Employment Board, but also other Members who are more closely involved in the case, why did we simply not change the wording so that we could request the Health Minister to instruct Verita, or another agent, to investigate this, give us specific dates. It has been suggested by a colleague of mine that we should ask the Chief Minister for an in-principle agreement with a date, if that is what is being proposed, that we do have Verita look at this, or some other inquirer or commission, and that we have something definite. Perhaps the Chief Minister would like to respond now and I hope I can carry on with my speech after that.

**Senator T.A. Le Sueur:**

I would just draw the Deputy's attention to the final paragraph of my comments on this proposition where I said: "I have asked for an independent review to be carried out. I expect this review to be completed within a matter of weeks once a competent person has been appointed. Verita deal with Health-related issues rather than H.R. ones. I will report the main findings to Members." The statement was clearly set out in my proposition.

**Deputy M. Tadier:**

I am glad for the intervention but that does not seem to be what is understood by all Members in here, but I will leave Members to make their own minds up about that. I guess the question is about who does the inquiry. It has been said that Verita are quite capable of doing the job. Looking back at the wording as well, it is not simply that it is an H.R. issue, I do not think that is true. The wording says that we are requiring an investigation into the events relating to the exclusion of the consultant. It does not just say to the exclusion of the consultant it is the whole events that relate to the exclusion of the consultant. I mean, as it has been said before, that seems something that should go on anyway and in my simple mind it seems that the investigation either is doing that already or it is not. If it is doing it already I do not see the harm in voting for this proposition just to cement it, because there are clearly Members in the Assembly who do not believe that that is going on, so that will give them peace of mind. Of course, if it is not happening already then clearly it is something which the investigation should be looking at. That may sound slightly simplistic but that is the way I would look at it. I do not have any problem in supporting this proposition but it is not a proposition that I feel easy about voting for, one or the other. I realise why there is hesitation on both sides and I hope at the end of the day that we do bring closure to both parties in this because I do not think it is satisfactory that it has been dragging on for so long and I do commend the Deputy of St. Martin for bringing this.

**5.1.21 Deputy J.A. Martin:**

I will be brief. I do think we have got ourselves in a bit of a pickle because I just want to read exactly what (a) says, and maybe when the Deputy is summing up he can give me some assurance because I think some people in the House are under some misconception of what (a) may give them: "Investigating the reasons for the immediate exclusion of the consultant obstetrician and gynaecologist and the locum consultant obstetrician and gynaecologist." "Investigating the reasons", now that is totally a private and confidential matter between the consultant and the employee and unless either - and I hope both - will ever give permission for any of this to be put in the public domain, the Health Department certainly or the Human Resources definitely cannot do this. You might all want to know what the reasons were but if the internal investigations lead to obviously disciplinary then that will be and maybe even go further. But that alone will not get it. Again, (b)(i) is totally right. It is: "Did Health Services procedures in place at this time deal capably ...?" Totally right, which is what the Chief Minister seems to be looking into, which is totally acceptable. Again, (b)(iv): "What factors lead to the consultant being excluded on full pay?" Again, it is exactly the same thing that we would all like to know. I think, as Deputy Power has mentioned, obviously there are lots of things that people may know. There is lots of evidence, if you care to look for it, in places. It is a matter of opinion. There is also a fundamental flaw, I think, to request the Minister for Health and Social Services to instruct Verita. Verita are just employed, they are a totally private company. Obviously talks will go along and there will have to be terms of reference drawn up under these and budget and timescales. Again, a very, very long way off. I know that they have started writing the report which will be produced next month. From there these may flow. I am in a very awkward position because there are 3 or 4 things in here that definitely need looking into. Some of it is covered by the comments from the Chief Minister in the independent inquiry but I do think, listening to the Attorney General, I think what we should have, because it is so conflicted, as the Constable of St. Mary said, is an assurance and maybe if this does not go through, I mean, it is certainly a matter for the House, and I know that either Senator Syvret

or the Deputy of St. Martin know very, very much about committees of inquiries. We need in Jersey a Committee of Inquiry into the whole Human Resources across the States and the States Employment Board. I think that would be fully supported. I think this again could waste a lot of resources and a lot of money not achieving what everybody wants in this House, a reason because, as I say, it will have to be released by the person themselves. If the Deputy of St. Martin is going to assure us that he has got this permission, that is another thing. But I really do think we do need a Committee of Inquiry into the Human Resources. We have not just this person, we have too many people suspended in the States of Jersey and it needs to be across the board. This I do not think will do it. It will certainly delay ... well it will not because, as far as I am concerned on Health, I will not let this delay the thorough work ... we have worked to a timetable, we extended it slightly, it is nearly finished. If anything, this will have to be negotiated. We would have to ask Verita if they want the job. In fact, as it is a completely different set of work I think it should go out, as most things do, to the best appropriate people for the job - they may be it. But I would definitely take Deputy Green up and discuss with Verita that we would have to produce the report that we were doing and this would have to be done separately. But if you are going to do another committee of inquiry to look at Human Resources, please do it correctly. Get everybody together, get all the departments, you have got suspensions in Education; you have got suspensions in Home Affairs. It needs to be uniformed and it needs to be detailed and it needs to be totally independent and it needs to look at the States Employment Board itself.

#### **5.1.22 Deputy E.J. Noel of St. Lawrence:**

Firstly, may I say that Verita are looking into the care, clinical and related matters and not into any H.R. exclusion matters. That is the job of the S.E.B., which they are doing. The clinical issues involving Dr. D are being covered by Verita. The Minister and her Assistant Minister are not allowed to divulge information concerning H.R. issues about individual employees. The Deputy of St. Martin can state his case but we at H.S.S. (Health and Social Services) Ministry cannot. We find ourselves in a similar position to that of the Home Affairs Minister in connection with the Chief of Police. We are not a million miles away from the Deputy of St. Martin and I would like to address the terms of reference - the terms of reference are on the seventh page that has been distributed. The terms of reference have been clarified and strengthened by making it fundamentally clear that Verita are investigating the details of what happened and the actions of individuals making it clear that the investigation will also be considering hospital and H.S.S.D. procedures and practices. I return to what is the fifth page of the document that you received earlier this morning, which is a copy of the letter that was sent to Verita. In the third main paragraph down, the last sentence, the Minister writes: "I can also reconfirm that we are not asking you to carry out an investigation for the purposes of disciplining individuals. However, any such issues arising from the report will be dealt with under the relevant policies and procedures." That clarification was put into that letter on behalf of Verita, they requested that clarification. I would like to support the proposition but I cannot for the following reasons: the proposition asks us, and I quote: "To instruct Verita to include in their current investigation and examination of the events relating to the exclusion of the consultant." I simply cannot go along with that because this assumes one key fact - Verita would want to do that piece of work. After the Deputy of St. Martin met with Verita, Verita had a meeting with the Minister and myself. Although they indicated that they would be willing to look at the H.R. issues they - Verita - do not wish to include such a piece of work within their current terms of reference. Naturally Verita are willing to do this piece of work but after they have completed and submitted their report because - in their words - they do not wish to dilute their findings in any way because of the serious nature of those findings. I humbly request this House to allow the Health ministerial team to complete the work that we have started, please reject this proposition.

#### **5.1.23 Deputy T.A. Vallois of St. Saviour:**

I just wanted to refer to the comments of the Chief Minister to this proposition. The last paragraph states that he has asked for an independent review to be carried out by an external competent person, not by a Committee of Inquiry, and also the States Employment Board would be assured, not the States Assembly, not anybody else that has issues with regards to the Health management as well. I think that needs to be confirmed by the Chief Minister but also to say that it will be done in a matter of weeks I personally do not feel that that is a good enough timeline. I cannot hold the Chief Minister to account by saying a few weeks because that could mean a number of weeks. So, could I have some clarification on these comments, please?

**The Greffier of the States (in the Chair):**

I call upon the Deputy of St. Martin to reply.

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

I thank all those who spoke. I had a feeling who was going to speak against. It has not changed my mind. I am a little bit disappointed for the Constable of St. Martin, I thought he might have listened to the whole of my argument and would have understood it but quite clearly he did not, but never mind. Can I begin with Senator Ferguson who was quite right with so many things she said and, really, at the same time she is well aware of the cost, both in human and in financial terms. I think that is something we have got to look at here. I did say in my speech there was another victim, an innocent victim who has been suspended for 3 years. A good analogy maybe is to ask Members of the House themselves to think: "What would I feel like if someone took a 3-year term out of my service in the States?" I tell you what, I wish some of them did. But that is the effect, really, that we have had someone's life taken away from the whole way of life for 3 whole years and yet no one is really feeling any sympathy for that, and I will come to that when I come to what Deputy Power said. The Deputy of Trinity, the Minister, really, we heard nothing new. Basically the speech was from her comments. She mentioned about patient safety and I have heard the Minister and I know she is very concerned about patient safety and we share that concern. But where is the concern and who are we afraid of? She will know and I know because I have read it out that Hutchison's review are not concerned about Dr. D's capability. Even the Medical Director in his report - maybe the Minister has not got it but I have - to N.C.A.S. said there is no concerns about his capability. So why are we concerned about patient safety? I wish people would really read and understand their brief. Quite clearly it is a lot for the Minister to take on and I just feel the easiest way would have been to accept what really is part of Verita's terms. We have got Deputy Green, I am grateful, he says what is to be gained by delay and he is quite right. Deputy De Sousa and Deputy Jeune both spoke in support. Senator Ozouf, we must remember, is the Deputy Chairman of the States Employment Board. I think Deputy Shona Pitman really tried to get an answer from him but I think Senator Ozouf - maybe he will agree with me or disagree with me, I want to find out - although I know he has been a Member of the States Employment Board this term, I do not know whether he was for the term ... okay. So at least I think that has clarified this. So, really, in fairness to Senator Ozouf, he has only had responsibility since December, along with other Members again. So that clarifies the point. At the same time they have a job to do. He has really serious concerns about Health management and I am not really into that. This is not what this debate is all about as, indeed, the Deputy of St. John mentioned about a vote of confidence against the Minister for Health. That is not my brief; I am not even interested in that at all. Again, that is not what this is today. I do not really think he fully understood the terms of reference and, in fairness to him, he had not got that and I slipped him across a copy for him to go through. So, again, in fairness to Senator Ozouf, he would not have understood. I have spent a lot of time, I do understand it and indeed Senator Syvret does. It is a complex project, maybe it is too complex for my Constable of St. Martin [**Members: Oh!**], but it was complex ...

**The Connétable of St. Martin:**

I fully understood the proposition from the Deputy of St. Martin but I just did not agree with it.

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

I understood from his speech that he found it complex but never mind, we will agree to disagree. There was just one thing that Senator Ozouf mentioned about this being a court. I did not say it was a court I said: "But what we ought to be doing is listening as if we are in a court because you are the jury and the only way you can really vote yes or no is listening to all that has been said and then you can sum up the merits of the case." Indeed, sometimes people do not need to listen because if Deputy Hill stands up people are going to vote against, but this should not be the case. I am not saying it will be the case here because it was not this morning. But we should not do that, what we are doing is discussing whether in fact Verita should be looking at this, so take personalities out of it. The Deputy of St. Mary, I thought, again had a good grasp of what was going on but he did ask a question which needs an answer. He was asking about the money. What I have done is quite right, the written question I asked of the Minister was: "What was the cost not only of the suspension but also of the cover?" Unfortunately we did not get all the answer again from the Minister for Health, I could not understand why. So, in fact, if you say it cost £635,000-odd to cover his work it must have cost another £600,000 for the work he was not doing. So you multiply, it is quite simple. I have got an accountant on my left disagreeing, but obviously if it cost that to cover him it must have cost him that in the first place. We are not going to argue about it but I will say it is at least £1 million plus and if everyone is quite happy with that, okay. I do remember Senator Perchard mentioning it in March when I spoke to him and the figure then was £750,000 and he said he was staggered and he would not want to live with that, and I quite agree with him, whatever the sum was, it is far too much. He talks about the delay again for reasons and there were not. We should not be looking for delay. He said about lack of adherence to procedures and again we keep hearing that. We wonder, in fact, whether procedures are in place and I think that is one of the things Verita will find out. But a lot of policy was not there. That is why if people are supposed to do something how can they be taken to task for doing something when there is no policy to say they cannot or they can. It is so open and so unfair. Again, he pointed out the main action was to look at the response afterwards which, of course, has been agreed by the Minister. So, well done for picking that up. The Deputy of St. John, again I thank him for his support. Senator Le Marquand went a long way with agreeing with me. There are a number of issues there we can agree with and I hope now that as the States have agreed to the policy or the new system I brought to the House earlier on about when someone is suspended, they are now given it in writing. Yet I had Members of the States Employment Board telling me: "Occupational Health, that never happens." It does happen. We have a classic case here where a doctor has not been given the reasons for his exclusion or suspension. I am rather disappointed the Senator Le Marquand cannot support what I am proposing. Again, I do not think we are a million miles away and for the reason that I will say in a minute why I should go on with it. Senator Perchard, I am grateful for his support. He fully understands it. He was dead right. There are so many things in here which Verita should be doing already and it will be part of the brief. That is the reason why I have asked Members to have a look at the quality. This is one of the things that turned my support from voting against. What Senator Syvret was proposing was what is the quality and the breadth of experience from the Verita team? Now, okay, I want to maintain Senator Perchard's support but I honestly believe the quality of the people on the team here are more than capable of looking at some of the concerns that he had. I think another Member also spoke about whether this team was capable of looking and what factors led to the consultant being excluded on full pay for almost 3 years. Well, I would have thought people from here were quite ... you know, I could do that and I am not clever enough to be on this lot: "They would have no expertise investigating funding arrangements to cover the cost of exclusion." Well, I thought these people here, again, more than capable of looking at that. You know, if that was the only concern Senator Perchard had I hope I have allayed his fears. The Chief Minister, again almost said what was in his comments. I said the comments had been checked by someone like myself because I could ensure they were accurate but really we learned nothing new except again and again, we are not a million miles away. What the worry always is is the delay. I honestly believe that Verita are the best people to do it because they

are already in there. If we have got to start all over again how much is it going to cost and how much longer is it going to go and how long is it going to take? We have Deputy Le Claire, again, I am grateful. He talked about how can the States Employment Board be selecting a team to look at them, you know, where is the conflict? He is right and again he said quite correctly: "Verita are so well advanced in their review that why should they be stopped?" I have mentioned about the Constable of St. Martin, I will not repeat. I hope I might get him to change his mind, but who knows. Senator Syvret, again, a thorough knowledge. I am not going to go through what he said but quite clearly he knows what is going on and I think, quite rightly, I wish in a way I had supported him last time. But really what we have got? I think he now respects what Verita have got to do and he has the confidence that will fulfil it. The Constable of St. Mary I was disappointed but not surprised. She had said she contacted the widower but I am glad Deputy Tadier clarified the note she gave us. I have got here something that is almost what Deputy Tadier got to say but in a different way. He was talking about what the Constable of St. Mary said about bumping into things. Well, what we would have is people bumping into things and not dealing with the problems that they come to. That is the sort of analogy that Deputy Tadier was using. If you are going to be servicing a car you do not service it all and find out the carburettor is no good: "I have not been asked to do that so I am not going to do that." So you take the car out and it has got to come back 5 minutes later because the carburettor will not go. You say: "Well, why did you not ...?" "Well, you did not tell me." But here, in fact, they have been told because it is already within their terms of reference. So if they did not do it you could then have justification to say: "Well, why did you not fulfil your terms of reference?" Deputy Power I think he said about the focus of my speaking, a problem with the focus of my speech. In fairness, the Deputy is right because I just felt it was not covering all of the ... it was important to ensure that what Verita was doing was focussing on all aspects of it and I honed in, in particular, on to the main actions taken by Health after the death and that is why I have read out part of my proposition just to look at that aspect because I felt it was so important. So, if it is focused on that one suspension, well, it is intended but to the exclusion of everything else because, as I say, it is part of the terms of reference. Deputy Tadier mentioned about it again in his comments. Deputy Martin wanted to know about some of the issues on the proposition. I am rather surprised because Deputy Martin is normally quite sharp on these things. But she did say that she thought that (b)(i) and (b)(iv) were all part of the human resources issues. If they are, so what? I do believe that the people on the Verita team are more than capable of looking at these things. Does she really sort of put things down ... Verita are not just simple people, they are quite capable of dealing with a number of things and these, honestly ...

**Deputy J.A. Martin:**

Would the Deputy give way a minute? Sorry, I fully respect I do know that they are H.R. My question to the Deputy was in disclosing dealing with employees is completely private and confidential. I was asking the Deputy did he have permission from the consultant? What the people in this room want to know is would he be disclosed in the information because the Health, or whatever, cannot ...

**The Deputy of St. Martin:**

I would have thought Dr. D would be delighted to find out what he has been suspended for, and I am sure he would share it with the rest of us. He is just as much in the dark as the rest of us here. Probably the only people who know are ... who knows, because I do not think anyone knows. He does not know so I am pretty certain that Dr. D would be delighted for the rest of us to know.

**Senator S. Syvret:**

Could I ask the speaker to give way a moment? Having discussed this matter with Dr. D on several occasions, I can inform the Assembly that he fully understands the nature of a transparent investigation, whatever type it may be agreed by this Assembly. He fully understands and is quite content.

**The Deputy of St. Martin:**

Could I say I have only met Dr. D once and that was out somewhere in the summer when a States Member introduced me to him. So I am not on familiar terms. Certainly I have only met him on the one occasion. Just to pick up on one thing that Deputy Martin said, Verita are already writing their report. Well, there you are because I know when I went to see them they were writing their report as they go along, sometimes like we do in Scrutiny. You do your report and you keep adding things to it. So they are writing the report. But I know that for a fact they have not finished interviewing people because they are going to see Dr. D I think next week or the week after. It is ongoing, they have not completed it so do not think we are going to delay it. Deputy Noel followed as Assistant Minister and almost said what we have got in the Minister's comments. We knew full well that he was not going to support what I was going to do and he had met Verita. Finally, I had met Verita just prior to Deputy Noel and the Minister - because they said they were going to meet - and when I spoke to Verita they did not see it as a problem. They said that they had not been told but to them they did not think it would be a big deal. They said with the addendum anyway that would cover it. I said: "Well, I thought it was in your terms of reference but I will check with the Minister", and that is why as soon as I got home I emailed, I think, at 2.00 p.m. or 3.00 p.m. in the afternoon but, of course, by that time the Ministers had already met and when I got a message back saying: "No, we do not think it is." Certainly I do not think it was difficult for Verita to do it. Could I sum up now by the final things I want to say. There are 5 parts to the Verita terms of reference and I think it is very, very important that all those 5 parts are covered. The main one really taken by the Health and Social Services Department was in response to the death. That was the second part and I just feel that is important, that if Verita are looking at the main actions then the suspension is the main action. The one concession I have had from the Minister for Health is that she has conceded that the suspension of Dr. D is the main action. So if it is the main action and Verita are looking at the main actions, and Verita are already well into their review, why should they not carry on with that review? It will save delay, it will save expense and the delay will be, to the overall end of the report, maybe 2 or 3 weeks at the very most. Just imagine if we have got to go ahead and get a Verita report without the carburettor because it has been left out. So, it makes sense. Again, I believe Verita have all the qualifications to do it and this is not about disciplinary matters, they are looking at the circumstances that led to the exclusion, the reasons, not whether the guy is guilty or not, they are looking at the reasons. I have told Members to look at the quality of the Verita team. I think it will cause more delay if we do not go forward with this and delay will be to the cost, the financial cost and the personal cost of Dr. D. There are other victims and other people involved. Do not just think, and as much as we want to not think about the poor lady but at the same time there is a man here who has been suspended for 3 years. How would you like 3 years of your life taken out. Somewhat, maybe, like in practice, do not come to the States for the next 3 years and tell us at the end of the 3 years how you feel. Yes, I believe the review should be thorough, should be robust and, to use the Minister's terms, leaving no stone unturned. Deputy of Trinity, this is what we will have, a thorough, comprehensive, robust review. Do not delay, let Verita get on with the job they are already doing. They are capable of finishing it so let them do so. Sir, I ask for the appel.

**The Greffier of the States (in the Chair):**

The appel is called for. Will Members return to their seats. All those who are for or against the proposition of the Deputy of St. Martin the Greffier will open the voting.

<b>POUR: 22</b>		<b>CONTRE: 22</b>		<b>ABSTAIN: 0</b>
Senator S. Syvret		Senator T.A. Le Sueur		
Senator B.E. Shenton		Senator P.F. Routier		
Senator J.L. Perchard		Senator P.F.C. Ozouf		
Senator A. Breckon		Senator T.J. Le Main		
Senator S.C. Ferguson		Senator F.E. Cohen		
Connétable of St. Helier		Senator A.J.D. Maclean		



Connétable of Grouville		Senator B.I. Le Marquand		
Connétable of St. Lawrence		Connétable of St. Martin		
Deputy R.C. Duhamel (S)		Connétable of St. John		
Deputy of St. Martin		Connétable of St. Peter		
Deputy R.G. Le Hérissier (S)		Connétable of St. Mary		
Deputy of Grouville		Deputy J.B. Fox (H)		
Deputy P.V.F. Le Claire (H)		Deputy J.A. Martin (H)		
Deputy S. Pitman (H)		Deputy of St. Ouen		
Deputy of St. John		Deputy J.A. Hilton (H)		
Deputy M. Tadier (B)		Deputy J.A.N. Le Fondré (L)		
Deputy A.E. Jeune (B)		Deputy of Trinity		
Deputy of St. Mary		Deputy S.S.P.A. Power (B)		
Deputy T.M. Pitman (H)		Deputy I.J. Gorst (C)		
Deputy A.K.F. Green (H)		Deputy A.T. Dupré (C)		
Deputy D. De Sousa (H)		Deputy E.J. Noel (L)		
Deputy J.M. Maçon (S)		Deputy T.A. Vallois (S)		

**Senator S. Syvret:**

Could I just make an observation that all 3 former Health Ministers all voted in favour of it.

**6. States of Jersey Complaints Panel: appointment of members (P.116/2009)**

**The Greffier of the States (in the Chair):**

Very well, finally in Public Business, you will recall that P.116 was deferred to the bottom of the list yesterday, the States of Jersey Complaints Panel. I ask the Greffier to read the proposition.

**The Assistant Greffier of the States:**

The States are asked to decide whether they are of opinion to refer to the Act, dated 17th June 2009, in which they appointed a Chairman, Deputy Chairman and 5 members of a States of Jersey Complaints Panel from whom members of Complaints Boards can be drawn, for a period of 3 years, and in accordance with Article 5(2) of the Administrative Decisions (Review) (Jersey) Law 1982, to appoint the following additional members of the Panel for a period of 3 years: Mr. Christopher Beirne, Mr. Robert Frederick Bonney, Mr. Frank Dearie, Mr. Stephen William Platt.

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

I think that this proposition is extremely self-explanatory and I hope that Members will note the format in which it is set out. The report is designed to show exactly what the role the appointees are going to fulfil entails, what the selection process was, how many applicants there were, how the selection was made and a brief C.V. of all the successful applicants. I think this is a model that is comprehensive and fulfils some of the criticisms that have been levied at recent appointments and I hope other Members of the House when dealing with appointments might see fit to follow this same model. Apart from thanking both the existing chairman, vice-chairman and 5 members who were appointed earlier this year and, of course, all the applicants and the 4 successful applicants willing to give their time voluntarily to this position, I think there is nothing further to add and I make the proposition.

**The Greffier of the States (in the Chair):**

Is the proposition seconded? **[Seconded]**

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

Just quickly to cover what the Constable of St. Mary has just said, I absolutely agree that the way this has been laid out is absolutely exemplary and I will agree with her that other Ministers or other Members should take this forward.

**6.1.2 Senator A. Breckon:**

I would just like to comment. I would like to congratulate these people and heartily endorse their public spiritedness in coming forward but I do have some problems with the process and I think it is something that P.P.C. really should look at again. Students of Clothier will know that Clothier said there should be a public sector ombudsman. He probably underestimated the amount of work that would be required but it really irritates me if you are putting forward a case and there was one recently about a window being a door that was brought to the attention of the Planning Minister. I took the case, or I think Deputy Le Claire did, last year about allocation of school places and this takes up these good people's time. I really think we need to look at the process of challenging decisions of departments and Ministers to give the public easy and reasonable access. This system, I believe, is cumbersome and these good people, I think, could be better employed doing things at a higher level than some of the things that they have got to apply their minds.

**6.1.3 The Deputy of St. Mary:**

I just briefly want to very much endorse what the previous 2 speakers have said. It was going to be just the one but I endorse what Senator Breckon said as well. I have been calling consistently for appointments to be presented in this manner and I am really, really pleased that P.P.C. have done this and all power to their elbow and I hope others follow suit.

**Connétable D.J. Murphy of Grouville:**

Can I declare an interest here and not vote.

**The Greffier of the States (in the Chair):**

Yes, very well. I call on the Chairman to reply.

**6.1.4 The Connétable of St. Mary:**

First of all, I thank all the speakers for their support and I take on board what Senator Breckon has said, of course. He was really more concerned the process at the Complaints Panel is fulfilled when constituted. Of course, this is simply about appointing members to them, but I acknowledge his concerns. Having said that, I make the proposition and I ask for the appel.

**The Greffier of the States (in the Chair):**

Very well, the appel is called for. The Greffier will open the voting.

<b>POUR: 43</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 1</b>
Senator S. Syvret				Connétable of Grouville
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator F.E. Cohen				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.D. Maclean				
Senator B.I. Le Marquand				
Connétable of St. Helier				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				

Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy D. De Sousa (H)				
Deputy J.M. Maçon (S)				

## **ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

### **The Greffier of the States (in the Chair):**

The Assembly comes finally to the arrangement of Public Business for the next meeting which was agreed yesterday. We will start with questions and preliminary matters on Monday, 21st September. Chairman.

### **7. The Connétable of St. Mary (Chairman, Privileges and Procedures Committee):**

Just to carry on from what you said there, Sir, of course, we did agree to start at 2.30 p.m., I would just like to reinforce that. The arrangement of Public Business will be as per the lilac sheet with the following changes: firstly, amendment 18 to the annual Business Plan will be taken on 22nd September. Your pink sheets show P.49 is listed for that day but I have not had confirmation from Senator Syvret whether he is ready to take that business at that day.

### **Senator S. Syvret:**

I am afraid I have been rather preoccupied trying to keep myself out of jail so I have not had time to look at the amendment.

### **The Greffier of the States (in the Chair):**

You wish it to be deferred?

### **Senator S. Syvret:**

Yes, Sir.

### **The Connétable of St. Mary:**

Thank you, Senator. In that case P.49 will move to the 6th October sitting and if my calculations are correct, that would be the last date for debate under its lodging code of 6 months. I just advise the House of that. Additional items for 6th October will be Projet 143, the Annual Business Plan 2009 variation in respect of the pay freeze rescindment lodged in the name of Deputy Shona Pitman. Then additional items on 3rd November: P.144, the Plémont Holiday Village acquisition by the Public in the name of the Constable of St. Ouen; P.145, the Committee of Inquiry into the

management of the Health and Social Services Department, lodged by the Health and Social Services Scrutiny Panel; Projet 146, the referendum, Position of the Constables in the States, lodged by Deputy Tadier. I think I have got everything.

**The Deputy of St. John:**

Could we be told when the Committee of Inquiry for Reg's Skips is going to happen, please, by the Chief Minister?

**The Greffier of the States (in the Chair):**

Well shall we just deal ... are there any queries on the arrangement of Business matters that have already been lodged? No, there are no comments. Do you want to briefly address the matter of Reg's Skips, Chief Minister?

**Senator T.A. Le Sueur:**

I was interviewing the prospective members this week. I hope to be able to make the proposition next week to put forward their names for debate as soon as possible thereafter.

**The Greffier of the States (in the Chair):**

Very well, if there are no further matters the Assembly meeting is closed. The Assembly will reconvene at 2.30 p.m. on Monday, 21st September.

**ADJOURNMENT**