

# Review of States Annual Report & Accounts 2020

Public Accounts Committee

16 August 2021

P.A.C. 1/2021



States of Jersey  
States Assembly



États de Jersey  
Assemblée des États



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## Section 1 - Chair's Foreword

The Annual Report produced by the States of Jersey provides information on how the States of Jersey performed over the course of the year in the context of its objectives ('the Performance Report') and on how the States are governed ('the Accountability Report'). The Annual Accounts provide information on the financial performance of the States of Jersey covering both assets and liabilities, income and expenditure.

The Public Accounts Committee is tasked with determining whether public funds have been used efficiently, effectively, and economically and represent value for money for Islanders. One of its key tasks is to assess whether the funds have been applied for the purpose intended by the States and whether sound financial practices have been maintained.

Assessing the States Annual Report and Accounts for the year 2020 has been particularly challenging because they reflect unique circumstances, namely COVID-19 and the exit payment of the former Chief Executive. The Qualified Regulatory Opinion issued by the External Auditors was a direct consequence of the handling of the payment. I would like to take this opportunity to thank members of the PAC for their assiduous efforts, especially during the ongoing pandemic and its associated restrictions.

I would also like to thank the Treasurer of the States and his team in the Treasury and Exchequer (T&E) for implementing the recommendations made by the Public Accounts Committee last year and improving the preparation of the States Annual Report and Accounts, despite the challenging conditions. The 2020 States Annual Report and Accounts now includes additional information on departmental performance and objectives and is further supported by Departmental Annual Reports, and the Treasury and Exchequer is continuing to identify and embed improvements within its standard practices. We welcome the Treasury and Exchequer's continued improved performance. I consider that the States Employment Board, as the largest employer in Jersey, should also undertake steps to improve its performance on reporting in its Annual Report<sup>1</sup> in line with the established Performance Framework.

Unlike other jurisdictions, the pandemic did not delay the preparation and publication of the 2020 States Annual Report and Accounts. Its publication would have been on target but for consideration by officers and the External Auditors of the exit payment of the Chief Executive.

Several of the findings in our report relate to the exit payment of the former Chief Executive but it is our fervent wish that the hard work of the Treasury and Exchequer (and indeed, all Government officers) is not overshadowed by this one event.

However, the PAC does not share the view of the Chief Minister in his role as Chair of the States Employment Board that the lack of consultation with any member of the Treasury and Exchequer before or during the time the exit payment was negotiated with the former Chief Executive was a mere "technical breach" of the Public Finances Manual. The PAC is of the view that it was a grave oversight which may have caused, contributed to, or given the impression of, an absence of proper financial oversight and/or expertise in respect of the final negotiated settlement.

The PAC accepts that in view of the extraordinary circumstances which led to the potential for the former Chief Executive to lodge a claim against the States, his 'exit' payment of £500,000 was not unreasonable. However, we hope this unique set of circumstances remain exactly that – unique. To that end, we have recommended that all relevant processes should be stringently followed and documented, in respect of any Special Payment, and consultation with the Treasury and Exchequer should always happen, regardless of time pressures.

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<sup>1</sup> [Microsoft Word - 200308 SEB Annual Report Draft V 2 \(gov.je\)](#)

Furthermore, to ensure that the pay-out of large sums in Severance Payments does not become the norm, we strongly recommend that all contractual obligations such as alternative dispute resolutions should be exhausted before negotiating special payments. We sincerely hope that the States Employment Board makes improvements to the process for recruiting and appointing the next Chief Executive Officer as per the advice contained in our letter of 19 July 2021, in particular:

- Do not announce publicly the appointment until there is a robust binding contract in place;
- Implement a disciplinary procedure specific to the post of Chief Executive;
- Negotiated terms and conditions with the potential candidate should be independently verified as legally 'robust' by an independent HR specialist and employment lawyer;
- Clarify and align the responsibilities of the candidate in his or her roles as Chief Executive Officer, Principal Accountable Officer and Head of the Public Service;
- Agree a stringent consistent, clear and robust understanding that undertaking any other role would be incompatible with his/her other responsibilities; and
- Where anomalies and inconsistencies exist between current Employment and Machinery of Government legislation, define and include specific, robust and legally binding terms and conditions for the incoming Chief Executive Officer.

Other findings we have made support our recommendations that future Annual Report and Accounts should separate spending made in response to COVID-19 or other non-recurrent expenditure from routine annual spend and greater clarity should be provided to distinguish 'efficiency savings' from the deferral of growth and other rebalancing and savings measures.

We consider that these measures would improve the monitoring of public spending. We also urge the Government not to use 2020 as a baseline year upon which to form performance indicators. 2020 was not a typical or baseline year because of the pandemic and the necessary Government reaction to it, so we consider that 2020 is somewhat of an 'outlier' and to base future performance on this extraordinary year could distort the picture of underlying longer-term trends.



**Deputy Inna Gardiner**  
**Chair, Public Accounts Committee**

## Section 2 - Key Findings and Recommendations

### Key Findings

**FINDING 1** – The publication of the 2020 States Annual Report and Accounts would have been on target but for consideration by officers and the External Auditors of the exit payment of the Chief Executive.<sup>2</sup>

**FINDING 2** – Unlike other jurisdictions, the COVID-19 Pandemic did not delay the preparation and publication of the 2020 States Annual Report and Accounts.

**FINDING 3** – The auditing firm Mazars has taken over from Deloitte LLP as External Auditors for the 2020 Annual Report and Accounts. The transfer between External Auditors went smoothly and did not delay the auditing process.

**FINDING 4** – The External Auditors issued a Qualified Regularity Opinion in respect of the exit payment of the former Chief Executive, which was included in the States Annual Report and Accounts 2020.

**FINDING 5** – The States Employment Board did not seek the advice of the Treasury and Exchequer prior to agreeing a final payment made to the former Chief Executive in excess of contractual requirements and thereby did not comply with the requirements of the Public Finances Manual.

**FINDING 6** – The States Employment Board was not required to seek financial advice on the original employment contract, but changes are scheduled to be made to the Public Finances Manual to require seeking such advice on future employment contracts with non-standard clauses.

**FINDING 7** – The Treasury and Exchequer has implemented all of the recommendations made in the PAC Report of the States Annual Report and Accounts 2019.

**FINDING 8** – The Departmental Performance Highlights provide a minimal overview of figures on annual key deliveries.

**FINDING 9** – The Government of Jersey has made a number of improvements in producing the States of Jersey's Annual Report and Accounts and is continuing to identify and embed improvements within standard practice.

**FINDING 10** – The 2020 States Annual Report and Accounts includes additional information on departmental performance and objectives and is further supported by Departmental Annual Reports.

**FINDING 11** – Spending directly linked to the response to the COVID-19 Pandemic has not been identified separately from other expenditure within the 2020 Annual Report and Accounts.

**FINDING 12** – Transparency between one-off and recurring efficiency savings is not clearly provided within the 2020 Annual Report and Accounts.

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<sup>2</sup> There is a statutory deadline for concluding the audit of 31 May 2021 and that was achieved.



**FINDING 13 – Some efficiency savings have only been achieved by deferring spending from 2020 to 2021.**

**FINDING 14 – The Chair of the States Employment Board did not accept all of the concerns raised by the PAC in its letter of 19 July 2021.<sup>3</sup>**

**FINDING 15 – The contract of the former Chief Executive was not agreed until after his appointment was announced. This left the States Employment Board in a weaker bargaining position to negotiate a final contract with the former Chief Executive.**

**FINDING 16 – The Government of Jersey accepted all but one of the Comptroller and Auditor General’s Recommendations in her report<sup>4</sup>; the rejected recommendation was to include in the Government Plan a short description of the scope of revenue income and expenditure budget lines (rejected on the grounds that sufficient information is already available).**

**FINDING 17 – The Chief Executive provides a considerable number of principal advisory functions to Jersey’s political leadership, including to the States Employment Board and the Council of Ministers.**

**FINDING 18 – Work is being undertaken by the Government of Jersey’s People and Corporate Services function to improve the handling of conflicts of interest relating to the Chief Executive.**

**FINDING 19 – The line management of, and process for, entering into compromise agreements for the Chief Executive or resolving scenarios regarding any secondary employment or appointments s/he may undertake, is flawed because the disciplinary processes and procedures for States’ employees have not been designed with the unique post of Chief Executive in mind.**

**FINDING 20 – The former Chief Executive failed to obtain contractually required written approval before accepting the role of Non-Executive Director of NewRiver REIT plc.**

**FINDING 21 – The former Chief Executive failed to respect the contractual obligation that formal approval for his secondary employment could only be obtained in writing from his employer.**

**FINDING 22 – The Chair of the States Employment Board failed to consult with members of the States Employment Board regarding the appointment of the former Chief Executive as a Non-Executive Director of NewRiver REIT plc until this became a matter of considerable public interest.**

**FINDING 23 – The States Employment Board and Council of Ministers appeared to arrive at separate, public-facing conclusions regarding whether the former Chief Executive was conflicted, with the States Employment Board failing to clarify its position.**

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<sup>3</sup> [Letter – Public Accounts Committee to Chair of the States Employment Board re Appointment Process of New Chief Executive – 19 July 2021](#)

<sup>4</sup> [Report - States of Jersey 2020 Annual Report and Accounts – 20 May 2021, p.93](#)

**FINDING 24 – The States Employment Board did not adequately consider the risks and protocols linked to providing access to emails and Broad Street Offices to the former Chief Executive whilst he was ‘between contracts’ and not employed by the States of Jersey.**

**FINDING 25 – The nature and status of the former Chief Executive/Principal Accountable Officer’s role between 1 and 7 January 2021 was not communicated to senior staff, States Members, or the public of the Island.**

**FINDING 26 – Deputising arrangements for the role of Chief Executive/ Principal Accountable Officer are not clear and could be substantially improved to enhance transparency.**

**FINDING 27 – The Government of Jersey failed to clarify the identity of the Chief Executive/ Principal Accountable Officer during March 2021, when two employees held contracts stating that they were Chief Executive.**

**FINDING 28 – The States Employment Board incorrectly identified the former Chief Executive’s minimum and maximum entitlements in the event of the termination of his employment.**

**FINDING 29 – The Committee does not accept that the minimal contractual entitlement was ‘to the value of £500,000’<sup>5</sup> as stated by the Chair of the States Employment Board, and concurs with the Comptroller and Auditor General’s finding that the former Chief Executive was paid more than the minimum (and maximum) contractual entitlement, particularly given that the States Employment Board have accepted the factual accuracy of the Comptroller and Auditor General’s Report.<sup>6</sup>**

**FINDING 30 – The Committee does not accept that the lack of consultation with any member of the Treasury and Exchequer before or during the time the exit payment was negotiated with the former Chief Executive was a mere technical breach of the Public Finances Manual, rather it was a grave oversight which may have caused, contributed to, or given the impression of, an absence of proper financial oversight and/or expertise in respect of the final negotiated settlement.**

**FINDING 31 – The PAC accepts that in view of the extraordinary circumstances which led to the potential for the former Chief Executive to lodge a claim against the States, his ‘exit’ payment of £500,000 was not unreasonable.**

**FINDING 32 – The Committee notes that all proper procedures were followed, including consultation with Treasury and Exchequer, in relation to the Special Payment made to the former Director General to Growth, Housing and Environment.**

## **Key Recommendations**

**RECOMMENDATION 1 – In accordance with the Public Finances Manual, the States Employment Board should consult with, and obtain written advice from, the Treasury and Exchequer regarding significant payments for Senior Officers.**

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<sup>5</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.19](#)

<sup>6</sup> [Report - States of Jersey 2020 Annual Report and Accounts – 20 May 2021, p.93](#)



**RECOMMENDATION 2 – The provision of a Treasury Business Partner to provide advice on financial matters to the States Employment Board should be included within the Public Finances Manual.**

**RECOMMENDATION 3 - The Government should include clearer key performance indicators and continue its work to unify the language of public-facing performance reporting to aid understanding and overall scrutiny of annual departmental performance.**

**RECOMMENDATION 4 – Performance Reporting for future Annual Report and Accounts should include comparative performance information from years prior to 2020, due to the anomalous data created as a result of (and the Government’s response to) the COVID-19 pandemic.**

**RECOMMENDATION 5 – Future Annual Report and Accounts should separate spending made in response to COVID-19 or other non-recurrent expenditure from routine annual spend, to improve the monitoring of public spending.**

**RECOMMENDATION 6 – Greater clarity should be provided to distinguish ‘efficiency savings’ from the deferral of growth and other rebalancing and savings measures within future Annual Reports and Accounts.**

**RECOMMENDATION 7 – The process for recruiting and appointing the next Chief Executive Officer should be strengthened in line with the PAC’s recommendations in its letter of 19 July 2021.<sup>7</sup>**

**RECOMMENDATION 8 – A document, which clearly sets out the scope of responsibilities of Ministers and their respective department(s), each Ministerial and departmental revenue income, expenditure budget lines, and other relevant information, should be published annually alongside the Government Plan.**

**RECOMMENDATION 9 – The current advisory structure of the States Employment Board should be reviewed to improve its regulatory framework, with consideration given to the scope of an advisor specialising in Jersey’s employment law.**

**RECOMMENDATION 10 – The announcement of the appointment of a new Chief Executive should not be made until contract negotiations have been completed and the contract signed.**

**RECOMMENDATION 11 – The line management of the Chief Executive should be reviewed and updated in time for the appointment of the next, permanent Chief Executive.**

**RECOMMENDATION 12 – A process dealing with conflicts for the Chief Executive (when the States Employment Board is dealing with disciplinary matters relating to him or her), should be documented as a matter of good governance.**

**RECOMMENDATION 13 – The Chair of the States Employment Board must inform the States Employment Board within two days of any approach by a Senior Officer**

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<sup>7</sup> [Letter – Public Accounts Committee to Chair of the States Employment Board re Appointment Process of New Chief Executive – 19 July 2021](#)

requesting secondary employment, where the contract of that officer requires written permission from the employer.

**RECOMMENDATION 14** – All key agreements directly relating to Senior Officers, including secondary employment, advisory positions and membership of boards should be made in writing with a clear understanding that verbal approval is insufficient and does not imply or substitute formal approval.

**RECOMMENDATION 15** – The States of Jersey should take the necessary steps to inform the workforce about the employment status of the Chief Executive should his or her original contract be terminated prior to the date of departure initially agreed, and more widely advise who is responsible for the positions occupied by the Chief Executive if no-one is in post.

**RECOMMENDATION 16** – The identity of the Chief Executive and Principal Accountable Officer, or the individual deputising in one or both of these roles, should be publicly available at all times.

**RECOMMENDATION 17** – Clear demarcation should be established to ensure that Civil Servants whose contracts have recently expired and are not employed by the States should not be permitted to access emails from their work account, should not have access to the building, and should not attend the meetings of boards where membership was held through their previous employment.

**RECOMMENDATION 18** – The Government of Jersey should adopt a policy on the appointment of individuals in unpaid roles who have access to States of Jersey information and should ensure that any such appointments are approved at an appropriate level and in writing.

**RECOMMENDATION 19** – A formal structure of deputising should be developed and published to identify clear continuity of business in the event of the Chief Executive Officer being incapacitated or otherwise unable to fulfil the functions of this role (including as Principal Accountable Officer and Head of Public Service).

**RECOMMENDATION 20** – The holder of the role of Chief Executive (and its attendant functions as Principal Accountable Officer and Head of Public Service) should be publicly clarified during periods where there are two employees with equal claim to the position (i.e., an outgoing and incoming Chief Executive).

**RECOMMENDATION 21** – All due processes should be stringently followed and documented, in respect of every Special Payment, including consultation with Treasury and Exchequer, regardless of time pressures.

**RECOMMENDATION 22** – To ensure that the pay-out of large sums in Severance Payments does not become the norm, all contractual obligations such as alternative dispute resolutions should be exhausted before negotiating special payments.

## **Section 3 - Introduction**

### **Background**

Part of the Public Accounts Committee's role is to assess whether public funds have been applied for the purpose intended by the States and whether sound financial practices have been maintained. This includes determining whether the funds have been used efficiently, effectively, and economically to deliver value for money for the people of Jersey.

The Annual Report contains a breakdown of the activities and initiatives carried out by the different elements of the States of Jersey, including Government departments, non-Ministerial departments, funds, and subsidiary companies.

The Annual Report provides information on how the States of Jersey has performed over the course of the year in the context of its objectives ('the Performance Report') and on how the States is governed ('the Accountability Report'). The Annual Accounts provide information on the financial performance of the States of Jersey covering both assets and liabilities and income and expenditure.

### **Purpose of the Committee Report**

The Committee considers that the public should know how its money is spent by those who are entrusted to spend it, what is achieved through the annual expenditure and how that is controlled. The public deserves accurate, timely and high-quality annual reports and accounts which clearly present the States of Jersey's aims, activities, functions, and performance.

The Committee is aware that the 2020 Annual Report and Accounts reflects two unusual circumstances. The first relates to the exit payment of the former Chief Executive and the Qualified Regulatory Opinion issued by the External Auditors appointed by the Comptroller and Auditor General, which was a direct consequence of the handling of the payment. The second circumstance is the COVID-19 Pandemic. The Committee has therefore agreed to include consideration of both issues within this report.

### **Engagement with Stakeholders**

The Committee held a private briefing with the External Auditors on 24 May 2021 to discuss the publication of the 2020 Annual Report and Accounts and issuance of a Qualified Regulatory Opinion. The Committee noted that the External Auditors were positive about their working relationships with the Comptroller and Auditor General, Treasury and Exchequer (including the Treasurer of the States), and Senior Officers, and were satisfied by the arrangements embedded within the final accounts process.

To further support its review, the Committee held a private briefing with the Chief Executive and the Treasurer of the States on the 2020 Annual Report and Accounts on 24 May 2021, followed by a public hearing with the same witnesses on 7 June 2021. A private meeting between the Chair of the States Employment Board and the Chair and Vice-Chair of the Committee took place on 14 May 2021.

The Committee held a public hearing with the Chair of the States Employment Board on 9 July 2021, to gain further clarity regarding the departure of the Chief Executive and the handling of his exit payment. This was followed by a private briefing with the Chair of the States Employment Board and Senior Legal Advisor from the Law Officers' Department on 26 July 2021.

## **Declaration of Potential Conflicts of Interest**

Senator Vallois has been a member of the Public Accounts Committee since 18 January 2021. Prior to this role, Senator Vallois was Chair of the States Employment Board between June and December 2018. The States Employment Board is the employer of the Chief Executive, as it is for all other civil servants.

Senator Vallois was not involved in the negotiation of the contract of employment of the former Chief Executive, was not involved in any disciplinary proceedings involving the former Chief Executive, and was not a member of the States Employment Board during any of the events outlined in this report.

To avoid any potential conflict of interest, Senator Vallois did not take a leadership position in this review, and the Committee was aware of her previous role as Chair of the States Employment Board.

## Section 4 – Overview of the Report

### Sign-Off of the 2020 Annual Report and Accounts

The Treasurer of the States confirmed that he had signed off on the Accounts within the 2020 Annual Report and Accounts. The interim Chief Executive confirmed he had signed off the affiliated Performance Report.<sup>8</sup> The Interim Chief Executive and Treasurer of the States both signed the Corporate Governance Report that is an element of the Accountability Report. The Treasurer of the States signed the Statement of Responsibilities for the Annual Accounts.<sup>9</sup>

During the public hearing of 7 June 2021, the interim Chief Executive confirmed that he had met with the former Chief Executive and had received assurances from him that the Annual Report was reliable and that the Performance Reporting could be verified. The Chief Executive advised the Committee that these statements were supported by conversations he had had with other Senior Officers, including with the former Chief Executive, and that he was content to sign.<sup>10</sup>

The Treasurer of the States commented that the Annual Report and Accounts were ready to be signed in March 2021 but were eventually signed on 14 May 2021: a gap of six weeks<sup>11</sup>. The Treasurer explained that conversations between his department, the Comptroller and Auditor General and the External Auditors presented differing views on whether the disclosure and reporting of the payment made to the Chief Executive contravened the Public Finances Manual, and whether the Accounts required a Qualified Regulatory Opinion.<sup>12</sup>

Unlike in other jurisdictions, where the publication of the Annual Report and Accounts has been delayed because of the COVID-19 pandemic, this has not been the case for the States of Jersey.

**FINDING 1 – The publication of the 2020 States Annual Report and Accounts would have been on target but for consideration by officers and the External Auditors of the exit payment of the Chief Executive.<sup>13</sup>**

**FINDING 2 – Unlike other jurisdictions, the COVID-19 Pandemic did not delay the preparation and publication of the 2020 States Annual Report and Accounts.**

### External Audit Functions

The Committee understands that a robust external audit process is necessary to provide assurance that annual accounts are prepared to a high quality. The audit firm Mazars have replaced Deloitte LLP as the External Auditors as appointed by the Comptroller and Auditor General, following a successful tender process.

After only one year as External Auditors, Deloitte LLP was identified as having a conflict of interest arising from their acquisition of a business who were tendering for a Government of Jersey contract and were unable to continue as External Auditors for 2020.

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<sup>8</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.30](#)

<sup>9</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.19](#)

<sup>10</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.30](#)

<sup>11</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.19](#)

<sup>12</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, pp.19-20](#)

<sup>13</sup> There is a statutory deadline for concluding the audit of 31 May 2021 and that was achieved.

The Treasurer of the States outlined his view that the experience of working with Mazars had been “very good”<sup>14</sup>, that they had been appointed in the Autumn of 2020, and that the auditing process for the 2020 Annual Accounts had taken place entirely remotely, as a result of the COVID-19 pandemic.

As part of the external auditing of the 2019 Annual Report and Accounts, Deloitte LLP had raised a number of findings to improve the quality of future Annual Reporting. The Director of Risk and Audit confirmed in a public hearing on the 7 June 2021 that in “most of those [areas identified for improvement], we have made progress”<sup>15</sup>, and that the Integrated Technology Solution, set to be introduced in 2022, would help to further embed improvements to Annual Reporting.

**FINDING 3 – The auditing firm Mazars has taken over from Deloitte LLP as External Auditors for the 2020 Annual Report and Accounts. The transfer between External Auditors went smoothly and did not delay the auditing process.**

### **Delay in Publication of Annual Report and Accounts**

The publication of the 2020 States of Jersey Annual Report and Accounts was originally scheduled for April 2021, but was delayed until the 20 May 2021, a gap of six weeks. The delay was as a result of consideration of the matter leading to the decision to issue a qualified regularity opinion by the External Auditors, Mazars. The Committee is of the understanding that a Qualified Regulatory Opinion has not been previously issued.

The Treasurer of the States clarified during the public hearing with the Committee on 7 June 2021 that the six week period included an intention to explore and discuss “*at quite some length with the auditors differing positions as to whether it amounted to a regularity qualification, in particular in seeking advice. We had many conversations involving me, my officers, the C&AG and the audit team in Mazars.*”<sup>16</sup>

The Treasurer of the States outlined in the same public hearing that additional fees for the audit were incurred primarily because the external auditor had to consider the matters that were the subject of the qualification and that the Government of Jersey had to undertake consultation with a third party (as confirmed during a private briefing on the 26 July 2021). This had led to a delay in publication of the States Annual Report and Accounts. The Treasurer of the States stated that the additional fees were estimated to total around £26,000.<sup>17</sup> In addition, the Committee is aware that there were further costs incurred by the SEB for obtaining external legal advice.<sup>18</sup>

### **Qualified Regulatory Opinion of the External Auditors**

As previously detailed, a Qualified Regulatory Opinion was issued for the first time in the history of the States of Jersey’s Annual Report and Accounts by its External Auditors.

The Qualified Regulatory Opinion identified an exception related to the settlement agreement in respect of the severance agreement of the Chief Executive’s employment contract, which is included in the Annual Report and Accounts as a staff cost. The External Auditors concluded that, in their view, the amount agreed was in excess of the minimum contractual requirements

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<sup>14</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.17](#)

<sup>15</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.17](#)

<sup>16</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.20](#)

<sup>17</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.20](#)

<sup>18</sup> Private Briefing with the Chair of the States Employment Board – 26 July 2021



and the consultation with the Treasurer of the States and/or Treasury and Exchequer as required by the Public Finances Manual (under Special Payments) had not taken place:

**Treasurer of the States:**

*“They have qualified their regularity report in respect of one transaction. It must be said, they have not qualified their report of the true and fairness of the accounts and have only issued an except-for opinion in respect of a single transaction. That arises from the process involving a special payment relating to severance pay to the former chief executive and whether that payment did or did not follow the Public Finances Manual requirements.*

*Just briefly touching on regularity; regularity relates to whether money was spent for the purpose that it was intended by the States Assembly and secondly, in shorthand, whether it was in line with the rules and authorities governing that expenditure. In this case, that would be the Public Finances Manual.*

*There is a requirement in respect of special payments, i.e. payments outside the normal course of business for the States for there to be consultation with Treasury and Exchequer, not me personally, but the department, ahead of agreeing to any such payments. In the view of Mazars, as that did not happen that gave rise to an exception against the rules governing the expenditure, giving rise to a single exception to the regularity.”<sup>19</sup>*

The Committee understands that the Treasurer of the States became aware of the exit payment after the 12 November 2020, following the resignation of the former Chief Executive and meetings of the States Employment Board (as outlined in the timeline in Section 8):

**Deputy I. Gardiner:**

*When were you aware of the settlement that has been entered with the chief executive to pay £500,000?*

**Treasurer of the States:**

*Some time after 12th November when I understand the payment was ...*

**Deputy I. Gardiner:**

*After it has been reached you have been made aware about the settlement you think.*

**Treasurer of the States:**

*Yes. I was obviously aware that there were discussions ongoing but only aware of the agreement then.*

**Deputy I. Gardiner:**

*When was the payment to the former Chief Executive authorised? What information did you consider prior to the authorisation of the payment?*

**Treasurer of the States:**

*When it was all authorised I was asked to look at the payment, so what I was looking at when I was looking at the payment was whether it was lawful and whether it was in agreement with or consistent with or in accordance with the agreement that had been reached. I took advice at that time before agreeing to the payment.”<sup>20</sup>*

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<sup>19</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.18](#)

<sup>20</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, pp.27-8](#)

The Treasurer of the States acknowledged the Qualified Regulatory Opinion of the External Auditors but considered it to be “a matter of judgement”<sup>21</sup>, and that there were “grey areas”<sup>22</sup>, but that he understood the basis for the qualification and respected their right to issue it.

The Treasurer of the States further outlined that he viewed the issuance of the Qualified Regulatory Opinion as being “heavily weighted towards a technicality in the Public Finances Manual”, and that the decision taken by the States Employment Board, which subsequently resulted in the issuance of the Qualified Regulatory Opinion, had been taken with “the most senior and expert advice available to (the States Employment Board) at all points during that process”<sup>23</sup>.

However, the Treasurer of the States noted that this had not included consulting with, and taking advice from, the Treasury and Exchequer department, although the Treasurer further acknowledged the Minister for Treasury and Resources’ membership of the States Employment Board.<sup>24</sup>

The Committee heard that the States Employment Board had relied on legal and HR advisors, but not financial advisors. During a later public hearing, the Chair of the States Employment Board explained that consultation with the Treasurer of the States would have been unnecessary due to the use of identical expert advisors, and that the States Employment Board had simply gone to these advisors instead.<sup>25</sup>

During a private briefing with the Chair of the States Employment Board on 26 July 2021, a Senior Legal Advisor from the Law Officers’ Department confirmed that financial advice would be included in the future. The Executive Response to the Comptroller and Auditor General’s report advised that the Public Finances Manual section on the States Employment Board would be updated to require the Group Director for People and Corporate Services to consult with the Treasurer of the States and the relevant Accountable Officer prior to the States Employment Board offering an employment contract with non-standard clauses that could expose the States of Jersey to future liabilities. This is expected to be implemented by the end of 2021.<sup>26</sup>

The Chair of the States Employment Board admitted that there had been a “technical omission”, but that it “did not change the advice that would have been available” and “would not have changed the outcome.”<sup>27</sup> This is discussed further in Section 8.

**FINDING 4 – The External Auditors issued a Qualified Regularity Opinion in respect of the exit payment of the former Chief Executive, which was included in the States Annual Report and Accounts 2020.**

**FINDING 5 – The States Employment Board did not seek the advice of Treasurer and Exchequer prior to agreeing a final payment made to the former Chief Executive in excess of contractual requirements and thereby did not comply with the requirements of the Public Finances Manual.**

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<sup>21</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.18](#)

<sup>22</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.18](#)

<sup>23</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.18](#)

<sup>24</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, pp.18-9](#)

<sup>25</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.15](#)

<sup>26</sup> [Executive Response – States Employment Board – Follow Up: Employment of the Former Chief Executive \(R.88/2021\) – Executive Response \(R.88/2021 Res.\) – 6 July 2021, p.6](#)

<sup>27</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, pp.15-6](#)

**FINDING 6 – The States Employment Board was not required to seek financial advice on the original employment contract, but changes are scheduled to be made to the Public Finances Manual to require seeking such advice on future employment contracts with non-standard clauses.**

**RECOMMENDATION 1 – In accordance with the Public Finances Manual, the States Employment Board should consult with, and obtain written advice from, the Treasury and Exchequer regarding significant payments for Senior Officers.**

**RECOMMENDATION 2 – The provision of a Treasury Business Partner to provide advice on financial matters to the States Employment Board should be included within the Public Finances Manual.**

## Section 5 - Improvements in Government Annual Accounts Reporting

### Recommendations Made by the Public Accounts Committee during the Review of States Annual Report and Accounts 2019

The previous Public Accounts Committee, chaired by Senator Sarah Ferguson, published five recommendations as part of its review of the [2019 Annual Report and Accounts](#):

- a. **RECOMMENDATION 1** – The Chief Executive should ensure that the branding of key States documents is clear and demonstrates recognition that the terms are not interchangeable.
- b. **RECOMMENDATION 2** – The weaknesses in systems and processes should be identified at an early stage so that they can be remedied in good time and not impede the faster close of accounts for 2020;

Every effort should be made to significantly reduce the number and extent of disclosure errors;

There should be effective timetabling and effective contingency timetabling to enable all parties to have sufficient time to comment on versions of the Annual Report and Accounts and to enable officers to respond more completely and more effectively to the comments that are raised.

- c. **RECOMMENDATION 3** – The Committee concludes that it<sup>28</sup> should be reinstated for the 2020 Performance Report, in accordance with best practice as it demonstrates public ownership and accountability for the data contained within the performance report.
- d. **RECOMMENDATION 4** – Baselines should be established at the outset, so that performance improvement can be meaningfully measured and reported for the 2020 Annual Report and Accounts.
- e. **RECOMMENDATION 5** – If disruptions to briefings and presentations should occur again, the laying of the States Annual Report and Accounts should still be expedited as soon as practicable after the audit is complete and the Comptroller and Auditor's certificate has been issued.<sup>29</sup>

The Committee subsequently reviewed the Government of Jersey's progress and is satisfied that the Recommendations have been implemented where possible.

In respect of Recommendations 2 and 5, which relate to contingency timetabling and disruptions to the release of the States Annual Report and Accounts, and as highlighted in this report, the Committee understands the six-week delay to the publication of the Annual Report and Accounts was a result of the Qualified Regulatory Opinion, a matter not expected to carry a high risk of reoccurrence. The Committee further understands that this delay was not a direct

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<sup>28</sup> The requirement for the Chief Executive to sign off the Performance Report within the States Annual Report and Accounts, which was removed from the Jersey Financial Reporting Manual prior to the publication of the 2019 Annual Report and Accounts.

<sup>29</sup> [Report – Review of States Annual Report and Accounts 2019 \(P.A.C.2/2020\) – 24 July 2020, p.3](#)

result of the acts or omissions of those officers tasked with preparing the 2020 Annual Report and Accounts itself.

During the public hearing of 7 June 2021, the Interim Chief Executive confirmed that he had signed off on the Performance Report following formal assurance from the former Chief Executive in writing that the report was an “accurate and comprehensive account.”<sup>30</sup>

As previously noted within this report, the Treasurer of the States explained during a private briefing on 24 May 2021 that internal confidence in the accuracy of the Performance Measures provided as part of the 2020 Annual Report and Accounts varies from indicator to indicator and confirmed the need to revisit the baselines used. The Treasurer of the States agreed that 2020 data would not be a reliable baseline due to the COVID-19 pandemic distorting ‘Business As Usual’.

As further noted by the Treasurer of the States, the use of 2020 data for baselines has a high risk of creating anomalous results because of the COVID-19 pandemic creating a number of unusual circumstances during the previous year. The Committee therefore recommends that baselines for performance reporting should be developed using data prior to 2020 to avoid anomalous indications of departmental performance in the future.

The Committee notes the first-time inclusion of increased performance reporting through Departmental Performance Highlights in the 2020 Annual Report and Accounts and [Departmental Annual Reports](#) that are provided separately but linked to the report. It notes that the Departmental Performance Highlights provide a minimal overview of figures on annual key deliveries.

The Committee considers that a way to improve the overview of figures on annual key deliveries may involve the inclusion of Key Performance Indicators and measurements of initiatives and deliverables included within the annual [Departmental Operational Business Plans](#). The Committee is of the understanding that a Performance Measure of Services is to be introduced to the Jersey Performance Framework before the end of 2021, to publicly identify how services provided by the Government of Jersey are performing.

During a private hearing with the Director General of Strategic Policy, Planning and Performance on 22 February 2021, the Committee was informed that work was being undertaken to utilise “new vocabulary” to identify public service performance and Island outcomes. The Committee recommends the inclusion of clearer key performance indicators and continued work to unify the language of public-facing performance reporting by the Government of Jersey, to aid understanding and overall scrutiny of annual departmental performance.

**FINDING 7 – The Treasury and Exchequer has implemented all of the recommendations made in the PAC Report of States Annual Report and Accounts 2019.**

**FINDING 8 – The Departmental Performance Highlights provide a minimal overview of figures on annual key deliveries.**

**RECOMMENDATION 3 - The Government should include clearer key performance indicators and continue its work to unify the language of public-facing performance**

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<sup>30</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.30](#)

**reporting to aid understanding and overall scrutiny of annual departmental performance.**

### **Management of Documents**

During a private briefing with the External Auditors on the 24 May 2021, the auditors outlined the concerns they had regarding the management of relevant documentation and that some officers had been left with unauthorised access to systems for a short time, but that these concerns had not reached the necessary threshold to be considered a reportable risk.

### **Training and Use of Needs Assessments**

During a private briefing with the Chief Executive and Treasurer on the 24 May 2021, the Treasurer advised that extensive training had been made available to Senior Officers on the use of the Public Finances Manual, with refresher training made available. The Treasurer noted that over 300 officers had participated in training on the Public Finances Manual, with the opportunity to book training from 1 January 2020. The Treasurer advised that a feedback process had been set up in 2020.

The Committee raised concerns regarding the discrepancy between the use of 'needs assessments' for procurement as required by the Public Finances Manual and 'Structured Needs Assessments', with the Treasurer noting that these had been enshrined in relevant practices and frameworks.

### **Closedown of Accounts**

As part of the external auditing of the 2019 Annual Report and Accounts, Deloitte LLP had raised a number of findings to improve the quality of future financial reporting. During a private briefing on the 7 June 2021, the Director of Risk and Audit noted that "[in] most of those [areas identified for improvement] we have made progress", and that the Integrated Technology Solution, which is set to be introduced in 2022, would help to embed further improvements to Annual Reporting.

The Treasurer advised that there had been investment in the faster close-down of the accounts, including the use of additional resources to improve the quality of audit files and investment in the Finance Transformation Programme. The first tranche of this Programme delivered improvements in 2020, with the second tranche expected to deliver improvements to the close-down of accounts from 2022.

The Treasurer confirmed that this marked the first year of a principles-based approach to the 2020 Annual Report and Accounts, which included a planned use of case studies for further training, giving reference to the Comptroller and Auditor General's review of the Public Finances Manual. The Treasurer noted that it was "difficult to imagine" a year more likely to give rise to irregularity, and that Treasury and Exchequer were aware of internal control issues to improve upon for 2021.

The Treasurer commented that the recommendations provided by the External Auditors were noticeably fewer than the year before, with auditors considering that it had been a largely successful process.



**FINDING 9 – The Government of Jersey has made a number of improvements in producing the States of Jersey’s Annual Report and Accounts and is continuing to identify and embed improvements within standard practice.**

### **Improvements to Internal Controls**

The work of the External Auditors included recommendations through which to improve internal controls, scored numerically to indicate their severity, alongside recommendations for improvements to reporting related party transactions.

The Treasurer of the States explained the External Auditors’ concerns as follows, and noted that improvements were being sought to improve internal controls:

*“They found that not all contract documentation for new starters could be located electronically, but it was subsequently accepted it was just a timing issue and we have better processes in place now.*

*There were discrepancies between valuation spreadsheet for sea defence assets, which impacted the overall valuation; accepted and arrangements put in place to improve for the current year’s audit.*

*There were, in the auditors’ opinion, a lack of supporting documentation for all journals that was not available, so we put a further improvement within 2021’s audit as well. There was one new level access that had not been removed from a system that was found, there was still an employee of Government of Jersey, very different department, therefore, should not have had access to that system. That has now been corrected. There was adding on to journal controls, need for further controls to be put in place before implementing the new system in 2022.*

*We prioritise resources away from our plans to consolidate the further strategic investments, i.e. the wholly-earned entities that are not currently consolidated in the accounts, largely as a result of having to do other works as a result of COVID during the year.*

*The additional recommendation arises from the need, which I believe is currently being developed as a result of recommendations made in a recent C. and A.G. report, in that the declaration of interest for States Members do not extend to extended family. They are those that relate to the States Member in particular. That is not consistent with the requirements of International Accounting Standards and therefore that will be addressed or considered to be addressed through the Greffier of the States, I believe.”<sup>31</sup>*

The Treasurer of the States further posited that the ongoing Information Technology Solution would improve the standardisation of processes to reduce the time taken to reconcile and deliver reporting. It is expected that these improvements will begin to appear year-end 2022, with further improvements expected over the following years.<sup>32</sup>

### **Reporting of Performance**

The 2020 Annual Report and Accounts is the first to include departmental Service

<sup>31</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.21](#)

<sup>32</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.21](#)

Performance Measures to further identify the performance of each department. These Measures have been taken from Operational Business Plans.

During a private briefing, the Treasurer of the States explained that internal confidence in the accuracy of these Measures varies from indicator to indicator, and there was a need to revisit the baselines used in the coming years. The Treasurer of the States agreed that 2020 data would not be a reliable baseline due to the COVID-19 pandemic distorting business as usual.

The issue associated with the use of 2020 performance figures was further identified during the Committee's public hearing with the Treasurer of the States and interim Chief Executive on 7 June 2021. During the hearing, the interim Chief Executive acknowledged the potentially anomalous results from 2020 and explained that:

*"...just to take one example of performance, which refers to children, young people, education, skills, performance measures and we see some very big fluctuations there in areas like the number of children in need, which has decreased by 25 per cent, or the number of referrals to children's social care services, which is decreased by 47 per cent. I use these as examples of indicators that, on the face of it, they have changed a great deal and they maybe, and probably are in those cases, telling us something about performance which is COVID-related, because of the particular circumstances of last year, and may indeed generate new risk for the coming period, for the years ahead.*

*So that is one category of performance changes where I think we are aware that there may be new risks that are opening up as a result of what took place during 2020. Then if I move on to another kind of indicator, on page 72, take as an example the number of ... this is in Infrastructure, Housing and Environment, the number of passenger bus journeys which fell by 55 per cent.*

*So the total number of passenger bus journeys last year, 2.2 million, a drop of 55 per cent. Again, obviously COVID-related but a different kind of issue here. So that is a performance that has changed a great deal, is of concern and the risk there - is a different kind of risk - is of changes to habit.*

*The risk in that kind of change is that there may be some permanent change to Islander habits which we want to consider and see how we can revert. That is the second. There are 4 I will draw attention to. The third is on the same page, page 72, and is a reduction in the number of visits to the household recycling reuse centre to 38,800."<sup>33</sup>*

The 'Delivering for Islanders' section of the 2020 Annual Report and Accounts includes an overarching performance analysis for each government Department and includes year-end service performance measures for key public facing departments. Each of these key public facing departments provided commentary on their services and highlighted the impacts of Covid 19 on the 2020 Service Performance Measures.

For example, the Children, Young People, Education and Skills (CYPES) commentary included:

*'In January, we reviewed all Child In Need cases and identified a large number which were suitable for closure, as their level of need had reduced and they no longer met the threshold*

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<sup>33</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.7](#)

*for Social Work intervention’, and ‘The number of referrals to Children’s Social Care was significantly lower in 2020’.*

The closure of schools inevitably impacted the number of safeguarding concerns being identified. Whilst children with known vulnerabilities were supported to attend school during lockdown, other children were less visible.” The Infrastructure, Housing and Environment (IHE) commentary included:

*‘Services that were impacted due to Covid-19 included the number of passenger bus journeys being reduced by 48% due to a change in the level of service during the pandemic. However, work with Liberty Bus enabled services to be maintained throughout Covid-19 lockdown’.*

**FINDING 10 – The 2020 States Annual Report and Accounts includes additional information on departmental performance and objectives and is further supported by Departmental Annual Reports.**

**RECOMMENDATION 4 – Performance Reporting for future Annual Report and Accounts should include comparative performance information from years prior to 2020, due to the anomalous data created as a result of (and the Government’s response to) the COVID-19 pandemic.**

## Section 6 - Spending Linked to the COVID-19 Pandemic

### Spending on COVID-19 and Healthcare

The Committee questioned the Chief Executive and Treasurer of the States on accountability reporting during its public hearing on 7 June 2021. The Treasurer identified that the ongoing COVID-19 pandemic had led to a substantial increase in public expenditure on staff during 2020 but he was unable to provide a breakdown that separated out spending increases as a result of COVID-19, and spending that had increased as a result of other reasons.<sup>34</sup>

During a private briefing with the Interim Chief Executive and Treasurer of the States on 24 May 2021, the Committee noted that costs had risen year on year, with an increase in consultancy spend. The Treasurer advised that consultancy costs related to significant projects, with increases in the use of temporary staff being a consequential feature of the pandemic.

The Treasurer of the States identified that some major projects, including the 'Our Hospital' project, had resulted in increased expenditure, alongside difficulties in recruiting key staff for areas such as Health:

**Dr. H. Miles:**

*We see from the report as well that staff costs have increased £43.4 million and expenditure on consultancy and temporary staff has increased by £3.5 million and £1.9 million respectively in 2020 compared with 2019. How much of that increase was related to COVID and therefore how much will be reversed in 2021?*

**Treasurer of the States:**

*I do not have a breakdown to give me that figure precisely but COVID obviously played a great part in that rise, although it is not just limited to that rise. So just short of £16 million arises from pay awards and other forms of growth. There are significant costs in there that we would not see ... for example, the cost of employment of G.P.s (general practitioners) during COVID in there of £4 million.*

*Testing and tracing, the figure including testing and tracing amounting to £7 million obviously, some of it may well reduce in the coming year but will still be in, to some extent, during 2021. In terms of temporary staff, likewise that was from testing and tracing and, of course, testing and tracing fees are still with us.*

*Beyond that consultancy staff has increased for a number of reasons, which you will find at the P.59 analysis coming out soon, if not already out. £3.5 million of those were COVID-related, some testing and tracing picking up in there as well.*

*On an ongoing basis in H.C.S. (Health and Community Services) as well as M.D. and for major projects such as the hospital in particular, and some of those hospital 9 roles will continue into coming years. Some of those reflect struggles in filling key roles among those departments, particularly during the COVID period and some of those had been transferred from consultancy to staff but obviously that reduced the amount."<sup>35</sup>*

<sup>34</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, pp.8-10](#)

<sup>35</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.8-9](#)

The evidence of the Treasurer of the States led the Committee to conclude there was a difficulty when it came to separating out COVID-19 spending from efficiencies reporting in the Annual Report and Accounts:

**Treasurer of the States:**

*“From a high-level perspective, looking at type of expenditure, so we are up on social benefit expenditure by £138 million, on staff costs by just over £40 million and other operating expenditure by £48 million. Of that total £250 million the lion share of that is £190 million, which includes expenditure across each of those categories, leaving £60 million from a combination of growth but also including pay award allocation in 2020 at just short of £16 million.”*

**Mr A. Lane:**

*“Okay, and the fact you have made £40 million of saving presumably means you have also re-spent that £40 million on something else as well?”*

**Treasurer of the States:**

*“Yes, that is where that would have been net off as well, yes.”*

**Mr. A. Lane:**

*“So the £60 million of non-COVID related increases is actually £100 million of non-COVID-related increases?”*

**Treasurer of the States:**

*Well, yes, on a grossed out basis that would be the case, reflecting the scale of growth that is embedded in the expenditure plans of 2020 as a result of the Government Plan 2020 which we ...*

**Mr. A. Lane:**

*Okay, so just to confirm that £100 million of increased gross ...*

**Treasurer of the States:**

*On a gross basis, yes.”<sup>36</sup>*

...

**Interim Chief Executive:**

*“So if I could I would like just to put this in a little bit of context that the question was about baseline, I think. ...I think that the annual report shows a detailed and an impressive account of the year’s performance obviously in an exceptionally unusual year, which is what you are pointing towards in 2020. Both in terms of the protection of lives and the protection of livelihoods, but also in the continuous improvement of the government and its operations. I think that in a broad sense the annual report for 2020 in front of you is an advancement on what came before in 2019. It is an impressive account of the Government’s work and despite the pandemic I think it shows continuous improvement that is commendable.”<sup>37</sup>*

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<sup>36</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.5](#)

<sup>37</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.6](#)

As outlined in [R.118/2021](#) (the half-yearly report published by the Government of Jersey into its use of consultants from July to December 2020), the total cost of consultants and fixed-term contract staff increased from £28.3 million to £37 million, an increase of £8.7 million or 30%.<sup>38</sup>

This is explained as a result of the COVID-19 pandemic and the inhibition of the Government of Jersey's ability to attract and secure permanent and fixed-term employees, leading to contracts and interim arrangements being extended until more favourable conditions were reached to recruit and appoint permanent and suitable employees.<sup>39</sup>

**FINDING 11 – Spending directly linked to the response to the COVID-19 Pandemic has not been identified separately from other expenditure within the 2020 Annual Report and Accounts.**

**RECOMMENDATION 5 – Future Annual Report and Accounts should separate spending made in response to COVID-19 or other non-recurrent expenditure from routine annual spend, to improve the monitoring of public spending.**

This issue will be examined in greater detail as part of the Committee's upcoming review on the Government's Response to COVID-19.

## **Presentation of Efficiencies and Rebalancing Measures**

Section 4 of the Performance Report outlines the efficiency targets by the Government of Jersey for that year. The report identifies that of the £40 million of efficiencies met in 2020, £25 million were recurring efficiencies and £15 million were one-off measures.<sup>40</sup>

The Committee questioned the Treasurer of the States on the contributions the one-off efficiencies will make during its public hearing on 7 June 2021. The Treasurer of the States explained that the one-off measures were "either through a process of one-off savings themselves or from deferral of growth" that had been rolled forward into 2021.<sup>41</sup> The Treasurer noted that they were "monitoring just short of £35 million" of efficiencies when 2021 targets are included.<sup>42</sup> The Treasurer of the States confirmed that this was consistent with the original 2021 targets.<sup>43</sup>

The Treasurer of the States accepted that the deferral of spend to future years would create a greater challenge than alternative strategies but noted the impact of the COVID-19 Pandemic on departmental spend and spending approved by the States Assembly.<sup>44</sup>

The Treasurer of the States confirmed that the £40 million of efficiencies had subsequently contributed to spending in line with original strategies, with the efficiency programme used to offset some of the expenditure from the Government Plan 2020.<sup>45</sup>

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<sup>38</sup> [Report – Consultants: Reporting on their use by the Government of Jersey \(P.59/2019\) – Report of the Chief Minister – June 2021 \(R.118/2021\) – 9 July 2021](#)

<sup>39</sup> [Report – Consultants: Reporting on their use by the Government of Jersey \(P.59/2019\) – Report of the Chief Minister – June 2021 \(R.118/2021\) – 9 July 2021](#)

<sup>40</sup> [Report - States of Jersey 2020 Annual Report and Accounts – 20 May 2021, p.93](#)

<sup>41</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.3](#)

<sup>42</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.3](#)

<sup>43</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.4](#)

<sup>44</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, pp.3-4](#)

<sup>45</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.5](#)



The Committee concluded that within the 2020 Annual Report and Accounts, the distinction between savings which are recurring and savings that are 'one-off' is unclear and the Annual Report and Accounts does not provide a sufficiently clear understanding of where each type of efficiency saving has been delivered.

The Committee notes that 'rebalancing measures' were introduced in the [Government Plan 2021-24](#) as part of measures to restore public finances following the COVID-19 Pandemic. Whilst the Committee notes that the terminology around Rebalancing was introduced through the Government Plan 2021-24, lodged in October 2020, the Committee notes the Findings and Recommendations made by the [Government Plan Review Panel](#) and [Government Plan Efficiencies Review Panel](#) in their reports on the Government Plan 2021-24 that efficiency measures were not separated from rebalancing measures<sup>46</sup> and rely on uncertain definitions.<sup>47</sup>

**FINDING 12 – Transparency between one-off and recurring efficiency savings is not clearly provided within the 2020 Annual Report and Accounts.**

**FINDING 13 – Some efficiency savings have only been achieved by deferring spending from 2020 to 2021.**

**RECOMMENDATION 6 – Greater clarity should be provided to distinguish 'efficiency savings' from the deferral of growth and other rebalancing and savings measures within future Annual Reports and Accounts.**

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<sup>46</sup> [Report – Scrutiny Review of the Government Plan: 2021 – 2024 \(S.R.16/2020\) – 10 December 2020, p.8](#)

<sup>47</sup> [Report – Review of the Efficiencies Plan and Government Plan 2021-2024 Rebalancing Measures \(S.R.17/2020\) – 14 December 2020, p.6](#)

## Section 7 - States Employment Board

### Reports of the Comptroller and Auditor General

As part of the Comptroller and Auditor General's annual work programme, she issued a [follow-up report](#) on the States Employment Board in May 2021, regarding the employment of the former Chief Executive.

The report considered the circumstances surrounding the severance of the employment of the former Chief Executive and evaluated the internal control; economy, efficiency and effectiveness; and corporate governance of the actions taken during this period. The Committee concurs with all of the findings and recommendations of that report and refers to it throughout this report.

The Comptroller and Auditor General concluded that the circumstances of, and processes followed, in respect of the departure of the former Chief Executive, highlighted a number of weaknesses in the policies and procedures of the States of Jersey.<sup>48</sup> The Comptroller and Auditor General made eleven recommendations, including to develop a suitable disciplinary policy and supporting process specific to the post of Chief Executive, and to update policies and procedures for dealing with perceived and actual conflicts of interest of senior employees including the Chief Executive.<sup>49</sup>

The Committee notes that, as was the case in 2017 during the appointment process of the former Chief Executive, the final contract for the new Chief Executive would not be finalised until the preferred candidate had been given a chance to comment on the draft, opening the possibility they might be unwilling to agree changing terms and conditions. The Committee raised this concern with the Chair of the States Employment Board, in a letter submitted 19th July 2021.<sup>50</sup> The Committee is of the understanding that the recruitment of the next Chief Executive is well underway, with the timeline provided on the [specialist website](#) indicating that final assessments and interviews would take place in "late July 2021".<sup>51</sup> However, at the time of issuing this report there is a proposition ([P.73/2021](#)) to halt his or her recruitment, pending the completion and publication of a review into the appointment process.

The Committee received a response dated 29 July 2021, in which the Chief Minister (as Chair of the States Employment Board) did not accept all of the concerns. However he asked that his response in its entirety be kept strictly private and confidential, citing that all matters related to the private rights of a future States employee, and further stating he did not want to risk prejudicing discussions with a prospective employee. The Committee does not accept that making robust improvements to any contract process would so prejudice and recalls his statement to the States Assembly on 2 November 2020 regarding the need to "set an example of transparency and accountability."<sup>52</sup>

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<sup>48</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.6](#)

<sup>49</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.31](#)

<sup>50</sup> [Letter – Public Accounts Committee to Chair of the States Employment Board re Appointment Process of New Chief Executive – 19 July 2021](#)

<sup>51</sup> <https://ceo.gov.je/how-to-apply/>

<sup>52</sup> [Statement – Statement to be made by the Chief Minister on Tuesday 2nd November 2020 – 2 November 2020](#)

**FINDING 14 – The Chair of the States Employment Board did not accept all of the concerns raised by the PAC in its letter of 19 July 2021.<sup>53</sup>**

**FINDING 15 – The contract of the former Chief Executive was not agreed until after his appointment was announced. This left the States Employment Board in a weaker bargaining position to negotiate a final contract with the former Chief Executive.**

**RECOMMENDATION 7 – The process for recruiting and appointing the next Chief Executive Officer should be strengthened in line with the PAC’s recommendations in its letter of 19 July 2021.<sup>54</sup>**

An [Executive Response](#) was presented to the Committee on 6 July 2021 and subsequently published. The Response outlined targets for completion for each recommendation, except for Recommendation 8. The Response asserts that the scope of responsibilities for each Minister and department is already clearly set out across publications.<sup>55</sup>

The Committee would recommend that a single, unified and easily accessible document is published on an annual basis either within, or adjacent to, the Government Plan, which brings together the scope of responsibilities of Ministers and their respective department(s), a description of Ministerial and departmental revenue income, expenditure budget lines, and other relevant information, to consolidate the information found within:

- Ministerial responsibilities published by the Chief Minister;
- The Government Plan Annex; and
- Departmental Operational Business Plans.

**FINDING 16 – The Government of Jersey accepted all but one of the Comptroller and Auditor General’s Recommendations in her report<sup>56</sup>; the rejected recommendation was to include in the Government Plan a short description of the scope of revenue income and expenditure budget lines (rejected on the grounds that sufficient information is already available).**

**RECOMMENDATION 8 – A document, which clearly sets out the scope of responsibilities of Ministers and their respective department(s), each Ministerial and departmental revenue income, expenditure budget lines, and other relevant information, should be published annually alongside the Government Plan.**

## **Advisors to the States Employment Board**

Under Article 6A of the [Employment of States of Jersey Employees \(Jersey\) Law 2005](#) (“the Law”), the States Employment Board may appoint one or two advisors, with no term limits provided. The Law does not provide a requirement for contracts or terms of reference for these advisors, or outline what experience these advisors should or must possess. The SEB has appointed one such advisor.<sup>57</sup>

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<sup>53</sup> [Letter – Public Accounts Committee to Chair of the States Employment Board re Appointment Process of New Chief Executive – 19 July 2021](#)

<sup>54</sup> [Letter – Public Accounts Committee to Chair of the States Employment Board re Appointment Process of New Chief Executive – 19 July 2021](#)

<sup>55</sup> [Executive Response – States Employment Board – follow up: Employment of the Former Chief Executive \(R.88/2021 Res.\) – 6 July 2021, p.9](#)

<sup>56</sup> [Report - States of Jersey 2020 Annual Report and Accounts – 20 May 2021, p.93](#)

<sup>57</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.10](#)

The Group Director for People and Corporate Services defined the Chief Executive as the “principal advisor to the States Employment Board”<sup>58</sup>. The Chief Executive is also the principal advisor to the Council of Ministers.

The Committee has considered the status of advisors to the States Employment Board during this review and is of the conclusion that the current arrangements for Advisors to the States Employment Board should be reviewed. The Committee believes that particular attention should be given to the appointment of an advisor with specific familiarity of Jersey’s employment law to mitigate any future disputes with Senior Officers that the States Employment Board may encounter, but be mindful that the appointment should be adequately term-limited, to provide a consistently updated understanding of on-Island employment law and regulations.

The Committee is aware that the Corporate Services Scrutiny Panel is currently undertaking a review of the People and Culture strategy, policies and procedures of the public sector (the [People and Culture Review](#)), with its Terms of Reference including an examination of the effectiveness of the States Employment Board. The Committee is content that the contents of this report do not conflict with the Panel’s ongoing work.

**FINDING 17 – The Chief Executive provides a considerable number of principal advisory functions to Jersey’s political leadership, including to the States Employment Board and the Council of Ministers.**

**RECOMMENDATION 9 – The current advisory structure of the States Employment Board should be reviewed to improve its regulatory framework, with consideration given to the scope of an advisor specialising in Jersey’s employment law.**

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<sup>58</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.7](#)

## Section 8 - Exit Payment of the Former Chief Executive

### Background - Appointment of the Former Chief Executive in 2017

During the public hearing of 7 June 2021, the Interim Chief Executive commented that the events surrounding the departure of the former Chief Executive related in part to his original contract, which was entered into towards the end of 2017.<sup>59</sup>

The Chair of the States Employment Board at that time was Deputy Andrew Green MBE, who held the position until the formation of the current Council of Ministers in June 2018. Senator John Le Fondré, has served as Chair since December 2018. As previously highlighted, Senator Tracey Vallois was Chair of the States Employment Board between June and December 2018. Senator Vallois joined the Public Accounts Committee in 2020.

It is understood that the former Chief Executive's appointment to this role was announced on 21 July 2017<sup>60</sup>, but contract negotiations continued until November 2017, when a final contract was signed. The Committee considered that this placed the former Chief Executive in a favourable negotiating position.<sup>61</sup>

The Comptroller and Auditor General noted in her report that, at the time the contract of employment was agreed, the States Employment Board had considered the employer's potential liabilities in the event of early termination of the contract or early retirement, and had made an informed decision on the nature of the terms it was willing to agree.<sup>62</sup>

The contract permitted the former Chief Executive to be engaged in secondary employment, provided that it was approved in writing by the employer. However, the Comptroller and Auditor General found that there were limited procedures in place to deal with situations where the former Chief Executive had a conflict of interest<sup>63</sup>.

The Group Director for People and Corporate Services confirmed to the Committee that the Government of Jersey would be considering the issues raised in the previous paragraph in July 2021, with a formal report being written at the time of the public hearing on the 9 July 2021.<sup>64</sup>

**FINDING 18 – Work is being undertaken by the Government of Jersey's People and Corporate Services function to improve the handling of conflicts of interest relating to the Chief Executive.**

**RECOMMENDATION 10 – The announcement of the appointment of a new Chief Executive should not be made until contract negotiations have been completed and the contract signed.**

In her report, the Comptroller and Auditor General found that there were no delegations in place from the States Employment Board for the line management of the Chief Executive, and

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<sup>59</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.28](#)

<sup>60</sup> [News Release – Chief Executive for States of Jersey – 21 July 2017](#)

<sup>61</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.33](#)

<sup>62</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.3](#)

<sup>63</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.4](#)

<sup>64</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.33](#)

that line management arrangements were not documented.<sup>65</sup> In practice, the Chief Minister serves as the line manager of the role.

The Group Director for People and Corporate Services explained that the appraisal and pre-contract documentation had agreed that the Chief Minister would serve as line manager to the Chief Executive. The Group Director further confirmed that a revised scheme for delegations and conflicts would be put in place in September 2021 to address this concern<sup>66</sup>.

The Group Director further outlined that delegations were being rewritten to cross-reference the Public Finances Manual with the delegations of the States Employment Board.<sup>67</sup>

The Comptroller and Auditor General found that the disciplinary processes and procedures for employees in place within the States of Jersey had not been designed with the position of Chief Executive in mind. As a result, there are no specific procedures that can be used to take disciplinary action against a Chief Executive if they are suspected of wrongdoing.<sup>68</sup>

The Committee noted that disciplinary action against the Chief Executive would need to be operated by the States Employment Board. However, with two members of the Council of Ministers sitting on the States Employment Board (Senator John Le Fondré [Chief Minister and Chair] and Deputy Susie Pinel [Minister for Treasury and Resources]), and therefore potentially conflicted, it was concerned that the remaining members of the States Employment Board may be unable to operate an effective appeals process.<sup>69</sup>

**FINDING 19 – The line management of, and process for, entering into compromise agreements for the Chief Executive or resolving scenarios regarding any secondary employment or appointments s/he may undertake, is flawed because the disciplinary processes and procedures for States’ employees have not been designed with the unique post of Chief Executive in mind.**

**RECOMMENDATION 11 – The line management of the Chief Executive should be reviewed and updated in time for the appointment of the next, permanent Chief Executive.**

**RECOMMENDATION 12 – A process dealing with conflicts for the Chief Executive (when the States Employment Board is dealing with disciplinary matters relating to him or her) should be documented as a matter of good governance.**

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<sup>65</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.15](#)

<sup>66</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.13](#)

<sup>67</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.13](#)

<sup>68</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.17](#)

<sup>69</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.17](#)



## Background - Appointment of the Former Chief Executive as a Non-Executive Director of NewRiver REIT plc

On 10 September 2020, it was announced on the [London Stock Exchange](#) that the former Chief Executive had been appointed to the position of Non-Executive Director of the real estate investment trust, NewRiver REIT plc. The form for this appointment was then filed to [Companies House](#) on 17 September 2020. This appointment was first reported by the Island's media on 28 October 2020.

The Committee notes that the role of Chief Executive also encompasses the roles of Principal Accountable Officer, Head of the Public Service, and advisory roles to the States Employment Board and Council of Ministers, alongside the line management of other Senior Officers. The Committee concludes that the role of Chief Executive is significantly different to that of other Senior Officers, and therefore carries greater expectations regarding the performance, accountability and commitment to the Government of Jersey, including matters of secondary employment and unpaid appointments.

At the PAC's public hearing in July 2021, the Chair of the States Employment Board told the Committee that he had first become aware of the former Chief Executive's potential appointment "during 2020 or late 2019"<sup>70</sup>, and commented that it was an "informal conversation on the back end of a meeting saying that it was something he was looking at".<sup>71</sup> He granted verbal permission for the Chief Executive to take up this role, but the Committee notes that written consent should have been obtained by the Chief Executive, as per the contractual obligation to obtain this in writing.

The other members of the States Employment Board were not made aware of the former Chief Executive's announcement until it was reported by the Island's media in October 2020. A Freedom of Information (FOI) release confirmed that the former Chief Executive had called and spoken to the Vice-Chair of the States Employment Board, Connétable Richard Buchanan, about the Non-Executive Directorship (NED) on 27 October 2020, and had spoken to the Deputy Chief Minister, Senator Lyndon Farnham, on the morning of 28 October 2020. This followed requests for information made by the Jersey Evening Post that began on Monday 26 October 2020.<sup>72</sup>

The report of the Comptroller and Auditor General confirmed that the former Chief Executive did not seek or receive written approval from their employer prior to this appointment.<sup>73</sup>

The Chair of SEB told the Committee that this verbal permission was granted on the grounds that it would involve "a very limited amount of time being required" and that it would not be remunerated, further noting that the former Chief Executive's position as a member of the Buckingham Palace Reservicing Programme Board also involved property management advice, and that there was a consistency with an area that would have been "of benefit to the Island".<sup>74</sup>

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<sup>70</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.3](#)

<sup>71</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.3](#)

<sup>72</sup> [Freedom of Information Request – Table 1 – Timeline of the release of a response to initial media queries about the Chief Executive's NED role up until Wednesday, 28 October 2020 – 11 January 2021](#)

<sup>73</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.4](#)

<sup>74</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.3](#)

In her report, the Comptroller and Auditor General found that, in light of the lack of formal delegation from the States Employment Board for the line management of the Chief Executive, the secondary employment of the former Chief Executive should have been considered by the States Employment Board as a whole. The Committee notes that the States Employment Board subsequently consented to the NED appointment on 29 October 2020.<sup>75</sup>

A statement published on 30 October 2020 by the Board's Vice-Chair, Connétable Richard Buchanan, on behalf of the States Employment Board, confirmed that the Board "were not consulted or informed about the appointment and we have expressed our utmost disappointment to both the Chief Minister and the Chief Executive." The Statement further advised that the Chief Executive had apologised to the Chief Minister and the States Employment Board, who had both accepted that this was a "genuine oversight, which was a rare lapse of focus."<sup>76</sup>

The Committee consider that the clarity over the approval of this position was confused by the release of an inaccurate statement by the Government of Jersey, stating that the role had been cleared by the Chief Minister and Deputy Chief Minister, which was subsequently reported in the Island's media.<sup>77</sup> An FOI request later confirmed that this was not the case, and that the former Chief Executive had himself approved the publication of the inaccurate release.<sup>78/79</sup>

In a letter to the Chair of the Committee, the Chief Minister confirmed that procedures had been re-evaluated regarding news releases and communications, with a strengthened approach for Ministers and officials to sign off on news releases and to create a "clearer audit trail and approval process."<sup>80</sup>

The Comptroller and Auditor General concluded that the former Chief Executive had been conflicted in approving this press release, and that the response should have been approved by appropriate Senior Officers who did not have a personal interest in this matter.<sup>81</sup>

A further Freedom of Information request outlined that work had been undertaken by the former Chief Executive in his capacity as Non-Executive Director during his working hours as the Government's Chief Executive.<sup>82</sup>

NewRiver REIT plc remunerates its Non-Executive Directors with an annual basic fee of £50,000 per annum.<sup>83</sup> Additional fees are paid to Non-Executive Directors for additional

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<sup>75</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.4](#)

<sup>76</sup> [News Article – Jersey's Chief Minister backs Charlie Parker over controversial second job – ITV Channel Jersey – 30 October 2020](#)

<sup>77</sup> [News Article – Revealed: Jersey's top civil servant has £50,000 second role – 28 October 2020](#)

<sup>78</sup> [Freedom of Information Request – Press release in relation to the CEO and New River – 11 January 2021](#)

<sup>79</sup> [News Article – Gov CEO approved incorrect statement on his own 'second job' – Bailiwick Express – 13 January 2021](#)

<sup>80</sup> [Letter – Chief Minister to Chair of PAC re CEO NED - Response to Media Questions – 9 January 2021](#)

<sup>81</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.4](#)

<sup>82</sup> [Freedom of Information Request – CEO and New River correspondence 1 – 22 December 2020](#)

<sup>83</sup> [Report – Annual Report and Accounts 2021 – NewRiver REIT plc., p.116](#)

responsibilities, taking into account time commitment, responsibilities and fees paid by companies of a similar size and complexity.<sup>84</sup> In October 2020, the Chair of the States Employment Board confirmed that this sum would form part of a “salary sacrifice scheme” to be distributed amongst a range of charities of the former Chief Executive’s choice.<sup>85</sup>

NewRiver’s 2021 Annual Report and Accounts outline that the former Chief Executive was remunerated £25,000 between his appointment on 10 September 2020 and the financial year-end of 31 March 2021, with his fee waived via a salary sacrifice to charity from the date of appointment to 31 March 2021.<sup>86</sup>

The Chair noted that meetings of the States Employment Board in October-November 2020 were held to discuss whether there was a conflict of interest between the work of the former Chief Executive and this position.<sup>87</sup>

On 6 November 2020, the Council of Ministers published a statement, continuing to assert “that the non-executive role is not compatible with his duties as Chief Executive at this time”.<sup>88</sup>

On the same day, a statement was published by the States Employment Board (chaired by the Vice-Chair, Connétable Richard Buchanan), noting it had met with the former Chief Executive and would submit a confidential letter to him.<sup>89</sup> On 23 May 2021, the Jersey Evening Post announced that it had been provided with a letter from the Vice-Chair to the former Chief Executive, stating that he was “choosing to focus on [his] personal goals”, and had formally instructed him to resign from the position of Non-Executive Director. However, the letter affirmed that the States Employment Board was “not minded to withdraw” its approval of the appointment.<sup>90</sup>

On 9 November 2020, the former Chief Executive submitted an open letter to the Chief Minister, confirming his intention to step down as Chief Executive, and offered to “continue in post for as long as the Government requests” to ensure an orderly transition.<sup>91</sup> This was accepted by the Chief Minister.

The former Chief Executive’s contract ended at 23:59 on 31 December 2020, before he began a new, temporary contract as Chief Executive on 8 January 2021, which lasted until 31 March 2021, when he left the States of Jersey. The second contract was signed on 23 December 2020.<sup>92</sup> The gap in employment of about a week is explored later in this section.

To provide further clarity to the events surrounding the exit payment of the former Chief Executive, a timeline has been provided on page 37.

**FINDING 20 – The former Chief Executive failed to obtain contractually required written approval before accepting the role of Non-Executive Director of NewRiver REIT plc.**

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<sup>84</sup> [Report – Annual Report and Accounts 2021 – NewRiver REIT plc., p.104](#)

<sup>85</sup> [News Article – Gov CEO’s second job salary ‘to go to charity’ – Bailiwick Express – 29 January 2020](#)

<sup>86</sup> [Report – Annual Report and Accounts 2021 – NewRiver REIT plc, p.109](#)

<sup>87</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.5](#)

<sup>88</sup> [News Release – Statement from the Chief Minister, Senator John Le Fondré, 6 November 2020](#)

<sup>89</sup> [News Release – Statement from the States Employment Board – 6 November 2020](#)

<sup>90</sup> [News Article – Charlie Parker ‘instructed’ to give up second job – Jersey Evening Post – 23 May 2021](#)

<sup>91</sup> [Letter – Chief Executive to Chief Minister – 9 November 2020](#)

<sup>92</sup> [Freedom of Information Request – Chief Executive Officer’s employment contracts– 3 March 2021](#)

**FINDING 21 – The former Chief Executive failed to respect the contractual obligation that formal approval for his secondary employment could only be obtained in writing from his employer.**

**FINDING 22 – The Chair of the States Employment Board failed to consult with members of the States Employment Board regarding the appointment of the former Chief Executive as a Non-Executive Director of NewRiver REIT plc until this became a matter of considerable public interest.**

**FINDING 23 – The States Employment Board and Council of Ministers appeared to arrive at separate, public-facing conclusions regarding whether the former Chief Executive was conflicted, with the States Employment Board failing to clarify its position.**

**RECOMMENDATION 13 – The Chair of the States Employment Board must inform the States Employment Board within two days of any approach by a Senior Officer requesting secondary employment, where the contract of that officer requires written permission from the employer.**

**RECOMMENDATION 14 – All key agreements directly relating to Senior Officers, including secondary employment, advisory positions and membership of boards should be made in writing with a clear understanding that verbal approval is insufficient and does not imply or substitute formal approval.**

### Timeline of Events

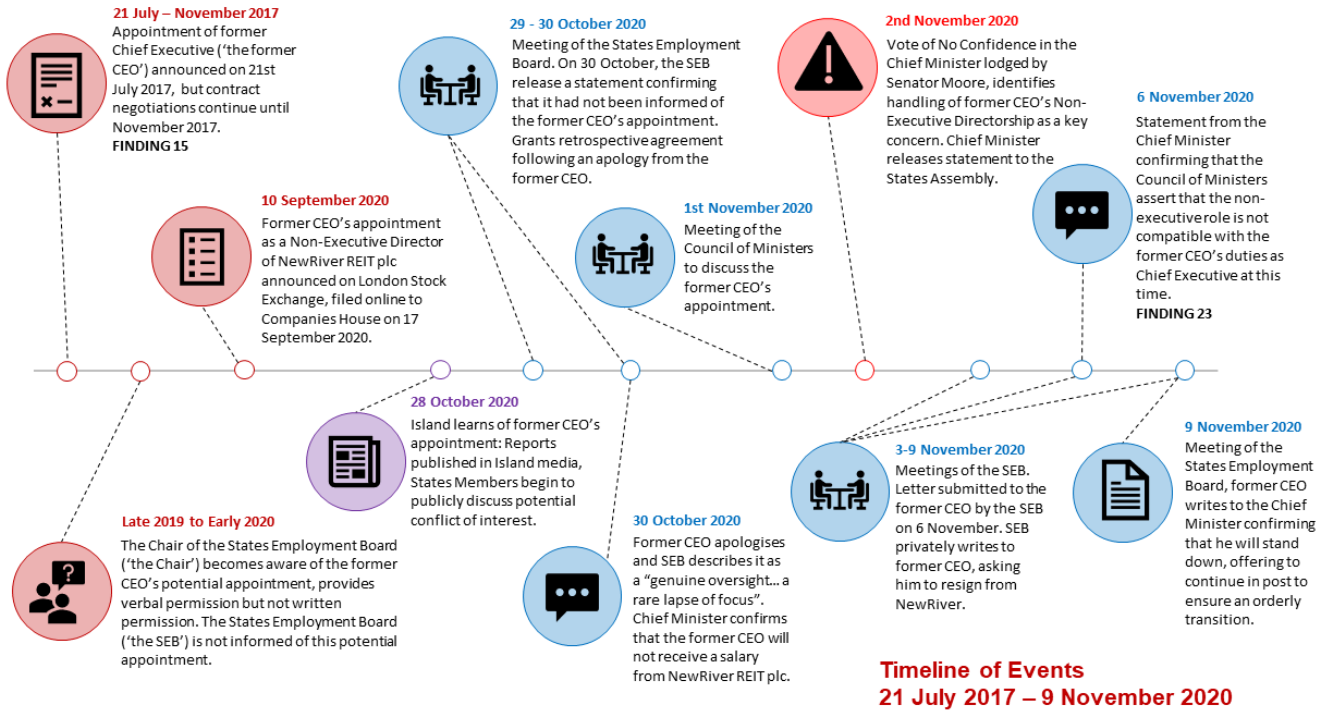


FIGURE 1

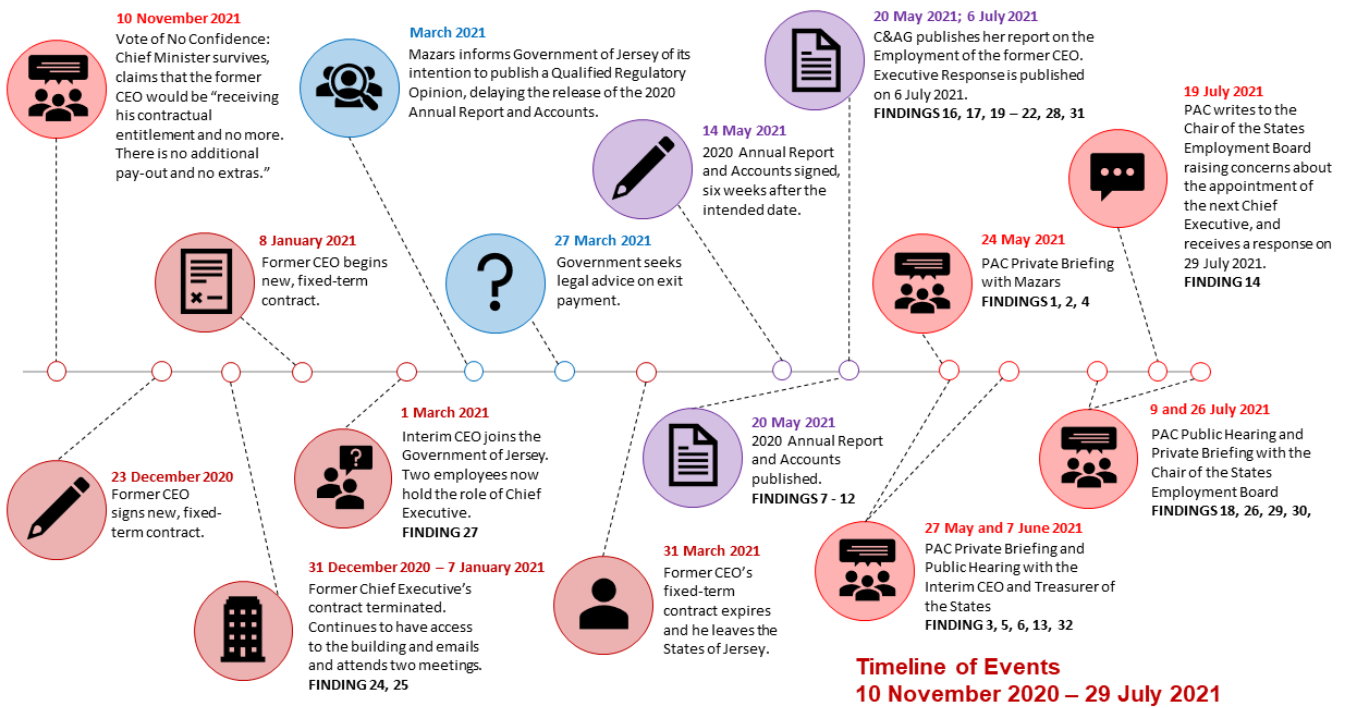


FIGURE 2

## Gap between Employment Contracts of the Former Chief Executive

As noted by the Comptroller and Auditor General in her Follow-Up Report on the States Employment Board, the former Chief Executive was re-employed under a fixed-term contract. There was a period of seven days between the termination of his original contract of employment and the commencement of the new, fixed-term contract. During this seven-day period, the former Chief Executive acted as an unpaid advisor to the Council of Ministers.<sup>93</sup>

At the public hearing on 9 July 2021, the Chair of the States Employment Board told the Committee that there was a “standard deputising rota” that was in place at all times in the absence of the Chief Executive, with the Chief Operating Officer deputising for the duration of the former Chief Executive’s contractual hiatus. The Chair explained that this seven-day hiatus was “about having a break in continuity of service for the purposes of the Employment Law 2003” and was “a safeguard to protect the employer’s position”.<sup>94</sup>

During the hearing, the Group Director for People and Corporate Services identified that a former Chief Executive may continue to act as an advisor in a specific capacity, with an agreement in place that the former Chief Executive would be allowed to fulfil this role in light of a spike in COVID-19 cases at that time.<sup>95</sup> It is unclear whether this agreement was verbal or in writing.

The Committee learned from the Group Director that the former Chief Executive had access to the email system and access to buildings during this time. However, he explained that other files outside of the email system had been closed down for the purposes of secure communication, and the former Chief Executive’s presence within buildings was monitored, alongside his email, with the Group Director also having sight of his inbox.<sup>96</sup>

The Group Director explained that the former Chief Executive had advised on “a COVID matter and one other issue which was an urgent commercial matter of which he had great in-depth experience and he was requested to do so”.<sup>97</sup> The COVID matter was a meeting of the Competent Authorities, with the Comptroller and Auditor General noting in her report that the former Chief Executive had acted in an unpaid capacity in this period as an advisor to the Council of Ministers, and, in this capacity, had attended this meeting on 6 January 2021.<sup>98</sup> The ‘urgent commercial matter’ was subsequently identified by the Group Director as being related to the Our Hospital project.<sup>99</sup>

The Committee noted that senior roles within the States of Jersey prevent individuals from being employed or working with the States of Jersey in an advisory capacity for two years following the termination of their employment contract. The Group Director for People and Corporate Services explained that this would be the case in a standard compromise agreement, but that this “was not a standard situation and clauses can be waived mutually.”<sup>100</sup>

The exact nature and status of the former Chief Executive’s status, including his brief period of unemployment, was not communicated to senior staff, States Members, or the public of the

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<sup>93</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.5](#)

<sup>94</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, pp.32-3](#)

<sup>95</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.32](#)

<sup>96</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.32](#)

<sup>97</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.32](#)

<sup>98</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.28](#)

<sup>99</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.33](#)

<sup>100</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.33](#)



Island. The Group Director for People and Corporate Services identified the members of the Government who were aware of this gap as “key members” and that other members of the civil service were not notified because “it was a period where most of the offices were closed down, there was very little activity and the deputising arrangements were in place so there was no lack of leadership or decision-making at the top, so there was no need for a wider announcement at that point.”<sup>101</sup>

**FINDING 24 – The States Employment Board did not adequately consider the risks and protocols linked to providing access to emails and Broad Street Offices to the former Chief Executive whilst he was ‘between contracts’ and not employed by the States of Jersey.**

**FINDING 25 – The nature and status of the former Chief Executive/Principal Accountable Officer’s role between 1 and 7 January 2021 was not communicated to senior staff, States Members, or the public of the Island.**

**FINDING 26 – Deputising arrangements for the role of Chief Executive/ Principal Accountable Officer are not clear and could be substantially improved to enhance transparency.**

**RECOMMENDATION 15 – The States of Jersey should take the necessary steps to inform the workforce about the employment status of the Chief Executive should his or her original contract be terminated prior to the date of departure initially agreed, and more widely advise who is responsible for the positions occupied by the Chief Executive if no-one is in post.**

**RECOMMENDATION 16 – The identity of the Chief Executive and Principal Accountable Officer, or the individual deputising in one or both of these roles, should be publicly available at all times.**

**RECOMMENDATION 17 – Clear demarcation should be established to ensure that Civil Servants whose contracts have recently expired and are not employed by the States should not be permitted to access emails from their work account, should not have access to the building, and should not attend the meetings of boards where membership was held through their previous employment.**

**RECOMMENDATION 18 – The Government of Jersey should adopt a policy on the appointment of individuals in unpaid roles who have access to States of Jersey information and should ensure that any such appointments are approved at an appropriate level and in writing.**

## **Alternative Arrangements**

During its public hearing on 9 July 2021, the Committee enquired as to whether alternative arrangements for appointing an Interim Chief Executive had been considered, including the promotion of a Director General to the role of Acting or Interim Chief Executive.

The Group Director for People and Corporate Services explained that the Director Generals were consulted about alternative arrangements, but that none of them had expressed an interest in stepping up into the role. The Group Director further identified that a Director

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<sup>101</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.32](#)

General becoming an Acting or Interim Chief Executive would lead to a reshuffle of the civil service that would only last for the short term.<sup>102</sup>

**RECOMMENDATION 19 – A formal structure of deputising should be developed and published to identify clear continuity of business in the event of the Chief Executive Officer being incapacitated or otherwise unable to fulfil the functions of this role (including as Principal Accountable Officer and Head of Public Service).**

### **Employment of Two Chief Executives**

There was a common understanding that the former Chief Executive remained Chief Executive, and therefore held the associated roles of Principal Accountable Officer and Head of Public Service in the period overlap of 31 days between the former Chief Executive's fixed term contract and the employment of the Interim Chief Executive.

However, the Committee concluded that there was potential for confusion because the written contracts of both individuals stated that they held the position of Chief Executive and performed the associated roles.

**FINDING 27 – The Government of Jersey failed to clarify the identity of the Chief Executive/ Principal Accountable Officer during March 2021, when two employees held contracts stating that they were Chief Executive.**

**RECOMMENDATION 20 – The holder of the role of Chief Executive (and its attendant functions as Principal Accountable Officer and Head of Public Service) should be publicly clarified during periods where there are two employees with equal claim to the position (i.e., an outgoing and incoming Chief Executive).**

### **Exit Payment**

As outlined by the Comptroller and Auditor General in her report, the States Employment Board and the former Chief Executive agreed an exit payment as part of a termination agreement. In the Comptroller and Auditor General's opinion, the amount agreed was in excess of their maximum entitlement under their contract of employment and associated side letter.<sup>103</sup>

This resulted in a payment of £500,000 to the former Chief Executive. The Comptroller and Auditor General further noted in her report that, in light of these circumstances not existing at the time this agreement was signed, the exit payment was "reasonable in the circumstances", which she described as "extraordinary", but did not "fall within the agreed contract of employment terms." The Comptroller and Auditor General acknowledged that the States Employment Board did not lack "the power to agree and make the payment".<sup>104</sup>

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<sup>102</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.31](#)

<sup>103</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.4](#)

<sup>104</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.5](#)

The Comptroller and Auditor General further noted that the exit payment may be considered reasonable in light of the potential claims that the employer might have faced<sup>105/106</sup>.

During the public hearing of 9 July 2021, the Chair of the States Employment Board explained that this payment was split into two equal amounts, which were associated with the mutual termination of employment and pension matters.<sup>107</sup>

The Committee recalled that during the debate on the Vote of No Confidence lodged against the Chief Minister ([P.149/2020](#)) on 10 November 2020, the Chief Minister announced to the States Assembly that the former Chief Executive would be “receiving his contractual entitlement and no more. There is no additional pay-out and no extras.”<sup>108</sup> In the Comptroller and Auditor General’s opinion, the eventual payment was “in excess of his [the former Chief Executive’s] maximum entitlement.”<sup>109</sup>

During the public hearing of 9 July 2021, the Chair of the States Employment Board informed the Committee that the advice received indicated that the minimum contractual entitlement was “to the value of £500,000”.<sup>110</sup> The Chair of the States Employment further outlined that the Board had sought “eminent professional advice” regarding the exit payment, and that the advice provided held the final exit payment as being within the former Chief Executive’s entitlement.

It is the Comptroller and Auditor General’s opinion that the £500,000 payment to the former Chief Executive was, at the time of the compromise agreement, in excess of his maximum entitlement under his contract of employment and associated side letter.<sup>111</sup> The Committee concluded that the sum of £500,000 was in fact the maximum potential entitlement under the contract if the following and particular set of circumstances existed:

- a. if there was mutual agreement between the former Chief Executive and the employer to pay the former Chief Executive the maximum specified amount in the mutual termination clause in the contract; and
- b. if the former Chief Executive chose to retire before his NPA [Normal Pension Age] and the cost of alleviating any actuarial reduction in pension exceeded a specified amount. In this situation the specified amount would be paid as a contribution to PEPS [the Public Employees Pension Scheme].<sup>112</sup>

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<sup>105</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.6](#)

<sup>106</sup> The risks faced by the States Employment Board can be examined against a 2018-9 claim made by Mr Amar Alwitary against the States Employment Board, where the Royal Court found that the Board had breached his contract by wrongfully terminating it a week before he was due to take up his post as a Consultant Ophthalmologist at the Jersey General Hospital. It was found that Mr Alwitary’s claim in damages was not capped by reference to any notice period - [News Release – Nick Pointon wins for consultant ophthalmologist before Jersey Court of Appeal – St John’s Chambers – 23 July 2019](#)

<sup>107</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.16](#)

<sup>108</sup> [Hansard – States Assembly – 10 November 2020, p.6](#)

<sup>109</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.4](#)

<sup>110</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.19](#)

<sup>111</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.18](#)

<sup>112</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.18](#)

The Committee received private briefings with the SEB Chair, external auditors, and viewed the former CEO's compromise agreement, contemporaneous SEB minutes, and also received relevant advice. These findings are the views of the PAC as expressed through its interpretation of the reliability of the information presented. The PAC notes that the C&AG report was 'fact-checked' and agreed by CM and SEB and has not been challenged outside of comments made in a hearing, therefore it concurs with the conclusion drawn by the C&AG and the external auditors. It notes that the original contract was superseded by the subsequent compromise agreement.

The Committee notes that the report of the Comptroller and Auditor General was reviewed as a draft prior to publication and confirmed for factual accuracy by the Government of Jersey, although later, the Chair of the States Employment Board, at the hearing of 9 July 2021, disputed that the amount awarded to the former Chief Executive had been above the maximum entitlement, stating that "we have accepted the Comptroller and Auditor General's report but there were different opinions of the contractual entitlement".<sup>113</sup>

The Committee infers from the Chief Minister's comment that the payment was made of 'two equal amounts'<sup>114</sup> which totalled £500,000, that therefore a lower actuarial amount should have been paid into the PEPS, of which the Chief Executive was one of 17,000 members. However, £250,000 was paid directly to him.

The Chair of the States Employment Board also informed the Committee that the breach of the Public Finances Manual, which led to the Qualified Regulatory Opinion, had been "a technical breach, a technical issue that was capable of being resolved"<sup>115</sup>, and that it was "a reasonable outcome for the taxpayer" when considering "what the alternative outcomes might be."<sup>116</sup>

The Committee understood from the Chair of the States Employment Board and a Senior Legal Advisor at its public hearing on 9 July 2021 that the States Employment Board sought legal advice on aspects of the contract of the former Chief Executive. However, the Committee has not been privy to that legal advice nor the terms under which it was sought.

During the public hearing with the Interim Chief Executive and Treasurer of the States on 7 June 2021, the Treasurer of the States noted that the decision had been taken within a "fast-moving environment" and that this may have "potentially created an issue relating to interpretation and the need to consult".<sup>117</sup>

**FINDING 28 – The States Employment Board incorrectly identified the former Chief Executive's minimum and maximum entitlements in the event of the termination of his employment.**

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<sup>113</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.23](#)

<sup>114</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.16](#)

<sup>115</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.5](#)

<sup>116</sup> [Report – States Employment Board – follow up: Employment of the former Chief Executive \(R.88/2021\) – 20 May 2021, p.37](#)

<sup>117</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.25](#)

**FINDING 29** – The Committee does not accept that the minimal contractual entitlement was ‘to the value of £500,000’<sup>118</sup> as stated by the Chair of the States Employment Board, and concurs with the Comptroller and Auditor General’s finding that the former Chief Executive was paid more than the minimum (and maximum) contractual entitlement, particularly given that the States Employment Board have accepted the factual accuracy of the Comptroller and Auditor General’s Report.<sup>119</sup>

**FINDING 30** – The Committee does not accept that the lack of consultation with any member of the Treasury and Exchequer before or during the time the exit payment was negotiated with the former Chief Executive was a mere technical breach of the Public Finances Manual, rather it was a grave oversight which may have caused, contributed to, or given the impression of, an absence of proper financial oversight and/or expertise in respect of the final negotiated settlement.

**FINDING 31** – The PAC accepts that in view of the extraordinary circumstances which led to the potential for the former Chief Executive to lodge a claim against the States, his ‘exit’ payment of £500,000 was not unreasonable.

### **Other Remunerations**

The exit payment made to the former Chief Executive was one of two Severance Payments made to Senior Officers that are recorded within the 2020 Annual Report and Accounts. A separate Severance Payment was made to the former Director General to Growth, Housing and Environment (now Infrastructure, Housing and Environment) for the compensation of the loss of office, totalling £192,500.<sup>120</sup>

During the Committee’s public hearing on the 7 June 2021, the Treasurer of the States confirmed that full processes were followed for this payment, including consultation with the Treasurer.<sup>121</sup>

Total exit packages for 2020 totalled £1,282,708 for 34 staff, a decrease from the £2,048,138 for 40 staff as provided in 2019.<sup>122</sup>

**FINDING 32** – The Committee notes that all proper procedures were followed, including consultation with Treasury and Exchequer, in relation to the Special Payment made to the former Director General to Growth, Housing and Environment.

**RECOMMENDATION 21** – All due processes should be stringently followed and documented, in respect of every Special Payment, including consultation with Treasury and Exchequer, regardless of time pressures.

**RECOMMENDATION 22** – To ensure that the pay-out of large sums in Severance Payments does not become the norm, all contractual obligations such as alternative dispute resolutions should be exhausted before negotiating special payments.

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<sup>118</sup> [Transcript – Public Hearing with the Chair of the States Employment Board – 9 July 2021, p.19](#)

<sup>119</sup> [Report - States of Jersey 2020 Annual Report and Accounts – 20 May 2021, p.93](#)

<sup>120</sup> [Report - States of Jersey 2020 Annual Report and Accounts – 20 May 2021, p.204](#)

<sup>121</sup> [Transcript – Public Hearing with the Interim Chief Executive – 7 June 2021, p.25](#)

<sup>122</sup> [Report - States of Jersey 2020 Annual Report and Accounts – 20 May 2021, p.204](#)

## Appendix 1 - Public Accounts Committee Membership

Deputy Inna Gardiner, Chair



Connétable Karen Shenton-Stone, Vice-Chair



Senator Tracey Vallois



Connétable John Le Maistre



Connétable Richard Vibert (resigned from the PAC on 7 July 2021)



### **Non-States Members (independently appointed):**

Dr Helen Miles

Mr Adrian Lane

Mr Graeme Phipps

Mr Paul van Bodegom



## Appendix 2 – Terms of Reference

1. To examine the content, reported performance, transparency and timeliness of the States Annual Report and Accounts 2020
2. To consider whether the Performance Report contained within the Annual Report and Accounts 2020 present clearly the Government's aims, activities, functions and performance.
3. To examine the contents of the Accountability Report contained within the Annual Report and Accounts 2020 including reported risks and mitigations as well as remuneration reporting (including termination payments).
4. To determine the clarity of the Government's (and its officers) explanations for how funding has been used to achieve objectives
5. To examine the adequacy of reporting of remuneration (including termination payments) and special payments (including special severance payments) in the Annual Report and Accounts.
6. To determine whether the Annual Reports and Accounts have implemented the recommendations of last year's PAC Report, to demonstrate:
  - Earlier confirmation of the structure and content of the primary statements and notes;
  - Earlier confirmation of JFReM, accounting policies and critical judgements;
  - Embedding process improvements; and better engagement with the External Auditor.



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