

STATES OF JERSEY

Education and Home Affairs Panel Briefing with the Minister for Home Affairs on Draft Repatriation of Prisoners (Jersey) Law 201

MONDAY, 16th MAY 2011

Panel:

Deputy R.G. Le Hérissier of St. Saviour (Deputy Chairman)

Deputy J.M. Maçon of St. Saviour

Mr. M. Haden (Scrutiny Officer)

Witness:

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

Deputy J.A. Hilton of St. Helier (Assistant Minister for Home Affairs)

Mr. S. Austin-Vautier (Chief Officer, Home Affairs)

[9:30]

Deputy R.G. Le Hérissier of St. Saviour (Deputy Chairman):

I would like to welcome you. Yes. We do assume our highly-esteemed colleagues are between here and St. Johns or between here and St. Brelades, but we are going to commence because at this time as we are quorate. So I would like to thank you for attending. You obviously know the rules and, basically, the panel was of the view that while it obviously was not in accordance with the scrutiny, it is a fairly fundamental law; to some people it is a very attractive law because people, I suppose like Kenneth Clarke in the U.K. (United Kingdom), could clean his prisons out very quickly, if applied with vigour and energy. But we do want to make sure that, well, the human rights side of it and the economic side of it ... because on the surface it is very attractive but, clearly, the panel would be interested to see whether it is indeed going to deliver what people think it will. So can we start by announcing ourselves? Roy Le Hérissier, Deputy Chairman.

Deputy J. M. Maçon of St. Saviour:

Deputy Jeremy Maçon representative for St. Saviour.

The Minister for Home Affairs:

Ian Le Marquand, Minister for Home Affairs.

The Assistant Minister for Home Affairs:

Deputy Jacquie Hilton, Assistant Minister for Home Affairs.

The Chief Officer, Home Affairs:

Steven Austin-Vautier, Chief Officer, Home Affairs.

Mr. M. Haden (Scrutiny Officer):

I am Mike Haden, Scrutiny Officer.

Deputy R.G. Le Hérissier:

Okay. Thank you. I think we are ready. We are recording. We have identified certain key areas and then, if necessary, we have identified certain supplementaries which flow from those areas. But I wonder if, very briefly, Mr. Minister, you could tell us what the advantages and disadvantages are going to be of implementing this law?

The Minister for Home Affairs:

Yes. Well, thank you. I am very grateful for the opportunity to explain the law to you because the more people in the Assembly who have some understanding of it the better when the debate takes place. Broadly speaking, this law enables the Minister for Home Affairs, in certain circumstances, subject to certain constraints and limitations and human rights principles, to return prisoners to their home country in order to serve their sentence in accordance with the sentencing regime, or the serving regime (the parole regime, that is why I call it that) of that particular country. Now, there is in existence, and has been for some time, a European directive on this which, of course, is not binding on Jersey, but nevertheless indicates this is a principle accepted across the E.U. (European Union) countries that prisoners should be able to return in this way. So there are already in existence arrangements as between the U.K. and other countries and so Mr. Clarke is already able to do this in appropriate cases; in fact, the U.K. has arrangements which are wider than just with the E.U. Now, there are broadly speaking 2 advantages to this: firstly, there is an advantage to the prisoners themselves, particularly where they have virtually no ties with Jersey, and the nature of our prisoner

population (which includes quite a number of people who are drugs couriers who have virtually no ties with the Island) means that we will always have a grouping in this area. The advantage to the prisoner is that they are able to return to their home country; there, they have their ties with family, they can be visited, et cetera. That is the thinking behind it: it enables more effective rehabilitation into their home communities. The advantage from our point of view is that we anticipate, even at the first stage, a net gain in terms of reduction of numbers because we think that the number of foreign prisoners (particularly Portuguese and Poles, although there may be others as well) outgoing, will outweigh the numbers of Jersey people incoming. There will be some incoming people, I am aware of individuals who have been caught and sentenced in France for instance for drug-related offences, where they were in the process of importation into Jersey. If one considers for the moment the topical subject of Mr. Warren(?) and his gang, if they had, in fact, been caught and tried in France, then those members of his group who had ties with Jersey could potentially then have come back in. There is also a potential secondary gain, which I am going to explain to you, and that potential secondary gain is larger in terms of numbers than the primary. The secondary gain would relate to if, as a result of this, we were to change our approach in relation to the terms upon which we send prisoners back to the U.K. ... but I am going off on a tangent, though; do you want me to carry on down that tangent?

Deputy R.G. Le Hérissier:

Well, briefly. Yes.

The Minister for Home Affairs:

Yes. Okay. If I can explain: I already, I think, have explained this in brief, but it is best explained if I invent a supposed Mr. Le Marquand from St. Ouens, a Mr. Smith from Liverpool and a Mr. Da Silva from Madeira, all 3 of whom are co-conspirators in some drugs matter, all of whom get the same sentence. If they all serve their sentence in Jersey then, clearly, they would be subject to the Jersey guidelines, although there might be some slight difference if Mr. Da Silva was subject to a deportation recommendation. But if we entered into an agreement with Portugal/Madeira, then you would have a situation in which Mr. Da Silva would be returning to Madeira to serve his sentence, subject to the Madeiran system, whatever it may be, and that might mean that he was eligible to be

let out earlier. At the moment, there is not a differential between Mr. Le Marquand and Mr. Smith, even if Mr. Smith chooses to return to serve his sentence in Liverpool because the system was changed in Jersey some years ago so that we have what are called restrictive transfers. Restrictive transfers mean that they return, basically, to serve their sentence in accordance with our parole-type system, not theirs. But the moment you have a 3-way split, inevitably, Mr. Smith is going to say: "Why is Mr. Da Silva allowed to go back on the Portuguese/Madeiran terms and I am not?", there will be a differentiation. The only logical system that I can see for dealing with this ... there are already disparities which happen, even in the present system, because if you think: if Mr. Smith goes back, he might be sharing his cell with Mr. Jones who had been sentenced to the same length of period in Liverpool, Mr. Jones would be subject to the U.K. system and Mr. Smith to the Jersey; so we have a disparity within the U.K. at present. But the only logical system I can see is to adopt the universal principle of the directive which is that people serve in accordance with the parole regime of the place where they serve their sentence.

Deputy R.G. Le Hérissier:

But, thinking laterally, there is another solution, which I thought has been under discussion for years, that is to bring Jersey's parole conditions into alignment with those of the U.K. Where are we at at that?

The Minister for Home Affairs:

Well, I stopped work on those in order to work on these because this became the high priority, and the problem which I encountered was that I have not understood, and I am not sure how many Members of the States understood, what the Criminal Justice Policy was saying on that. I had been part of working parties on the Criminal Justice Policy which looked at parole and universally the view was that we should move towards a parole system which was potentially activated after half of sentence and where they would remain on parole until up to two-thirds of sentence. As I say, potentially activated, that is what we want to move to, that is what I thought the Criminal Justice Policy had said. In fact, on examining it when I came in as Minister, to my horror, I discovered that, in fact, the draft law that I had inherited was a system whereby people could potentially be granted parole at half, but would remain subject to parole until the end of their full sentence. Now, this could

create the most bizarre results: for instance, if a person served a 12-year sentence, hypothetically released after 6, breaching the parole 5 years later, could be recalled to serve the final 6, and this does not make sense. But I discovered that what had happened was that, in discussions, I think between a previous Minister and the courts, that that was the arrangement which had been arrived at. It was not an acceptable arrangement.

Deputy R.G. Le Hérissier:

So where is it at now, Minister?

The Minister for Home Affairs:

It is not going anywhere at the moment because this ... the other issue which is very interesting is the issue as to which system is preferable because I quite like, in terms of rehabilitation, the Jersey system. The Jersey system, as you know, allows prisoners to be released on a basis of going out to work up to 12 months before, depending upon the length of their sentence, and then after a period of up to 8 months where they are going out working but staying at night-time in a prison, which is acting as a sort of hostel for them. In the final 4 months they go out on curfew conditions. I have had recent discussions with the probation chief and we think this is quite an effective system compared to the system which just tips people out, as it were, straight away and does not give them the period of transition. So it will be up to the next Minister to decide where to go with that but there are not huge and obvious advantages to changing the system.

Deputy R.G. Le Hérissier:

Sorry, one last question and then I will move to Deputy Maçon, I know he is going to look more at the economics. Are you aware from your evidence, because the U.K. group is obviously quite a big group and the public will, because of all our talk of our semi-independence, assume you are exercising the same kind of system (although you are not, and it is going to be quite difficult to give them the nuanced view) but are you of the view from the feedback from the prison that U.K.-based prisoners, so defined, are dissuaded from moving to U.K. prisons in large numbers because of this anomaly around parole?

The Minister for Home Affairs:

Yes. That is right. That is the view that if there were the secondary change made, that there would then be a much larger group of U.K.-based prisoners who would want to return to serve their sentences under the U.K. system, that is, I expect ...

Deputy R.G. Le Hérissier:

You did not think that would be to your advantage and would help with what you might call the spirit of the Repatriation Law?

The Minister for Home Affairs:

Well, I have not wanted to make a commitment on that thus far because, in fact, the timing is so tight this year, we had to lodge this law and then enter into discussions with the court in relation to that. It is clear from our discussions that the court accept this is a political decision and they do not seem to have very strong views in relation to it, and so I think it is likely that, once this has come in, that we would then move and take the secondary step, slightly. But that is going to fall into the term of the Minister for Home Affairs in the next States, in reality.

Deputy R.G. Le Hérissier:

Yes. Whoever the lucky person ...

The Minister for Home Affairs:

We do not know who that may be.

Deputy R.G. Le Hérissier:

No. If I can move to Deputy Maçon.

Deputy J. M. Maçon:

Yes. Just before we move on, you were talking about the positive points and the cons. You touched on your 2 main positive points and then we got slightly diverted. Is there anything else you would like to add to the positive points, and then if we can move on to the cons?

The Minister for Home Affairs:

No. I think that is it: the advantage to the prisoners and the potential advantage in terms of reduction in size of the resident population. I should have said, of course, that where prisoners do return to their home countries, the transfer is at the expense of the sending people but the actual housing of them is at the expense of the receiving, so this is why we anticipate potential large savings.

Deputy J. M. Maçon:

Are there any of the cons that should be counted?

Deputy R.G. Le Hérissier:

That word could be misinterpreted, but we will carry on. **[Laughter]**

Deputy J. M. Maçon:

Disadvantages, then. Yes.

[9:45]

The Minister for Home Affairs:

Yes. We will take that as being the against as opposed to the prisoners themselves. What would the potential downsides be? Some people might see the secondary effect as well as the primary effect as watering down the effect of the length of sentence. But, at the end of the day, that is clearly a political decision, it is the role of the judiciary (which I accept) to set sentencing policy and to decide individual sentences, it is the role of politicians to decide what is the regime under which people serve their sentence. But some might view that as a potential downside for watering down of the actual length of sentence.

Deputy J. M. Maçon:

Then if we can move on to arrangements with other relevant jurisdictions. Can you tell us how negotiations have been going?

The Minister for Home Affairs:

Well, we have not started negotiations. I think the current position, as I understand it, is that we are still at this stage not 100 per cent sure as to which is the best route. It may well be that the best route will be the individual agreements with individual countries, and I suspect that is the way we are going to go initially, and I mentioned Portugal/Madeira and Poland. I should have mentioned in relation to Poland that the Poles have so many expatriates all over the place that they are currently indicating they may not be able to agree to operate the system for some years in case there is just too much of an inflow. I think that is somewhere in the notes.

The Chief Officer:

Well, they have a derogation under the Framework Agreement for 5 years, but from the end of this year.

The Minister for Home Affairs:

They have a 5-year ... it is the end of this year, is it not?

The Chief Officer:

Well, all member states have to comply by the end of the year, they have got a 5-year derogation after that, yes.

The Minister for Home Affairs:

Sorry, I have forgotten what the question was, I have side-tracked myself. Oh, yes, agreements under jurisdictions. We have also explored whether we could, in some way, come in on the fringes of the U.K. agreements so that we would become a party to something which would bring in a number of different countries at the same time, but I think that may prove rather complex, and Mr. Austin-Vautier understands that area better because he has attended many meetings on that.

The Chief Officer:

Yes. We have got as far as opening up a useful channel with the Ministry of Justice with the

National Offender Management Service, and there is a person there who specifically deals with the bilateral arrangements with other countries. What he has said so far is that, rather like the Isle of Man who has had already the arrangements extended to them, there is opportunity, obviously, for Jersey to benefit from that as well so that we do not have to enter into arrangements directly with other nations and that would merely mean the U.K. authorities requesting the E.U. to do that, or extend them to us on our behalf. Until the law is through, there is no real point in forging ahead with that, we have got plenty of time to look at the detail of that while the law is away at Privy Council, but that would be the mechanism.

Deputy R.G. Le Hérissier:

So, sorry, that is not a substitute for the law, you still have to bring the law in?

The Chief Officer:

Yes.

Deputy R.G. Le Hérissier:

On the back of the law, you could do an E.U.-wide extension.

The Chief Officer:

Yes. At the moment there are no inquiries(?) in Jersey to transfer anybody other than to Britain; we need the law, just like the U.K. brought in its own Act in 1984 but, on top of that, yes, you do need to have specific agreements in place to effect the transfer.

Deputy R.G. Le Hérissier:

Okay. Yes. One of the issues, obviously, that is going to be brought up (and, of course, it has sometimes come up with the U.K. transfer system) is the question of consent. I wonder if you could explain to the panel what “consent” means and whether repatriation is possible, as appears to be the case, in a situation of no consent.

The Minister for Home Affairs:

Yes. I can do that. We have worded this law so that agreements could be entered into with other countries either on the basis of requiring consent or on the basis of not requiring consent of the individual prisoner. We did that, basically, so that we could fall in with whatever other countries might insist on either way in relation to that. But, having said that, the way the system works is that both the sending country and the receiving country have to agree that it is appropriate that the person be sent. So if the prisoner is saying: "I do not want to go back" then, obviously, he could be transmitting that not only to the sending country but also to the receiving country, who will both formulate a view in relation to that. The situation, of course, may to a degree be clarified by issues like if a person is subject to a recommendation for deportation because then that means the court has looked at it and done a balancing act and decided that it is not in the interests of the sending country that they stay in that country once sentence is concluded. In Jersey, although the court has made their recommendation, the Lieutenant Governor has to consider other issues, which he does towards the end of a sentence, in determining whether or not they will be deported or not. The other thing that I have to say which really will start to answer the final bullet point as well is that, of course, in exercising powers under this law, as with any law, the public authority must do so in a way which is compliant with human rights considerations. I have a letter of human rights advice which, of course, advises me as to what criteria should be considered and, clearly, if you had a situation where a prisoner was not subject to deportation recommendation and where the prisoner has substantial ties with the Island, all that would have to be considered because it might be a breach of his right to family life, et cetera. So, in considering the decision, rather in the same way as the Governor considers these things and the courts consider these things, the Minister will have to also consider these things. The other aspect is, of course, that the human rights principles will also apply in relation to not returning people to a country where they are likely to be tortured or subject to inhuman or degrading punishment or executed, or whatever. So exactly the same principles which we hear of regularly in the press in relation to illegal immigrants, as to whether or not they can be returned to particular countries, will apply here also, and that is a matter which will have to be considered.

Deputy R.G. Le Hérissier:

It is possible, and I say it in the light that there was, as you know, a notorious case last week where I

think a Sri Lankan national had been convicted but after a lot of appeals he was able to argue that having a girlfriend in Britain was grounds that amounted to the preservation of family life, and that is obviously going to arouse a lot of public controversy, that kind of case. Who will make the decision before it reaches the courts on what amounts to substantial roots on the Island?

The Minister for Home Affairs:

Finally, the Minister; obviously, on advice. The Minister may delegate decisions, of course, has a power to delegate decisions to the Prison Governor, but I would have thought in contentious cases it is going to come back to the Minister.

Deputy R.G. Le Hérissier:

But it would be quite possible to say: “Well, you may have some links to the Island, you may have something that could be construed, for example, as the right to family life but, on balance, we are repatriating you” is it possible for you to ...?

The Minister for Home Affairs:

It would depend upon the nature of the links and the strengths of the links and so on. But, as I say, this is not a new area in as much as it is looked at in a slightly different context, of course, in relation to deportation orders, it is a factor which is taken into account. I think in practice with the largest grouping of cases that were envisaged, which is the couriers and so on, people have so little ties, as I think I have sometimes said, that the only people they know in Jersey are the people who arrested them, the people who transport them to and from the prison and the people in the prison, their fellow prisoners, and the judges. So I think in the vast majority of cases, it is going to be pretty clear-cut. I do not think that this should be used, if I can put it that way and it would be wrong in my opinion for this to be used as an alternative route to a deportation order. That is not its functionality and, of course, if it were, if hypothetically people were returned to serve their sentence but were not subject to a deportation order, they could still come back once they have served their sentence, so it should not be used as an alternative to a deportation order, that would be a wrong usage of it.

Deputy R.G. Le Hérissier:

We bear in mind, although I know you will be explaining this to the Assembly, the fact that the Sex Offenders' Register was temporarily halted in its tracks on human rights grounds. What issues have human rights ...

The Minister for Home Affairs:

I am not sure I understand what you mean by that.

Deputy R.G. Le Hérisier:

I thought there had been issues that had been raised as to whether or not it was ... I do not want to get into this, I use it as a comparison as to whether or not that particular law was fully human rights-compliant.

The Minister for Home Affairs:

No. That is the issue of the amendments. No. Judges tell me that the judicial decisions that have already been made have dealt with those points; I have not checked that. But, no, the issues which arose in general were issues which were capable of being dealt with by judicial decision, as I think I said in my statement to the Assembly. So there was ...

Deputy R.G. Le Hérisier:

So what I am asking is, in terms of this law, you have there a letter (and, as you know, as Members, we are not normally allowed to see the contents, it is this strange system we have) what do you anticipate, having considered the situation, will be some of the human rights issues that may arise as you seek to implement this law?

The Minister for Home Affairs:

I highlighted them very briefly. There is the issue that they must not be sent back to a country where they would be subject to torture or to inhuman or degrading treatment or punishment. But then I do not think we would want to enter into an agreement with such a country in the first place, although countries can change. There are some issues, interestingly, incoming where we would have to make sure, in order to be human rights-compliant, that they had been properly dealt with by an

independent criminal court.

Deputy R.G. Le Hérissier:

You mean for sentencing?

The Minister for Home Affairs:

Yes. If we were going to receive them, we would have to be satisfied, so that is the other way around. There is the right to respect for private and family life, home and correspondence, and that is the issue which will require, particularly where it has been made without the prisoner's consent, a proper consideration. I am just seeing if I can ... that is a qualified right: "Contracting states have permission to interfere with it to the extent that there is a legitimate aim, interference is in accordance with the law and necessary in a democratic society, that is, proportionate."

Deputy R.G. Le Hérissier:

What about when the executive decision has been taken, Mr. Minister, as to whether or not to repatriate a person, the person will not be seen obviously by the decision-maker, it will be a paper-based decision, so to speak?

The Minister for Home Affairs:

I would have thought so. There must be a fair procedure, as with anything, and of course the decision would be subject to judicial review challenge. There is no express right of appeal built into the law, but it will be subject to judicial review challenge in the same way.

[10:00]

In fact, if you think about it, many of the cases which arise in the U.K. in relation to deportation issues are judicial review challenges as to whether or not it is a reasonable decision. My own personal view is I think you are going to find in the vast majority of cases the prisoner is going to be asking to go, but you are quite right to ask questions about potential for cases in which they do not want to go and where, nevertheless, technically they should. But, as I say, there is this secondary

safeguard built in that the receiving country has also got to be happy to have them, because I believe the receiving country could say: “No, we disagree with your decision. You are just unloading the person on to us, they do have substantial ties. It is not in their best interests to be serving their sentence here.” I am just trying to find the section ... 20 is on disproportionality. It is 20, is it? Of course, transfer without consent is not, in my view, disproportionate as: “There will be cases where national security and the economic wellbeing of Jersey, or public safety, could be at risk, thus necessitating the repatriation of a prisoner out of Jersey.” That is saying that having a system which may not require consent is not, in itself, inappropriate. It then does go on to talk about judicial review. But it is going to have to be necessary and proportionate, as with any such ...

Deputy R.G. Le Hérissier:

When you say: “Necessarily proportionate” ...

The Minister for Home Affairs:

“Necessary and proportionate.”

Deputy R.G. Le Hérissier:

“Necessary and proportionate”, you mean from your point of view as the sender?

The Minister for Home Affairs:

Yes. Or where a person does not want to go.

Deputy R.G. Le Hérissier:

Yes. Okay. What are you going to do about, because of the Jersey Prison and the facilities it has and does not have as the case may be, what about if a Jersey person is sentenced to life in one of the countries with whom we have an agreement, will you accept such a person back in the Jersey system?

The Minister for Home Affairs:

Yes, if their ties are with Jersey and they then would have to serve the sentence in accordance with

our rules, as it were, in relation to that. One of the safeguards that is in the law (it seems rather an obscure sort of area) is that the safeguard, which is basically saying that the agreement that is reached with foreign countries must mean that they are essentially going to serve the original sentence, as it were, but in accordance with what are called the parole rules of the receiving country. So you cannot have a situation where you send someone back to a country and they say: "We are just going to ignore the initial sentence, we are just going to let them out" that would be unsatisfactory, and the agreement must make that clear. But, of course, different countries may have different rules in terms of how they deal with life sentences. We have a situation (I think we mirror the U.K. now, do we not) where there are recommendations for minimum periods. They may not have, of course, in other countries; it is an interesting issue. But if we were sending somebody back serving a life sentence with a minimum recommendation, we would expect that to be followed by the receiving country.

Deputy J. M. Maçon:

Can I just ask, from your evidence, what evidence have you found about the willingness of other countries through other jurisdictions to accept prisoners back to the home jurisdictions?

The Minister for Home Affairs:

Well, one would expect them to because they are internally bound by the terms of the directive, they are already signed up to the principle of accepting this because of the nature of the E.U. directive. What we do not know and have given some thought to, which brings us back to what Jeremy was asking before in relation to the parole system, at the moment there is no harmonisation of parole systems throughout the U.K., the different countries have different systems. If there was a move towards a harmonisation then we might find ourselves in a situation where people are saying: "Well, we only are going to enter into agreements with you provided you harmonise your system with us." At the moment, we do not think that we would run into a situation where that would be required by individual countries because the systems are so different and because, in a sense, it is our people, if you understand what I am saying; they may have been sentenced elsewhere but if they are going to return to Jersey they must have substantial links with Jersey in the first place, and vice versa.

Deputy R.G. Le Hérissier:

But you would be prepared (we are looking forward) but we know, rather embarrassingly, there is a group for example of Britons in Thailand and who are in the Philippines who were there largely on paedophile-type convictions, and some of them under quite punitive sentences. Would you be prepared to enter into negotiations with countries like that to receive people on the terms on which they had been sentenced?

The Minister for Home Affairs:

I do not think we have thought thus far, indeed the new countries ...

The Chief Officer:

The thought has been within the E.U. and not beyond, that would be a different dimension, I think.

Deputy J. M. Maçon:

But, presumably, under this law, there would be scope for that.

The Chief Officer:

Yes. It is where international arrangements apply.

Deputy R.G. Le Hérissier:

Okay. I know Deputy Maçon is going to ask an economics question, but before we move into that, I wonder if I can wrap up this issue: we are now in a situation where the U.K. is not looking as strong as it used to, for example, there is talk of Scotch independence and so forth, and then of course there is the issue of the Irish Republic as well which is sometimes seen, like Jersey, as part of the U.K. in terms of arrangements (not in political terms, I hasten to add) ...

The Minister for Home Affairs:

It is part of the common travel area.

Deputy R.G. Le Hérissier:

Yes. What are the arrangements between the different constitutional elements of the U.K., including our Crown dependency colleagues, Guernsey, Isle of Man, for example, and the constituent parts of the U.K. and the Irish Republic, how have the arrangements worked between all these different parts?

The Minister for Home Affairs:

Are you talking about arrangements for sending prisoners back?

Deputy R.G. Le Hérissier:

Yes, for repatriation in both directions.

The Minister for Home Affairs:

I do not know what they are doing in terms of restrictive transfers, it is really restrictive transfers which is the issue.

The Chief Officer:

I think there are 2 things to say there: firstly, the Crime Sentences Act 1997, which introduced unrestricted and restricted, that has separate sections on transfers between the various parts of the British Isles, so those things are laid out. The second thing is that I have been meeting in London (not too often, only 3 times) together with Guernsey, the Isle of Man, Scotland, Ireland and England, to talk about all of this. So we latched on to the fact very early that we all have the same issue and there is obviously a desire to try and harmonise as much as possible, but my impression is that the transfers between what is the U.K. are not difficult because the regimes appear to be very similar if not the same, it is really the Crown dependencies which are different. So it has been our issue rather than the United Kingdom issue.

Deputy R.G. Le Hérissier:

Out of the fog, so to speak, has any basis for agreement been achieved?

The Chief Officer:

It was out of that group that the opportunity and liaison over the bilateral agreements run. So what was initially looking like quite a daunting problem suddenly became a lot easier because the U.K. had already hacked that and we obviously set up the contact so that that is the point or really the rationale for meeting in groups like that.

Deputy R.G. Le Hérissier:

Are there any major problems arranging for repatriation between the Crown dependencies?

The Chief Officer:

Between the Crown dependencies?

The Minister for Home Affairs:

Yes.

The Chief Officer:

I think the issue we will have is transferring to, say, the Isle of Man or Guernsey and we have not thought about that too deeply at the moment.

The Minister for Home Affairs:

Is that not covered under the existing arrangements? We are only ...

The Chief Officer:

We cannot transfer to Guernsey.

The Minister for Home Affairs:

We cannot transfer to Guernsey?

The Chief Officer:

No.

The Minister for Home Affairs:

I did not know that, or the Isle of Man.

The Chief Officer:

Yes. Separate jurisdictions.

Deputy R.G. Le Hérissier:

Isle of Man, could you transfer to?

The Chief Officer:

No, it is the same problem.

Deputy R.G. Le Hérissier:

What about the Irish Republic, what ...?

The Chief Officer:

No. As far as I am aware, I think it is the same, a foreign country.

The Minister for Home Affairs:

They would contract to enter into agreements.

Deputy R.G. Le Hérissier:

I will move to Deputy Maçon.

Deputy J. M. Maçon:

Yes. Just getting back to the C.S.R. (Comprehensive Spending Review) and budgets, so to what level does the prisoner population have to fall in order to realise a major saving?

The Minister for Home Affairs:

I asked for this information overnight, I have not looked at the notes. Yes. It has really got to do

with closing a level in a wing; the smallest level in a wing has got 20 people in it, that is in K. Wing, L. Wing has got 40 people in it. To close a level in L. Wing would result in a saving of 3.5 officers, but 40 in the other one ... no, it is more complex than that. I think what that is saying is that a reduction of 40 would be approximately £250,000 to £300,000. Is that right?

The Chief Officer:

Yes. If you are not supporting(?) ... it would be that because you would also be able to reduce the management side too, but if you only lost 20 it would be about 3.5 posts.

The Minister for Home Affairs:

Yes. These are rough figures, it is approximately 20. But the reason I say these are rough figures is because there are other criteria that could come into play, it is not just straight numbers, it has got to do with the closing of floors or units and therefore numbers in other units, particularly those in the vulnerable-prisoner units, can have an effect on it. But what it is indicating is that to close a level in K. Wing, which is about 20, would create an approximate saving of £140,000 plus any training costs, to close L. Wing, which is roughly 40, would be £250,000 to £300,000. The savings are not proportionate to the size of the prison because you have got running costs, overheads in any eventuality. Our plans, our C.S.R. savings were about £240,000 but the reason I am hedging this also is for a secondary reason which has got to do with the degree of sharing of rooms. Obviously, in an ideal world, almost every prisoner would have their own individual cell but in reality they do not, some prefer to share. You can potentially squeeze, with lower levels of reduction, the numbers by doubling up further. But there is a natural ebbing and flowing of numbers anyway because the numbers of prisoners ... I am going from memory, but last year I think we went from the upper 170s at the lower end to the upper 190s. So we are used to having an ebbing and flowing of numbers in that. But, in practice, it is the same, you need about 20. But, as I say, you might be able to squeeze that.

The Chief Officer:

But you do need to reach a tipping point and a sustainable one.

The Minister for Home Affairs:

A sustainable tipping point, yes. Because if you do close down a floor, then you have got to be able to sustain that if you get an upswing.

Deputy J. M. Maçon:

From your estimates, how many prisoners would be eligible for this type of scheme?

The Minister for Home Affairs:

Under the primary system, I cannot remember.

The Chief Officer:

Do you mean for dual repatriation?

Deputy J. M. Maçon:

Yes.

The Chief Officer:

Yes. That is in the background report. I do not know if you have the report, have you? If you look at paragraph 29, there is a little table there which gives you the breakdown.

The Minister for Home Affairs:

Page 7, is that? I think it is on page 9.

[10:15]

The Chief Officer:

It is on page 7, yes. We have taken out ...

Deputy J. M. Maçon:

All right. Sorry, I beg your pardon.

Deputy R.G. Le Hérissier:

So it is 9 from Poland, 27 from Portugal ...

The Chief Officer:

It is probably on page 9 of the actual report and proposition. We highlighted Poland and Portugal because that is the highest population of foreign prisoners, and then by comparison with the U.K. ones.

Deputy R.G. Le Hérissier:

Which is 49. There is no doubt the U.K. is the ghost at the feast, so to speak, because it is such a massive number if you were able to offer comparable parole conditions obviously you would really move in that area, I would have thought.

The Minister for Home Affairs:

That is the area of major savings, yes. Poland and Portugal together might be getting towards the 20 tipping point, but with a bit of squeezing and doubling up ... but you are not going to get beyond that, if you are looking to be getting to the sort of 40 level, which is obviously what we are hoping to, then it does require a substantial increase in the U.K.

The Chief Officer:

Those figures mask the 32 U.K. prisoners we already have in the U.K. on restrictive terms, so it is a big part of the population.

Deputy R.G. Le Hérissier:

Yes. Absolutely.

Deputy J. M. Maçon:

Then how many on this have you estimated would return to Jersey?

The Chief Officer:

We have tried to get a handle on that, there are feelers out, it is desperately difficult to find who is abroad, but we are still working on that. But we do not think it is probably more than half a dozen, frankly.

The Minister for Home Affairs:

Do you have any idea of numbers of prisoners who have returned to serve their sentence here from the U.K.? There are some, but again, it is not very many.

The Chief Officer:

Yes. Insignificant, I cannot even recall one. No.

The Assistant Minister for Home Affairs:

I am not aware of one.

The Minister for Home Affairs:

It is the Island's drugs activity policy, particularly in relation to couriers more generally which does lead to people serving longer sentences and then there would be the equivalent the other way round.

Deputy R.G. Le Hérissier:

This was mentioned years ago in the whole Criminal Justice Paper, do you remember done by the Professor (whose name I forget) from Southampton.

The Chief Officer:

Rutherford.

Deputy R.G. Le Hérissier:

Professor Rutherford. Of course, as you yourself, Mr. Minister, know this has been the subject of a lot of talk on the Island but, of course, in terms of judicial independence it never seems to have come to a clear result, other than the retention of the current policy.

The Minister for Home Affairs:

Well, it is a judicially-determined policy, constitutionally. If politicians were to come to the view that they thought that the sentencing policy was wrong, if hypothetically that were to happen, then ultimately the methodology available for politicians to seek to vary sentencing policy is by changing the maximum sentences, that is what then signals change. I am not expressing any view on that today other than it is a matter for the courts.

Deputy R.G. Le Hérissier:

But given that a lot of your population, obviously, is the result of that particular sentencing policy, you do not think it behoves you as the Minister to, sort of, look at the policy implications of that and make suitable recommendations to the Assembly?

The Minister for Home Affairs:

Such recommendations would be within the ambit of the Minister, in my case ...

Deputy R.G. Le Hérissier:

Yes. Is the Minister so minded to move on that?

The Minister for Home Affairs:

No, he is not.

Deputy R.G. Le Hérissier:

While it is excellent, of course, you could bring relevant experience, do you think the fact that you have been a magistrate might inhibit you in that regard?

The Minister for Home Affairs:

No. I do not think that politically the people of Jersey would want to see our maximum sentences reduced, that is a political statement and, at the end of the day, I think that people would feel that that sent out a wrong message. We are not, of course, bound to follow public opinion in relation to our

decisions, but I think the public view would be quite clear.

Deputy R.G. Le Hérisssier:

Yes. Okay. But there is no doubt that again is a major ghost at the feast, so to speak, because clearly it leads to your prison population and make up of that population.

The Minister for Home Affairs:

In terms of prison numbers yes, it is. It is. Although, of course, if both the primary legislation and the secondary knock-on effects were activated, that would have some effect; clearly, the current policy for courts is to retain a deterrent policy in relation to sentencing for serious drugs offences. I am not talking about possession, low-level stuff where it is accepted generally by the courts, possession of heroin or cocaine, but for first offences, that certainly the correct approach is rehabilitation and so on and so forth. Repeat offenders tend to get custodial sentences; that policy has not really changed and in many ways it is locked into a particular guideline case; even if the Royal Court wanted to change the sentencing policy they could not do so without it being referred back to the Court of Appeal to review. I cannot remember the name of the guidelines.

The Chief Officer:

Campbell Mackenzie and Malloy.

The Minister for Home Affairs:

Yes. *Campbell, Mackenzie and Malloy*, which was where an enhanced Court of Appeal sat ... that was 15, 16 years ago, was it not?

The Chief Officer:

Yes. 1996.

The Minister for Home Affairs:

1996. Yes. It is a matter for the courts as to whether they would want to review that.

Deputy R.G. Le Hérissier:

Yes. But obviously, as you quite rightly say, that is a political issue.

The Minister for Home Affairs:

No. It is part of the constitutional framework that we have. I perhaps by nature am more likely to be a guardian of the constitutional arrangements. I find my colleagues in the Assembly very often wanting to trespass on those arrangements, if I may put it that way, delicately.

Deputy J. M. Maçon:

I am just moving on to a slightly different area, it is a bit ... apologies.

Deputy R.G. Le Hérissier:

It is all right. Fair enough.

Deputy J. M. Maçon:

Okay. Yes. Just to move on to a slightly different area. The term “temporary return” is mentioned. I am not familiar with this term so if you could just talk to that and then when does a temporary return occur?

The Minister for Home Affairs:

That is a very good question. I do not think I know the answer to that and that is one of the things I am going to have to find out. Perhaps Mr. Austin-Vautier can tell me what is a temporary return?

The Chief Officer:

Yes. I think it was felt that there ought to be a provision for somebody to be able to be temporarily returned, for whatever reason. But I imagine there might be an occasion when somebody is to be brought back to the sentencing jurisdiction for some reason, in which case, if you repatriated somebody and there was no power in the law, you would be snookered. I think it is probably as simple as that.

The Minister for Home Affairs:

I see. If there were further appeals pending? Is it Article 5?

The Chief Officer:

Something like that. Yes. It is Article 10, temporary return.

The Assistant Minister for Home Affairs:

No, it is Article 10.

The Minister for Home Affairs:

I wondered if it might be on compassionate grounds also.

The Chief Officer:

That could cover it, too. Yes. Well, temporary return ...

The Minister for Home Affairs:

Yes. That is send them back to the sentencing country, 1(a), and this is just to bring them back to Jersey. I suppose you could have a situation where they were required as a witness, or something like that.

Deputy R.G. Le Hérissier:

As a witness, yes.

The Minister for Home Affairs:

There is no exhaustive list but I would imagine there would something like them being required as a witness in relation to a subsequent case. You have to have a mechanism by which you can ...

Deputy J. M. Maçon:

A holding provision. Right.

The Minister for Home Affairs:

Yes. This does not contain any exhaustive list of reasons so there would be a number. Certainly, if you wanted them to be a witness in ... let us say we had sent somebody, a Pole, back to Poland to serve their sentence and then they were required as a witness in a subsequent case, we have got to have a means of bringing them back so that they can give their evidence. I suppose if some civil case arose, a collateral matter arising again whereby their presence would be required ... I mean, things like confiscation orders or so would normally be dealt with at the same time, or appeals, matters of that nature. I think this is a bit vague and, in fact, I now realise why it was not clear, because it is not specified. I think it would be any reason by which the country which had initially sentenced them had sent them off to another country, wanted to have them back for a short period, that is what it is saying.

Deputy R.G. Le Hérissier:

The person would have to consent to return.

The Minister for Home Affairs:

No.

Deputy R.G. Le Hérissier:

They would not. There would simply be a reverse repatriation arranged.

The Minister for Home Affairs:

I think that is right, a temporary reverse repatriation, yes. If they were required to give evidence or something you can see that you have got to have a means of compelling their return.

The Chief Officer:

I think it would probably be put in the warrant as well to cover that eventuality in a standard term.

The Minister for Home Affairs:

Yes. I think if you are going to make such a request, you are going to have to explain why.

Presumably both countries will have to agree with it, again.

The Chief Officer:

Yes, at the outset.

The Minister for Home Affairs:

Yes. So I am sorry I cannot give you an exhaustive list.

Deputy R.G. Le Hérissier:

I think we will ask the wind-up questions at this point, Mr. Minister. On a technical question, if somebody is transferred overseas and they are released earlier than the Jersey sentence would appear to warrant, for example, and they then return to the Island, having been legally or lawfully released by the other jurisdiction and they return to the Island, what would you do about that?

The Minister for Home Affairs:

Well, if the other country has operated in accordance with the agreement, there is not a problem, they will have served their sentence.

Deputy R.G. Le Hérissier:

What about if the King of Luxembourg, for example (just for the sake of argument) institutes a prisoner amnesty and says: "I am going to institute an amnesty" and the person is released a lot earlier than the Jersey sentence indicates, what would you do about that?

The Minister for Home Affairs:

I would have thought that would be contrary to the agreement.

The Chief Officer:

Yes. It may be there is some provision in the Framework document.

The Minister for Home Affairs:

I would have thought the agreement would say ... this is where I come back to this subparagraph, which is hidden away, which says the agreement has got to be on terms which ... it is worded in a very complex way ... can you see where that line is? Line 3, was it? It has got to do with the agreements. As I say, the way I understand this is it is saying that there cannot be an arbitrary system. Essentially, the starting point for the length of time they will serve in the receiving country must be the sentence imposed. So a, sort of, arbitrary amnesty to release everybody would clearly breach that.

Deputy R.G. Le Hérissier:

Even if they were to say, admittedly under the guise of legal authority, as the U.K. Justice Secretary sometimes obviously reaches the conclusion: "I have to clear out the prisons, they have got too crowded" so these sorts of temporary release programmes are instituted.

The Minister for Home Affairs:

Well, I would have thought, frankly, that what is more likely to happen in that situation is apology, a derogation: "I am sorry, we cannot talk of our obligations any longer."

Deputy R.G. Le Hérissier:

But the existing prisoners who are there under repatriation terms would be expected to fulfil the terms of the Jersey sentence.

The Minister for Home Affairs:

Well, we certainly would, if that was the agreement, but obviously if countries start breaching the terms of the agreement we will not be very happy with them. But this is also going to put them in breach of the terms of their international obligation more widely in as much as that the whole system is loosely attached to the E.U. directive.

The Chief Officer:

They probably have not signed to the international agreement.

The Minister for Home Affairs:

I cannot see how a country could do that without, sort of, renegeing upon the whole system, effectively.

[10:30]

Deputy R.G. Le Hérissier:

Okay. Jeremy?

Deputy J. M. Maçon:

No, nothing further.

Deputy R.G. Le Hérissier:

We have covered a whole lot of ground here and people will ask ... we will write up a little note, basically (because obviously this is not a scrutiny in the fully-fledged sense of the term) and while we will not necessarily give our imprimatur to the proposal, we will obviously say a few words about whether we think ... because I think we do, it is going in a right direction, but what are some of the issues. Clearly, one of the issues that has arisen today, which you yourself are well aware of, is this issue of the U.K. anomaly, that you have got this massive number, 49 according to your figures, who are U.K.-based people according to your figures, and that would obviously have a major impact on the prison and staffing and it might lead to this tipping point, and even things like the kitchen and the education provision could be shrunk proportionately, whereas now they remain as big overheads.

The Minister for Home Affairs:

I just realised there was one other point which I should have mentioned (which is remiss of me, because I was given the opportunity before) and that is, of course, that part of our system is that because people are potentially released up to the last 12 months to go out and work, they are more likely thereby, in such a system, to start to form ties to the Island and thereby are more likely to want to perhaps stay more permanently which, if they have criminal tendencies, is not something we want. So there is a further advantage, it is not just length of the sentence but also that there would

not be that forming of ties if they do not exist already.

Deputy R.G. Le Hérissier:

Okay. So are there any comments from the 3 of you? Jacquie?

The Assistant Minister for Home Affairs:

No, thank you.

The Chief Officer:

No. I do not think so.

Deputy R.G. Le Hérissier:

Somebody said the other day we all have this politicians' habit of saying we are about to wind up and then 20 minutes later the final, final, final question arises. But just to sum up from your end, do you see any major impediments in the implementation of this law or are you fairly confident, bar the shaking down and some contesting of what the right to family life, for example means (which will be an issue, no doubt) do you see it as being fairly bug-fee, so to speak?

The Minister for Home Affairs:

The biggest potential impediment would be if we were unable to enter into agreements with other countries, with other jurisdictions, that is the biggest potential issue. But then, because of their own obligations under the directive, we would have thought that that is not likely, but that is the biggest risk.

The Chief Officer:

I think from the point of view of the officer heading up the work, another risk is inertia because with the cuts that are taking place in the United Kingdom, we do not really figure very highly on their list of priorities and there is a constant battle to keep plugging away, getting the work done.

Deputy R.G. Le Hérissier:

Yes. Okay. Is there anything else?

Deputy J. M. Maçon:

No. There is nothing from me.

Deputy R.G. Le Hérissier:

Good. Well, thank you very much indeed. As I said, we will probably issue a little note, basically. It has been quite elucidating.

The Minister for Home Affairs:

It is a very helpful question. I am going away on holiday at the end of the week and will be preparing while away on holiday, so your questions certainly will help me in my explanatory speeches to cover areas that might not have been covered quite so well, to think it through.

Deputy R.G. Le Hérissier:

Yes. Okay. Thank you. Here endeth the formal session.

[10:34]

STATES OF JERSEY

Education and Home Affairs Scrutiny Panel Review of Issues Surrounding the Review of the Final Financial Management of Operation Rectangle

TUESDAY, 16th AUGUST 2011

Panel:

Deputy T.M. Pitman of St. Helier (Chairman)

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

Deputy R.G. Le Hérisier of St. Saviour

Witness:

Mr. D. Warcup (via conference call) former Acting Chief Officer with the States of Jersey Police

Also Present:

Scrutiny Officer

NOTE: The text has not been corrected by the witness

Deputy T.M. Pitman:

Okay. I will introduce everyone for the purpose of the transcript and the fact you cannot see us and we cannot see you and I do need to read the proceedings details, the oath so that you ... I am sure that you are fully aware of that but I believe it has not been sent to you so if I can just read that to you to make sure you are happy with that, is that okay?

Mr. D. Warcup:

I understand, yes.

Deputy T.M. Pitman:

Okay, so it is: "The proceedings of the panel are covered by parliamentary privilege through Article 34 of the States of Jersey Law 2005 and the States of Jersey (Powers, Privileges and Immunities) (Scrutiny Panels, P.A.C. (Public Accounts Committee) and P.P.C. (Privileges and Procedures Committee) (Jersey) Regulations 2006 and witnesses are protected from being sued or prosecuted for anything said during the hearing unless they say something which they know to be untrue. This protection is given to witnesses to ensure that they can speak freely and openly to the panel when giving evidence without fear of legal action although the immunity should obviously not be abused by making unsubstantiated statements about third parties who have no right of reply. The panel would like you to bear this in mind when answering questions." Is that okay?

Mr. D. Warcup:

Yes, I understand that.

Deputy T.M. Pitman:

Okay. As I say, thank you very much for agreeing to speak to us and for your written submission. We have got a lot of material and we have got an hour to get through it so we will jump straight in. Could you tell us first about the concerns that you felt regarding a range of matters concerning the conduct of the Operation Rectangle inquiry when you first got involved in all of this. What were those concerns, if you could briefly outline them?

Mr. D. Warcup:

Yes. This afternoon I am more than willing to assist the panel in relation to this review but I would like to say that just from some of the evidence I have seen previously you will excuse me, if I may comment, if you start looking at issues which I believe are outwith the terms of reference I will direct that back to you. So I am more than willing and I hope that I can help the panel this afternoon in relation to these specific issues. To go directly to your question the issues which were concerns related to the conduct of the inquiry which was known as Operation Rectangle. I was concerned that some of the management arrangements and some of the investigative issues were concerns as has been documented and of course were continuously raised with the former Chief Office, Mr. Power, and subsequently for very detailed legal reasons - reasons which again have been well documented - I brought my concerns to the attention of the Chief Executive.

Deputy T.M. Pitman:

Could you enlarge for us, what specific steps did you take to rectify the position that you had found and were so concerned about?

Mr. D. Warcup:

In which respect? With Mr. Power or ...?

Deputy T.M. Pitman:

Well that is a good place to start, yes.

Mr. D. Warcup:

I mean for some time prior to raising this with [former States Chief Executive] it again was a documented fact that I raised all my concerns and all of the concerns which have been subsequently highlighted in the Wiltshire report were previously raised with Mr. Power.

The Deputy of St. Mary:

When were they raised with Mr. Power?

Mr. D. Warcup:

On a number of occasions. I think what we could do here is we could spend a lot of time examining the issues prior to the media release which was made in November 2008. Those have been documented, reported in the Wiltshire report, and they have examined them in detail. It would take longer than the hour we have this afternoon to do that and I am [not] sure that it is part of today's terms of reference.

The Deputy of St. Mary:

I sort of agree with that but I was concerned when I heard you say that there were concerns about the conduct of the inquiry which eventually the suspension had been raised with Mr. Power. But I think you are right, we have to stick to what we are talking about today.

Mr. D. Warcup:

Sorry, Mr. Wimberley?

The Deputy of St. Mary:

I think you are right, we have to stick more narrowly to the terms of reference. I think if we go back prior to the suspension ...

Mr. D. Warcup:

I am not trying to be obstructive in any way in relation to this but my concerns which were set out, and unfortunately I believe that the panel will not have access to those full written issues, which were submissions as part of the Wiltshire inquiry but they do explain in detail exactly what happened, the engagement with Mr. Power prior to myself raising those issues with [former States Chief Executive].

Deputy T.M. Pitman:

For the record, Mr. Warcup, do you feel that that would strongly help the panel if we could have access to the material that you are referring to? Do you think that is a big gap in what we have got to look at?

Mr. D. Warcup:

Yes, it is because I mean it is something that we will probably touch on later on. Many of the documents and many of the reports and things that I had to deal with through my time contained confidential information. But there is also some information which would be of assistance to the likes of yourselves. Perhaps I could give an example. I was going to say that when I was coming back to Mr. Wimberley there it was that I could not hear him very well, that was all. Yes, there are clearly many issues which are within some of the documents in my submission to the Wiltshire inquiry which I believe would be of help. The issue would then be redacting those for matters which were legally privileged or sensitive, but I think it would help explain some of the issues. By way of example, if I can clarify, the Deputy of St. Mary has previously -- the previous witness has raised an issue in respect of that, that the Metropolitan Police during their review did not speak to Mr. Power or Mr. Harper. That is not correct. They did speak to both of them as part of the review and it is the issues like that that would be clarified.

The Deputy of St. Mary:

Did they speak to both of them before the interim review reached your desk on 10th of ...

Mr. D. Warcup:

The only reason it was an interim review was because they had not had a chance to speak to Mr. Harper because of his availability. They therefore submitted an interim report. Once they had had the opportunity to interview Mr. Harper they then submitted their final report.

The Deputy of St. Mary:

Had they spoken to Mr. Power before the interim review came to your desk on 10th November 2008?

Mr. D. Warcup:

Yes, they had.

The Deputy of St. Mary:

They had spoken to him?

Mr. D. Warcup:

Absolutely clearly they had.

The Deputy of St. Mary:

Can I just ask you this to get this clear in my head, Mr. Warcup, are you saying that, in your opinion - and it would be your opinion - there is no need for these documents to be redacted, that they could help the panel and probably should be available to us? Is that what you are saying?

Mr. D. Warcup:

No, I am saying there are possibly parts of those documents ... if you take the documents as a whole some of it needs to be redacted because it does contain confidential information and sensitive information that was given in confidence and so on. But there are parts of that which would explain ... going back to your very first question, for example, I have detailed fully to Wiltshire in early 2009 my full involvement and discussions with Mr. Power. They were all documented, they were all written records and subject to appropriate legal advice, which I am sure the panel could take, I do not see why the panel should not have the opportunity to see those.

Deputy R.G. Le Hérissier:

Okay, thank you, Mr. Warcup. I wonder if we can jump to the fact that in your submission you mentioned 5 different reviews and obviously people have, in a sense, become a bit confused about this. But as you know we are looking very much at the BDO report. Could you tell us, as you allude to in your written submission, what the overlap was, if any, between the Wiltshire review and the BDO external review when both, it appears, were looking at aspects of financial management?

Mr. D. Warcup:

Yes, I think you have highlighted the difficulty. The fact is that they were not the same reviews, the BDO review was specifically an audit to look into the aspects of financial management. The other review, which was referred to and approved by the Gold Group on 8th December 2008 was it was a review of matters which were a broad range of issues. We had had a number of public complaints, we had had a number of issues of concerns raised by members of the public, by States Members, and through that process we felt that it was necessary to research those, document those, and to have that information available should it be required either to respond to the Minister, to States Members' questions or indeed to any future committee of inquiry. That was the purpose. It would have been wrong not to have collated that information at the time.

Deputy R.G. Le Hérissier:

Thank you, Mr. Warcup. I will just continue. Of course obviously there is the Wiltshire review which seems to be understood by the politicians and the public, there is then the States of Jersey Police internal review and then there is the BDO external review. Can you distinguish between the States of Jersey Police internal review and the BDO review?

Mr. D. Warcup:

Yes, absolutely. The BDO review was a review which was commissioned by the Minister, the terms of reference agreed by the Minister, and the involvement as far as I was concerned, when that was commissioned in December 2008, was to provide some resource to assist people from the auditors. I say the auditors at the time because BDO had not been appointed at that stage. It was to appoint somebody to assist the auditors to understand their way through the practice, procedures and policies of policing.

[15:15]

Not to carry out a review on their behalf, not to carry out an investigation and that was my clear understanding and instruction at that time.

The Deputy of St. Mary:

So the BDO terms of reference, how were they arrived at, because we need to be clear about these different reviews. So if we take BDO first. You said the terms of reference were agreed by the Minister and I am sure that is right that he would have signed them off but how were those terms of reference arrived at?

Mr. D. Warcup:

Those terms of reference, to my understanding, were prepared and completed within the Home Affairs Department. Procedurally I would imagine that the Chief Officer at Home Affairs had a key role in doing that. However, as you are aware, we had established an oversight board called the Gold Group for Operation Rectangle and on 8th December ... if you bear with me while I just refer to the relevant document. On 8th December that panel met and was advised by the Chief Officer of Home Affairs that they were to conduct this review which became known as the BDO Alto review. At that meeting papers were presented at which the details of the internal review as set out in my written submissions were presented to that group and agreed.

The Deputy of St. Mary:

So at the same time as the setting up of the BDO investigation was reported to Gold Group you

also ... what I am not clear about is I can see the BDO you are now saying was internal to Home Affairs, they developed the terms of reference and that was then presented to the Gold Group and you did not have an input into that process?

Mr. D. Warcup:

It was not my role to have an input into that.

The Deputy of St. Mary:

No, okay, fair enough.

Mr. D. Warcup:

I can possibly clarify as well from the minutes of the meeting, which I have had a chance to go through. I chaired that meeting and in the minutes of the meeting it is recorded that auditors had been engaged at the direction of the Accounting Officer. "The chair (myself) had proposed that a formal review should be carried out using resources available within the inquiry and a separate and 'firewall' strand of the inquiry to report on those matters relevant to the conduct of the inquiry providing necessary details to facilitate reports to Ministers and to States Members. Also to pull together information that will ensure that full and accurate disclosures were made to any future public inquiries."

The Deputy of St. Mary:

Okay, now this is the bit that I am less than clear about, did you propose that additional review to the Gold Group?

Mr. D. Warcup:

I did, yes.

The Deputy of St. Mary:

Okay, and you say it would have been within ... you were proposing that it be within the formal review? Within which formal review is that?

Mr. D. Warcup:

Are they separate reviews? I was proposing something completely separate to the audit proposed by the Accounting Officer, what is now known as the BDO Alto review.

The Deputy of St. Mary:

Okay, so that is fine. Completely separate review to look at these other details so that Ministers and States Members and the public could be informed of the other matters. So how did that evolve then? What was the process of taking that forward?

Mr. D. Warcup:

It is from previous experience you have a slight difficulty whenever you try and run 2 reviews, inquiries or investigations in parallel. What you must determine is you must determine which has primacy and sometimes those that do not have primacy have to take a back seat until certain stages are reached within various inquiries. That is required for evidential purposes. In this particular case what we were doing was we were saying that we had had a number of issues which had been raised by ... concerns which had been raised, public complaints which had been raised under the Police Complaints (Jersey) Law that are required to be reported to the Jersey Police Complaints Authority. We had a number of internal issues which we needed to review including learning lessons of how we should do things in the future and the purpose of the review that I commissioned, and I believe I wrote the terms of reference myself for that, was to capture all of that learning and all of that information.

The Deputy of St. Mary:

Did that go back to the Gold Group for their ratification? Did you report back saying: "Here are the

terms of reference, I am going ahead with carrying out what I said on 8th December and ...”

Mr. D. Warcup:

That is right, yes. It was presented; the papers were presented and agreed by the group on 8th December.

The Deputy of St. Mary:

No, wait a minute, sorry, sorry, no that was when I understood that it was first mentioned by you that there would be a second review in parallel to the auditor’s review, which that meeting was informed of for the first time and you said you were going to have a ...

Mr. D. Warcup:

I was not formally informed, I was made aware by the Accounting Officer, the Chief Officer of Home Affairs, that this process was embarked on and that is why I put together the separate review. I would have done it anyway, had the first one been commissioned or not I still would have put this review together.

The Deputy of St. Mary:

Okay, and so you are saying now that both the reviews came to 8th December meeting more or less as finished articles with terms of reference and so on?

Mr. D. Warcup:

Yes.

The Deputy of St. Mary:

Yes, okay.

Deputy R.G. Le Hérissier:

Mr. Warcup, you mentioned you wanted to bring together all sorts of issues that have been the subject of complaints to yourself, to the Complaints Authority, et cetera. Could you give us a summary of what those issues were that you wanted to be the subject of the internal review?

Mr. D. Warcup:

No, some of them related to complaints against serving informant(?) police officers, some them related to concerns which had been expressed about the conduct of the inquiry and some of them were concerns over matters which were appearing in the media or appearing on the internet. For example, documents that were appearing on the internet and other such things. So there was a very wide range of issues which were ... it was necessary for us to look at.

The Deputy of St. Mary:

So how did that then turn into ... you have got terms of reference now, you have got the agreement of Gold Group, how does that turn into a review? Where did the person come from who was ... how did you see the appointment of someone to do this?

Mr. D. Warcup:

It was agreed within these terms that the committee would be appointed to do this; in fact I believe originally it was felt that there should be ... there would be sufficient work for 2 people. My understanding was that having attempted to recruit the right people with the necessary skills and background we were only able to recruit one person. Part of the terms of the review were that this aspect of the review would be taken under the wing of the Senior Investigating Officer, [retired D/Superintendent], and he was left with responsibility to this review.

Deputy R.G. Le Hérissier:

Did you give [retired D/Superintendent] complete discretion? What kind of reporting relationship was there to you as he was going about this report?

Mr. D. Warcup:

I think when you say “complete discretion” the complete discretion was to carry it out within the instructions which I issued which were those formal terms of reference agreed on the 8th. That was my expectation and that was my understanding. Indeed I met with [retired D/Superintendent] almost on a daily basis and while the focus of our meetings was primarily aspects of the historical abuse investigation and the progress on that I was assured that matters were progressing, I became aware that the auditors had been appointed and subsequently became aware that assistance was being given. I think if we get right to the heart of the matter you would have noticed now that it was not for some considerable time that I realised that, or became aware, work had been indeed commissioned and was taking a different route other than that which I had previously prescribed should be done.

Deputy T.M. Pitman:

Could I just come in at that point? [police consultant] obviously was appointed to carry out this review in March 2009, however, as you have just alluded to, he claims that he was never given the terms of reference for the review and only discovered in July 2009, 4 months after starting work, that there was another review that he was expected to be working on. Can you try and clarify that because it is something the panel are really struggling to get their heads around, I must be quite honest? How could that situation come about?

Mr. D. Warcup:

I wish I could provide some clarity because I think in many respects probably [police consultant] and myself were in a similar position. We were both probably ... I am sure we were both working under the illusion that everybody was working to agreed terms of reference. However, subsequently to this conversation when I found that he was not - and I attach no criticism to him for that, as I said to him before - I spoke with [retired D/Superintendent] and found [retired D/Superintendent] had indeed given him some different direction in relation to the work that he should carry out.

Deputy T.M. Pitman:

If I can just come in before my colleague, Deputy Wimberley, it does seem very hard to grasp here. We have got people diligently working away apparently doing the job that they have been requested. You have said in answer to Deputy Le Hérissier that [retired D/Superintendent] was really the man who Kellett would have been reporting to. I think that is what I understood. What kind of liaison was there in those 4 months? What was happening in those 4 months before you sort of discovered this within conversation? Can you just try and make that clearer for us?

Mr. D. Warcup:

Yes, I think it is important to make clear the context in which the BDO Alto review was operating as well. This was an audit which was being carried out. It had not been commissioned by me, I had no oversight responsibility. To go back to your very first question today in relation to what were the concerns that I had, clearly I had raised concerns in relation to the management of the inquiry. It was therefore not appropriate for me to be in any way trying to influence or guide any reviews, whether that was the BDO Alto review, whether it was the Wiltshire review or anything else, my role at that time was the responsibility for the States of Jersey Police and to ensure that the historical abuse inquiry was carried out in a thorough, detailed and professional manner.

Deputy T.M. Pitman:

I am sorry to labour this point but a 4 month period, how was this being reported back? Surely you had to be kept in the loop given your seniority in the role?

Mr. D. Warcup:

Yes, during that time there were various things reported back. I do not have the details here but there were many matters which were reported back, all of which would have fallen under the terms of reference that I had agreed. However, when it came to ... it was probably ... you said it was 4 months

and you have assistance in that but when I first saw some written paperwork in relation to that, that is what is immediately drew my attention to the fact that obviously was not as had previously been agreed.

Deputy T.M. Pitman:

A final point, [retired D/Superintendent] has unfortunately refused to give us any evidence, which does limit us slightly. So really am I right in understanding what [police consultant] would have been reporting back would have gone to [retired D/Superintendent] and then, through no fault of your own, you would have been none the wiser? Is that how this was working or not working?

Mr. D. Warcup:

You are correct to say that I unfortunately was not aware and although I was receiving regular updates and regular briefings on many of the matters that I had asked to be done I was not aware that it was taking a slightly different direction, and that slightly different direction was clearly the fact that it had become what one might call a joint inquiry with BDO Alto with a single report.

The Deputy of St. Mary:

Can I go back to the 8th December meeting of the Gold Group because when you were talking about that you said that there was ... first of all the terms of reference were presented by the Home Affairs people at that meeting and there was an offer, now I am just saying and you can confirm whether I am right or not, from your side that someone would be provided to assist the auditors because they would not know their way around a major police investigation, is that what happened at the Gold Group?

Mr. D. Warcup:

Yes, that is right. It happened at the Gold Group and in discussions with the Chief Officer at Home Affairs. Having been involved previously in external audits into financial matters, into policing, it is not unusual to have somebody who is familiar with these procedures, police regulations and to its practice as well particularly to perhaps advise the external auditors as to a more efficient way of doing it as well.

The Deputy of St. Mary:

Right, and how was that discussed at the Gold Group? How was that envisaged, that helping the auditors?

[15:30]

Mr. D. Warcup:

I am not sure what you mean exactly in terms of the detail.

The Deputy of St. Mary:

Well, would it have been provided from States of Jersey Police existing resources or did you see that as someone who would need to be appointed to do that, or how did you see that fitting in?

Mr. D. Warcup:

Yes, absolutely. It was agreed ... I am just looking at the terms of reference, sorry the detail. It was agreed that the States of Jersey Police would provide those resources from the resources that were available. I am trying to find it but I cannot lay my hands on it at the moment, whether it would be paid for by as part of Operation Rectangle or part of the base budget.

The Deputy of St. Mary:

Yes, okay. So did the States of Jersey Police agreed to provide a resource that would provide someone who was au fait with police procedures to help BDO?

Mr. D. Warcup:

Yes.

The Deputy of St. Mary:

Now where did that agreement go to operationally? How did that pan out?

Mr. D. Warcup:

When we agreed at the Gold Group that the resources would be made available ... what happens with great regularity is the forecast in relation to expenditure are updated at each of the Gold Groups and the Accounting Officer is then fully apprised of the planned expenditure as part of the inquiry.

The Deputy of St. Mary:

Yes, sorry, but what I am saying is how did that decision or that offer to provide someone from within S.O.J.P. (States of Jersey Police) to help with the au fait ... the police side, to help the auditors, how was that decision carried through? Who was appointed, how did that happen, was it yourself who found somebody? This is where I am not clear.

Mr. D. Warcup:

Sorry, yes, absolutely. As I said before [retired D/Superintendent] was given direct responsibility for that. He was given full oversight of that and, in liaison with his colleagues, was finding the right person with the appropriate experience to be able to come in and assist. I did not have a role in that.

The Deputy of St. Mary:

Who drafted the terms of reference for that person?

Mr. D. Warcup:

The terms of reference were the terms of reference that were agreed at the group. It has now transpired that the terms of reference to which [police consultant] was working to were a different set of terms of reference. However, again in contrast it must be understood that - and I am sure you will appreciate - if the Gold Group, which is the strategic level group, determines what would happen in the direction of the review then that was really what was engaged with under the inquiry that was carried out. That is laying down the foundations and the expectations for what is happening. If there were any disagreements with that or changes which were necessary, those would be brought back to the Gold Group and the Gold Group would agree any changes.

Deputy R.G. Le Hérissier:

Thank you, Mr. Warcup. Moving slightly on, we have got your written submission and in your submission of course you say that you became concerned that the BDO Alto report might indeed seriously undermine the Wiltshire review. Can you explain to us why you were struck by this thought and when it occurred to you? How did you know that there was this danger and (b) what did you do about it once you had become aware of it?

Mr. D. Warcup:

Right from the very outset, when we go back to December and the terms of reference that we have been talking about, one of the things that somebody in my position must be alive to is that different inquiries do not conflict with each other and that any conflict does not tarnish or inhibit the investigation in any way. So my concern would be that - and was - having reached a stage where we fundamentally, through the powers(?) of [retired D/Superintendent], had begun the process of investigating the financial arrangements, the decisions which were made by Mr. Power and Mr. Harper. That was not the expectation that I had. That was already agreed as part of the terms of reference for Wiltshire and the Wiltshire inquiry had primacy in every respect.

Deputy R.G. Le Hérissier:

You said that was not the expectation you had. What was the expectation you had?

Mr. D. Warcup:

The expectation that I had ... sorry, could I just add another point in relation to that last matter. This is something that may appear to you as something that ... you know, I am perhaps going on experience or it is something that I have determined is the correct way forward. It goes a lot further than that. It is also the conclusion of meetings which were held between Mr. Moore, the investigating officer from Wiltshire, and the Attorney General at the outset of the investigation. A meeting was held with the Attorney General to determine the primacy and the structure of all aspects of investigation. So Mr. Moore was aware, as the acting head of the force I was aware and as the responsible law officer the Attorney General was aware of what the primacy was in relation to any review, investigation or misconduct complaints issue that was being carried out. That was clearly established right from the very outset. It went through a formal process as well.

Deputy R.G. Le Hérissier:

Okay, thank you. That point then, so presumably you received the draft of some sections of BDO Alto and said this is seriously in conflict with or may be seriously in conflict with what Wiltshire were after. Indeed it might impugn the integrity of people. I put words there but I think that is what you said in your submission.

Mr. D. Warcup:

If I can explain and clarify. The paper that I reviewed were not part of the BDO Alto report, they were papers of which my understanding was that [police consultant] had prepared for [retired D/Superintendent] - [retired D/Superintendent] showed me them - and they were to be submitted then to BDO Alto. Whether they would have been repeated verbatim, I do not know, but they were not ... it was not the BDO Alto report, this was an early draft of some written work which was going to be submitted to BDO Alto and that is the point at which I said, you know, that is not going to happen, my instructions are that these are 2 separate issues, they should not be conflated and that is where I refer in my submission as well to objectivity because [retired D/Superintendent] had made his position clear, even prior to September 2009. He had made his position clear in relation to some of his concerns and I was concerned that the objectivity of somebody who had been, shall we say, critical in overseeing permissions of that nature back to BDO Alto, and I was concerned that it would be less than objective.

The Deputy of St. Mary:

You said there were 2 separate issues. Could you clarify what those are?

Mr. D. Warcup:

Yes, the second issue was that I had become aware that the work being done for BDO Alto had gone further than my expectation - far, far exceeded that. I also, and being aware of the primacy issue, went and spoke to the Senior Investigating Officer from Wiltshire, Mr. Moore, and I sought his advice. But I also wanted to make sure that all of the work which had been carried was submitted to them so they could consider that as part of their financial review. First of all there was duplication but most importantly there were the issues of potential for possible misconduct to consider. We already had the Wiltshire inquiry going. It had already been established and in determination with the Attorney General that that had primacy, and on the advice that I received, the legal advice and the advice from Mr. Moore, that is why I instructed for them to take no further action at that time in relation to interviewing Mr. Harper.

Deputy T.M. Pitman:

Can I just come in there? Can I get this clear for the record, when you are talking about objectivity are you saying that there were concerns at the way this review, investigation, was being undertaken? Was in danger of being personalised where perhaps it focused on the individual, as it happens Mr. Harper, who was at the centre of much of the decision making, was that the primacy of your concern? Was it being personalised?

Mr. D. Warcup:

That was not the primacy of my concern but that was a concern, yes, and that was part of my concern

in relation to the objectivity aspect. The aspect of my decision not to let [police consultant] to interview Mr. Harper as part of the States of Jersey Police was not in relation to that. That was purely in relation to the advice that I had received and the primacy of the investigation. If you could envisage a situation where evidence was to be taken at a future hearing, how that may be interpreted in relation to what had gone on because Wiltshire had primacy in that investigation. It is perhaps just worth reflecting as well on the way that Wiltshire were conducting their inquiries, and that was by the use of expert witnesses. One of those expert witnesses in their discussions and what have you with Mr. Moore was a finance director with police experience. I was fully cognisant of the fact that they were looking into these issues and therefore I was not concerned that they were not going to be looked at. So the issue of objectivity and the aspect of [police consultant] interviewing Mr. Harper had not ... they are 2 separate issues anyway.

Deputy T.M. Pitman:

But how does this go back to the concern [police consultant] was appointed by [retired D/Superintendent] it seems and that relationship which has been criticised between [police consultant] and [retired D/Superintendent], was that a part of your concerns about the objectivity?

Mr. D. Warcup:

When that was brought to my attention later on, yes. I was aware that they knew each other as officers but that is not uncommon, particularly due to the fact that both of them were ... because they would work across ... Their work would transcend their normal areas of work and they would come into professional contact. Yes, later on it was a concern but I had no reason to impugn the professional integrity of either officer at that stage.

Deputy T.M. Pitman:

How did you deal with those concerns when you began to feel them? What options were open to you and what did you do?

Mr. D. Warcup:

I think [police consultant] - and I read his submission to the panel - described to you the fact that I was very relaxed about this. I think that is a fair comment because it was plainly clear that [police consultant] was working under the instructions that he had been given. It was not his fault that he was working under different instructions. I did not therefore need to challenge him, the challenge came when I spoke to [retired D/Superintendent], and I challenged [retired D/Superintendent] on that and issued further directions in relation to what I expected, which was to return to the original review and have that work done.

Deputy T.M. Pitman:

Is it fair to say, and I do not want to put the words into your mouth, that you would not have put 2 people who had that relationship into such a situation with foresight. If you had known you would not have seen that as an ideal situation?

Mr. D. Warcup:

I would have been and would still be comfortable with ... had they carried out the work which I had initially set to them, I would have been comfortable with that. I was not comfortable in relation to the focus which ... there had become a focus on ... I make no comment about the rights and wrongs, there was a predominant purpose to look at the activities of Mr. Harper at that particular point.

The Deputy of St. Mary:

Can I just come in, you mentioned the phrase “the work set to them” and that is [police consultant] really. I just want to put to you 2 things, one is from your submission to the panel where you say on page 4: “Subsequently Mr. Mike Kellett was appointed to fulfil this role” and that is the role of the internal review, the one that wraps up the complaints and questions from States Members and so on. In [police consultant]’s submission to us he says: “In March 2009 I was engaged by the Acting Chief Officer of the States of Jersey Police [that is yourself] to carry out a review of certain aspects of

Operation Rectangle, the full terms of reference read as follows” and then it is the support role that we talked about earlier. Helping BDO Alto to come to terms with how the police work and lots of very specific questions which he has been asked to answer. How can you square those 2? He seems to be being asked to do 2 things, one by yourself in relation to the BDO and one by someone unknown, it is not stated, about the ... within yours it was appointed, he was appointed to fulfil a completely different role, the internal review role?

[15:45]

Mr. D. Warcup:

Yes, my interpretation of that, I am not sure I can be of use but my interpretation is that he is talking about in a general sense of being appointed by me because I did not personally appoint him. That was a delegated function to [retired D/Superintendent] and [retired D/Superintendent] carried that out, he appointed him, he did not have to refer back to me in relation to the appointment. It had been agreed previously. Does that help?

The Deputy of St. Mary:

That helps a lot. So that is the helping BDO part of it. [retired D/Superintendent] appointed [police consultant] to do that role and what about the other, the internal review. “Subsequently [police consultant] was appointed to fulfil this role under the supervision of Detective Superintendent Gradwell.” Was that also delegated to [retired D/Superintendent]?

Mr. D. Warcup:

Yes, that was delegated to [retired D/Superintendent] and [retired D/Superintendent] had the terms of reference which I had proposed on 8th December. That was what they should have been working to.

Deputy R.G. Le Hérissier:

Just carrying on with the issue of the Wiltshire report, [police consultant] disputes your statement in your submission that there was unhappiness with the contents of the draft sections of his report, unhappiness from Wiltshire when they saw his report. He says it simply boiled down to an issue to do with a member of the States of Jersey Police and a national tabloid newspaper and that it was easily resolved by him simply deleting this reference. Do you agree with his characterisation of this issue or do you think it was indeed a serious issue that they raised that they were really quite concerned about the content of the drafts?

Mr. D. Warcup:

I am certainly not aware who he is referring having spoken to within the Wiltshire team but I can be absolutely clear that I spoke to the Chief Constable Mr. Moore about this and was advised that those and other matters had been subject to legal advice and they were inappropriate to be included in the report. It did not take legal advice to believe that it was inappropriate that they should be included.

Deputy R.G. Le Hérissier:

Was this because, I do not know and I suppose I am speculating and I need confirmation from you, there were some allegations being made about individuals or an individual and that the appropriate evidence was not there to back up these allegations?

Mr. D. Warcup:

Yes, and I think that that was my feeling and I mentioned that some of the witnesses have not been disposed in writing so if we are making issues which are going to be substantially challenged then it would only be right to do so if you had the written evidence backing that up. Of course that written evidence may have been available to Wiltshire but it certainly was not available to anyone in Jersey, including [police consultant], because the aspects of the Wiltshire inquiry were entirely confidential.

Deputy T.M. Pitman:

Mr. Warcup, just taking you back a stage, you told us in your submission how it became overly

focused on Mr. Harper and, as we said, lacked objectivity, but I am interested in where you said it had the potential to be unfair to Mr. Power. Could you just enlarge on that, what was your concern, how would that evolve and did it evolve? What was this unfairness?

Mr. D. Warcup:

I raised those concerns with Mr. Moore and what I mean by that is these 2 issues are directly connected. At the time, although I was speaking to Mr. Moore about matters which affected the States of Jersey Police we could not discuss matters of evidence in the same way as I could not discuss matters with the Minister in relation to that. So what we had to do is we had to make sure that there was no conflict between what Wiltshire were doing and what the States of Jersey Police were doing. I was very clear in that regard that if comments were made which were critical of Mr. Harper they could, by implication, have therefore been critical of Mr. Power because we did not know at that time where the Wiltshire inquiry was at, whether the Wiltshire inquiry would draw conclusions that Mr. Power was ultimately responsible or whether indeed individually they would be responsible for their own options. The focus on Mr. Harper may have been detrimental in that regard.

Deputy T.M. Pitman:

Did it cross your mind that - and this may be impossible to answer - there was an ulterior motive from anywhere that this was a deliberate focus on Mr. Harper? I ask that because when we had BDO in [the Managing Director] said: "Look, we praised Mr. Harper in 9 specific areas here." If you look back at the reporting that does not really come out, it all seems to be focused in one angle, the negativity as opposed to possibly thing that went well. Were there any concerns ...

Mr. D. Warcup:

Yes, I think in every situation you flag those things that were positive as well as if you are going to challenge and flag things that are negative. You have to balance it and be fair. I think that is a fair comment. I cannot comment, however, not having studied in detail the findings which were the ultimate outcomes. I could not comment on that.

The Deputy of St. Mary:

Can I ask a few questions again to the point of why Mr. Harper was not interviewed by the whole BDO process? First of all, do you agree that in retrospect it would have been a better base for the report if he had been interviewed?

Mr. D. Warcup:

Yes, it would have been a better base but I have some concern that maybe it is felt or conclusions were drawn that I in some way inhibited or prevented that. What I did was to advise on what we as the States of Jersey Police would do in our role as part of that. It was not for me to advise in relation to how the BDO Alto would conduct their audit and their review.

The Deputy of St. Mary:

Could BDO have approached Mr. Harper, from your point of view?

Mr. D. Warcup:

There is no ... there is a saying in law that there is no propriety in a witness. You do not own a witness. Nobody owns a witness so there is every freedom to approach people and speak to them.

The Deputy of St. Mary:

I am positive about this, on page 5 of your submission to us you say you had not approved a joint report by [police consultant] and BDO, you had to approve that there should be a joint report produced, nor was it in accordance with the agreed terms of reference but it is implicit completely in the terms of reference which went to [police consultant] and which he accepted when he took on the job or jobs.

Mr. D. Warcup:

That is right and I did not approve those.

The Deputy of St. Mary:

But they came from Gold Group. I am just putting that to you and asking for a clarification. The terms of reference that are on [police consultant]'s page 2, where he says he was engaged by yourself but you are saying that that was delegated to [retired D/Superintendent]: "To carry out a review of certain aspects of Operation Rectangle, the full terms of reference of which I was handed read as follows. Employment of Mr. Mike Kellett" and it goes through a page including all the details of all the different aspects of Operation Rectangle.

Mr. D. Warcup:

I am sorry, I do not have that document in front of me.

The Deputy of St. Mary:

[police consultant]'s first submission to us. What he said ...

Mr. D. Warcup:

In his written submissions?

The Deputy of St. Mary:

Yes, but if I can just read the first 2 paragraphs: "The Home Affairs Accounting Officer has employed accountants to conduct the above review. The accountants have no knowledge relating to the management or police operations, the review will benefit from the involvement of an experienced police manager" then [police consultant] is ideally placed, and then it says all the things he is going to look at on behalf of BDO. [police consultant] says: "While it was not explicitly stated it was my understanding from the outset that BDO Alto and I would prepare a joint report of our findings" and certainly that is the impression they gave in the hearings with us. They were working together from the beginning and that was their understanding.

Mr. D. Warcup:

All right, well that is different to the terms of reference which I am referring to and I referred to in my written submissions which were: "The purpose of the review is to carry out a formal internal review into matters which currently do not fall within the parameters of the current historic child abuse inquiry or other related investigations or reviews."

The Deputy of St. Mary:

This is the funny thing that [police consultant] - as my colleague Deputy Pitman pointed out - worked for 4 months on one terms of reference and you said he was working for another terms of reference.

Mr. D. Warcup:

That is right, that was the position.

The Deputy of St. Mary:

Can I just carry on, because you then say on page 6, because this is relating now to why Lenny Harper could not be interviewed, and this really perhaps in the nub: "In summary, my intervention that they could not interview Mr. Harper related to the States of Jersey Police internal review and not the BDO Alto report."

Mr. D. Warcup:

Yes, that is right. There were several things. One, I said that we were not going to be joint authors because I had issued terms of reference about what I required and the report was a sole report from BDO Alto and as part of that [police consultant]'s role had been, albeit he was working to different instructions, he was there to assist them in the compilation and to understand the policy, practice and

procedure. It had gone beyond that and I was then reverting back to the original terms of reference which had been agreed. Under those terms of reference and following the advice I was given by Mr. Moore and based on legal advice that I received, that we the States of Jersey Police would not carry out an interview with Mr. Harper.

The Deputy of St. Mary:

Could you expand on what the issues and complaints were that led to your terms of reference, if I can call them yours? You know, the second of terms of reference that came out of the Gold Group, the issues and complaints raised. Are you able to give any details about what the ... because you have not said specifically what those issues and complaints were.

Mr. D. Warcup:

No, those issues are obviously confidential; they are reported through the process and overseen by the Police Complaints Authority in Jersey.

The Deputy of St. Mary:

You mentioned States Members complaining, you cannot give any details about those?

Mr. D. Warcup:

No, no, unfortunately. I am sure you will understand why I cannot. Not only States Members but other complaints which had been received as well and were being actioned.

Deputy T.M. Pitman:

Can I just ask, those complaints - and we probably accept that you cannot go into details - were they specific things and specific incidents or was it just that perhaps politicians were very unhappy at how things were being reported in the media because there was a huge global interest. Can you give us some indication of ...

Mr. D. Warcup:

I cannot. I do recall what they were and I recall the sources of those complaints that I am referring to, not all of them but I do recall. I need to be clear as well that it was not totally States Members who were raising issues and making complaints. There were complaints from members of the public as well.

The Deputy of St. Mary:

Did any actual report arise out of this review or did it simply not happen, although [police consultant] was supposed to be working on it?

Mr. D. Warcup:

That is the position that when [police consultant] left what we did was we did conclude each different aspect in a different way so all the complaints were subject to investigation and recorded for the Police Complaints Authority and they were finalised in accordance with the Police Complaints (Jersey) Law, the learning of lessons in relation to what we need to do and how we need to approach it were all developed and in many cases the practices and changes were implemented where they could be. For example, training of officers to ensure that they have got the right training in the right areas to be able to deal with serious investigations and the investigation of serious crimes. They were implemented as well.

The Deputy of St. Mary:

So it was all done on a kind of ad hoc basis?

Mr. D. Warcup:

Not ad hoc, no. It would be wrong to say it was ad hoc, some of them were subsequently reported on in the Wiltshire report that I think we had already identified. For example, training was an issue and we had put in place the arrangements to make sure that relevant people were trained, including

investigating officers, and that they were able to comply with best practice and the procedures which were adopted following the investigation of serious crime.

Deputy R.G. Le Hérissier:

We are getting towards the end. It strikes me, listening to your evidence, that you obviously felt that when it came rightly to people like Mr. Power and Mr. Harper there had to be a high evidential bar. But there appeared to be these other investigations going on and there was evidence brought forward which did not meet that bar, so to speak. Do you think in retrospect or just as a general principle it was wrong to have these reviews going in parallel with each other, particularly when you have the primacy of Wiltshire.

[16:00]

Because what was happening was people were making allegations based not on verifiable evidence necessarily. Do you think that led to very unfortunate outcomes and that were you to do this again you would never go into a situation where reviews were running essentially parallel to each other and where they appeared to have on level of evidence and another review appeared to have another level of evidence acceptability?

Mr. D. Warcup:

I would agree with you. Can I just go back a step further in relation to what ... you said what you would do. I did not do it, of course, because it is fair to say I would not have initiated the BDO Alto review in the way it was done but it is appropriate to look certain things, to learn the lessons even while there are inquiries ongoing. What must be established, however, is what the parameters of those are and where you draw the line in relation to the extent of those inquiries. One the fact of it, if I was to go back and say: "Well, how should it have been done?" then I would say that it would have been perhaps better to deal with the issues of alleged misconduct and deal with those first and to completely separate out the other issues. If there are other issues that need dealing with that are likely to overlap, they should be included within the terms of reference for the primary review. It is not uncommon in a police discipline inquiry for the investigating officers to be asked not only to see whether there are any misconduct issues which flow from the circumstances, but also whether there are any organisational issues from which the organisation can learn and benefit in the future.

Deputy T.M. Pitman:

A question that was further down our list, although we are getting towards the end, talking about primacy. You stressed that quite a lot and I think I understand why, however could you clarify for the record how it could be then that BDO or [police consultant] got to see apparently Mr. Harper's statement from Wiltshire? How did that ... surely that would have affected primacy and possibly conflict in some way? Can you enlarge on that because we are having difficulty getting to the bottom of this and it is, I am sure you will accept, a key issue.

Mr. D. Warcup:

I would accept that until I saw the papers I was not really aware that they had seen that. My understanding was that the States of Jersey Police and those working for the States of Jersey Police would not see any of the evidence in relation to the Wiltshire inquiry, and I do think that ... I cannot say whether he did or he did not see that. I do not know, has [police consultant] said that he has seen that?

Deputy T.M. Pitman:

As I say, we are getting a really confused picture. My question to you, and obviously you cannot answer what another person has seen, is how could that come about where a person could see something which was meant to be confidential to another review which you said had primacy?

Mr. D. Warcup:

I would say there is not a matter of confidentiality in relation to that, what there is is a matter that

goes back to that issue of primacy that you raised and it would raise an issue should there any misconduct procedure I would have thought it would have been a matter which would be subject to challenge within the misconduct process to say why did that happen and was it appropriate and what was the purpose. Such things always raise doubt in any such proceedings. That is why decisions are often made to engage outside bodies to carry out inquiries and it is a very unusual circumstance, yes.

Deputy T.M. Pitman:

But if something can be almost quoted from surely there is no smoke without fire. Had did that come about, that is what we need to find out.

Mr. D. Warcup:

You mean [police consultant] seeing the statement?

Deputy T.M. Pitman:

Yes.

Mr. D. Warcup:

I have no idea because to put it another way, if [police consultant] or [retired D/Superintendent] had come to me and said: "Can we approach Wiltshire to see Mr. Harper's statement?" I would have said no.

Deputy R.G. Le Hérissier:

In a related issue, Mr. Warcup, the issue of how it appears a very similar replication ... sorry, a very similar version or replication of parts of Operation Rectangle can be published in a newspaper, a national newspaper, in October 2009. Were you able to get to the bottom of this?

Mr. D. Warcup:

No, unfortunately there were many issues right through from 2008 until 2010 where we did look to try and establish how information had been released to the media. It is a matter of some regret in many respects that it happened and I do not condone it at all but I am afraid I cannot shed any light on the source or how it happened.

Deputy R.G. Le Hérissier:

Did the police institute any investigations into whether there was a leak occurring from Police H.Q. (headquarters)?

Mr. D. Warcup:

I am sorry; I did not catch the first part of that.

Deputy R.G. Le Hérissier:

Sorry, did the police institute any investigations into how this information was indeed leaking, so to speak?

Mr. D. Warcup:

It would be wrong to say an investigation. On each occasion when information is put into the media we will look and see whether there is a source and whether there is a prima facie reason for information going into the media. Sometimes of course it is neither illegal nor is it a disciplinary matter that information is put into it, it maybe just be a question of judgment or professionalism.

Deputy T.M. Pitman:

Just to take on from that point, you said from 2008 right through to 2010, and of course that is well after the Mr. Harper/Mr. Power period, did it ever concern you that possibly those leaks were politically based? They were coming from politicians and probably they were not even internal from the States of Jersey Police. Was that a concern to you?

Mr. D. Warcup:

No, I would not focus my attention on that. If I was to say ... my concern was from a very early stage the media was being given a considerable amount of information and documents and they were being given this information either directly by people or indeed - people I do not know and I do not wish to get into a guessing game ... they were getting information and also information was appearing on the internet. I have to say that I think that the release of information in such circumstances is detrimental to the good conduct of the inquiry. In fact it is a fact that the release of some information in the earlier stages which appeared on the internet and in the media and was clearly information which had been given in court, could have had a detrimental impact on those cases which appeared before the Royal Court in Jersey and could have undermined those cases, and indeed there was a hearing in the Royal Court in which it was challenged by the defence solicitors that there could have been an abuse of process. I think that that matter needs to be seriously considered for the future and the release of information, however well intentioned, has to be carried out under proper regulated and approved systems and not to fulfil whatever agendas people are trying to pull through.

Deputy T.M. Pitman:

So just the last question I will ask you on this point. The leaking, however it came about, to the media, you would expect to see consistency in this because obviously there has been huge and very negative focus on leaks which allegedly came from during Mr. Harper/Mr. Power's time yet the Minister, for example, seems very unconcerned about leaks that have come subsequently. Is that not a concern that should be ongoing all the time? Should there be consistent policy? That seems to be what you are saying.

Mr. D. Warcup:

I cannot speak for what the Minister would say but I can speak from my conversations with the Minister during my time with the States of Jersey Police and my impression at that time of the Minister's point of view was he, like I, thought it was totally wrong, irresponsible and unprofessional. But I would agree entirely that there needs to be a consistent approach. Leaking of information to the media is something which can, as I say, seriously undermine criminal inquiries and the consequences could be quite serious. That is not serious to you or I or others, it is to the victims of crime who will not get justice through the courts.

Deputy T.M. Pitman:

One final point on that. We have heard within our review here allegations that a former Assistant Minister for Health leaked information to a U.K. (United Kingdom) journalist. To what extent were you aware of that? How did it come about that you were learnt of that?

Mr. D. Warcup:

I am not sure I am aware of that particular ...

Deputy T.M. Pitman:

A leak to Mr. Rose who is a quite well-known U.K. journalist. You are not aware of that? So there is no inquiry?

Mr. D. Warcup:

Was it a former Minister for Health?

Deputy T.M. Pitman:

Assistant Minister for Health. You are not aware of that at all?

Mr. D. Warcup:

No, I am sorry I am not clear about the particular case that you are talking about.

Deputy R.G. Le Hérissier:

Just a wrap up question, Mr. Warcup, it is maybe a bit too broad but in the light of what happened, in the light of all these reports, in the light of the different evidential standards that appeared and in the light of the concerns you expressed once you became aware of the way things were panning out, how would you have done things differently?

Mr. D. Warcup:

How I would have done things differently?

Deputy R.G. Le Hérisssier:

Yes.

Mr. D. Warcup:

There are many things which one learns in relation to things which happen but I have no regrets that what I did I did in the best interests for the States of Jersey Police and hopefully the people of Jersey and also the victims. Had I not made the disclosures in relation to that there was every possibility that the cases before the Royal Court would have been undermined and there would have been no prosecutions that would have followed. There are perhaps many other things that I would have tried to do differently in the weeks and months which followed but I am not sure, given some of the circumstances which prevailed, how much I would have been able to influence though.

Deputy R.G. Le Hérisssier:

Can you give us one or 2 examples?

Mr. D. Warcup:

I think just the one. I think the issues of the control of information which was being put not into the media but into the public domain, whether it was through the States Chamber or whether it was through the media, however you refer to it, that uncontrolled information which was being put through there, perhaps with the best intentions, was quite often inaccurate and ill-informed. That unfortunately had a big influence on the way that the States of Jersey Police were able to operate, the way they were able to conduct their inquiries and also on my role and position as head of the force. As I say, I am not sure that I could have been in a position to change that. What I could do is to try and act with the utmost professionalism to try and do things properly and also to try and make sure that everything that is done in respect of the former Chief Officer, Mr. Power, was done fairly and appropriately. As a good example of that, at no time will you find me on record as getting into speculation and comment on the rights and wrongs of some of the things that have been speculated about.

The Deputy of St. Mary:

I would like to ask a final question, I would probably kick myself afterwards if I did not ask you and what you have been saying leads on to it about information should not be put into the public domain in an uncontrolled way, in an often inaccurate and ill-informed way and so on and trying to do things properly. I think that is nub of it, is it not, trying to do things properly. So if I just quote you from the Wiltshire report in a paragraph where they are writing about the Met review, which of course you referred to in your letter which led to the suspension or immediately led to the suspension.

[16:15]

“The purpose of the review [that is the Met review] and the report which followed was to provide advice, guidance and learning for the S.I.O. (Senior Investigating Officer) and the Operation Rectangle team. The review will typically highlight well run aspects of an investigation and comment on areas that require attention. In order to be effective and to encourage staff to speak openly the content of the final report of the review is intended to be provided and received in the spirit of learning, public disclosure of the report is resisted and it usually attracts public interest immunity, in other words the whole thing is private to allow people to speak openly. Accordingly it would not be disclosable for the purposes of a discipline hearing as to do so could undermine the

public interest by inhibiting candour between interviewers and interviewees in the review process.” As you know, you based your letter which led immediately to the suspension of the former Chief Officer, Graham Power, on that review even though the review specifically has to be open book, people encouraged to speak openly and not used for disciplinary purposes. Would you like to comment on that?

Mr. D. Warcup:

In those last couple of sentences where I would agree to depart from what was being said and the reason for that is that I did not base my letter solely on that review. The construct of my letter, which I believe you will have seen, was that I raised issues which were concerns and I also - which I was subsequently criticised for, which is rather strange - abided by that in terms of saying that the review remained confidential. It remains confidential for other reasons of course as well. But if we go back to earlier questions, I had raised concerns and they were documented concerns with a number of people, including the then Minister for Home Affairs, the Chief Office of Police, the Attorney General and others, including [former States Chief Executive], about certain aspects. That was in September, 2 months before the review ... in fact the Met did not even start the review until September and I had already raised, before they gave the written review, some concerns. Those concerns were documented and documented in September. Therefore I stand by the fact that the issues that I raised with [former States Chief Executive] were issues that I had been raising for about 2 months and were not as a consequence of the Met review.

The Deputy of St. Mary:

So you do not think that in that letter, which had been requested by [former States Chief Executive] and 2 days later Graham Power was suspended, you should have mentioned the fact that it was not a disciplinary investigation and could not be used as such, or in any way connected with the disciplinary process?

Mr. D. Warcup:

Sorry?

The Deputy of St. Mary:

Should you not have mentioned in that letter, and I would have to say that the perception - and I am pretty sure I could find it in Napier if I had time - that one can show that your letter was largely - not exclusively - based on your reliance on the Met interim review. In fact people around were saying if we had not ... [former States Chief Executive] is on record as saying in the Napier review that if the letter had not been received about the Met interim report then it would have been much harder to suspend Graham Power. So it was a very important letter and it relied on the interim review but it did not mention that the Met interim review was not a disciplinary investigation and could not be used in any disciplinary process.

Mr. D. Warcup:

They were probably ... given the scale and complexity of things, there were probably a lot of other things that could have been put but I was not unfortunately aware of that at that exact time and I put in what I considered to be relevant information but I absolutely stand by the fact that the issues and concerns that I had raised had been raised for some 2 months prior to the Met review being produced.

The Deputy of St. Mary:

None of the other concerns were mentioned in the actual suspension documents. This is the problem, is it not? This is the problem with the whole basis of why we are here, why we are talking about BDO and so on is this kind of atmosphere around this whole process. But can I just ask you, you mentioned the letter which you will have seen. We would love to see the letter. Is it possible for you to let us have that letter?

Mr. D. Warcup:

Again, I would ask the panel if you can take legal advice as to whether it is appropriate for you to see that.

The Deputy of St. Mary:

Yes, we will do that.

Mr. D. Warcup:

I think that, for example, there was comment which was attributed to the fact that no reference was made to the fact that it was an interim report. If you saw the letter you will see that one of the paragraphs is headed at the very end, in a very brief reference, refers to the Met review interim report.

The Deputy of St. Mary:

So it would be useful to us to see the letter, in fact it would clarify issues for a lot of people.

Mr. D. Warcup:

I think it would, not least for myself.

Deputy T.M. Pitman:

I am greedy so I have got 2 questions, both very different ones. Obviously we know it was down to you appointing the finance manager; however when you look back if there is one thing that has been learnt it is that Jersey's set up was less than perfect. But with reflection do you think it is unfair the way the focus has been on the police side of this and the finances, and that is why we are here, and very little has been said about the Home Affairs side and their control or lack of with the finance; what would your thoughts be on that, trying to move forward for the future?

Mr. D. Warcup:

Looking forward to the future I think there is now a general agreement, and I proposed this very early, that the Chief of Police should be the Accounting Officer and the budgets should be set but I also feel that there should be more formal oversight of the police in its entirety with some form of police committee or police authority. I am well aware that the U.K. are moving away from that but I think you will struggle to find a Chief Officer in the U.K. that will support that change because the current arrangements with oversight provide for clear lines of accountability and responsibility and a lot of these issues which are being discussed and where it was discussed in the public arena and in the States it could have been properly, professionally and formally discussed through an authority and a lot of the questions could have been answered and then reported back formally to the States.

Deputy T.M. Pitman:

Obviously we are in the process now we are going to have a police authority. Was it ever a concern to you at the time that it has been driven to focus too much on the police side and the police failings, which obviously failings need to be identified, but did you ever feel real concern at the Home Affairs side were almost perhaps shifting the blame not wanting to say: "Yes, there is fault on our side too." Is it easy to just have a scapegoat? I am not saying that is what you have done but you appreciate the question.

Mr. D. Warcup:

No, no, it is not concern I had. I did not feel necessarily the blame was shifted because I think the blame was systemic. It was organisational in as much as the procedures for managing finance and the arrangements were not in place. If they are put in place, if budgets are established and accountability procedures are put in place then I think that Jersey will be in a good position for managing finances for difficult context issues in the future.

Deputy T.M. Pitman:

I suppose it seems an obvious question but it must be hard to know if you are going over budget if you have not got a budget.

Mr. D. Warcup:

Regardless of whether you have a budget or not you have a responsibility to act responsibly and to ensure that monies which are spent in the public purse are spent responsibly. I was acting chief of the force for over 2 years and I would like to think that I applied the same rigour that I would have applied wherever I have been Accounting Officer.

Deputy T.M. Pitman:

One final question, and it takes us back to your big issue of objectivity. Would you agree that when you look back on this now the big tragedy of all this is perhaps the focus on things, the Bombay Brasserie, et cetera, have moved the focus away from what is really important and the victims in this horrible situation. That is not your fault but the way this report and various other reports that have been spun out, has that been the real tragedy of ... this would deter people perhaps from coming forward in the future, the way the focus has gone on to the money when people are more important than money, victims are even more important. That is what I am getting at.

Mr. D. Warcup:

Without a doubt the victims are the most important aspect of any of these inquiries. Sometimes that is very easy to say but it is sometimes very hard to deliver when we become distracted with other things. I think that is why if the arrangements are put in place that holds people properly accountable for what they do then I think the victims will get the better service from the police in the future. I know that colleagues within the States of Jersey police would be very comfortable working, certainly when I was there, within those arrangements and they are not afraid of being accountable.

Deputy T.M. Pitman:

Do you think perhaps politicians were afraid of being accountable? Did you ever get that sense? It is perhaps not a fair question but I will ask it anyway.

Mr. D. Warcup:

I do not think I ever quite got under the skin of that.

Deputy T.M. Pitman:

Did you not ever the pressure in the job that more important is Jersey's image because I think that is what a lot of the public felt? Did you ever feel a pressure on you in your work as it relates to this review?

Mr. D. Warcup:

No, I think there certainly were pressures as you will know and your colleagues on the panel will know, but those pressures came from many different directions. One of the major difficulties which took up a substantial amount of time and was a huge disruption from the investigation and from the successful day to day running of the force was the wild speculations and inaccurate information that quite often then substantial amounts of work had to be done to attempt to correct that. I have to say that that does seem to be a facet of policing in Jersey that you are fire-fighting issues and concerns that are raised which quite often turn out not to be correct.

The Deputy of St. Mary:

Would you say that greater openness and transparency would help in that because then, for instance, if people had had much, much earlier your letter which eventually led to the suspension, if we had that then we would know what was in it whereas without it all people can do is speculate.

Mr. D. Warcup:

If you compared it to a police authority situation, those people on the police who have responsibility for discipline matters concerning chief officers of police would all have had access to that sort of level of information and it is very unfortunate that that responsibility eventually was vested in the Minister and the decisions that he made when it is clearly a serious decision and that is why changes

will undoubtedly benefit future decisions because it will provide a greater breadth of transparency. I am sure you will understand if I say that I would have welcomed that personally because I would like to think that would have led to an understanding of the position I found myself in, the action that I had to take, and the reasons why I did it.

Deputy T.M. Pitman:

To end, Mr. Warcup, is there anything that you would like to say to us that we have missed or that you feel needs to be said?

Mr. D. Warcup:

No, it is fine. I think in your final questions you have covered many of the issues which I am quite glad that I have had an opportunity to express a view on.

Deputy T.M. Pitman:

Good. Okay. I will end the panel hearing now. Thank you for that. I am aware that you were in Jersey in quite a difficult time. Would you say though, in closing, that is almost part of the job for a senior role as you were in? It was not a problem to you as such, you dealt with it. It is a small community, some of these issues were just par for the course, were they not?

Mr. D. Warcup:

You may say that and look it like that but I think it is a much broader issue and much more strategic issue. Having been in the position that I was, the power and position unfortunately as the head of service, you were not only challenged as an individual you were also challenged as being part of an organisation. People are not only forming impressions of you as an individual they are forming impressions of an organisation. If there is a determined effort to try and undermine people in that position then it can have a very negative effect on the organisation itself, and that is a position which is not really sustainable and healthy for an organisation such as the States of Jersey Police. There is a much wider issue.

[16:30]

Deputy T.M. Pitman:

All right, but hopefully a police authority will curtail some of those problems.

Mr. D. Warcup:

I really hope that it will and I hope that Members have some part in implementing such a commitment.

Deputy T.M. Pitman:

One question I promised I would ask, if any of the media wish to get in touch with you, or citizens media, is there an address that they can do so or not?

Mr. D. Warcup:

No, they can go through the press office of the States of Jersey Police.

Deputy T.M. Pitman:

Right, but you will field any questions that people put to you if you receive them?

Mr. D. Warcup:

If they go through the States of Jersey Police media office I will consider things but I will also say that I will be unlikely to give interviews for further speculation and debate. I hope that I have been able to give the panel today some clear answers in relation to issues and what I do not want to do is to step outside of the scrutiny panel and start another round of speculation, debates and challenges. That would only serve to undermine things further.

Deputy T.M. Pitman:

Okay. Thank you again, and I will end it there. Thank you.

Mr. D. Warcup:

Okay. Thank you very much.

Deputy T.M. Pitman:

Thank you, members of the public and media.

[16:31]

STATES OF JERSEY

Education and Home Affairs Panel Draft Civil Partnership (Jersey) Law 201-

WEDNESDAY, 15th JUNE 2011

Panel:

Deputy R.G. Le Hérissier of St. Saviour (Chairman)

Deputy M. Tadier of St. Brelade

Deputy J.M. Maçon of St. Saviour

Witnesses:

Clerk for Jersey Quakers

Assistant Clerk for Jersey Quakers

In attendance

Mr. M. Haden, Scrutiny Officer

[12:08]

Deputy R.G. Le Hérissier:

Well, thank you very much for attending. There is a notice, which is important you read about the truthfulness, which I am sure will be in abundance of your evidence. We welcome you to this meeting; it is very kind of you to come at relatively short notice. You have obviously picked up some of the discussion with the Dean. I wonder, just to set it off and then our lead member in a way is Deputy Tadier and he will move the points along, but I wonder if you could tell us succinctly what your approach is to this law, and why you as a group appear to have taken a different approach to the other religious groups in terms of “solemnising the civil partnership”, if you could explain (a) the general approach and (b) your involvement in this particular matter.

Clerk for Jersey Quakers:

Well, Quakers have traditions to support a balance with equal rights with equal responsibilities. That is very much in our traditions, it goes back about 350 years, Quakers have always been very proactive in equality and truth. They began really looking at the equality of same sex relationships I think back about the 1960s when they moved from tolerance of same sex relationships into an acceptance and a welcomingness. We believe in the worth of a relationship, not necessarily the detail of whether it is heterosexual or homosexual. We believe that a loving and honest and supportive relationship is valuable, and therefore people who, because of the way they feel and they way they are, wish to have that relationship in a same sex situation, they should not be in any way disadvantaged, and that they should be supported by their friends in the Meeting. When I use this word “Meeting”, it is an old Quaker word and we use it all the time. We hold meetings for everything so our worship is in a Meeting, when we have our business meetings that is a Meeting. We just use this word “Meeting” for everything that we do and we have different sorts of meetings. So if you hear me talking about Meeting for Commitments, it is a worshipful service that is one in which people can have commitment to each other. We do not have a priesthood, we do not offer blessings, and when we have a marriage ceremony, because we do not have priests, we believe that it is the couple who make the sacredness of the act, and nothing comes between them and God. So a marriage ceremony, if I can put in context of a marriage ceremony, which is held in silence, and at a time of their suiting the couple will stand up and make the vows to each other, and they are the vows that you know and understand in a church service. So that is how it works.

Deputy R.G. Le Hérissier:

For the purposes of the Jersey law, are you recognised as “a religion”?

Clerk for Jersey Quakers:

Yes. We are recognised as a church I think, are we not?

Assistant Clerk for Jersey Quakers:

Yes.

Clerk for Jersey Quakers:

They do recognise us as a church.

Deputy M. Tadier:

Are you currently able to carry out marriages in the same way that the Church of England or the Catholic Church does?

Clerk for Jersey Quakers:

We have a registry officer and you can be married in the Quaker Meeting House. It is not very often that we hold marriages but yes you can be. At the most recent one that we had in the Quaker Meeting House, the registrar also attended as well as our Quaker registrar and there was a small part of it, just very small, slightly on the side, that was conducted and that part was the registrar.

Deputy M. Tadier:

So ultimately a ...

Assistant Clerk for Jersey Quakers:

We used to have ... we would be an accepted case like the Jewish community were but when you changed the law to have marriages everywhere, you know, castles and things like that, they withdrew our special case.

Deputy M. Tadier:

Really?

Assistant Clerk for Jersey Quakers:

Yes, and we were able to marry in the Quaker Meeting House but when you changed the law we have to have this civil ...

Deputy M. Tadier:

Okay, but the point is as things stand with the drafted law you would not be able to do the same with a civil partnership in your premises with a registrar, for example?

Clerk for Jersey Quakers:

Not if the law was drafted to prevent civil partnerships being held in a worshipful setting. What we have been doing in actual fact, I think it was 9 years prior to the U.K. (United Kingdom) Civil Partnerships Act, is we would celebrate same sex relationships in our Meeting House, well at least they did in the U.K., I do not think we have ever done one in Jersey, through what is called a Meeting for Commitment, which would be a Meeting for Worship where the couple could at their own time stand up and commit to one another, but of course it has not got any legal status.

[12:15]

But what we would like to see is, if civil partnerships come in in Jersey, if the Act is passed, then rather than have to have the civil partnership and then a secondary Meeting for Commitment, we would like to be able to hold it in the Quaker Meeting House.

Deputy M. Tadier:

Okay, I mean that is a voice which has not come out really officially yet. We have seen representatives, obviously the Dean of Jersey was here a moment ago and we had the Chief Minister in but it is interesting to know that there are denominations, if I can call you that, in Jersey, which would welcome the opportunity to perform civil partnerships legally in their own premises.

Clerk for Jersey Quakers:

Well, I would also stress ... I do not know if you have this, I sent it on to Mike. I think you might have it in front of you but Quakers, we would not just marry or create a civil partnership for anybody. We take marriage and civil partnerships very seriously; to us it is not just a civil contract. As I have said it is a religious act, and as with marriage, with civil partnerships only members of the Meeting or those who were not in formal membership, in sympathy with it, could be joined in a Quaker Meeting. I know that the churches just will not marry people who, if you like, walk in of the street but if both of you are not a member of the Quaker Meeting - this has gone on for hundreds of years - if one is a member and one is not as very often is the case then we would send a member round to talk to the couple concerned to make sure that they were in sympathy with our Quaker Witness.

Deputy M. Tadier:

Okay. That is reasonable. I think that is consistent with what would happen with marriage in most denominations anyway.

Clerk for Jersey Quakers:

Yes.

Assistant Clerk for Jersey Quakers:

In England at the time of the Meeting, at the yearly Meeting, you know, all Quakers were be invited to come to discuss this particular issue and there were over 2,000 Quakers and it was put forward very well because they had different couples giving their opinion. There were 2 heterosexual old age pensioners who were getting married who said, you know: "We cannot have children, to say that marriage is just for the procreation of children does not come into it in our case", you know, so you cannot make that a provision for marriage. Then there was a couple of homosexual men who had adopted children who spoke to the fact what a marvellous thing they were bringing up children. We had a couple of lesbians who were saying that when they got married they had really missed being able to have the same service as any other couple getting married. They missed having it in the Meeting. Then we had a normal run-of-the mill man who had children so we had every aspect covered, and the Meeting for Worship was 2,000 people in silence, except for one person getting up to speak at any one time. It was very moving, and they really did feel that we wanted to treat everyone equally. If they were committed to a partner regardless of sex that they should be able to have a religious service in the Quaker Meeting House and it was passed.

Deputy M. Tadier:

One option is that well there is a provision in the law, which unfortunately from your perspective and from some of our perspectives, would mean that you cannot carry out civil partnerships and have them registered on your premises.

Clerk for Jersey Quakers:

Why is that?

Deputy M. Tadier:

Just that is what is in it, so currently there is an Article, which prohibits a religious service to be used while a civil partnership registrar is officiating. So similarly, you can go down to the registry office and have your part but he would not be allowed to come to your premises while you were having the religious ceremony. Now, one idea, which we may favour, is just to remove that Article and that

does not provide you with any obligation to perform a civil partnership, nor does it provide an obligation for any denomination to do that but at least it would give you the choice if you wanted to apply to perform these kind of ceremonies in your own place, you could do that. Would that be something you were ...?

Clerk for Jersey Quakers:

Yes, this would be very much like incorporating the United Kingdom Amendment 211, which they are planning to bring in this year, I think. Is that what you are trying to incorporate into the Act?

Deputy M. Tadier:

I think that is what we are looking at. I think the current proposal is to get the law in as is currently the case in the U.K., and which we understand because it is essentially copy and paste to all intents and purposes.

Clerk for Jersey Quakers:

Yes.

Deputy M. Tadier:

I think the concern of the Scrutiny Panel is that while there is consultation going on in the U.K. at the moment, things are in flux, and rather than having a law, which is introduced which may then later be changed with the relevant expense, it may well be the case that we should just take this Article out, which would allow the flexibility for your denomination to retain its autonomy while not obliging other denominations to perform a ceremony that they do not want to.

Clerk for Jersey Quakers:

May I ask are there any other denominations who are prepared to have civil partnerships within their churches?

Deputy M. Tadier:

The Dean informed us that, for example, the Unitarian Church would be likely to carry out, was that the name of it? Yes, the Unitarian.

Deputy R.G. Le Hérissier:

Yes, which does not have a church over here.

Deputy M. Tadier:

And the Liberal Jewish community may.

Deputy R.G. Le Hérissier:

And the Methodist Church.

Deputy M. Tadier:

And the Methodist Church would.

Deputy R.G. Le Hérissier:

But you have not made any representation, Frances, to the progenitors of this law?

Clerk for Jersey Quakers:

No, we have not. This is the first time we have actually been to see you at all.

Deputy R.G. Le Hérissier:

Yes.

Deputy M. Tadier:

We will certainly convey those but it is up to you to decide whether you may want to contact the

Chief Minister's Department directly, and we can certainly give you the contact details to convey your views.

Clerk for Jersey Quakers:

I would be grateful for that, yes.

Deputy M. Tadier:

Are there any other aspects, which would be useful to ...

Assistant Clerk for Jersey Quakers:

I know in England that a Quaker couple of heterosexuals have wanted a civil partnership and wondered why they cannot have one, and I notice that you are prohibiting that.

Deputy M. Tadier:

Well, I think it would be useful to get your view. It has been necessary, we heard from the Chief Minister, probably politically and socially, to distinguish civil partnerships from marriage. Of course that did not have to be the case, there were several options put forward for consideration but that was considered, I think, the most current of options, which has been adopted elsewhere.

Deputy R.G. Le Hérissier:

I think the view was it has been put to us and interestingly enough it has been partly, not because they approve of course, I suspect they are taking a pragmatic view of the situation, it has been put to us by the representatives of the Community Relations Trust that this is a very, very important step on the way but it is not the attainment of the journey, it is not the culmination of the journey.

Clerk for Jersey Quakers:

Well, the Quaker intention or policy, if you like, is that same sex couples eventually could share in the sacrament of marriage like heterosexual couples but I think at the moment if we can even get this step it would be marvellous, and then we can go on.

Deputy R.G. Le Hérissier:

Yes, and I think the issue was raised by the Deputy Chief Minister - who I noticed has been promoted to Chief Minister by Deputy Tadier, who I know is one of his admirers - and was adamant on the point that the 2 things, they were linked but separate. I have to say that we were all struggling with that but he was adamant on that point but I think the broader explanation is that there is a pragmatic view out there, I am not commenting on it right or wrong, that Jersey society will only take so much of this reform and this is as much as can be pushed at the moment. That seemed to be the view of some other parties.

Deputy M. Tadier:

I think part of the problem, and you may be able to say whether this is the case I think, is we are in a situation where we do not have any Civil Partnership Law at all so legally these relationships are not recognised. There is probably a reluctance from those who would want the law to go further, to speak out, because there is a fear that what we do have already needs to be achieved before we go that one step further.

Clerk for Jersey Quakers:

I think that is very fair?

Deputy M. Tadier:

I think that is why we are mindful as politicians; we can voice the concerns, which maybe have been neutered up until this point.

Clerk for Jersey Quakers:

I think eventually it will end up as marriage because if heterosexual couples push for civil

partnerships then you will get kind of 2 types of marriage, which is not right so eventually I think it may move to marriage but you know there has to be ...

Assistant Clerk for Jersey Quakers:

If there were ...

Clerk for Jersey Quakers:

We all want everything immediately but if you are prepared to give it loving consideration and time then eventually you may find that it just happens because there is no reason for it not to happen but I do not know if it terribly matters if it does not happen next week.

Assistant Clerk for Jersey Quakers:

I know the way we approached this certainly in the Meeting is to have every area Meeting throughout Britain discussing it and getting used to it.

Deputy R.G. Le Hérissier:

Yes.

Assistant Clerk for Jersey Quakers:

Seeing where marriage was born from, because I mean people used to jump over the broom and that was quite legal, and it was only when the church wanted to make a bit of money out of it that it became solemn. You know, if you look back into your theological history of marriage it is all a bit vague. The Dean did say it was a bit muddled well it certainly was, people got married just by saying they were married and jumping over a broom.

Deputy M. Tadier:

That is true, yes.

Deputy R.G. Le Hérissier:

Okay, but it would have been, from a law drafting point of view, immensely easier to have simply said that the 2 are synonymous in other words because there are enormous, we have dealt with other witnesses on this issue, there are unbelievable complex changes that have to be made to a whole raft of laws because by not being able to use the word "marriage" as synonymous we have to add the words "civil partnership." Plus look at the gender consequences of Social Security, which was as we have been rightly reminded, a gender based law for example. Tax is still in large part gender based, a tax law at its base so it would have been so much easier but anyway that is not really relevant, I suppose.

Deputy M. Tadier:

We would need to look about maternity leave as well.

Deputy R.G. Le Hérissier:

Yes, I would imagine there is actually, with adoption for example. So, Jeremy, have you got any final questions you wish to pose?

Deputy J.M. Maçon:

No, I have nothing further to ask, thank you very much for coming.

Deputy R.G. Le Hérissier:

Have you any?

Deputy M. Tadier:

I think just to clarify, so you would prefer that Article to be removed?

Clerk for Jersey Quakers:

Yes.

Deputy M. Tadier:

So that you could at least have the choices as to which ...

Deputy J.M. Maçon:

That is left to your discretion.

Clerk for Jersey Quakers:

We would be very happy with that.

Deputy R.G. Le Hérissier:

But would you be prepared ... sorry do you want to say something?

Clerk for Jersey Quakers:

No, I have forgotten what I was going to say.

Assistant Clerk for Jersey Quakers:

So, could that be part of this law? Let us hope it is a move forward to equality.

Deputy R.G. Le Hérissier:

But would you be prepared as a compromise position, the point I put to the Dean was, while there might not necessarily be approval for a religious element within a civil ceremony, it could be followed by a religious ceremony. Would you be prepared ...?

Assistant Clerk for Jersey Quakers:

That is how we have our ...

Deputy R.G. Le Hérissier:

That is how you do it at the moment?

Clerk for Jersey Quakers:

Well, we have been doing these Meetings for Commitment and in actual fact after the ... well we were doing it before the 2005 Act but after the 2005 Act in the United Kingdom they continued to do them. It is still ... it is not really equal in that you have got to sort of nip down the road get married and come up and do your own thing but we live in a democracy and it is what people will accept but I really do wonder, if you put in it about places of worship, if the sky would fall in, you know?

Deputy R.G. Le Hérissier:

Yes. Okay, are there any final points you wish to make or things you may feel we have left out or not understood properly or whatever?

Assistant Clerk for Jersey Quakers:

From how I understand it is you are not allowing heterosexual commitment.

Deputy R.G. Le Hérissier:

In a civil partnership.

Assistant Clerk for Jersey Quakers:

In a civil partnership.

Deputy R.G. Le Hérissier:

Well, no sorry it is not us, it is what the law will ...

Deputy M. Tadier:

You raise an interesting ... that has been brought up and I think as Roy said the contradictions of having 2 separate laws, I mean on the one hand we could face possible discrimination challenges, although we do not have a discrimination law yet, first of all from same sex couples who want to get married in the church or have religious content; secondly that there could be challenges for heterosexual couples who want the civil partnership for whatever reason.

Assistant Clerk for Jersey Quakers:

I think it is really important that couples whatever their sex be allowed to have a religious ceremony if that is what they want.

Deputy R.G. Le Hérissier:

Okay, so good. On those grounds I would like to say thank you very, very much for attending and we can formally end the session.

[12:29]

STATES OF JERSEY

Education and Home Affairs Panel Draft Civil Partnership (Jersey) Law 201-

WEDNESDAY, 15th JUNE 2010

Panel:

Deputy R.G. Le Hérissier of St. Saviour (Chairman)

Deputy J.M. Maçon of St. Saviour

Deputy M. Tadier of St. Brelade

Witness:

The Deputy Chief Minister (Deputy Chief Minister)

Acting Assistant Chief Executive

In attendance

Mr. M. Haden (Scrutiny Officer)

[10:48]

Deputy R.G. Le Hérissier:

Well, I would like to thank you very much for coming. I will just draw to your attention, of course, the witness advice which I am sure you are familiar with but I would like to thank you for coming. Basically, our panel felt this was a fairly complex piece of legislation and it was probably important to look at the details and, as we discovered with other laws, because we do not have legislative scrutiny, Members often feel when they get a highly detailed law presented we end up sort of looking at the detail and sometimes because we have not the whole thing structured, we go off in different ways, wrong ways. So it will help the House deal with this and we will produce a little report and possibly, and it will become evident as this scrutiny proceeds, there might be some amendments, nothing of a substantive nature, but there might be but I cannot anticipate what the panel will decide. By the way, I must apologise for Deputy Pitman who has been taken away on urgent family business. So I will kick off with some general questions and I imagine because you will not address the religious issues, which we have other witnesses to do later in the morning per se we will not spend a disproportionate time on that. But I will ask the Deputy Chief Minister, Senator Ozouf, could you tell us whether you are happy with the way the law is structured, what issues or difficulties you anticipate with it, assuming it is going to be accepted by the States?

The Deputy Chief Minister:

Sure. Well, first of all very happy to be here and very pleased and grateful that you are spending some time doing the legislative scrutiny which, as you have rightly said, Chairman, does not often happen. I should start by saying that the Chief Minister would be here but, obviously, he is on his overseas trip. He is ultimately responsible for it but I am standing in for him today but you will also know that I have a particular interest in this issue, have been at the sort of political lobbying end of same-sex relationship status issues for some time and, obviously, I am very pleased that we are in a position - the Chief Minister and the Council of Ministers - we now have a law. Let us be clear that this is not a law which is enacting into Jersey legislation same-sex marriage. It may come and it will as society moves on in terms of its acceptance of its respect for different lifestyle choices. I have no doubt that this will be a debate that will be live for a period of time. As we know, civil partnerships have been in existence in the United Kingdom now for some years. It is a shame that it has taken so long for the States to have a law. It is very complex. It is not just simply changing one or 2 words in

a piece of legislation. It is a very, very substantial piece of work to ensure that the law works in terms of a statutory basis for civil partnerships but also all the attendant consequential amendments to other laws in order to give effect to a relationship which is akin to marriage but is not marriage.

Deputy M. Tadier:

Can I just come in there. If it is so that it is not marriage, what are the substantive differences between civil partnerships in real terms and marriage if they are not the same?

The Deputy Chief Minister:

I have before me one draft law and one law and I suppose it is convenient that I was responsible for the new Marriage and Civil Status (Jersey) Law which was enacted in 2001, brought into force in 2002 and, effectively, this Marriage and Civil Status (Jersey) Law sets out an arrangement between 2 people of opposite sexes and it allows their relationship to be recognised in the eyes of the State but also makes provision for that relationship to be solemnised and, indeed, recognised in the eyes of the leading religious organisations; the established churches, in other words, and the established faith communities.

Deputy M. Tadier:

Those are the only 2 differences, essentially? Of course, one necessary difference is that the gender of 2 couples will be the same sex and not opposite sexes.

The Deputy Chief Minister:

If you were doing same-sex marriage, you would be amending the Marriage and Civil Status (Jersey) Law and that is what you would be doing. We are not. We are creating, as other countries have done - particularly the United Kingdom - a relationship which is equivalent to marriage but is not marriage.

Deputy M. Tadier:

What we are essentially doing, would you agree, that rather than amending the Marriage Law we are copying and pasting the Marriage Law to the Civil Partnership Law and changing the word "spouse" to the word "civil partner" wherever that occurs? So the only substantive difference between the Marriage Law and the Civil Partnership Law is that at the moment we are saying it cannot take place and be solemnised in a religious location. That is, essentially, the only difference.

The Deputy Chief Minister:

Well, "only" is a small word with a great meaning and it is at the heart of the debate about same-sex relationships as to whether or not you accept the fact that marriage can be a status in the eyes of the State and in the eyes of the faith communities which is available to same-sex couples. That word "only" is pretty significant, of which there are ...

Deputy M. Tadier:

Let us not ... technically, that is the ... there is only one difference, is what I am saying.

The Deputy Chief Minister:

Well, technically, you would, I think ...

Deputy M. Tadier:

That difference is the fact that ...

The Deputy Chief Minister:

Technically it would be to underplay the huge significance of it.

Deputy M. Tadier:

Let us not get pedantic. I am just saying there is only one difference and that one difference is the fact that in the Civil Partnership Law, civil partners may not have their ceremony solemnised by a

religious individual or in a religious place.

The Deputy Chief Minister:

Civil partnership is not marriage.

Deputy M. Tadier:

The reason it is not marriage is because of that one, single issue, is that case?

The Deputy Chief Minister:

Well, it is an important issue but the fact is marriage is available to ...

Deputy M. Tadier:

It is a simple question. I just want a yes or no.

The Deputy Chief Minister:

Yes, but you cannot answer it in a simple yes or no. I restate that the fact that the States has asked the Council of Ministers to bring forward legislation which is a relationship which is equivalent to marriage but it is not marriage.

Deputy M. Tadier:

The reason it is not marriage is because there is no religious element to it.

The Deputy Chief Minister:

I could not possibly begin to do justice to those arguments.

Deputy M. Tadier:

It is a simple question, Senator. It is not a trap. It is a simple question. Is that the only reason it is different? Otherwise we could have simply amended the Marriage Law, as you have said.

The Deputy Chief Minister:

I have made my position clear on that. If you were going to have same-sex marriage, you would be amending this law, you would not be presenting another law.

Deputy M. Tadier:

Scrutiny is here just to establish facts and it is very difficult ... it is a simple question and I do not know if the other 2 Members want to jump in but we need to progress this in a meaningful way, we need to establish what the facts are.

The Deputy Chief Minister:

I have established the facts and it is a relationship which is equivalent to marriage. It is not marriage. I cannot be clearer than that. That is exactly what the heart of the debate is. There is a difference between civil partnerships and marriage.

Deputy M. Tadier:

Okay, and reiterate that difference for us, if you could.

The Deputy Chief Minister:

You know exactly what the relationship of marriage is. A marriage is a relationship between 2 human beings of opposite sexes. A civil partnership is a relationship between same-sex couples and one of the amendments ... if you do not want to accept the fact that same-sex couples should have a relationship which is equivalent to marriage, then you would amend the Civil Partnership Law to allow human beings of different sex to have civil partnerships. Civil partnerships are for same-sex couples. Marriage is for human beings of a different sex.

Deputy M. Tadier:

I think we need to move on from that.

Deputy R.G. Le Hérissier:

Yes, I think we should move along now.

The Deputy Chief Minister:

It is 2 parallel but equivalent statuses.

Deputy M. Tadier:

It is fair to say, I think, that certainly you as an individual and, hopefully, the Council of Ministers would have borne in mind equality when it comes to civil partnerships. Let us take a ... if I wanted to engage ...

The Deputy Chief Minister:

Can I just stop you here for a second because there is an important premise that we have presented this law on and that is there is a legislative process in the Island which, when dealing with massively important bits of legislation, you seek the permission of the States to approve the principle and then you move to the legislative stage. You are opening up the debate, if I may say, which is an absolutely legitimate debate and a debate that will run for some time, that was appropriate to be debated at the first stage of the States consideration of this issue and the proposition which Tom Gales has, no doubt, a copy of it at hand, the instruction and the decision of the States was to put forward a relationship which was equivalent to marriage but was not marriage.

Deputy M. Tadier:

I think that is understood but, obviously, we are dealing with concepts here. I understand it is not marriage and that we established the reason it is not marriage is because we do not allow those who want to engage in civil partnership to have a civil partnership performed by a priest in a church. Now, perhaps it would be useful at this point ...

The Deputy Chief Minister:

That is a separate issue. There is the multi-sex issue and there is the religious issue.

Deputy M. Tadier:

Exactly. That is the issue we are dealing with at the moment. Could you give some background ... for example, if I wanted to engage in a civil partnership and I also attend church regularly, for example, if I am a Quaker, and Quaker minister is ... I do not think they have ministers but the Quaker religious leader would say: "I am happy to perform this," why is it that Quaker would be able to perform a marriage but he would not be able to form a civil partnership in that property?

The Deputy Chief Minister:

We have moved on. We have moved on to deal with ... we are dealing, I think, in this session, which is very important, with 2 separate issues.

[11:00]

We are dealing with marriage and civil partnerships and the parallel relationship of those things. Now, if we have moved on from that issue we can then go on to talk about the religious aspects or otherwise of civil partnerships but it is a separate issue. The first thing that would be important to say is that the coalition in the U.K. (United Kingdom) are now consulting on the issue of whether or not to extend civil partnerships to religious premises and there is a consultation that is underway. I am sure the Panel has looked at it. It is interesting. I have spent a little bit of time looking at it and there is going to be ... we are presenting, as was originally envisaged, a Civil Partnership Law which does not permit and does not have the opt-in of having the ability to perform a civil partnership in a religious place of worship. Now, interestingly, you have raised the issue of Quakers because while we have not been able to definitively confirm this this morning, I am advised that in the United

Kingdom the places of worship for Quakers are not approved premises for the purposes for civil marriages in the United Kingdom. So the same issue arises in relation to Quakers.

Deputy M. Tadier:

But that is being slightly pedantic. The point is, and let us take it back one step, I think. You have already highlighted the fact that we have deliberately put provision in our law which says that these civil partnerships cannot take place in a religious place. Now, the law could equally exist if that Article, which is 3(5) and there is a subsequent provision in Article 14, the law would still stand if that Article was not there. It would not oblige churches or religious individuals to perform civil partnerships in their churches. It would simply be permissive rather than proscriptive. What I would like to ask of the Chief Minister's Department is; what was the rationale for that provision to be put in there rather than for it to be omitted?

The Deputy Chief Minister:

Principally, as is set out in the drafting brief, the fundamental principles of the Civil Partnership Law was to provide a registration in the eyes of the State and that that is the purpose. It is a secular arrangement. It is a secular issue in the eyes of the State.

Deputy M. Tadier:

Okay, we will stop that there. But in the eyes of the State currently, a heterosexual is ... the equivalent institution that exists for heterosexuals - because, remember, they cannot have civil partnerships - is possibly capable of being taken by a religious entity and we are not affording that same possibility to civil partnerships.

The Deputy Chief Minister:

No, we are not and that is why would be ...

Deputy M. Tadier:

So why is that?

The Deputy Chief Minister:

Because the proposal was to bring forward civil partnerships on the same basis as civil partnerships were brought in in the United Kingdom. I am not ...

Deputy M. Tadier:

Well, that is the first flaw.

The Deputy Chief Minister:

It is not a flaw, Deputy. It is the basis on which it was brought forward. Now, you are perfectly entitled and, indeed, it is part of the political process for amendments to be considered and I suspect that you are going to lodge an amendment abolishing Article 34(5) and let us have that debate.

Deputy M. Tadier:

That will depend on the evidence of the panel. Clearly we are evidence based.

The Deputy Chief Minister:

That is fine.

Deputy M. Tadier:

But I still do not see where ... what I and the panel, I think, are getting at; we do not see what the value is of having this Article in here. If anything, it causes problems. It means that we are telling churches what they can and cannot do. We are saying churches cannot perform a civil partnership in their premises if they so desire whereas when it comes to marriage which is the equivalent institution for heterosexuals, there is not that provision. In fact, it is the opposite because it used to be the case, did it not, Senator, that religious individuals could not be registrars for marriage but now it is a case

they can.

The Deputy Chief Minister:

There is a difference between the people that can perform the marriage and the place in which it is conducted in the Article ... the paragraph that you are referring to is the place in which it can be done. This is a serious issue on which there needs to be a serious debate and to reflect the magnitude of this issue. It is not a casual issue. It is not something that is a small issue. The proposal in the United Kingdom to remove, and it is just a proposal, it is a consultation to remove the Article that you have raised, is the subject of a detailed 92-page consultation. So it is not a minor issue. It is a fundamental issue.

Deputy M. Tadier:

But that is because they have this clause. Surely, if we did not have this clause in the first place we would not have to have a costly and length consultation period and then followed by costly law-drafting time, at a time when you are trying to save significant amounts of money for the taxpayer.

The Deputy Chief Minister:

I do not think that is fair. It would be wrong to almost slip in a Civil Partnerships Law without the provision and the separate distinction between what can be celebrated in terms of a civil partnership and where it can be celebrated. I may well agree with you that, ultimately, civil partnerships ought to be able to be performed on religious premises but I think it would be wrong not to go through a proper process of discussion with faith communities and with the Island about this issue and with the gay and lesbian groups. It is not a casual issue. It is a really important issue ...

Deputy M. Tadier:

Can I just ask 2 more ...

Deputy R.G. Le Hérissier:

Ask 2 and then we will jump in.

Deputy M. Tadier:

The first one is, I think, first of all why are you opposed to giving the same-sex couples the same choice that heterosexual couples have about having a religious aspect to their ceremony. The second question is; where is this opposition? Where is the opposition coming from? Who is saying we do not want our churches to be able to decide what we can and cannot do in our own premises?

The Deputy Chief Minister:

First of all, it is not an issue as I am advised for Quakers because Quakers, according to their own tradition and the rules within Quakers, they will be able to perform civil partnerships and, indeed, civil marriages in the way that they currently do. That is their choice.

Deputy M. Tadier:

They will not be able to perform civil partnerships.

The Deputy Chief Minister:

No. Sorry, they will be able to conduct the same service or whatever Quakers ... I am afraid I have not been to a Quaker celebration so I do not know but they will be treating marriage and civil partnerships on the same basis because they do not register their premises. Now, there is a debate to be had with the established churches as to whether or not they want to have the ability to opt in. This law is not attempting to enter into the debate about marriage in the eyes of the church. It is - as I repeated earlier and you will be sick of me repeating it - a relationship which is equivalent to marriage in the eyes of the State and that is what this law is about. If you are going to change it, if you are going to make a step, if you were going to move eventually to a situation where you would allow same-sex marriages, then removing that which is a discrimination, I accept that, you would remove that and you would eventually move to mirror and introduce the concept of same-sex couples

being able to enter into a civil marriage. Those are the steps that you would evolve. I note with interest that while France has the equivalent of a civil partnership, the French Parliament voted down the Bill presented yesterday in the French Parliament to legalise ... to do the same-sex marriage issue. This is a live debate which is not going to go away and is going to evolve over time.

Deputy R.G. Le Hérissier:

I wonder if I can jump in, and just pursuing this; how extensively were you lobbied over this particular provision? Or the Chief Minister's Office or the legislative committee? How extensively were they lobbied?

The Deputy Chief Minister:

On what particular issue?

Deputy R.G. Le Hérissier:

On the issue of sanctifying the relationship within a religious premises?

The Deputy Chief Minister:

Tom, I do not know if you could help?

Acting Assistant Chief Executive:

One.

Deputy R.G. Le Hérissier:

One?

Deputy M. Tadier:

So you had one protest, so the reason that we are keeping this ...

Deputy R.G. Le Hérissier:

One church or one person?

Acting Assistant Chief Executive:

No, that was your ... we have had no representations.

Deputy M. Tadier:

So we put this provision in the law which takes away the autonomy of churches ...

The Deputy Chief Minister:

No, Deputy. That is not right.

Deputy M. Tadier:

... and that there was no representation from them, is that what was being said?

The Deputy Chief Minister:

No. No, that is not right.

Deputy M. Tadier:

Okay.

The Deputy Chief Minister:

We have been very clear from the start that the legislation would be presented to the Assembly on the basis that it is purely a secular arrangement.

Deputy M. Tadier:

Exactly. On what was that position predicated?

The Deputy Chief Minister:

It was predicated on the consultation that was originally carried out and the States has made a decision and it would be against a States decision, it would be against the instruction I think the Council of Ministers has been under to present a law which is a Civil Partnership Law, which is not something which is moving and a step forward in terms of a move towards same-sex marriage as opposed to civil partnership being an equivalent of same-sex marriage.

Deputy M. Tadier:

Why do we always talk about moving civil partnerships towards marriage as if marriage is some kind of ultimate goal? It could well be that marriage moves down to civil partnership status.

The Deputy Chief Minister:

If you want to wreck the relationship which is akin to marriage then you would allow multi-sex civil partnerships. That is what ...

Deputy M. Tadier:

Wreck the relationship which is akin to marriage?

The Deputy Chief Minister:

You will know this better than I do; in the U.K., the attempts to undermine the status of the Civil Partnership Law were that you allow it to be available to multi-sex couples. That is what all of the gay and lesbian lobby groups were fearful of, and I understand their fear, is that you effectively create a civil partnership which is available to multi-sex couples because then you are genuinely saying that you have marriage, civil marriage here, and you have this other thing called civil partnerships which, by the way, heterosexual couples can opt whether or not they are going to go for the civil partnership route or the marriage route. You want to create the equivalent of civil partnerships on the equivalent of marriage, then you will preserve one for same-sex couples and one for heterosexual couples. It is an important issue.

Deputy M. Tadier:

I have been researching this perhaps as much as you have, although maybe not. But if I read a quote to you and I would like you to comment on it. It is from a Professor Robert Landel, who is at Harvard University and he gave lectures on new morality. He said that: "The debate over same-sex partnerships is fundamentally a debate about whether gay and lesbian unions are worthy of the same honour and recognition that in our society State-sanctioned marriage confers." Do you agree ultimately with that? The debate about same-sex unions is about whether or not we acknowledge that gay and lesbian relationships are worthy of the same honour that we bestow to heterosexual relationships.

The Deputy Chief Minister:

You quoted that individual in your remarks in the original States and from those remarks it is clear that you believe, and I understand and respect your view, that marriage should be available to same-sex couples and multi-sex couples.

Deputy M. Tadier:

No. No, the question is ... we are not here to look at my views. The question I asked of the Chief Minister's Department is; do you agree - and again it is a simple yes or no answer - that gay and lesbian unions are worthy of the same honour and recognition of heterosexual relationships, heterosexual unions?

The Deputy Chief Minister:

Yes, and that is why I am representing to you that the best way to achieve that is to afford same-sex couples a relationship which in the eyes of the State is identical to civil marriage. In the eyes of the State. That is what all of the consequential ... that is why this is, unfortunately ...

Deputy M. Tadier:

But it is not because we have afforded religious ... sorry, to interrupt but ...

The Deputy Chief Minister:

I said in the eyes of the State.

Deputy M. Tadier:

In the eyes of the State but the State has then conferred the ability for a religious leader to perform marriage for the State so we have outsourced marriage to churches to be performed by the State but we will not afford that same privilege to civil partnerships.

The Deputy Chief Minister:

I would stop short of saying ... I am not here and I am not going to judge or make observations about religious recognition of same-sex relationships. I am here in a secular capacity, requested to make representations of a relationship in the eyes of the State. There is a debate internationally about the move on in terms of allowing same-sex marriages. That is going to continue.

[11:15]

This is in the eyes of the State, the equivalent recognition. You use the word "honour" et cetera and I understand those words. Same-sex couples will receive that recognition with the passing of a Civil Partnership Bill which is exclusively for same-sex couples.

Deputy M. Tadier:

I think that is understood.

Deputy R.G. Le Hérissier:

Okay. Yes. Not that we will draw a line under it but I think we will move on to other areas of questioning because clearly there is a difference of approach. Going from the broad issues to the more technical issues, there is a massive list of laws which are going to be amended as a result of this and we have had concerns raised about the Housing Law. We obviously know the never-ending saga of the Inheritance Law and the fact that for good and for bad there has not been revolutionary or radical change to Jersey Inheritance Law. So, essentially, you will inherit the legal system. Any issues that you can think about that have arisen that will continue to pose problems even if this law were to be implemented?

Acting Assistant Chief Executive:

There will always be issues with such a complex piece of legislation. It is the consequential amendments, as you say, that are the issue but I should explain that the law you have there is the primary legislation that needs to be changed. There will have to be subordinate legislation changes between now and when the law comes into place to bring everything into effect, one being housing regulations. That has been raised as an issue but we do not see it as an issue because the housing regulations will be changed. It is only subordinate legislation to give full effect to civil partnerships in the housing regulations.

Deputy R.G. Le Hérissier:

Can you just briefly tell us what is the issue that has been brought to you about housing?

Acting Assistant Chief Executive:

It is just the fact that some lawyers have noted that the housing regulations at the moment, there is no mention of housing in the existing Civil Partnership Law. It needs ... if you like, it was seen as an omission but it is not. It is in the back of our train for the law draftsmen to change. So, yes, the housing regulations will be changed before the law is implemented.

The Deputy Chief Minister:

That is obviously regulations as opposed to statute. So, obviously, the law needs to be passed and then the Privy Council approval?

Acting Assistant Chief Executive:

While these are away at Privy Council a lot more drafting needs to go on.

Deputy R.G. Le Hérissier:

What other areas pose, in your view, problems or issues or challenges?

Acting Assistant Chief Executive:

Difficult to say the issues. The issues are legalistic. I can say the actual volumes are small but there has been some disquiet, if you like, about the extent of the changes you would have to do for income tax, for instance. Income tax is quite a complicated piece of law. If I may say, it is gender specific so making civil partnership match that caused us a few problems. That was done but to give it full effect you have to change forms and procedures to give proper rights to people. Similarly with social security. So there are issues around the one-off costs of changing the forms and procedures.

Deputy R.G. Le Hérissier:

But on income tax, you made a very good point, Tom, that it is gender specific. What solution have you come up with to make it compatible with this law?

Acting Assistant Chief Executive:

Basically, to give civil partners a right to choose Partner A and Partner B because there are differences in allowances between male and female and they have the right to choose which one is which and that gives full effect to the same rights as a married couple. They have the choice to say which one becomes the premier earner, if you like, in the household.

The Deputy Chief Minister:

But that would not result in a same-sex couple being at any disadvantage to a heterosexual couple because, effectively, you can, you know, in a modern world you have an earning working mum and a house father and vice versa in the same way that you have that in relation to civil partnership. So the effect of it, while it is a bit tricky because the legislation did not originally envisage single sex, in fact, the end result is going to be that we will have achieved the equivalent. It has been a little difficult. As Minister for Treasury and Resources you would probably like to move to a single assessment but that is a ... because we can deal with a whole raft of other issues in relation to the interaction between social security and income tax but we are working on that as well.

Acting Assistant Chief Executive:

I think social security is slightly different. Back in 2001 the laws were changed to make it less gender-specific, if you like. It will be individual-based so the problems they have with Survivors' Benefit in the U.K., did not materialise as much although there is an amendment for the Survivors' Benefit in the air.

Deputy R.G. Le Hérissier:

What about an issue which has probably more resonance in terms of people who are not necessarily supporters, or natural supporters, should we say, of this law? What about the Adoption Law? How have you dealt with that? Any changes?

Acting Assistant Chief Executive:

There are changes in the Adoption Law to make it explicit, if you like, that you can adopt as a civil partnership. It happens now. That is purely because the Adoption Law does not explicitly exclude it. So it happens now. So basically the new changes to the Adoption Law are just to clarify that position.

Deputy J.M. Maçon:

Yes, just going back briefly, you talked about the different forms and procedures that will have to go forward and a lot of laws are going to have to be changed and subsequently a lot of advice is going to have to be given. What factoring has been made into the training of staff on the new procedures and advice and things, and information packs and things like that which will need to be produced?

Acting Assistant Chief Executive:

Fortunately, that will be left to the departments to do. The principal ones are Social Security and Tax and I know they have already those in hand. Other departments have to look at their literature, their advice, particularly at Health with the Adoption Law. It is not for me to guide them in any way but we are advising them if they want any help about what the interpretation of the law is and whatever, we can do that.

Deputy J.M. Maçon:

So that has been flagged up with the departments?

Deputy M. Tadier:

Is the department expecting any opposition to any of these amendments, for example, the Adoption Law?

Acting Assistant Chief Executive:

Not heard of any.

The Deputy Chief Minister:

It has been discussed at the Council of Ministers and all Ministers have had to sign off their own legislation and while there is obviously a difference in view of one Minister who has made his position quite clear, I think that all Ministers have signed off their own legislation.

Deputy R.G. Le Hérissier:

Obviously, back to the list of legislation there was one overarching piece which despite the very brief reference made to it, we know is of enormous importance in this context, that is the Human Rights Convention. We know this game that is played in the States that we are not allowed to look at the detail of the advice you have received but quite clearly it must be very important in this context. So can you tell us what areas you have been looking at to make sure that this statement stands up to scrutiny?

Acting Assistant Chief Executive:

Obviously, we have been advised by the Law Officers but there are also various public documents including the consultation with the U.K., and going back to the concept of the difference between marriage, heterosexual and marriage for homosexual couples. That was clearly not a breach to have that marriage for heterosexual and civil partnership for same-sex partnership is not a breach of the Human Rights. That has been proved by a case in Austria.

The Deputy Chief Minister:

It is worth just probably repeating this lest there be any lack of confidence which I do not have in terms of our Law Officer advice, the Chief Minister has signed a declaration on the convention saying that it is human rights compliant and that seems to also ...

Acting Assistant Chief Executive:

U.K. advice as well.

Deputy R.G. Le Hérissier:

Did that advice, Deputy Chief Minister, deal with the points ... I do not wish to open the former debate again. Did it deal with the points that Deputy Tadier raised of is a civil partnership a real marriage? Because to his mind, obviously, it ...

The Deputy Chief Minister:

It is worth saying that in the recent case of *Schalk and Kopf v Austria*, against the European Convention on Human Rights found that marriage only for opposite sex couples and civil partnerships only for same-sex couples did not breach Article 8, the right to private and family life Article 12, the right to marry; and Article 14, the prohibition of discrimination in the rights granted by the E.C.H.R. (European Convention on Human Rights). It also found that it is for national law to determine whether or not to permit same-sex marriage. So that is a fairly definitive statement. That is the U.K.'s position. Obviously, as a jurisdiction that are signing up to the European Convention of Human Rights and that is, obviously, relating to the Austrian case.

Deputy R.G. Le Hérissier:

That was an incredible opt out that you identified at the end, it is up to each national state as to whether it wishes to proceed.

Deputy M. Tadier:

But they are obliged to provide civil partnerships, presumably.

The Deputy Chief Minister:

Pardon?

Deputy M. Tadier:

But they are still obliged to provide civil partnerships, are they?

The Deputy Chief Minister:

Not all, I do not think every single European Union country is now enacted. But it is, clearly ...

Deputy M. Tadier:

But they would be under pressure to.

The Deputy Chief Minister:

Well, I mean, quite apart from the legal Human Rights compliance issue they are national ... interestingly, which I did not know, is that apparently in France a January poll published by Canal Plus found that 58 respondents in France believes that gays should be able to marry up from 45 per cent 5 years ago. Now, there is clearly an evolution of public opinion on this issue.

Deputy M. Tadier:

Taking it one step back because I appreciate now we have had ...

The Deputy Chief Minister:

So it is human rights compliant. We think there is a very ... a certificate has been signed on advice and that also then ... there is evidence from other jurisdictions.

Deputy R.G. Le Hérissier:

You saw the advice, did you?

The Deputy Chief Minister:

The Chief Minister signed it. I did not.

Deputy R.G. Le Hérissier:

He saw it? Yes.

Deputy M. Tadier:

Part of the problem, taking it one step back, it has been acknowledged the fact that certainly there is no obligation for any E.U. (European Union) country to provide marriage for same-sex couples, as

soon as we say there is difference and that civil partnership is not marriage and vice versa, then it would presumably seem okay if we say: “Well, there are significant differences in entitlement between civil partnerships and marriages.” Now, clearly, from a pragmatic point of view we try and make them as fair and as equal as possible. Would there be anything to stop, for example, the entitlement under one from being vastly different to the other?

The Deputy Chief Minister:

There is no point in dancing around this issue. You believe, it is clear from your observations which are absolutely clear from the original debate, that you believe in same-sex marriage and that is a fine, legitimate issue.

Deputy M. Tadier:

I am not bringing that ... that is not the point I am making. I am trying to take a step back and saying that given that the 2 are not the same, to what extent would it be possible to say: “Not only are we not going to allow civil partnerships to take place in churches but we are also going to say that civil partnerships are not entitled to other things which married couples are”?

The Deputy Chief Minister:

But we are not saying that.

Deputy M. Tadier:

But we could though.

The Deputy Chief Minister:

But we are not and we do not want to. We want to give the civil partnership the status, in the eyes of the State, in the eyes of the States of Jersey, the exact entitlement that the civil marriage has.

Deputy M. Tadier:

Is it fair to say that there has had to have been some very clever thinking with regard to tactics because we know that we have a diverse States membership? If I can give you an example, one of my neighbours would not have supported this law if they thought it was marriage. The Minister for Home Affairs did not support this law because he did think it was marriage. I had reservations about supporting this law because I did not think it goes far enough because I know it is not marriage. So we are having to balance all these issues. We know it is marriage, essentially, do we not? We know to all intents and purposes this is marriage but we cannot call it marriage because we live in a society where marriage is reserved for where it has religious connotations. Is that a ... you cannot voice that necessarily ...

The Deputy Chief Minister:

We could spend hours discussing this. The definition of marriage ...

Deputy R.G. Le Hérissier:

So your question is, does the Minister agree with your observations?

The Deputy Chief Minister:

No.

Deputy M. Tadier:

Is that a valid ... was that considered ...

The Deputy Chief Minister:

No. I mean, I understand what the Deputy is saying and I will agree with him in relation to some of his views.

Deputy M. Tadier:

That could mean anything.

The Deputy Chief Minister:

Okay, some things. But let us be clear, the definition of marriage in the eyes of the States of Jersey is the stated relationship between husband of wife, the institution of marriage, the contract made by man and a woman to live as husband and wife. That is what marriage is.

Deputy M. Tadier:

Okay.

Deputy R.G. Le Hérissier:

Okay. I wonder ... we are in the last few minutes and why I appreciate my colleague has brought up some very interesting philosophical issues, the rest of the panel is struggling with the more mundane practical issues, I am afraid.

Acting Assistant Chief Executive:

Sorry, can I just phase back to the human rights aspect? Obviously, human rights aspects change as time goes on so we have a watching brief, if you like, to watch what is going on in the European courts and in the U.K., particularly with things like ... I do not know if you know the case about the Burden sisters? They wanted to form a civil partnership to get around the Inheritance Act. So we look at things like that and that is a case that is ...

Deputy R.G. Le Hérissier:

Maybe you could very quickly ... you have laid yourself open to a question. Could you identify what the major H.R. (Human Rights) changes have been since the passage of the in principle to the point we are now at?

Acting Assistant Chief Executive:

I could tell you that the *Burden* case has been looked at. There is this *Schalk and Kopf* case was one that came up. There are still appeals outstanding on some of the cases.

Deputy R.G. Le Hérissier:

How was the *Burden* case seen as trying to evade obligations?

Acting Assistant Chief Executive:

Well, it is basically 2 sisters coming together who are looking at trying to pass assets on and that is one of the issues that came up with intergenerational relationships.

[11:30]

Deputy M. Tadier:

That could not happen in Jersey, could it? Because we have provision to stop relatives having civil partnerships, presumably.

The Deputy Chief Minister:

Well, 2 sisters cannot get married.

Deputy M. Tadier:

No. But this is not marriage, Senator. This is civil partnership.

Deputy R.G. Le Hérissier:

No, I cannot go down there again.

Deputy M. Tadier:

Two sisters cannot get married.

Deputy R.G. Le Hérissier:

Is that your review of the H.R. issues?

Acting Assistant Chief Executive:

Yes. There are also questions around prescribed relationships, again with siblings and things like that. They were in ...

Deputy M. Tadier:

Two brothers cannot enter into a civil partnership.

Deputy R.G. Le Hérissier:

The new H.R. in this statement reflects these new developments?

Acting Assistant Chief Executive:

Yes.

Deputy R.G. Le Hérissier:

Even though we are not permitted to ever look at these statements?

Acting Assistant Chief Executive:

2011.

Deputy R.G. Le Hérissier:

Okay. Very quickly we have to wrap up. I am going to ask Deputy Maçon, who has been enormously patient.

Deputy J.M. Maçon:

Just very briefly, you highlighted that ongoing regulations have to be changed. Can you just indicate what else will have done? You indicated the housing regulations rules have to change but what else?

Acting Assistant Chief Executive:

Most of the laws have subordinate legislation that qualify the primary legislation. Social security, for instance, we will have to change some of their orders and claiming provision orders will have to change. I am just trying to think of other subordinate legislation. But as I said there are ... it will have to go to the States.

The Deputy Chief Minister:

We have a list of ... I do not know whether the panel has seen the Council of Ministers paper on all of them, the massive list of consequential legislation?

Acting Assistant Chief Executive:

That was in the original proposition. That is primary legislation.

The Deputy Chief Minister:

Okay, but the thing that the Council of Ministers saw in relation to all of the individual ministerial legislation, it is all in there.

Acting Assistant Chief Executive:

That is primary.

The Deputy Chief Minister:

All right. Primary, so that is all subordinate ...

Acting Assistant Chief Executive:

We can try and liaise with the Law Draftsmen because he has, obviously, this in hand.

Deputy J.M. Maçon:

I think it would be good to give Members an idea of what else will happen.

Deputy R.G. Le Hérissier:

Yes, it would be good to see the complexity ...

Acting Assistant Chief Executive:

There is the issue that we have not covered but I think you have one of the Law Officers attending upon you to talk about inheritance.

Deputy R.G. Le Hérissier:

Yes, we have had that discussion.

Acting Assistant Chief Executive:

You have had that? We have had to do away with the concept of widow and widower in terms of the fiduciary right and ... it was completely wrong.

Deputy R.G. Le Hérissier:

Okay. Anything else?

Deputy M. Tadier:

No, I think that is fine. Should I thank these individuals for coming in? Thanks for coming in. We appreciate it is a very complex law, as well.

Deputy R.G. Le Hérissier:

Have they any wrap-up comments?

The Deputy Chief Minister:

I welcome the fact that there are going to be some amendments on the details. It is healthy thing to have.

Deputy R.G. Le Hérissier:

There may be.

The Deputy Chief Minister:

There may be. There may well be. I think they are expected. All the amendments to improve the legislation, to deal with any issues of making sure that it is equivalent to marriage are fine. No doubt there will be further considerations by the States about the issue of marriage and making that available at some point after an original in-principle proposition to allow that for same-sex couples. But what we should not do, and I know I have said it about 10 times, but I do not think we should be trying to legislate for same-sex marriage by the use of the Civil Partnership Law. I think that is quite an important principle that we would hold on to.

Deputy R.G. Le Hérissier:

Anything else? Okay. Thank you both very much indeed for coming.

[11:33]

STATES OF JERSEY

Education and Home Affairs Panel Review of Issues Surrounding Review of Financial Management of Operation Rectangle

THURSDAY, 25th AUGUST 2011

Note: The witness has not corrected the transcript

Panel:

Deputy R.G. Le Hérissier of St. Saviour:
Deputy T.M. Pitman of St. Helier (Chairman)
Deputy D.J.A. Wimberley of St. Mary

Witnesses:

Chief Officer for Home Affairs

In attendance:

Scrutiny Officer

[11:41]

Deputy T.M. Pitman:

When you look back now, Chief Officer, what do you think about the Finances (Jersey) Law 2005 and its impact on everything?

Chief Officer for Home Affairs:

Before I answer that, can I say something else?

Deputy T.M. Pitman:

Of course you can.

Chief Officer for Home Affairs:

A lot of the questions which I think you might have and a lot of the ground that I want to cover today arise out of [retired Chief Officer of Police]'s last transcript. If it helps for good order it might help to turn the pages on that transcript at some point, but you are in charge. Because a lot of the documents I have produced, which are evidential, refer to the things that he has said, or he has raised. So, that would be a way of proceeding which I think would be an organised way. I will come back to your question.

Deputy T.M. Pitman:

I should say we got some of this information in very late, which is not our fault, or probably your fault.

Deputy R.G. Le Hérissier:

I have not read your memo about the evidence of [retired Chief Officer of Police].

Deputy T.M. Pitman:

That is fine. If we get back to the Jersey Finance Law and its impact on how we got where we are today.

Chief Officer for Home Affairs:

Well, in many ways I think it is a side issue because ever since 2005 we have had to run the departmental accounts in accordance with the Finance Law. It is something we do every day and in many ways the fact that there was a major investigation which spent £7.6 million should not have made a lot of difference because we run and manage the accounts in accordance with the law every day. All we are talking about here is the number of transactions and the quantum, from my point of view. The other issue, I think, which is why we are here is whether the resources were used properly and that is where I think I then depart from my job and I would expect to look to the head of whatever service it is to see that those resources are used properly.

The Deputy of St. Mary:

Can I come back on that? To repeat the question really, what do you think now about the Finances (Jersey) Law 2005 and how it impacts on Home Affairs and, say, to Jersey Police? What do you think now about that law? What is your view of it?

Chief Officer for Home Affairs:

Well, it is such a broad question. It is unspecific.

The Deputy of St. Mary:

All right. Do you think that that law should be changed so that the Chief Officer of Police is an accounting officer?

Chief Officer for Home Affairs:

Well, that is a specific question.

Deputy T.M. Pitman:

I gave you lots of leeway. Be fair.

[11:45]

Chief Officer for Home Affairs:

Yes. I now think the Chief of Police should be an accounting officer. I did not. [retired Chief Officer of Police] is quite right in that part of his transcript of what he said, that when we were setting up the arrangements for the move to ministerial government we had a difference of opinion. I thought that we could run things as they are now. I will tell you why if you like before that. I think with the benefit of hindsight when you have a major inquiry like this whatever weaknesses there are, and Mr. Warcup described them as systemic, whatever weaknesses there are show through and where you have a service that is entirely its own master, except that it clearly reports at the moment to the Minister and does not report to me, then there will be a tension set up at times like this and it would be far better in hindsight if the Chief of Police was an accounting officer. Do you want to know why I thought otherwise?

Deputy T.M. Pitman:

Yes.

Chief Officer for Home Affairs:

[retired Chief Officer of Police] arrived in November 2000. Coincidentally I was appointed director of the Home Affairs Department in November 2000 as well but I have been on secondment since that February to set up the department; it was a new department. One of the first things I did after we were both in post, and I remember it well, I went to see [retired Chief Officer of Police] because one thing I had to do setting up a department was to bring together those functions of it which were generic to the whole department; in other words they serve the prison, the fire service, into one place because it is just a sensible and efficient way of running things. The 2 entities that that referred to were Finance and Human Resources. At that time the police had a finance and administration manager and other finance staff, so I went to discuss with [retired Chief Officer of Police] whether

he would agree to those staff coming with me to the Central Home Affairs Department and running it from there. His actual words were: "I have no problem with that provided there is no degradation in service." That is what he said and we agreed. So, the point I am making is that for 5 years before ministerial government and for 3 years since we have run the Home Affairs financial management and accountability without any problem.

The Deputy of St. Mary:

Can I just clarify that? My recollection of [retired Chief Officer of Police]'s evidence, and I am not absolutely sure, I have it here but I will not read it all to check, but I am pretty sure he said that from the outset when he came to Jersey he felt that he had to have accounting authority as well as operational authority and that was on the table from the word go. So, I just wanted to clarify that your recollection and his recollection seem to be different.

Chief Officer for Home Affairs:

Well, I stand by what I have said. The fact is he had a very good service from the 3 accountants that make up the House Affairs Finance Department throughout the time that he was in Jersey and he acknowledges that in a lot of the papers. The fact that they are sitting with me and not down at Police Headquarters is immaterial. One of the finance managers goes to the force management board meetings, provides all the updates and this is why I say, in answer to the first question, in a sense it does not matter because we have had to abide by those regulations and the law for the last 3 or 4 years and we were operating successfully for 5 years before it.

Deputy T.M. Pitman:

If I could ask one related question and then I will let my colleagues step in. Something very surprising the Minister just said to us was that according to him the offer was made to [retired Chief Officer of Police] to effectively take on the role of accounting officer. Now, as I understand it, and I am not an expert, that could have had no legitimacy under the law, so surely that could not work because where would he stand if a problem came up, as of course it did, and disciplinary issues followed. How could that offer have really been made? How could that have worked? I do not understand.

The Deputy of St. Mary:

Can I rephrase that as well, was the offer made, or was the Minister's recollection wrong?

Chief Officer for Home Affairs:

Well, not by me it was not, but with the current Chief of Police we have already discussed it and we are planning to move to a system of 2 accounting officers from January.

Deputy T.M. Pitman:

But if the offer was not made by you, who could it have been made by?

Chief Officer for Home Affairs:

Well, the Treasurer has a role. Various people have opinions and can be influential. If the Treasurer, for example, thinks it is best practice, or if the Comptroller and Auditor General wanted to insist then they would make that point, but nobody has pushed it to the point where it has to happen.

Deputy T.M. Pitman:

But you would have known if that offer had been made, surely?

Chief Officer for Home Affairs:

Yes, I would. Yes. There has been another driver of course. We have been waiting to get police authority up and running, or established in law, and I would say for a long time the most logical time for the Chief of Police to become an accounting officer is when we move to a police authority system. I now think: "Well, let us not wait for that; we will do it in advance of that."

Deputy T.M. Pitman:

But for the record, you are completely unaware that offer was ever made, from what you said.

Chief Officer for Home Affairs:

An offer made to [retired Chief Officer of Police] to become a ...

Deputy T.M. Pitman:

Yes.

Chief Officer for Home Affairs:

I think so, yes. Nothing stands out in my mind. I hesitate because it is difficult to remember.

Deputy T.M. Pitman:

It is quite a big issue though, you would think it would stand out if it had been put to you. What do you think? It impacts on your power so you would think you would recall it, would you not?

Chief Officer for Home Affairs:

It is probably true that it has been discussed but it has never been formally. I think that is the way to say it. Nothing has ever formally been put to me that somebody has written to me and said: "We want to make the Chief of Police an accounting officer, please can you submit your reaction to that" or whatever. No.

Deputy T.M. Pitman:

Okay.

The Deputy of St. Mary:

Okay. Well, thank you for that and maybe we can pursue it through the office. I want to ask about this business of the relationship between Home Affairs and the police in terms of oversight of the inquiry, which is why we asked the first questions around what you thought about the Finance Law. I am referring to [retired Chief Officer of Police]'s evidence to us on his page 12. He says: "When it became clear that Rectangle was likely to have significant financial implications I asked the Chief Officer for Home Affairs [I think it was you] what arrangements he wanted in respect of financial management." Can you remember this communication from [retired Chief Officer of Police]?

Chief Officer for Home Affairs:

No. Can you show me it?

The Deputy of St. Mary:

Sorry, it is page 12 of his evidence.

Chief Officer for Home Affairs:

No, the communication.

The Deputy of St. Mary:

Well, no, we cannot because I think we have asked him for this exchange but he only spoke to us quite recently. But I am asking you whether that letter reached you.

Chief Officer for Home Affairs:

I do not have a letter like that.

The Deputy of St. Mary:

It is in his evidence to you. He quoted it from his statement to the Wiltshire Inquiry and that has now been redacted and it has to go to him for release and then it comes to us. We have asked for it. So, we do not have the detail. We do not have the date or the actual detail but I am putting it to you and you cannot remember receiving that request?

Chief Officer for Home Affairs:

No, the only letters I have specifically with [retired Chief Officer of Police] are the ones in June 2008 that are in your bundle.

The Deputy of St. Mary:

Okay. Well, that leaves us in a bit of a quandary. He goes on: "I was conscious that it was his decision to take. He was the accounting officer and he had a legal responsibility for the budget" which is true under the Finance Law.

Chief Officer for Home Affairs:

Yes.

The Deputy of St. Mary:

"He said that he would appoint the senior finance officer, who I know, to work directly with the Rectangle team."

Chief Officer for Home Affairs:

No, that was in connection with the F.O.B. (Financial Oversight Board).

The Deputy of St. Mary:

Okay, so you are saying that this must refer to the F.O.B. it cannot refer to something before the F.O.B.?

Chief Officer for Home Affairs:

No, and in any case I have just had a meeting at 8.30 a.m. this morning with the Gold Group finance sub-group on the current murder investigation and the person at the meeting from the police is the Police Finance and Administration Manager, set up under the major incident room admin procedures, which are the procedures that they did not set up under for the Rectangle Inquiry. The point I am making is that it would appear that the proper procedures are being followed for this one and if you have read the Wiltshire Police Report one of the things that they remark on is that that did not happen. So, here we are 10 or 11 days after a major incident and the police have already swung into action. So, despite the fact that they are heavily involved with interviewing the prime suspect they have already set up those procedures and I am already able to have a meeting with the person who, from their end, is organising all the financial issues to do with the murder.

The Deputy of St. Mary:

Well, that is clearly a good outcome, if you like, a lesson learned. I am just trying to chase down this exchange which either did not happen or you are saying that it relates to the Financial Oversight Board only, which was set up in July, and it does not relate to the arrangements previous when a lot of the money was being spent very quickly.

Chief Officer for Home Affairs:

I have never set myself up in opposition to [retired Chief Officer of Police].

The Deputy of St. Mary:

No, we are not saying you should.

Chief Officer for Home Affairs:

We enjoyed a working relationship for 8 years ...

The Deputy of St. Mary:

So, then ...

Chief Officer for Home Affairs:

I was just going on to say, that was a preamble, that there is an email in there where he very correctly flags up in February 2008 shortly after the then Chief Minister made his now infamous statement about all necessary resources, where he was the first to flag up, where do we stand in terms of spending the police budget? If you want I will find it for you.

The Deputy of St. Mary:

No, I can remember that.

Chief Officer for Home Affairs:

I am not saying that he never thought about finance.

The Deputy of St. Mary:

No, and the response was what ended up happening was he took it from his police budget and ran on air and hope until it was organised and then the money was ...

Chief Officer for Home Affairs:

Yes, and I think that is what the Wiltshire Police have concluded.

The Deputy of St. Mary:

I am concerned with what the oversight was on the inquiry and how it was set up or not. You are saying that with this most recent event the police have a financial manager set up by themselves. I will just carry on with the transcript: "There you go: 'There is the man with the big stick' I say. [retired Chief Officer of Police] says, 'Yes'. I say it never happened because it is not in the BDO report, this person from your department working directly with the Rectangle team and then [retired Chief Officer of Police] says: 'I think that person was appointed to work with the Rectangle team. I know it became a concern as to how effective that arrangement was.'" So, I am just saying that this is a different version. It is not about the F.O.B., the Financial Oversight Board, as I understand it, and this person was appointed to work with the Rectangle team and he had concerns about whether it worked and yet I do not see this in the BDO report. So, this is what I am putting it to you.

Chief Officer for Home Affairs:

Go back to where we started in terms of the way we normally operate. Right as far back as when we both were appointed in 2000 [retired Chief Officer of Police], and they still do, enjoy a finance manager sitting on their monthly ...

The Deputy of St. Mary:

Yes, S.M.T. (Senior Management Team).

Chief Officer for Home Affairs:

It happens to be the same person. Nothing has changed. Now, that person was also providing the financial management backup in terms of the analysis of costs during the time of Rectangle and then a finance director, who works directly to me, both of us were on the Financial Oversight Board and then the Gold Group which succeeded it, but at no point did the police appoint their own finance manager sitting inside the investigation team to manage all their costs and resource handling and that is a point criticised by Wiltshire. Not for me to do that, that is standard operating procedure for major enquiries. If [retired Chief Officer of Police] had asked me: "I cannot get anyone, I need to have one of your 3 people" we would have talked about it but that was never requested.

The Deputy of St. Mary:

The problem from my point of view is that [retired Chief Officer of Police] in his evidence, and I am just trying to clarify this because this is an absolutely critical issue, [retired Chief Officer of Police] in his evidence to us said that he did ask you what arrangements you wanted in respect of financial management and presumably he asked you that because you are the accounting officer for his department. This is the issue, is it not, what feels to me like 2 stories. You are saying: "They should have set up under M.I.R.S.A.P, they should have set up their own financial person" and [retired

Chief Officer of Police] is saying that he wrote to you saying: “What financial arrangements? Can we talk about it? Can we sort this out because I have an unbudgeted huge expenditure coming up” and then there is the division between the 2 stories we are getting.

[12:00]

Chief Officer for Home Affairs:

Unless I am missing something or correspondence, but I suppose another thing I would say to you is, why would I on 27th May 2008 write to [retired Chief Officer of Police] seeking assurances about the way that he is handling the spend on the inquiry? Again, I think his transcript gives the impression that he was the instigator of those. No. I would go as far as to say that if I had not written to him in May about it I would never have had any contact with him about it because it was not uppermost in his mind.

Deputy R.G. Le Hérissier:

If I can jump in now, what were the precise circumstances, or immediate circumstances, that led you to write that letter?

Chief Officer for Home Affairs:

Well, I do not have the monopoly on wisdom so ...

Deputy R.G. Le Hérissier:

Neither do we.

Chief Officer for Home Affairs:

As soon as the then Chief Minister made his fantastic statement I thought: “We are not going to have enough money” so at various points I sought advice. The first time was in March after 26th February to say to the Treasury, and the letters are in there with the Treasurer: “Excuse me, what am I supposed to do here? Who is going to give me some money? How do I account for it?” I did a similar thing at the point where it was becoming apparent to me that there was a lot of money going out and I was not really sure how it was being accounted for. I took advice from the Treasurer and when you look at them you will see there are emails in there from the Treasurer. When the Treasurer says to me: “Are you sure you have done everything you should be doing?” In fact he said: “If I were you really you ought to seek formal assurance from the Chief of Police about the spend.” That was the trigger for these letters. I am not claiming that this was all my original thought. One takes advice. So, because of that I wrote to [retired Chief Officer of Police] saying: “You need to assure me. You are in charge of the Force, are you using your resources to the best effect?”

Deputy R.G. Le Hérissier:

But from your knowledge of your own role as an accounting officer, do you think a letter was sufficient?

Chief Officer for Home Affairs:

Well, how else does one start?

Deputy R.G. Le Hérissier:

Well, presumably receipts were coming through to your department and people were making ... I know the argument has been put forward, and in fact you may have put it forward at the last hearing, that these were operational issues and we have to take them at face value as they are presented to us but of course there were issues that are states-wide like hotel bills, restaurant bills and so forth where there are standards that apply throughout the service. Were you alerted to any unusual patterns of expenditure that would have demanded strong and immediate intervention?

Chief Officer for Home Affairs:

Do you mind if we go to page 11 of his transcript?

Deputy R.G. Le Hérissier:

Okay.

Chief Officer for Home Affairs:

What he said there is outrageous and it is more than that, it is dangerously outrageous. It is the bit that starts a quarter of the way down. He starts to say that the Deputy could not incur any expenses unless I had signed them off and then he says at the end: "The rules were bypassed and it could only be bypassed by the staff in the Home Affairs Department." Because you are talking about signing off bills, Deputy Le Hérissier?

Deputy R.G. Le Hérissier:

Yes.

Chief Officer for Home Affairs:

That statement was put to me before 17th August when you heard [retired Chief Officer of Police] by the Scrutiny Officer and words to the effect: "What have you got to say about this allegation?" I put in a written rebuttal of that and from what I understand that was not put to [retired Chief Officer of Police] at the hearing. The result of that was that Channel Television in the 1 hour 40 minutes that you talked to him the only thing they reported on Channel was that all the bills had been signed off by the Home Affairs Department.

Deputy R.G. Le Hérissier:

Yes.

Chief Officer for Home Affairs:

I was sick to the pit of my stomach when I heard that. It is just not true. We do not see any bills in the Home Affairs Department. The process is that the person who makes the order or incurs the bill signs it off. I have brought some with me. The vast majority of them were signed by Mr. Harper. The next signatory to that is the clerk who checks that it is completed correctly and has been signed. That clerk at that time did not work for Home Affairs, they were part of the Treasury shared services section. The first we know of expenditure is when it comes up now on the J.D. Edwards system and we are able to make our financial profiling in our reports. I never see any of this stuff and this either needs to be retracted or corrected because at worst it is a lie, but I would not accuse [retired Chief Officer of Police] of lying, it is just ignorant and he shows an ignorance of the process. He did not know how the bills in his own service are being processed.

The Deputy of St. Mary:

Can I say that from our point of view we are looking at a review by BDO Alto who are a professional accountants firm, about whether the expenditure was efficient and effective and in fact they added to their terms of reference about the oversight. This is one of the issues which we feel should have been looked at in some detail in their report. This is the kind of thing that their report should have covered as well as restaurant bills and the detail and yet here we have a big difference of opinion between yourself and [retired Chief Officer of Police].

Chief Officer for Home Affairs:

It is not a difference of opinion, it is fact.

The Deputy of St. Mary:

Well, that is right, I stand corrected. It is a difference of fact and yet BDO have not covered this. I do not recollect reading in BDO that there is an argument about who was signing off ...

Deputy R.G. Le Hérissier:

You are right.

The Deputy of St. Mary:

This is a big part of what they should have been looking at.

Chief Officer for Home Affairs:

In the section on purchase cards there is and that is why there is a focus on entertainment because it happens to be that that is where most of the purchase card stuff is. But the nature of the audit was on how the resources were used and whether they were used in an efficient way. It was not particularly about the minutiae of signing off individual bills. There had been an audit prior to that, which again is in the bundle. There had been an audit in October done by KPMG which did look at a sample of bills and they valued over £1 million and they could not make any adverse observations about them because these are done correctly. It is not about whether they were signed correctly or whether they had been processed correctly. The BDO audit is about the effective use of resources. It is a higher level thing.

The Deputy of St. Mary:

But the issue of authorisation does come up and you and [retired Chief Officer of Police] are totally disagreeing on the facts of that and that disagreement is part of the wider issue of the relationship between the Home Affairs Department and the police and how what is going to be a huge expenditure can be effectively controlled financially. So, those sorts of issues we would expect to be in the review.

Chief Officer for Home Affairs:

Yes. Any senior public servant who handles money, it is common sense. I am legally accountable in the law, that is accepted, but anybody who is spending public money knows that it has to be legitimate and 90 per cent of the time that was Mr. Harper because he was approving most of the bills.

Deputy R.G. Le Hérisier:

Can we come back to that?

Chief Officer for Home Affairs:

Can I just say I am not suggesting it was all illegitimate in that case because he had a lot on his mind at the time.

The Deputy of St. Mary:

Well, C.T.V. (Channel Television) certainly suggested that, so you and we have issues with the accuracy of some of the media.

Chief Officer for Home Affairs:

We all forget, do we not, what was going on at the time? What we thought we had on our plate.

The Deputy of St. Mary:

The pace of it.

Chief Officer for Home Affairs:

The pace of it, what we thought we were dealing with and as I have just said to the Finance Manager this morning: "You do not want me picking my way through everything becoming a blinking nuisance when you have a major murder inquiry." But it is up to the person authorising bills to make sure that that is a legitimate charge to public funds.

Deputy R.G. Le Hérisier:

Can I ask you, and I know this is focusing a bit on your own role, but it is important and although you say BDO is about effectiveness, of course it is about effectiveness based on a proper structure of control. In other words, that there are proper paths of accountability. You as accounting officer, other than this general letter you sent to [retired Chief Officer of Police] in which you asked him to

essentially sign as evidence that everything was honky dory, what did you as accounting officer think was sufficient evidence to prove that expenditure was being correctly and effectively handled within the police? What evidence did you seek?

Chief Officer for Home Affairs:

I think it is in his transcript. He refers to: "I express satisfaction" I think those are the words used. Bear in mind that I do not have any specialist knowledge on police functions and what they do. So, if the senior investigating officer says to me in writing in his email: "I have had A.C.P.O. (Association of Chief Police Officers) over here. They have been over, they have said that my inquiry is an example of best practice. I have had the National Policing Improvement Agency over here. They have not adversely commented on what I am doing. I have my inquiry policy file up and running and I am making entries in there and more than that, in writing, which I have, it is in there, he says that all the expenditure I am incurring is necessary to further the aims of the inquiry. Then I am hardly likely to say: "No, I am sorry, I do not care what you say, I need further evidence" and all that is in there. Those were the professional assurances that were being given at the time.

Deputy R.G. Le Hérissier:

You mentioned this was all going honky dory, this system, from your inception in Home Affairs, when did you realise, or come to the realisation that things were not going well financially?

Chief Officer for Home Affairs:

I hesitate there because it is like that film which has 2 scenarios running at the same time. God forbid, say that there were bodies at Haut de la Garenne, and say this was a multiple homicide, we could postulate whether we would be here today and whether there would be any query on the spend, but after 31st March 2008 when what had been described as a piece of juvenile cranium was later described as a bit of coconut and the thing started to take a different complexion, at that point I think it would be fair to say I probably started to think: "We have spent a lot of money on something which perhaps is not going to turn out on what we thought." So, you then get a concern. I think most people would. States Members staff have a concern. A lot of people started to have a concern about: "What exactly have you been spending all this money on?" At that point, and I think the correspondence bears it out, I sought advice from the Treasurer and I ended up writing to [retired Chief Officer of Police] about whether he could give me the assurance that what has been spent is an effective use of the money. That is about as fair an account as I can give you.

The Deputy of St. Mary:

Would you agree that there is a substantial body of opinion which would say that those issues of the juvenile skull turning into a bit of coconut and the charred corpses and so on, the various issues that do not seem to be resolved, the teeth, that there is a real doubt? You are saying: "Well, the thing turned on 31st March and it suddenly all became, 'Well, frankly why are we doing this?'" In fact, there are quite a lot of people who think: "No, the account given in BDO of those questions is partial and one-sided." So, there is still a debate about that. I am saying you cannot just rubbish it and say: "Well, all that expenditure in 2008, what a wild goose chase" or a lot of it. There have been prosecutions for a lot of it. I mean, there were 1,500 witness statements or something.

[12:15]

Deputy T.M. Pitman:

Before you speak, just because we will get pulled up on it, you said "charred corpses" it was charred bones, fresh and flesh, otherwise we will get accused ...

The Deputy of St. Mary:

Sorry, yes. No, fair enough.

Chief Officer for Home Affairs:

I am not qualified to criticise the conduct of the inquiry myself. Anything that I have said about that

is purely what I have read in here which is the thing that is on the internet which says what, in the opinion of the Wiltshire Police, was wrong with the inquiry.

The Deputy of St. Mary:

But Op Haven said, and the Minister has backed their version and not BDO's, they have said that the decision to excavate was legitimate, the expenses incurred up to a certain point were legitimate. There may have been no issues. What we are looking at is issues around how that expending was controlled, whether it was effective and efficient and so on. We are not looking at whether these police procedures were correct.

Chief Officer for Home Affairs:

No, and that is not part of my ...

The Deputy of St. Mary:

Oh, I thought you were questioning them.

Chief Officer for Home Affairs:

Not at all. I am not qualified to do that.

The Deputy of St. Mary:

Can I take you to the file note, 4th June 2008, which is in the bundle that I think you and our scrutiny officer provided us with. Now, there it says June 2008 you are present, Lenny Harper is present, the Director of Finance is present, and you just go through this. It is looking at the meetings, looking at financial management controls that have been put in place by the S.I.O. (Senior Investigating Officer). That is in part 1.

Chief Officer for Home Affairs:

Yes, I have it.

The Deputy of St. Mary:

At the commencement of the investigation he has followed A.C.P.O., accommodation was checked with States Procurement. A trip to Australia, taking all the factors into account, could be justified. Summary of key statistics was reviewed and expenditure we have put the extent of the investigation in proportion to the level of expenditure. In other words it was proportionate to the scale of what was going on and that gets a tick as well, but it just says: "Was reviewed." So, in June 2008 that meeting was an opportunity for challenge. I am just sort of trying to get hold of where the BDO review comes from with its extensive basically criticisms and that file note which says in June that ... well, what does it say?

Chief Officer for Home Affairs:

Well, what that was was me seeking assurances from the senior investigating officer about the money he was committing and Mr. Harper was able to do that at that time. I did not have a bad feeling after that meeting because I was basing it on those professionals who had come over and he relayed to me what they had said. But irrespective of this meeting on 4th June I still decided to seek verification of what I was being told from [retired Chief Officer of Police], expecting that he was supervising all of this, or supervising the S.I.O. and that was the purpose of the letters in June. I now know of course that perhaps that was not quite what the situation was at the time.

The Deputy of St. Mary:

Sorry, the letter in May? The letter that you wrote to [retired Chief Officer of Police] was 27th May.

Chief Officer for Home Affairs:

Well, the first one in May and June, yes, that is right.

The Deputy of St. Mary:

Your concerns were: "I will be meeting with Lenny to review some of the detailed expenditure."

Chief Officer for Home Affairs:

Yes, which one are you looking at? Oh, are you looking at the email, are you?

The Deputy of St. Mary:

No, 27th May letter in part 2 of the bundle. It is the first letter in the second ...

Chief Officer for Home Affairs:

First letter, yes. Yes, that is right. Well, that is referring to the 4th June meeting.

The Deputy of St. Mary:

It says: "As I am sure you are aware through my staff I have been monitoring expenditure on the historic child abuse Investigation and advising the Treasury through reports."

Chief Officer for Home Affairs:

Yes.

The Deputy of St. Mary:

Then you ask for confirmation from [retired Chief Officer of Police] that ...

Chief Officer for Home Affairs:

I did and I did not get it the first time so I wrote again.

The Deputy of St. Mary:

And then he wrote back saying: "I accept my responsibility as Chief Officer in the matter but in doing so encountered the customary difficulty of having no appropriately qualified staff within my direct command."

Chief Officer for Home Affairs:

That is true.

The Deputy of St. Mary:

Then after that between you you ended up setting up the F.O.B.

Chief Officer for Home Affairs:

It is true, but it is not true to say that he did not have access to qualified financial advice because he had it since 1st November 2000.

Deputy R.G. Le Hérissier:

On that, I think it is the same period again, we have what appears to be 2 divergent sets of evidence. One is that [retired Chief Officer of Police] was attending meetings presumably of the F.O.B. and the inference is from his evidence that he expected to be brought up at the F.O.B. if things were going wrong, expected concerns to be laid out. He says that there were no concerns raised with him, so he drew the inference that people were satisfied with his financial management, but yet apparently at the same time your finance and administration manager was expressing concern, which has been written about in the BDO report, that this person was getting very little information from Mr. Harper. So, (a) what was going on on the F.O.B? Was it all hunky dory? Was everybody sort of happy? And (b) did you hear from the finance and administration manager? Did that person come to you and say: "Look, I am not getting the information I require to make sensible assessments"?

Chief Officer for Home Affairs:

On the point of things not being flagged up; the whole point of these letters in May and June was because I was concerned and I do not think he is being totally up front. He is an intelligent man, he will know that the purpose of these letters was because I was not happy. He will know that. He has

not said it, but he will know that. This was me saying to the Chief of Police: “I need your assurance that what is going on you are happy with.” So, that is a written challenge. There is no other way of describing it. In terms of the finance manager, we are in the tearoom every day. He works downstairs. I suppose the best way I can portray it is if you look at tab 9; have you all got it?

Deputy R.G. Le Hérissier:

Yes.

Chief Officer for Home Affairs:

About 4 pages in the finance manager emailed the police in February seeking information and if you want the mood of things, if you look at the top thing there is a reply from Mr. Harper to the finance manager on 22nd February. It says: “At the moment it is a historical abuse inquiry. Details are confidential and I have no idea at present when it will end.” That was the reply to the request for financial information. Well, it was not easy, put it that way, but we did stay with it. From the records that are available electronically we were able to pull together financial reports which were provided to the police regularly and I think there is an example of one in there.

Deputy R.G. Le Hérissier:

Did you ever sit down with [retired Chief Officer of Police] and say: “Look, things do not seem to be going right here. Could we discuss how we can improve matters?”

Chief Officer for Home Affairs:

No, but we thought they were. I think that is the point I am trying to make. Up until it seemed that the inquiry was not going to do what it said it did, I think that is when the trigger was for my concern and at that point I decided to confront the Chief of Police with that.

The Deputy of St. Mary:

No, sorry, the matter of whether the inquiry was going to do what it said it would do on the tin; that is not the same as controlling the expenditure and you refer to this email from Lenny Harper on 22nd February: “I have no idea at present when it will end.” He turned out to be absolutely right because 4 days later they took the decision to ... they found then JAR/6 and so on and then the whole thing went stratospheric in terms of expenditure. So, he was right not to answer. He had no idea. I think I want to repeat the question of Deputy Le Hérissier which I do not think you answered. Did you hear from your financial manager, your person on the S.M.T. at the police who was a regular member of the team and was updating and so on and doing the analysis? Did you ever hear formally, or informally if you like, but formally preferably from that person about any misgivings about specifically Rectangle? Because they are in the senior management team every fortnight, is my understanding.

Chief Officer for Home Affairs:

Only that we had discussions about the size of the expenditure but I cannot recall specifically any conversations about anything else because of course do not forget we are not seeing the bills, like I said before. We are not seeing what is being signed off. We got to know about it retrospectively several weeks later because the financial information appears on the system. So, it is only from a sense of how much is being spent from the discussions of the group.

The Deputy of St. Mary:

You see, this is problem, is it not? There is someone who has a place on the S.M.T., it is a standing item on the agenda, the finances of the police, including Operation Rectangle, and yet in terms of strategic: dog-handler, big item; overtime cordon, big item. These are big items and apparently nothing is getting back to you at all, even though there is somebody ... You can imagine, you can see how this confusion arises; [retired Chief Officer of Police] is saying to us: “Well, there was somebody in on it” maybe he was referring to this person who was on the S.M.T. and there every time and yet nothing is coming back to you about any disquiet. I am not talking about a bill for this and a bill for that; I am talking about the overall thing, big costs, £100,000 here, £500, 000 there and

yet nothing is coming back to you.

Chief Officer for Home Affairs:

No, that is wrong; I was aware of that, yes.

The Deputy of St. Mary:

What about the challenge then on these items because obviously you go for the big items, do you not?

Chief Officer for Home Affairs:

Well, that is right but you have got to get back to the point that this is a major inquiry and people who had been brought over to look at the way they were conducting it were apparently saying that this was okay, this was being conducted in the right fashion. I am not going to question that. Why would I challenge that? The Wiltshire report says ... I mean I am going to have to quote it to you.

The Deputy of St. Mary:

Sorry, the Wiltshire Financial Report?

Chief Officer for Home Affairs:

Yes. Have you got a copy?

The Deputy of St. Mary:

Yes, I have.

Chief Officer for Home Affairs:

If you look at paragraph 1.5 in the executive summary: "Whilst it could be argued that Steven Austin-Vautier could have challenged either D.C.O. (Deputy Chief Officer) Harper or Chief Officer Power over the increasing costs of Operation Rectangle, the fact remains that he had no managerial or operational responsibility over them."

The Deputy of St. Mary:

Yes.

Chief Officer for Home Affairs:

So, unlike the Prison, the Fire Service, the Customs and Immigration Service, the Superintendent Registrar and the Territorial Army, where I can say: "Stop doing that and do not do any more until I have said otherwise." I cannot do that with the police.

The Deputy of St. Mary:

Which is why I asked right at the beginning, why we asked right at the beginning the question about the Finance Law and whether you felt it was satisfactory and you said your views changed and you now know that it is not satisfactory or words ...

Chief Officer for Home Affairs:

It has not stood the ultimate test.

The Deputy of St. Mary:

[retired Chief Officer of Police] said at the time: "It will not stand up to any of the stress."

Chief Officer for Home Affairs:

He had a lot of foresight.

The Deputy of St. Mary:

Yes.

Deputy T.M. Pitman:

I have sat very quietly because both my colleagues are on a roll here and that is fine, got my share last time. What I still find hard to get my head around is [retired Chief Officer of Police] is effectively saying that most of the concerns, the worries, the questions, only came to a head after he had been suspended almost. How could such a scenario be plausible? I know there are difficulties, we all know that now, between the lack of an adequate relationship between Home Affairs and the police but how could he come to that conclusion?

Chief Officer for Home Affairs:

Well, you are asking the wrong man, are you not?

Deputy T.M. Pitman:

Well, no, we have put questions to [retired Chief Officer of Police] but I think it is quite relevant to ask you because you are his friend.

Chief Officer for Home Affairs:

No. Well, look, [retired Chief Officer of Police] is a colleague, he is a colleague. You cannot ask me, as a colleague, why it is that people start to question [retired Chief Officer of Police], put some doubt on whether he should be in office, question whether he should be ...

Deputy T.M. Pitman:

Well, I can ask you if you respect why it sort of apparently took so long; July everything is great apparently, or that is the perception and then he is removed and suddenly December, a different ball game. That is what I find hard to understand. I am not casting any aspersions on yourself ...

Chief Officer for Home Affairs:

No.

Deputy T.M. Pitman:

I am just trying to get my head around this.

Chief Officer for Home Affairs:

Are you saying what happened in that, say perhaps 6 months that we ended up where he was suspended; is that the question?

Deputy T.M. Pitman:

Well, I suppose that it is a degree, yes. That is; I mean he is suspended and then I just do not understand how he got there without it being much more in the ...

Chief Officer for Home Affairs:

Yes. Well, lots of people caused that but I am not one of them. I am busy getting on with my job in Home Affairs.

[12:30]

Neither me nor my staff are saying: "Why is Graham Power still the Police Chief?" Lots of your brethren were, lots of Members, lots of members of the public, other people but we have got no axe to grind. We have got a job to do and it is busy.

Deputy R.G. Le Hérisier:

I have got to press this issue again, if I may; this issue of your officer attending meetings and not getting sufficient information, it appears, from Mr. Harper and yet somehow this concern, which must have been a major concern, does not sort of find its way to you and start alarm bells ringing or find its way to the Financial Oversight Board, which is meant to be the repository for all these concerns.

Chief Officer for Home Affairs:

Well, I think that the only thing I can say is that ... and it is the mildest answer; I was prepared to accept, at the time, that the A.C.P.O. group had been over, the N.P.I.A. (National Policing Improvement Agency) group had been over, the assurances that Mr. Harper himself formally had given about the fact that everything he had spent he needed. When you piece that all together it was a plausible account as to why we needed to spend the money we were spending. As I have said, it was only when it was quite apparent that the inquiry, the operation, was not achieving what it was supposed to achieve or it was portrayed as, that there then became a worry over whether we needed to be spending as much as we did. But up until that point everything looked quite plausible at the time.

Deputy R.G. Le Hérissier:

See the interesting thing is that a lot of the subsequent press media coverage was ... some of it was questioning professional policing decisions, like was a dog needed? But there are others, as I intimated earlier; essentially they were about extravagance, that there was extravagance in expenditure. Things that strikes me; lay people could judge. They were either staying in over-luxurious hotels or they were not and of course that is where it all ended up; the publicity, that is where the adverse publicity ended up. That was not picked up as an issue, was it, because it subsequently became a major issue?

Chief Officer for Home Affairs:

Well, it was. Well, it was because we had new ... we spent a lot of our time answering numerous States Members' questions around it and I have got it all. So, we did have to, I had to ask the questions. A classic example were the trips to Australia, for example; I had to go into all of that. We had a meeting with the police; they provided, again, a plausible reason why they had spent the money they had on going to Australia or to do with the length of the travel they had to endure, the work they had to do while they were airborne and you cannot do that sitting in the 3 and 4 pennies when you are juggling your tray of food with muggins looking over your shoulder at what you are writing; all good reasons, all perfectly plausible. So, we were dealing with those things at the time; there were numerous questions about hotels. I know that they did go to length to try and get one of the bills in now; I brought examples with me in case you wanted to see them. But there is a receipt in it or a bill in there, quite a large one, for the Hotel de France; £70 a night bed and breakfast. Well, you cannot say fairer than that; that is a good rate for the Hotel de France. There was some trouble being taken over things like that; it was not all ... and I said that the last time I appeared. The impression has been given that the BDO report just rubbishes everything that the police did. It does not; there are 9 examples at least of where they are saying steps were taken to be careful.

The Deputy of St. Mary:

This is the problem, is it not, that the public perception is totally different from what you have just said?

Chief Officer for Home Affairs:

Well, who is putting that about?

The Deputy of St. Mary:

Ah, I know, it is the media.

Deputy T.M. Pitman:

We discussed this with the Minister.

The Deputy of St. Mary:

We have referred to the Channel T.V. (television) who have used the Australia example as an example of profit and expenditure only last week and you are saying and of course we all know that that expenditure was justified and it is on record in your documents that you have given us. So, there

is a problem with the way the media goes about reporting this whole issue and I wonder if you have any comments on what could be done about that in terms of rectifying, getting them to put out the micro version corrections to the mistakes they are making?

Chief Officer for Home Affairs:

We are on an impossible mission.

The Deputy of St. Mary:

But you do share that concern.

Deputy T.M. Pitman:

But can I have some insights into how that came about?

Chief Officer for Home Affairs:

Well, sorry, Deputy ...

The Deputy of St. Mary:

Well, sorry, there are 2 questions.

Chief Officer for Home Affairs:

I share the concern because of the mass indignation I felt last week. I mean I just found it extraordinary; one hour 40 you had him on the phone and the one thing they report is tosh, sorry, it is drivel. They are both in the dictionary actually.

Deputy T.M. Pitman:

We can agree on some things then.

The Deputy of St. Mary:

Tosh is fine, so what do you ...?

Deputy R.G. Le Hérissier:

I wonder if I can jump to a new issue, although we do have a tendency to keep being drawn back; the lack of a finance manager. [retired Chief Officer of Police] of course, just as we are following this theme, he says of course he had asked for such a person to be appointed and so forth. Were you convinced that you moved as quickly on this one as you could have and were you convinced, once you had made the appointment, that you were getting the right information to start making some fairly informed judgments and assessments of what was going on?

Chief Officer for Home Affairs:

Well, there always was a finance manager; there has been for 8 years.

Deputy R.G. Le Hérissier:

Within the operation team?

Chief Officer for Home Affairs:

Yes, but as I have said before, that was Mr. Harper's responsibility to appoint his own finance backup for his operation in accordance with police procedures. That is not me; I have got a department to run.

Deputy R.G. Le Hérissier:

Presumably though you would have been of the view ... say, for example, you follow the argument; Mr. Harper, as you have said earlier, was running a very fast-paced investigation. He may not have had very recent experience of running such investigations and certainly you ...

Chief Officer for Home Affairs:

They do.

Deputy R.G. Le Hérissier:

Yes, well quite; bureaucratic niceties were not going to be sort of top of his agenda as he tried to get things moving. You did not think that there was a role for your department to intervene and say: “Look, we have got to push this along and it will help me because it will ensure that I am getting right from the frontline the right kind of financial data and I do not have to rely on these sort of letters from [retired Chief Officer of Police] that everything is hunky-dory.”

Chief Officer for Home Affairs:

Well, 2 things to say about that; the first is there has been a very sad incident in Jersey in the last 10 days but the senior investigating officer found time to, in the first week, sort out his admin and finance, point one. Point 2, this was all very new; we had not been here before. I am the first to admit we are all human beings and fallible.

Deputy R.G. Le Hérissier:

Absolutely.

Chief Officer for Home Affairs:

I, despite my 18 years in the Air Force and things I have seen and done, this was new for me. Nobody knew how it was going to unfold. It is great in hindsight but I am sure Mr. Harper, [retired Chief Officer of Police] and me, we would all do things differently but at the time you just do not know exactly what is coming up. I did not know that 4 weeks later we would still have a dog roaming around and we would have all these policemen still on a cordon. It was all new, never been there before and we all learned from those sorts of experiences.

Deputy R.G. Le Hérissier:

In a way, we are not here to assess your performance but obviously we are there ...

Chief Officer for Home Affairs:

I wondered.

Deputy R.G. Le Hérissier:

Because obviously one of the issues that has arisen is the balance of the findings of the BDO report and while we are not here to sort of engage in equal opportunity of allocating blame obviously there is a distinct trend in that report and it is to put the bulk of the blame upon police and certain named officers. So, we have to find out the workings of the Home Affairs Department. You gave a long list of the people Mr. Harper had sought advice from and that is a well known police thing; try and break down cultures and open up to new thinking. That did not apply to your side of the work. You could not pick up the phone to someone in the Home Office and say: “Look, we have got this massive operation in Jersey. I am in this position. What are the things I should be focusing on?” That did not come up?

Chief Officer for Home Affairs:

No. There is not that sort of thing. I mean we plugged for the Jersey public service. We do get on with it and sort things out. No, there is not the panoply of managerial oversight and advice that there is within the police force U.K. (United Kingdom)-wide. No, there is not and in any case, come back to what I said, at the outset why is it any different? We have managed £48 million every year or whatever it is; it happens to be that this year and this was just another operation at the beginning but it clearly unfolded into something much bigger.

Deputy T.M. Pitman:

If I can just take you back a bit; [retired Chief Officer of Police] stated at the early stages of the inquiry, when he was receiving responses, regular responses, that there were no concerns about the financial arrangements, he began to feel uneasy, to use his words, that: “There was not sufficient

rigour in the Home Affairs approach. I just came towards the end of May 2008, 22nd May” and he says he took the initiative to propose the Financial Oversight Board in an email he quotes, 9th June. He said that this was eventually accepted but not acted upon with sufficient speed and the first meeting is not held until 23rd July. What would have been the reason for that delay?

Chief Officer for Home Affairs:

Right. Well, the answer to the question, before I come back on from there, is I do not know because I have looked at that. I imagine it is something as simple as people not being available in July. It is right in the middle of the summer, other things going on. I honestly do not know of any other reason why there was a delay.

Deputy T.M. Pitman:

But something that would have seemed so important he has recognised as important.

Chief Officer for Home Affairs:

Yes.

Deputy T.M. Pitman:

Is that ...?

Chief Officer for Home Affairs:

No, it is a fair observation. I cannot honestly account for anything other what was said. I come back to; he says “insufficient rigour” and he suggested that ... I will submit that unless I had written to him in May and again in June that he would not even have thought of the Financial Oversight Board because he was not focused on the finance at all. That is an opinion; it is not backed up by anything I have given you.

Deputy T.M. Pitman:

Yes.

Chief Officer for Home Affairs:

But the only reason it popped up was because of the correspondence.

Deputy R.G. Le Hérisier:

Going to a slightly more micro issue, Mr. Austin-Vautier, as you know [retired Chief Officer of Police] claimed that the rules on expenses were bypassed, that they were never signed off and then of course this was heavily criticised in the BDO report. We are into detail again, sorry about that.

Chief Officer for Home Affairs:

Yes, that is all right.

Deputy R.G. Le Hérisier:

Can you explain to us how police claim for expenses were signed off or should have been signed off?

Chief Officer for Home Affairs:

Well, you are talking about purchase cards now, that sort of thing?

Deputy R.G. Le Hérisier:

Yes, well, alongside it, yes.

Chief Officer for Home Affairs:

Yes. Well, with purchase cards you have to have 2 signatories. You verify the bills yourself but you did incur those and then another officer has to verify that. Then, in addition to that, then the Finance Officer does the computation check and allocates the business unit, so there are 3 people; that is with

the purchase cards. That is why in the BDO report there is quite a long section about what happened at the Bondi Brassiere and other places and the fact that bills were split, it observes. With other bills and then ironically they could be a lot larger and I mean we are talking £90,000 for dogs, for example; with those it just has to be certified by the person committing the expenditure and most of those are signed by Mr. Harper, nobody else. They then go through to the Treasury clerk who then checks the computation and checks that it has been properly authorised. So, there is a difference between purchase cards and other types of bill.

The Deputy of St. Mary:

Is there no counter-signing for the items, for instance, where Lenny Harper might have thought there was going to be a counter-sign?

Chief Officer for Home Affairs:

No. No, not necessarily, no. No. I mean you might find it strange but not under the current finance directions. It comes back to the point that the person incurring the expenditure has to have the integrity to say: "I am satisfied, certified, that this is the correct charge to public funds" and every public servant in a managerial position knows that.

Deputy T.M. Pitman:

Yes.

The Deputy of St. Mary:

Which is why normally there is a right-hand person within a major inquiry to challenge and check that a competitive process has been gone through properly, et cetera, et cetera, when it is a bit item and this was not that.

Chief Officer for Home Affairs:

Yes, although, just to say on that, yes, in the ordinary run of events big things you would competitively tender things but clearly with something like this; we have had it this morning, I will tell you now ...

The Deputy of St. Mary:

Exactly.

Chief Officer for Home Affairs:

They have not tendered.

The Deputy of St. Mary:

No.

Chief Officer for Home Affairs:

I mean they have to get forensic people in like now and they go to the people who can do the job. They do not go out to tender in the time or anything like that.

The Deputy of St. Mary:

No, no, I am sorry. Yes, but I just mean looking at things where there is a lead time and so on.

Chief Officer for Home Affairs:

Yes.

The Deputy of St. Mary:

But some element of challenge; we are looking for some element of challenge.

Chief Officer for Home Affairs:

Okay, well, it is in there, is it not? It is in there, Operation Haven.

[12:45]

Deputy R.G. Le Hérissier:

One of the ways of dealing with this where you do give, shall we say, unilateral signing-off powers to an individual is the sum of money which they can sign off. What is the limit that can be signed off? Is it totally attached to rank in the police?

Chief Officer for Home Affairs:

I do not have that information readily to hand and I would not try and guess it but I think I can find out for you, if you would like me to, yes?

Deputy R.G. Le Hérissier:

Well, in the sense that if the allegations being made that expenditure is running out of control and someone can sit in front of a desk and sign off a whole series of £90,000 claims, obviously there is very little ... when you look at the system like that ...

Chief Officer for Home Affairs:

That is what happened.

Deputy R.G. Le Hérissier:

There is very little control in a system like that, other than presumably your department commenting on the trend of expenditure.

Chief Officer for Home Affairs:

No, but in a sense it should not matter for the reasons I keep saying. If there is proper professional oversight of what it is that is being done ...

Deputy R.G. Le Hérissier:

Yes.

Chief Officer for Home Affairs:

... and it is in accordance with procedures and policies and where you could tender, you have time to you did, there is no question. The fact that you are signing the bill for £156,000 should not make any difference because of those challenges and checks, professional ones, not from an accountant but from somebody who knows the business.

Deputy R.G. Le Hérissier:

Yes, I take your point. But in what you might call a steady state, as opposed to the kind of obviously urgency that governed a lot of this, you of course would do it against a budget, would you not?

Chief Officer for Home Affairs:

Yes.

Deputy R.G. Le Hérissier:

If it was not indented within the budget then obviously approval could not be made.

Chief Officer for Home Affairs:

Well, you have come back to one thing that was difficult with this whole thing and why I wrote to the Treasury in March in the first place to say: "Unless you give me any more money, I have only got the police budget; if you do not give me any more money I am telling you now it will overspend." We never, at any point, did as just for the record; the budget was never overspent. But, yes, unless you have got both sides of the balance sheet it is very difficult to profile a budget. You cannot say: "Well, hang on a minute, if we go on like this we are going to be overspent in 3 weeks" because you have got nothing to measure it against.

Deputy R.G. Le Hérissier:

Again, reverting to a broader question, we had the BDO report; obviously there has been considerable criticism of the absence of the main witness and we have heard explanations that the ongoing disciplinary inquiry in a sense sort of blighted that because everything had to be put on hold, in retrospect would you have handled the investigation into the alleged overspends by a mechanism like BDO or would you have taken a different approach?

Chief Officer for Home Affairs:

Let me think about it, the alleged overspends, yes. I am quite happy that ... because I was instrumental in asking BDO for it, yes. In fact I would go as far as to say it was my suggestion to the Minister that we do this because if I had not asked for it somebody would, if it was the Comptroller and Auditor General or a States Member maybe. I just knew that somebody was going to say, if I did not: "Was this money used efficiently and effectively?" which are the words in the Finance Law. So, we just did it. I am still happy that that was the right thing to do but it was not about overspend. It was, what it says on the front, about the efficient and effective use of resources. I think I read it; there was an observation on the minute that the Scrutiny Officer sent out about whether that might have interfered with the Wiltshire inquiry, whether it was the right time. I saw it as quite discreet from that because it was an audit and they had [Police consultant]. If, at any point, [Police consultant] had spoken to Wiltshire and they said: "Back off, this is going to seriously interfere with our inquiries" it would have stopped but that did not arise, as far as I know.

Deputy R.G. Le Hérissier:

There was an apparent understanding that there were Chinese walls between Wiltshire and BDO but apparently, as you know, the allegation has been made that [Police consultant] was able to procure the statement of Mr. Harper to the Wiltshire ... you were aware of that, were you?

Chief Officer for Home Affairs:

Not at the time.

Deputy R.G. Le Hérissier:

Did that strike you as rather strange, that ...?

Chief Officer for Home Affairs:

What, now?

Deputy R.G. Le Hérissier:

Yes.

Chief Officer for Home Affairs:

Yes. Yes, obviously but just speaking as a man in the street, it did strike me as a bit strange, yes but I did not know until this Scrutiny inquiry that in fact he had, I think I am right in saying. But we should say that Wiltshire do not appear to have had a problem with that; they appear to have taken legal advice.

Deputy R.G. Le Hérissier:

Legal advice, yes.

Chief Officer for Home Affairs:

So, it is not quite as perhaps wrong as it might appear.

Deputy T.M. Pitman:

When you say it appears a bit strange, I mean you have obviously read all the transcripts you have had; do you find it a bit strange the way things have been working behind the scenes with [former Acting chief Officer of Police] has obviously completely gainsaid the excuse for not talking to Mr.

Harper. He has totally denied that but he prevented [Police consultant] from doing so. I mean were you aware of any sort of unfolding concerns at the time when all this was going on or were you completely removed from that?

Chief Officer for Home Affairs:

I found that odd because I remember having a meeting with [former Acting Chief Officer of Police] where he was quite firm that Mr. Harper should not be approached. So, I heard that with my own ears.

Deputy R.G. Le Hérisssier:

What reasons did he give you?

Chief Officer for Home Affairs:

I did not ask for them. Well, no, that is wrong; I did say: "You have got a reason for that" and it was along the lines of ... well, it was a potential judicial reason why it might interfere downstream with anything that might arise as a result of the Wiltshire inquiry. I did not question it further because from my own background that was a good reason. If there was a chance that would happen then that was a good reason for not approaching Mr. Harper to talk about finance.

The Deputy of St. Mary:

Do you remember roughly when that meeting was, when you spoke with [former Acting Chief Officer of Police]?

Chief Officer for Home Affairs:

It was certainly near the beginning of the BDO work. It was fairly early on in the BDO work.

The Deputy of St. Mary:

There were a couple of beginnings, which beginning? February, as in February 2009, when the M.D. (Ministerial Decision) was initially an issue.

Chief Officer for Home Affairs:

Yes, it would have been in the summer of 2009 I imagine. It was quite early on.

The Deputy of St. Mary:

So, it was before Wiltshire was concluded.

Chief Officer for Home Affairs:

Yes.

Deputy T.M. Pitman:

Just going back to the formation of that Gold Group; [retired Chief Officer of Police] said to us that he was discussing that with Warcup very early on. Why did that take so long to establish, can I ask you that? He felt that Gold Group would have absorbed the work of the Financial Oversight Board.

Chief Officer for Home Affairs:

Well, again, I must doubt that because I did not know that Gold Groups were the order of the day as a policing thing. I did not know that it was in their procedures to establish the Gold Group for things like this, when they had established one right away for the current one. So, that is very much police procedure.

The Deputy of St. Mary:

To be fair the initial view of Harper and Power was not to have one anyway and then that evolved to: "Oh, we need one" that was all outside your camp(?).

Chief Officer for Home Affairs:

Yes. Once one was established and I was going to them I could see that there was a value in them because you are able to talk real time with the senior management running the inquiry. Just I said to them at those meetings: "Look, what is coming up that I need to be cited on? Have you got any big items?" the sort of things we have been talking about but there was no platform for that before the Gold Group. The F.O.B. was but that is not the Gold Group.

The Deputy of St. Mary:

I think the key issue is going to turn out to be whether before F.O.B. there was some kind of process set up by somebody to monitor this thing better.

Chief Officer for Home Affairs:

I would submit that that is a police procedural issue.

The Deputy of St. Mary:

Yes, we know that is your view, yes.

Chief Officer for Home Affairs:

But I would say that.

Deputy T.M. Pitman:

Something that underlies a lot of these decisions that were taken and actions that were not perhaps pursued seem to go back to [retired Chief Officer of Police]'s and Harper's concerns about political interference; were you aware of that from your side at Home Affairs?

Chief Officer for Home Affairs:

No, no.

Deputy T.M. Pitman:

In no way whatsoever?

Chief Officer for Home Affairs:

No, we are not ... I mean the ...

Deputy T.M. Pitman:

No pressure has been put on you?

Chief Officer for Home Affairs:

None at all. We are obviously very close to the political machinations because we are a central department and we are working with the Minister daily. But I was not aware of any what might be called political interference at the time.

Deputy T.M. Pitman:

But yet you did say that you were aware of comments being made by politicians; I thought you said that earlier.

Chief Officer for Home Affairs:

Yes, but those are comments which are things that you read and hear about. They are not more Machiavellian, if I could put it like that; what you would regard as some sort of undermining, put it that way, if indeed that happened I really do not know.

Deputy T.M. Pitman:

Was that even the case when you had the problem ... well literally, the Home Affairs Minister at the time went and was replaced; it was Senator Kinnard then, to be replaced by Deputy Lewis? Was there any concerns being expressed at that time as to any political motivations there or concerns being fed through to the department?

Chief Officer for Home Affairs:

Then?

Deputy T.M. Pitman:

Because it seemed to be a very messy situation at the time and I just wonder if that filtered down into ...

Chief Officer for Home Affairs:

No. No, but of course the circumstances around why Senator Kinnard left office and then Deputy Lewis came in for a short period were very specific and were for particular reasons which we will not go into here.

Deputy T.M. Pitman:

But what I am getting at is did that impact anything on the way things unfolded and the relationship between the Home Affairs Department and the police? I do not want to go into the case, it was going on and ...

Chief Officer for Home Affairs:

Not as far as I was concerned because ours is a ... you will understand that for officers it is a very businesslike thing; you are interested in getting on with the business. Really we have to be politically aware that we do not get involved in anything like that.

Deputy T.M. Pitman:

Is there anything that you think we should have asked you to draw out, Chief Officer, and we have not?

Chief Officer for Home Affairs:

Yes, there is one thing, if you do not mind, that you have not covered; it will not take long. It was, if I can find it, the thing to do with why there has not been so much apparent focus on the Home Affairs Department than there has on the police. Do you know what I am alluding to? Yes, in fact I think it was something you might have said. Oh, there it is. Yes. Why the Home Affairs side has not really been given the same scrutiny and that was a question you put to [retired Chief Officer of Police]? What I wanted to say on that was that I had to give a fairly detailed statement to the Wiltshire Police more than once, just the same as [retired Chief Officer of Police]. I clearly then, although I was part of the instigator of BDO, had all of that; they interviewed me and wanted to know what my take was on it. Me and the department then had the Comptroller and Auditor General's interest in all of this. For the last 3-and-a-half years we have also had all the media attention and the copious questions from States Members to deal with and questions from members of the public. Right throughout the last 3-and-a-half years the very few people that work over there with me, we have been at our post for 3-and-a-half years just getting on with the job that we are paid to do. All I would like to say is it does not feel to me like we have not had the same level of scrutiny. It has been a rough ride. So, I just wanted to counter the impression that there has been all this focus on [retired Chief Officer of Police] and Mr. Harper and the police. We have just been getting on with it in all this time and we have had a lot to endure rightly but we have, all of us, just been getting on with it in the meantime. We are a very busy department. So, I do not want people to run away with the impression that we have not been under scrutiny; we most certainly have.

Deputy T.M. Pitman:

I think we would probably say it is a difference between scrutiny which I am sure you would agree is completely valid, that is what we are here to do, obviously here to do and some of what has gone on in the media which has bordered on almost character assassination or certainly the way it has come across; perhaps that is the difference, which is not your fault, it is not my fault.

Chief Officer for Home Affairs:

Okay, well, that qualifies it. Yes, it is just that from the question you asked ... you have put it in a way that makes better sense.

[13:00]

But from the question you asked it sort of gave me the impression that we are almost spectators in a side show; we just wait for the next episode. We have been very much part of this.

Deputy T.M. Pitman:

Well, I think, for the record, it is quite clear there are 2 sides to this story. I mean there are 2 people involved; Home Affairs have been involved, the police are involved, so we are about to ask those questions and I think you would accept that.

Chief Officer for Home Affairs:

Yes.

Deputy T.M. Pitman:

But it is certainly not meant as a slight on the Home Affairs Department.

Chief Officer for Home Affairs:

No. There is one other thing I would just like to ask; have you read the Comptroller and Auditor General's report as well?

The Deputy of St. Mary:

On this?

Chief Officer for Home Affairs:

Well, on the whole of the Wiltshire inquiry. Well, Deputy Wimberley gives the impression that maybe not.

Deputy R.G. Le Hérissier:

He has read everything. If he has not read it the rest of us are in trouble.

The Deputy of St. Mary:

I have got to go, Chairman, because my son is just leaving the Island.

Deputy R.G. Le Hérissier:

We had better listen to this statement.

Chief Officer for Home Affairs:

Yes, it will take 30 seconds.

Deputy R.G. Le Hérissier:

Thirty seconds.

Chief Officer for Home Affairs:

Thirty seconds. He wrote his report in July 2010. He waited for the Wiltshire report and the BDO report and at paragraph 10 he says: "I accept the Chief Officer of the Home Affairs Department was throughout mindful of his personal responsibilities and took reasonable steps to discharge his responsibilities within the constraints I have described." Now, we know the Comptroller and Auditor General; I do not think he would write this unless he had thought about it and that is my last comment.

Deputy T.M. Pitman:

Okay. Is there any ...? Well, thank you coming in and for your answers and I will end it there.

Thank you.

Chief Officer for Home Affairs:

Thank you

STATES OF JERSEY

Education and Home Affairs Issues Surrounding the Review of Financial Management of Operation Rectangle

FRIDAY, 15th July 2011

Panel:

Deputy T.M. Pitman of St. Helier (Chairman)

Deputy D.J.A. Wimberley of St Mary

Deputy R.G. Le Hérissier of St. Saviour

Witnesses:

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

Also present:

Mr. M. Haden (Scrutiny Officer)

[14:07]

Deputy T.M. Pitman of St. Helier (Chairman):

Welcome everyone back for the third instalment of Scrutiny Sub-Panel Review, Education, Sport and Culture and Home Affairs. I welcome the Minister. He is well familiar with the oath I think, so I do not need to run through that with him anymore.

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

Absolutely.

Deputy T.M. Pitman:

For the record we will introduce ourselves; Deputy Trevor Pitman, Chairman of the Sub-Panel.

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

Daniel Wimberley, Deputy of St. Mary.

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

Roy Le Hérissier, Deputy of St. Saviour.

Mr. M. Haden:

Mike Haden, Scrutiny Officer.

Deputy T.M. Pitman:

For the record?

The Minister for Home Affairs:

Ian Le Marquand, Minister for Home Affairs.

Deputy T.M. Pitman:

Okay. Thank you for coming in, Minister. Our Panel has shrunk to 3 but I am sure we will fill the gaps admirably or we will do our best, so with that I will get underway. By the way, you have not said that you are happy being filmed, have you not?

The Minister for Home Affairs:

Yes, that is fine.

Deputy T.M. Pitman:

Thank you. Perhaps, to being with, Minister, could you just outline, for the record, the purpose of the review of financial management carried out by BDO Alto Limited?

The Minister for Home Affairs:

Okay, yes. Obviously you have the Ministerial Act and you have the report; it goes with that so you have it, in a sense, more formally so I am just going to explain it in my own words. When I first became Minister for Home Affairs it was drawn to my attention very early on, I think probably in December 2008, that there were issues and concerns in relation to financial management of BDO Alto. Those issues and concerns did not just involve use of money by the States of Jersey Police but also involved the role taken by staff in the Home Affairs Department, which obviously would

include my own Chief Officer at Home Affairs, Mr. Austin-Vautier, and his staff and so on because if there had been serious failures in terms of financial management there were issues as to whether those failures also extended. Clearly that was going to go well beyond the remit of the disciplinary investigation which had already been begun by my predecessor in relation to the then Chief Officer, Mr. Power. It was clearly going to go well beyond the remit of that because that investigation was going to look fundamentally at his role and any responsibilities that he had in relation to that role and this was going to go much beyond that and, as I say, would include not just police officers but also Home Affairs staff. Basically, I had been asked in principle back in, I think, as early as December in relation to that and said yes, I was in favour of there being such a report and then subsequently more formally I received papers and made the ministerial decision which started that off.

Deputy R.G. Le Hérisier:

Did you actually write the terms of reference?

The Minister for Home Affairs:

I do not think I did, no.

Deputy R.G. Le Hérisier:

Who did?

The Minister for Home Affairs:

Well, again, looking at the witness statements that I have seen, the statements of individuals, it appears that it was worked out between Home Affairs Departments and BDO Alto; that appears to be ... There was some involvement at some stage, I think, of the Acting Chief Officer of Police in relation to the details as to how it was going to happen in practice but it seems to have been dealt with entirely by them without my being involved. If my staff think otherwise then they are probably right and I am wrong but I have no recollection of dealing with it and I have not been able to come across any documentation in house which indicated that I did.

The Deputy of St. Mary:

Can I just come in there; how do you react to the fact that I am surprised when you say that you had no involvement in drawing up the terms of reference of the report which will cost a lot of money and which will come to you?

The Minister for Home Affairs:

Yes. I have to say that when I was asked the question by Mr. Harper as to whether or not I had been involved I could not recall and said to him: "I might have been" because there certainly had been instances where I have been involved with reports and had been involved with approving the terms of reference and this particular case I do not think I was. I am not sure of that but I just do not have any recollection of it.

Deputy T.M. Pitman:

Again, it surprises me that you, as the Minister, can say that it was: "I found that record that I would have agreed this or had not been involved" and it is such a big sort of commitment and obviously a lot of money would be involved, is that the way it normally works at Home Affairs?

The Minister for Home Affairs:

Yes. Remember I had in the ministerial decision defined what it was going to be. It would have been then the details of it so if you could go back to that; I have the ministerial decision somewhere among my papers.

Deputy T.M. Pitman:

It is okay, we have ...

The Minister for Home Affairs:

But if you look at the ministerial decision you will see that I have received the report and on the basis of that report I have made a decision. There was obviously detail contained in that report which told me what was going to be done on it and that is what I approved. But I did not, I think, in any way get involved with the how it was going to be done and I have to say that there had been cases where I have been involved in ministerial decisions but again, when you see Mr. Austin-

Vautier's submission and so on, you will see that there were complexities involved in who should be appointed, who was the States approved, preferred option to do these sort of reports and the exact terms and negotiations which is why it did not succumb to a final, final, final agreed form until about September of that year. I was not involved in that sort of process; the staff just viewed those as an administrative organisation.

Deputy T.M. Pitman:

We have been quite surprised today to hear some quite conflicting views that we find hard to marry up but could you tell us from your point of view, as Minister, did you set any boundaries or limitations on the review, as to who they ...?

The Minister for Home Affairs:

No, no, I approved the review in accordance with the report which I received.

[14:15]

Deputy R.G. Le Hérissier:

In approving the report, Mr. Minister, were you briefed on the kind of evidence collection and the kind of witnesses that the review would be required to consult?

The Minister for Economic Development:

I am not familiar with the details of the report; I have re-read it recently but I do not recall receiving information beyond that which is contained in the reports.

Deputy R.G. Le Hérissier:

One of the obvious things that was going to happen because obviously even at that point the whole inquiry was highly, highly contentious and people were watching it very closely and you still did not think it was worth imposing upon the terms of reference some very clear terms and ensuring that it was as independent as possible and that its reach was as great as possible.

The Minister for Home Affairs:

That is always a difficulty in relation to independent reports. My view is that the role of the Minister is to set the ambit of it and say: "Look, this is what I want you to inquire into" but not to be getting involved into the how. If there had been a specific issue, if at some stage somebody had come to me and said: "Look, there is a difficulty here; we some need guidance on it" or whatever then I would have made a decision or given direction ...

Deputy R.G. Le Hérissier:

One of the things that is perplexing the Panel or is perplexing me, maybe the others have resolved it, is are there 2 parallel reports? There was apparently a States of Jersey internal report on matters somewhat similar and then of course there was the BDO Report and then we had the introduction of Mr. Kellett and we have been very unclear as to whether he is working for both reports, whether there was, at some point, a decision taken to merge them for conveniences sake or whatever and whether there was a decision taken on the basis of a key witness to be excluded from one report but to be apparently allowed to attend upon the other report. Were you aware that these 2 reports were running ...?

The Minister for Economic Development:

No, I do not think I was. I think ...

The Deputy of St. Mary:

Can I just clarify, you said States of Jersey report which meant the States of Jersey Police report?

Deputy R.G. Le Hérissier:

It is the Jersey Police? Sorry, yes.

The Minister for Home Affairs:

You are talking about the States of Jersey internal ...

Deputy R.G. Le Hérissier:

Police report, yes.

The Minister for Home Affairs:

I am aware in general terms that at some stage that the police were looking at the performance of their own officers in relation to this because there was a potential for internal disciplinary matters in relation to continuing serving officers. I am aware of that in general terms but if you ask me was I aware that there was a specific thing taking place I am not sure that I was; I think I probably was not. I can recall the name Mr. Kellett being mentioned at different times but I have to say that until I looked in more detail in preparation for this I was very unclear as to what his role was. I was aware that somehow he was playing a role that was co-ordinating, if you like, between the Wiltshire investigation and this but I was very unclear as to precisely what role he was playing and he was ...

Deputy R.G. Le Hérissier:

Did the Chief Officer inform you that he was carrying out this review?

The Deputy of St. Mary:

The Acting Chief Officer of Police.

Deputy R.G. Le Hérissier:

Yes.

The Minister for Home Affairs:

It certainly did not lock in my mind if he did. As I say, in general terms I was aware that there were internal things going on but I am pretty sure I was not aware of the particular structure because, as I say, it was only looking at the papers in recent weeks that I realised what role Mr. Kellett was playing.

Deputy T.M. Pitman:

Taking on from that we have been quite surprised, I think it is fair to say, reading Mr. Warcup's submission; he said that he had never approved the joint report between Mr. Kellett and BDO and he

says, quote: “Indeed I did not feel it appropriate for Mr. Kellett to carry out any further work as my original instructions had not been complied with and the review had become advertently focused on Mr. Harper, lacked objectivity, had the potential to be unfair to Mr. Power and could have seriously undermined the investigation by Wiltshire Police.” As Minister, how would you react to that?

The Minister for Home Affairs:

Again, I only saw that for the first time just a couple of days ago and was quite surprised because I would assume that Mr. Warcup would have known exactly what arrangements were taking place in relation to things. As I say, that is not what he is talking about; the matters he is talking about there were not within my knowledge. I knew that BDO Alto were producing a report as a result of this. I knew that there was a Mr. Kellett doing something somewhere in the middle or playing some sort of intermediate role but I did not, I think, know any details at all.

Deputy T.M. Pitman:

But, with due respect, so you knew there was a Mr. Kellett doing something. This is a major ... I mean now it is run and run and the way it has been put out across the media. You say surprised but surely you must be a bit alarmed at, there you have the former Acting Chief Officer saying about a lack of objectivity; is that not a huge concern to you?

The Minister for Home Affairs:

Yes, it is a concern to me, yes, but obviously that is the first time I have seen anybody express a view. I am not sure I quite understand precisely what you are saying.

The Deputy of St. Mary:

Can I go to the nuts and bolts, if you like, updates on the progress of the review; were you getting any updates as it progressed?

The Minister for Home Affairs:

I was not getting updates in terms of draft reports or anything of that nature. There will have been conversations between myself and Mr. Austin-Vautier about this in general terms, but my memory

really jumps from setting it up to a situation where I think I saw a draft report or something of that nature, which was longer than what was eventually produced, and which had a lot of detail. I cannot remember if I read it in detail at that stage and I cannot tell you exactly when I saw it, but I have a recollection of being aware that something was in existence. Then I have a recollection that was being transformed in terms of its format and so on, into something that would be more readable and would exclude references to individual people and other items, which should not be in the report. But again my understanding of that is in general terms because Mr. Austin-Vautier was really dealing with that.

The Deputy of St. Mary:

Can I ask a simple question: as the Minister you meet with your Chief Officer how often?

The Minister for Home Affairs:

There are 2 Chief Officers of course, but at that stage I ...

The Deputy of St. Mary:

That is Home Affairs.

The Minister for Home Affairs:

Home affairs, we try to meet on a weekly basis relatively formally, in practice we probably meet about fortnightly, but in addition to that we meet and call into each other's office to discuss things very regularly, I mean he has an open door, I have an open door, but on a formal basis about fortnightly we will review particular matters, which are outstanding.

The Deputy of St. Mary:

That would have an agenda?

The Minister for Home Affairs:

It has an informal agenda, yes.

The Deputy of St. Mary:

An informal agenda?

The Minister for Home Affairs:

Yes.

The Deputy of St. Mary:

What is an informal agenda?

The Minister for Home Affairs:

Deputy Hilton is normally there as well when we do that.

The Deputy of St. Mary:

No, sorry, I am puzzled, I am coming to a question, but I want to test what is an informal agenda.

An agenda is either: “We are going to discuss 1, 2, 3, 4, 5, 6, 7”, there may even be recurring items and you say: “Number 6 is under control, Minister”, and it is gone in a few seconds, but is there a list of what you are going to discuss?

The Minister for Home Affairs:

Mr. Austin-Vautier would normally prepare a list in advance and I will come with other items as well, and Deputy Hilton may come with other items.

The Deputy of St. Mary:

So on that list, would you normally have the progress of the BDO review, given that it is quite a big-ticket item?

The Minister for Home Affairs:

No.

The Deputy of St. Mary:

No, it would not be on there?

The Minister for Home Affairs:

No, I cannot remember that appearing, not until perhaps the latter stages when there might have been some discussion in relation to changes, but no, it was not being dealt with by me in that sort of way.

The Deputy of St. Mary:

I am trying to fathom out how you did not know really much about Mr. Kellett's role, because it was pretty important, given that he was not just the grommet in between the 2 reports, but he was doing a lot of the work on the whole information.

The Minister for Home Affairs:

Yes, I was surprised by that when I saw that, I was surprised by that, I always assumed this was a BDO Alto report, now I see that in fact it was a joint Mr. Kellett and BDO Alto report. I was slightly surprised by that; if that is in the document itself then I have missed it. But I have not spotted it in the document.

Deputy R.G. Le Hérisier:

Jumping to the report, when you received the report, Minister, what was your reaction?

The Minister for Home Affairs:

You are talking about the final form of the report?

Deputy R.G. Le Hérisier:

Yes, the final form.

The Minister for Home Affairs:

Well I read it, I noticed that obviously it contained a number of areas where opinions were being expressed in relation to areas of failure. I received the report in time ... let me just check my timescale, because we provided a timescale for this ... but I received this report I am pretty sure in

time well after I had received the financial management report in relation to Wiltshire. My recollection is I think that was received in February. Yes, 10th February I had received that, so I had already read that obviously sometime before and noted the conclusions, which were reached in there, in relation to a whole lot of matters. Then, when did I receive, according to this, the final report? That seems to be in July. That was very late.

Deputy R.G. Le Hérisier:

So, having read that report, were you happy with its structure, the evidence that had been collected, the assessment of the evidence, the witnesses that had been covered, were you happy with all those aspects?

The Minister for Home Affairs:

Well fundamentally it was coming to the same conclusions as the finance report had done, except with much more detail, and in particular, if you take a particular area, which was dealt with in detail in the finance report, the expenditure of money on meals in London, that was dealt with in great detail in the Wiltshire finance report, so there was nothing new there, perhaps there was slightly more detail, but, if one looks at issues like the view in relation to whether or not it was imperative that the police operate in an efficient way, manage the thing effectively in terms of costs and so on, that is dealt with in the Wiltshire report. All those issues, which I know that Mr. Harper has been making submissions to you on, they are all dealt with in there, so there was not anything new in relation to those kind of issues, it was merely following the same ground. The new areas I think was that much more detail was gone into, and one of the passages that I have noted, which is significant to explain that I think, is paragraph 2.1.6 of the financial management report, the last redacted version of it, the fuller version of it, because it is quite interesting because there is a cross-reference there and what they say is ... this is in relation to Mr. Power: "He should not be held liable in misconduct terms for errors over which his governance did not directly extend such as, for example, management of the security cordon at Haut de la Garenne, employment of a specialist dog handler and the associated costs and forensic expenditure." So it is clear that they were aware, in the Wiltshire financial report, of there being other issues, but they do not go into those issues because they do not think that Mr. Power should be held responsible for any failures in those areas, because

they do not think that was within his oversight. But they are clearly aware of that and so I viewed frankly the BDO Alto as just providing me the detail in relation to some areas where the detail was lacking in the Wiltshire financial report.

The Deputy of St. Mary:

Do you think there was anything missing from the BDO Alto report; did you read it and think ...

The Minister for Home Affairs:

Well it did say that Mr. Harper had not been interviewed, but then on the other hand it contained references to sections of things that he had apparently said, and it therefore gave me the impression that, although he had not been interviewed, that his views on different matters had been considered.

Deputy R.G. Le Hérissier:

Would you, as somebody very expert in the assessing of evidence and so forth, do you really think to take quotes of a person from another context and then use them as the basis for assessing that person's behaviour in another context is right?

The Minister for Home Affairs:

Well it would be better to speak to the person and put the issues to them, of course that is right. What seems to have happened here is that there seems to have been ... well there seems to be some sort of misunderstanding in fact, if the statements are to taken at their face value, between Mr. Warcup on the one hand and Mr. Kellett on the other, as to the reasons why Mr. Warcup did not want, at the particular time, Mr. Harper to be interviewed, and then subsequently he could have been.

[14:30]

But, as I say, this was their report. I mean it was ... they were producing this for me, it was up to them to ensure that they had sufficient grasp of the evidence, et cetera, to be able to express a clear opinion. But, as I said, because in terms of issues of the generalities, which are perhaps the most important issue, as to whether the police were under a duty to be managing public funds properly and

so on and so forth, because all that had been looked at and determined by Wiltshire in terms of, yes, they had, even on their own statements and letters and assurances, given to Austin-Vautier, and all that sort of stuff. Because other parts of the data were dealt with, I merely viewed it as providing me with the extra detail in relation to areas where clearly there were concerns.

Deputy R.G. Le Hérisier:

But the result was of course, Mr. Minister, maybe none of your doing, all it did in people's minds was just sort of basically reinforce this stereotype that Mr. Harper was spending money like there was no tomorrow, and that there were absolutely no controls over that investigation, no financial controls.

The Minister for Home Affairs:

That is not right; the financial controls were not adequate, there was no finance officer appointed, because no Goal Group was set up. There is no question the financial controls were inadequate and mistakes were made, but there were some things that were done, which were good, I mean for instance I recollect that Mr. Harper and his colleagues renegotiated terms internally of some of the forces so that they received a lower rate of some of the staff. There were some good things, which happened. The trouble is that reports tend to highlight the bad things.

The Deputy of St. Mary:

Can I go back to when you said it is "their" report, you said, i.e. it is BDO's report, with reference to the fact that Mr. Harper had not been seen. You are the person the report was written for, so in a sense it is your report, would you not agree with that?

The Minister for Home Affairs:

No, no, it is their report. They have been contracted to do the work, it is up to them to ensure that they are in a position to express a judgment. I mean, if they did not think that they could express a proper judgment on these matters, if they had thought: "Well we cannot do the job properly without seeing Mr. Harper and putting these matters to him, it is not enough that we have had access to ..." whatever they have had access to, again I am entirely dependent upon having looked at statements in

relation to that, then it seems to me they should have then come back to me and said: "Look, we cannot do the job, we do not think we can do the job properly without doing this." Then it would come back to me and I would have then no doubt have made sure there was a way of doing it. But they did not say that; they seemed to be content to reach their conclusions, they seemed to think that they had weighed things up sufficiently. That is the impression the report gives. I mean if you look at the report I think that is the impression the report gives.

The Deputy of St. Mary:

So what is your view then on whether it was thorough and objective?

The Minister for Home Affairs:

Well they felt that sufficient ...

The Deputy of St. Mary:

What is your view; not their view?

The Minister for Home Affairs:

My own view is it would have been better for the conclusions to be put to Mr. Harper; that must be right. It must be right. I mean even if they were not going to interview him, it would have been better for the conclusions have been put to him so that he could have expressed his view and then they could have made a decision. Paradoxically, as I understand it, they have now seen his statements and have now said: "Well that does not change our view." But you may say they would say that because they had already formulated a view. But, yes or no, it must be better as a process.

Deputy T.M. Pitman:

But, in fairness, we probably would not be here today if a simple step of Mr. Harper being interviewed, maybe it would have changed something, maybe it would have changed nothing, but you agree that a lot of this could have been avoided probably if BDO had interviewed Mr. Harper.

The Minister for Home Affairs:

Yes, I do, yes, I do, but of course the particular difficulty did arise because of Mr. Warcup's view in relation to this, which again I only know of because I read his statement on that in the last couple of days.

The Deputy of St. Mary:

That is why I asked the questions about whether you ...

The Minister for Home Affairs:

But it is a pity that, if there was that sort of logjam situation, if: "We want to see him." "No, you cannot." It is a pity that nobody referred it back up the line to me to have said: "Well no, you do need to do this."

The Deputy of St. Mary:

That is why I asked the questions about the measures taken to update you and you said there were no updates, and then I asked whether it was on the agenda of your meetings with your Chief Officer of Home Affairs, and it was not on the agenda. So I am struggling to see how this would have ... there did not seem to be a channel ready-made for this to come up to you.

The Minister for Home Affairs:

What could have happened is that BDO could have said: "We do not think that we have a full enough picture to be able to express a view." But again I have seen their written submission to you and it is quite interesting, there is one area involving the question of the usage of a particular officer like as a chauffeur for Mr. Harper, which they did not feel able to express a view on, so they say in their statement, because they had not been able to speak to Mr. Harper. So, to be fair to them, in that particular situation, they clearly did not think they had sufficiently good ... One of the difficulties here, as I say, is that much of the work they were doing is forensic, looking at the figures, looking at the accounts, seeing what was spent, what the charge-out rates were for hotels, et cetera. Now, whether an excessive amount is being paid for a hotel or not, frankly is going to be a forensic type activity of what the going rates were, et cetera, it really does not matter what the view is of Mr. Harper on that. If they are paying over the odds for a room, they are paying over the odds.

Deputy T.M. Pitman:

But, with due respect, if they had been able to speak to him, for instance we look at the Wiltshire expenses, we discussed ... you said you were quite happy that those expenses were higher than normal, but you were happy it was good value because they were close to where they were working.

The Minister for Home Affairs:

Because they were closer, yes.

Deputy T.M. Pitman:

Now, if BDO had been able to speak to Mr. Harper, possibly he could have offered some kind of explanation like that.

The Minister for Home Affairs:

Yes. It is difficult to understand why people were being placed right across the Island.

Deputy T.M. Pitman:

But, to be fair, the Island is 9 by 5.

The Minister for Home Affairs:

Yes, I accept that. I am not denying it would have been better practice for it to have been bounced off Mr. Harper, I think that is pretty self-evident.

Deputy T.M. Pitman:

If I could take you back to what Deputy Wimberley asked about whether you were getting reports and feedback, when we hear that the Acting Chief Officer was already expressing concern about the methodology being used with this review, alongside BDO, if he was already concerned, did Mr. Warcup never express those concerns to you as Minister?

The Minister for Home Affairs:

No, I am sure he did not. I tried as far as possible, and he understood this and co-operated in this, not to discuss matters with Mr. Warcup, which would relate in any way to the disciplinary matter of Mr. Power. It was a difficult situation in the sense he was my Acting Chief Officer for some time, but we tried to steer away from those areas, for the simple reason that he was going to be a key witness himself in relation to aspects of that, and it was a sort of off-limits area in terms of us discussing it, in order to maintain my objectivity. Now, whether that transferred itself over into the BDO Alto, I do not know, but that is possibly an explanation as to why those matters were not discussed with me.

The Deputy of St. Mary:

So he would not have mentioned to you either way: “I am not letting anyone see Mr. Harper as part of the finance review because that would prejudice the Wiltshire review”, which seems to be his position. But you are saying that he would not have ...

The Minister for Home Affairs:

I do not think he did. I mean it is very difficult to remember the details of all the conversations that I have had with different people over the period of time, but certainly absolutely nothing of that nature is logged in my mind.

The Deputy of St. Mary:

You also say you knew nothing of the internal States of Jersey Police review that apparently the Chief Officer commissioned?

The Minister for Home Affairs:

Accept in general terms. As I say, I was aware at some stage that there was being some sort of internal review to try to assess the responsibility of other officers who continue to be serving officers. I was aware of that in general terms.

The Deputy of St. Mary:

That is interesting because that is a very different type of review from what we see in Mr. Warcup’s

submission to us, which is a very fluffy review, if that is a quite specific review you are talking about, it is an extra review.

The Minister for Home Affairs:

In that case I have not understood the nature of the other review; I assumed it was disciplinary in nature.

The Deputy of St. Mary:

Maybe there are 2 other reviews.

Deputy R.G. Le Hérissier:

You say, Mr. Minister, that: “Look, they were fair, for example they said they would not proceed on the chauffeur issue because they had not received Mr. Harper’s view”, but ...

The Minister for Home Affairs:

Well that is what they say.

Deputy R.G. Le Hérissier:

But the fact remains, on a vast range of other issues, like his allegation that he was trying to get bed and breakfast rates and they were saying: “No, you were staying in very upmarket hotels at upmarket prices”, there are a vast range of other issues where basically ... and I have no apologies for Mr. Harper ... but basically he was castigated. So the balance of the report, there may have been one area where they said: “We must have his view”, but essentially the balance of the report was very much in the other direction.

The Minister for Home Affairs:

Yes, of course I do not know whether that is dealt with or not in his statements to Wiltshire, because I do not know if they went into those areas or not. We have this precarious situation where apparently, again I have gleaned this from reading the opening statements, the written submissions of people, so I had no knowledge of this at all ... now I have lost my train of thought, oh dear. Where

was I going? We were talking about the ...

Deputy R.G. Le Hérissier:

Well the balance of evidence and all the examples essentially, other than oddly enough the one you picked on about the chauffeur, they all sort of suggest that there was basically rampant spending going on and there was no real financial discipline.

The Minister for Home Affairs:

Yes, well of course I do not know what areas he went into in terms of his statement to Wiltshire on financial matters, because I do not know if they went into these areas, because, if they had already decided that Mr. Power could not be held responsible for those areas, then they may not have done.

Deputy R.G. Le Hérissier:

You mention Wiltshire a lot, and sort of the trend of your comments seem to be that Wiltshire cover an awful lot of BDO Alto. Did anyone say at any point: "Look, this is a bit crazy, we have all this duplication going on, why are we sort of bothering?" Did anyone ever say that?

The Minister for Home Affairs:

Well, they were 2 separate reports, one was very strictly for disciplinary purposes and therefore had to be subject to the highest standards, if I can put it that way, and the other one was for purposes of determining whether things had gone wrong, if so, what had gone wrong, to learn lessons from that, to see in general terms who was responsible, but it was not a disciplinary report. It was always going to have a much lower level of ... I am struggling for the word ... not intensity; that is not the right word. It was not going to be done to the same sort of meticulous standard, if I can put it that way, because it was not a ...

Deputy R.G. Le Hérissier:

Yet the impact on people, although you argue an interesting argument that it was looking at the system and the procedures, but undoubtedly of course it was going to have a major impact upon individuals because we work in a society where it is all often down to personalities, and that is of

course what happened, was it not?

The Minister for Home Affairs:

Yes, but ...

Deputy R.G. Le Hérissier:

It just continued the saga of: “Here is so-and-so and so-and-so is utterly ill-disciplined when it comes to finance and they are spending money like there is no tomorrow.” This simple reinforced that, did it not, at the end of the day?

The Minister for Home Affairs:

Yes, but the criticism in my view is there in the Wiltshire financial report, as I say the key issues as to what the level of duty was and so on are dealt with there. This is a matter of detail.

Deputy T.M. Pitman:

How much, with the quite unique setup in Jersey with Home Affairs and your Chief Officer and his responsibilities financially, and the system in the Jersey Police Force, how much was, really Mr. Harper was irrelevant, anyone in that situation was in a position that was not ideal, is that not fair to say?

The Minister for Home Affairs:

The system is not ideal, but in fact, in my view, the person who should have been the Accounting Officer at the time was the Chief Officer of Police. But frankly in practice, if he had been, I do not think it would have made any difference at all to the way things happened, in reality. Although, there are issues there, Mr. Power has always contended that, to be fair to him, he has always contended that this arrangement caused difficulties, they did not have their own accounting staff and so on, but the Home Affairs accounting staff provide services to all the Home Affairs departments, it is just that the accounting function is centralised, as is the H.R. (Human Relations) function in relation to that.

[14:45]

I do not personally think that it would in practice have made any difference because of the failures of oversight on the part of Mr. Power generally, I have to say sadly.

Deputy R.G. Le Hérissier:

This is a more general question, and I did pose it to Mr. Kellett as he sort of unfolded his story, did no one think it was very odd that, even if, for the sale of argument, you had a totally innocent police officer running an area where he had absolutely no financial knowledge, did no one think it was rather odd that you have this highly complex investigation, you have masses of money being ploughed into it, and apparently it carries on for ages with total financial ill-discipline, did nobody say: “There is something wrong here”? I mean how ... it begs the question, how was it allowed to run for so long without any intervention?

The Minister for Home Affairs:

That is an issue you need to talk to Mr. Austin-Vautier about, because he found himself in the situation where, because there was no budget set, and I think, if we look at the wider issues, and they are criticised in the finance report, I mean there was an extraordinary situation that the historical abuse inquiry, as it unfolded, it expanded in terms of Haut de la Garenne, had their budget, and had no additional financial safeguards, no Finance Officer, no Goal Command Group, et cetera, it is quite an extraordinary situation, I mean it is quite contrary to the normal probes that would happen where you would expect there to be a budget, it may have to be exceeded, but then you have to come back and explain and so on and so forth. I think you will find that what Mr. Austin-Vautier will say is ... and I cannot really speak for him ... is that he found himself, it was setup, and then it was: “Over to you now.” But he had no managerial control, he was not Chief Officer of the Police Force, over the Police Force, they are a separate thing and operational freedom issues arise and so on and so forth.

Deputy T.M. Pitman:

But that is the point I come back to. That is the point I was trying to make, it is almost an impossibly

flawed setup for anyone to be put in. That is not an excuse for Mr. Harper.

The Minister for Home Affairs:

The initial setup was flawed, yes, but, having said that, it is accepted ... and certainly that is the view of Wiltshire based upon the documentation and so on ... that all those, Mr. Power and Mr. Harper, and Mr. Austin-Vautier accepted that the police had to run it efficiently, as it were. Now, I think you can differentiate on the one hand between what I might call the ambit of the investigation in terms of which cases they should pursue and so on and so forth on the one hand, and the methodology used to do that, which then gets down to the nitty-gritty of overtime rates and all these other things, and in my mind there is a clear distinction. Now I think there was a problem because of the ambit aspect, but then that was a political response to a particular crisis as it was then perceived, where the politicians decided that they should not seek to set the normal controls in relation to the ambit of the size of the thing, but that does not detract, in my opinion, at any stage, from the need to be operating efficiently, which is what the finance reports are about.

Deputy T.M. Pitman:

Can I just ask you from that, Mr. Harper claims in his evidence to the Panel that obviously that he was slapped down by Mr. Ogley for even questioning the issue of costs and told: "You do whatever is necessary basically, cost is irrelevant." How do you respond to that as a Minister?

The Minister for Home Affairs:

I would be very surprised if Mr. Ogley said that other than in the sense of the first aspect of it, and that is contrary frankly to the undertakings given to Mr. Austin-Vautier and all the other stuff. That is dealt with in detail; that is not for me to argue the case, please look at the financial report of Wiltshire and you will see the reasoning there.

The Deputy of St. Mary:

Yes, I can understand the tensions between saying: "Get on with it, spend what you need to" and needing the controls that you would have normally; that is not an issue. But what is an issue, and I want you to comment on it, is where ... I do not know in this mass of paperwork ... but somebody has

said that: “Why did BDO focus on the police side?” which of course goes straight to Mr. Harper as the decider of basically most expenditure, and why does it focus so little on the Home Affairs side, where that is where the professional money counters are; that is where the people who are paying the bills are, so why did they not say: “We ought to put somebody in there to help you”? Why was there not that kind of joint approach that would have saved a lot of grief?

The Minister for Home Affairs:

Sorry, you have confused me now by saying: “We need to put somebody in there to help you.” Because, by the time this was happening, by the time the report was produced, I mean we are into June/July 2010, and the whole system has changed.

The Deputy of St. Mary:

There is a question, why did BDO focus on, if you like, the police side, and not where the accounting power was, the professionals who do that sort of thing at Home Affairs, and there was a gap over here, so firstly why did BDO not focus on that issue ... well let us leave the question there, do you think the report is balanced in that sense, because that might be worth ...

The Minister for Home Affairs:

Well I thought they had reached conclusions in relation to that; that effectively it was very difficult for Home Affairs to control because they received the invoices in after the event, as it were.

Deputy R.G. Le Hérisier:

But when they have received ... just to pursue it, and this is getting almost to micro-management, but presumably when they received the invoices in, somebody, if indeed it was as bad as it has been portrayed, somebody would have said: “There is something seriously wrong here, we had better sit down and see if we can sort it out with the police.” As far as you are aware, did that happen?

The Minister for Home Affairs:

I think that could not have happened, I think, in relation to some areas, like overtime system, because they simply would not have understood that. But in other areas, if the rates being paid for hotels

were too high, yes, somebody could have picked that up. So there could be areas where staff might see repetitively things happening. Again, staff could not possibly have known how the dog was being used or how much the dog handler was being used or in what way he was being used, they could not possibly know that sort of thing. But things like hotel rates, yes, possibly someone might have said: "Well, is this a bit high?" when it carried on going on.

The Deputy of St. Mary:

I am not concerned with the detail, Minister, it is when the expenditure is up to ... what are we looking at ... £5 million a year, so how much is that per month? You are looking at £400,000 a month, something like that, then you start going: "Gosh, so where are the controls on this whole investigation?" and then you have a talk with the S.I.O. (Senior Investigating Officer) and then you say: "All right" and then you have a discussion about that and then maybe he does what the recommendation is now, 2 years later, and we have a finance manager who scrutinises all this and runs the ship.

The Minister for Home Affairs:

That is where there should have been a Goal Command Group; that is where much of the managerial failures came down to the decision of Mr. Power and Mr. Harper to centralise control in the 2 men alone. That is the core of the issue because, if you had a Goal Command Group you would have had finance people on it, you would have had other police officers, and you have proper checks and balances built in. The decision for 2 men, as it were, to take the total control of leadership on their own and to exclude the third and fourth ranks of the police force, led to a situation where unfortunately there were not the checks and balances built within the police. Now, within Home Affairs, the finance officers will log things, but there has to be a high degree of trust in the individual officers, whether it is Customs and Immigration or Fire Chief or whatever, that they are not wasting money, otherwise you can only pick it up subsequently.

The Deputy of St. Mary:

Sorry, the Goal Group is a known issue of, we know the reasons why Power and Harper did not go down that route, and it may be right that for 2 people to have the sort of say and without the checks

and balances was wrong, but I am saying, was there not another way of Home Affairs relating to the States of Jersey Police that would have avoided this ghastly thing where there is no finance manager at the L.B.O.(?), no finance manager within M.I.R.(?) to look at the deal with all these things?

The Minister for Home Affairs:

That is an issue you would need to discuss with Mr. Austin-Vautier as to whether he made suggestions or not in relation to financial management.

The Deputy of St. Mary:

But the issue for you is the balance in the report between looking at the police's handling and when we are looking at Home Affairs' handling of money; that is what I am putting to you, as to whether that was satisfactory.

The Minister for Home Affairs:

Again, I cannot remember the timing of this, because there was another report of course, which also looked at the issue of responsibility of Home Affairs, and that was produced by the Comptroller and Auditor General. Again, I am not sure as to which order those reports came in, because I think I am right in saying that the view of the Comptroller and Auditor General was that Home Affairs did the best they could do out of a pretty bad job.

Deputy T.M. Pitman:

Can I take us back to the report itself. One of Mr. Harper's opinions expressed, and perhaps could have been avoided if he had been interviewed, was when he says how BDO seemed to deliberately play down the decision based on the evidence to excavate in Haut de la Garenne, which obviously is where a lot of expense really kicked off from there. What is your comment as the Minister on this?

The Minister for Home Affairs:

My comment is contained best in my press release in July where I discussed this very issue. The difficulty I think was that BDO Alto seemed to have been influenced by the terms of the Metropolitan Police report. The Metropolitan Police report's view, this is the report that even I have

not seen in detail, and therefore I am going on my understanding of it. I have physically seen it, but I have not read it. I think this is what happened: the Metropolitan Police's view was that they should not have started digging at all in the first place. The Wiltshire view was that the decision to start digging in the first place was questionable, but not clearly wrong, certainly not a matter that should be subject to a disciplinary matter. My own view, which, as I think was expressed in my press release document, was that, even if it was questionable to start, once the police had thought that they had found a piece of skull fragment, then I think it was not unreasonable for them to carry on. So I take a more positive view I think that anybody else.

Deputy T.M. Pitman:

But to try and get even further with that detail, and I am sure you will correct me if I am wrong, but I believe even you said that some of this confusion is led by perhaps the angle that Mr. Gradwell put on the decision to go in and dig, is it fair to say that seems to have influenced BDO? Because I mean it must ... my interpretation of natural justice, you would look at things and you would weigh up the evidence, where I think what Mr. Harper is trying to say, BDO just seem to have accepted one view as being black, black is black, and that seems to be the problem to me.

The Minister for Home Affairs:

I just simply do not know. I mean you would have to ask other people. Mr. Kellett no doubt you have asked about the influence of Mr. Gradwell. Mr. Gradwell's view, certainly in terms of what he said to the press, was that they should not have gone in the first place. But, as I say, it is my understanding that was the view of the Met, although, as I say, I have never seen the report, it is only on the basis of hearsay I say that. Curiously enough, in a strange paradoxical sort of way, the fact that this situation ended up does to a degree support the view of Mr. Warcup that there were dangers in having 2 lots of people looking at similar issues in parallel. But certainly my view is well documented that, although it might have been questionable to start digging, once they thought they had found the skull fragment, it was reasonable to continue.

The Deputy of St. Mary:

On the Met issue, just quickly, can you see how it polarises the public and how it makes people

suspicious if you get a report, BDO Alto's report, and they rely on the Met report, and the Met report also did not speak to either Graham Power or Lenny Harper, so they are relying ... they are not speaking to Lenny Harper, they are relying on a report that did not speak to Lenny Harper, so you are getting a kind of self-fulfilling look, and then they criticise the decision to go in, or whatever it might be, all these different aspects.

[15:00]

The Minister for Home Affairs:

Well, now I agree with what you are saying there, and that is why, in my own press release, I was very careful to deal with this matter and to use my own comment. Now of course the trouble is inevitably, no matter how careful you are in wording your press releases, I produced it in writing, insisted on reading it out in full, much to the annoyance of some of the press who wanted to hurry on and ask me questions, nevertheless they do not print what you say sometimes and end up putting their own spin; that is why I did it so carefully, and I did look, as I say, and come to my own conclusion on that one. I think it is unfortunate that BDO Alto did take that particular view, and I did not agree with it on that particular issue.

Deputy R.G. Le Hérissier:

Mr. Minister, I wonder if we could move to a new area, because time is of the essence. It is the question of leaks. You made a revelation in the States quite recently that the leaking of the document and whether it was "the" document, the content of the document, or a remarkably similar document, to a national newspaper was carried out by the former superintendent, Mr. Gradwell. Were you aware that there was another leaking going on, for example?

The Minister for Home Affairs:

Other leaking by Mr. Gradwell, do you mean?

Deputy R.G. Le Hérissier:

Yes.

The Minister for Home Affairs:

No. The first I was aware of an issue in relation to Mr. Gradwell was when he went public just before he left the Island and that was the first time. I viewed this as merely a continuation of that, he had already gone public with his views to the local press, radio. It is my understanding from Mr. Warcup that Mr. Gradwell, although he was asked very strongly not to do anything before he went, and not just by Mr. Warcup, but I understand even by the Attorney General of the day, again this is hearsay, this is obviously what I have been told, that he had already pre-recorded interviews before he had left. So that is the first that I was aware of an issue, and then of course my staff picked up the *Mail* article and they did some excellent detective work, emailing, and then sent to me the consequences of that, which clearly pointed to Mr. Gradwell. I have to say, when the issue came up again, I had completely forgotten about this, I had just totally forgotten about it. I had to look back and find the emails and then say: "Oh yes, now I do recall it", because it was not that significant to me once I knew it was Mr. Gradwell.

Deputy R.G. Le Hérissier:

Why do you say that?

The Minister for Home Affairs:

Well he had already done it in Jersey, so ... second leak, it is helpful to me because I have a question from Deputy Pitman in the States next week about a second leak, and I did not know what he meant by the second leak; what is the second leak?

Deputy T.M. Pitman:

Well it was said to us with Mr. Harper's evidence that there were previously emails that had gone and somehow made it into the hands of Mr. Rose, the journalist for the *Daily Mail*, which allegedly came from Senator Perchard.

The Minister for Home Affairs:

Sorry, yes, I picked that up in ...

Deputy T.M. Pitman:

Which again must ring alarm bells with ...

The Minister for Home Affairs:

I picked that up from his statement I think. But I was not clear, I have to say, again I only just read that by reading the ... was that in his evidence rather than his statement? I think it was in his evidence.

Deputy T.M. Pitman:

Yes.

The Minister for Home Affairs:

I think it was in his evidence because he was diffident about giving the name of that. I have to say that I was not clear what it was that Mr. Perchard was supposed to have leaked, I was left unclear about that from the evidence.

The Deputy of St. Mary:

Coming back ...

The Minister for Home Affairs:

But I had not heard about that before, no.

The Deputy of St. Mary:

Coming back to the, if you like, the Gradwell leak, although we have not spoken to Mr. Gradwell yet, but we know that he has told people on the phone that it was him, the question is how you said you did not think it was that significant, and yet clearly the effect of the leak certainly in Jersey and his whole sort of farewell, was quite dramatic, so ...

The Minister for Home Affairs:

No, do not misunderstand me, I am not saying it is not significant, the fact that he went to the press and so on and so forth, what I am saying is that going to the *Mail* in addition to what he had already done in Jersey was not a significant level of things from my point of view. It was just the same thing, but ...

The Deputy of St. Mary:

Well how did you react then to the Jersey end of it, which was in the beginning of September I think, where he was on Channel TV and all the rest of it?

The Minister for Home Affairs:

I answered questions in the Assembly on that and very firmly indicated I viewed it as thoroughly unprofessional.

Deputy T.M. Pitman:

Is there not an irony in that one of the big criticisms of Mr. Harper is his handling of the media, and yet here you have the person who has replaced him investigating him and he is really inappropriately interacting with the media? I know you cannot control that now.

The Minister for Home Affairs:

There is, but I am afraid there is strong evidence that Mr. Harper was improperly interacting ...

Deputy T.M. Pitman:

But that is not the question. I am saying ...

The Minister for Home Affairs:

No, fair enough. Yes, it is ironical, if you are going to complain that somebody else is doing something improper, you should not be doing it yourself.

Deputy R.G. Le Hérissier:

Did you warn him not to do this after he had done it locally?

The Minister for Home Affairs:

No, the first time I ... I have only ever once spoken to Mr. Gradwell, and that is when he rang me up to protest at something I had said in answer to a question, and he was very unhappy because I had basically said, in answer to a question in the Assembly, that I thought he had been annoyed by unfair treatment he had on blog sites and so on, and claims that he had ulterior motives, and so on and so forth, and he rang me up and said he was very unhappy with my having said that and that his primary motive was simply to get the truth, as he saw it, out into the public domain. That is the only conversation I have ever had with him.

Deputy T.M. Pitman:

Some people might say that is almost the actions of an incompetent maverick though to go and do that the way Mr. Gradwell did. **[Laughter]**

The Minister for Home Affairs:

It is improper. It is undoubtedly improper. I have said that right from the start, I mean you gentlemen are my witnesses, you have heard me in the Assembly whenever it has been raised, I have said that is improper. The trouble is, it is a thin end of the wedge, once one officer does it for whatever reason, it creates a major difficulty.

Deputy R.G. Le Hérissier:

In the nature of a winding-up question, Mr. Minister, I wonder, without making it too much of a statement of the obvious, can you tell us what lessons you have learned from this episode and how in your view it should have been handled differently?

The Minister for Home Affairs:

I do not think I did anything wrong, but I would say that, but I do think that more consideration should have been given to finding a way to allow Mr. Harper to see what the report was likely to say and to comment on it; I think that is right. That is my view. I mean I could go into other areas of the financial management and so on, but I do not think that is what you are asking me, I think you are

asking me in relation to the BDO Alto report.

Deputy R.G. Le Hérisier:

Yes.

The Minister for Home Affairs:

I think that is my view. I expect it would be your view as well.

Deputy T.M. Pitman:

When you, and obviously you have only just read Mr. Warcup's submission, if I can take you back to that, without making any final conclusions, and you will probably want to mull it over, I appreciate it, does it not undermine the report slightly that you have had such conflicting views from people apparently working together very closely, we have heard Mr. Kellet and then Mr. Warcup has completely come from a different angle and said: "No, this was not how it was." Does that undermine the credibility of the report to you, because it perhaps was not as tight or as thorough as it should have been?

The Minister for Home Affairs:

I am puzzled as to why there appears to have been this misunderstanding between Mr. Warcup and Mr. Kellet in relation to why it was that Mr. Warcup did not want Mr. Harper to be interviewed at that time and that was not an indefinite thing. I am puzzled as to what happened there in terms of the misunderstanding. I do not really understand precisely the nature of Mr. Warcup's criticism of the process. I have read his statement but I did not assimilate that. He is a very professional officer; I know that people have criticised him, but he is a very professional officer, and objective, and I think something of his objectivity comes out in the fact that he is prepared to criticise in this context.

Deputy T.M. Pitman:

I will leave Deputy Le Hérisier to try and clarify this, because we spent several minutes trying to get our own heads around it, when you hear a former senior police officer sitting there and telling us that he was not even aware of the terms of reference of a review that he was carrying out, that has to

worry you?

The Minister for Home Affairs:

No, he was not ...

Deputy R.G. Le Hérissier:

But those are his words.

The Minister for Home Affairs:

He was not carrying out the review; the review was being carried out by ...

Deputy R.G. Le Hérissier:

But he did not know the terms of reference; he said that.

The Minister for Home Affairs:

All right.

Deputy R.G. Le Hérissier:

Of the other review.

The Minister for Home Affairs:

I am sorry, which review are you talking about?

Deputy R.G. Le Hérissier:

The internal States of Jersey Police review.

The Minister for Home Affairs:

Mr. Warcup is saying he did not know ...

Deputy R.G. Le Hérissier:

No, Mr. Kellet.

The Minister for Home Affairs:

I am sorry.

Deputy R.G. Le Hérisier:

That seems to be the problem, nobody knows what the other was doing at all.

The Minister for Home Affairs:

That confuses me even more as to what Mr. Kellett's role was, I have to say. I thought I was just about starting to understand Mr. Kellett's role.

Deputy T.M. Pitman:

Maybe by 5.00 p.m. we will know there is another role. We have our next witness. Is there anything else that you would like to clarify or point out for us, Minister?

The Minister for Home Affairs:

No, thank you very much. It has been a very fair hearing and thank you for that.

Deputy T.M. Pitman:

Thank you.

[15:11]

STATES OF JERSEY

Education and Home Affairs Scrutiny Panel Issues surrounding of the Review of Financial Management of Operation Rectangle

FRIDAY, 15th JULY 2011

Panel:

Deputy T.M. Pitman of St. Helier (Chairman)
Deputy D.J.A. Wimberley of St. Mary
Deputy R.G. Le Hérissier of St. Saviour

Witness:

Managing Director, BDO Alto Limited
Police Consultant

Also present:

Scrutiny Officer

[11.00]

Deputy T.M. Pitman of St. Helier (Chairman):

Welcome, everyone, to this hearing of what is a Scrutiny Sub-Panel of Education, Sport and Culture and Home Affairs, and welcome to the public as well. I would just say to the public to please be quiet and respectful while the questioning is going on. In a moment we will name ourselves for the transcript, for the record, and I would ask the 2 gentlemen here to do the same. I have to explain the oath, which you should have in front of you, but hopefully you are familiar with it. The basis of it is that as long as you do not tell us anything that you know not to be true, everything is straightforward and hunky dory. The media have asked to film us, as you know, which is fine. I appreciate you 2 do not want to be filmed, and that is quite fine; that is your right. I think we can move on from there. We have an hour and a half set aside. If we finish early, that is fair enough. We do not normally, so we will see how we go from there. I believe you want to make a brief statement to start. Is that correct?

Managing Director, BDO Alto Limited:

Yes, if we could.

Deputy T.M. Pitman:

Yes.

Managing Director, BDO Alto Limited:

Really just to provide some context before we get underway. In March 2009 we were engaged by the Minister and the Accounting Officer for Home Affairs to undertake a review of the use of financial resources during Operation Rectangle, that being the code name for the States of Jersey Police's investigation into historical child abuse. It is solely the role of the States of Jersey Police and the prosecuting authorities to investigate the allegations of child abuse and to bring perpetrators to justice. Our review of the financial aspects of the States of Jersey Police's investigation is not relevant to those investigations or prosecution processes and they do not in any way inhibit the furtherance of those investigations and prosecutions. Sadly, it appears necessary to reiterate this point given allegations made on certain internet blogs that our report has somehow been used to discredit

the investigation of the historical child abuse and to instead direct attention on to management of the inquiry itself. We sincerely hope that this scrutiny review process corrects these and other misconceptions relevant to our report. In terms of the drivers behind our work, all departments of the States of Jersey are subject to ongoing audit and review. These processes are designed to ensure that taxpayer money is spent wisely and is properly accounted for. It also enables lessons to be learned to facilitate the continual improvement in the quality of public service while balancing the need to derive value and efficiency from spending. Our review commissioned in March 2009 was not about the historical child abuse investigation per se. It was not about criticising anyone as an individual and it was not in any way linked to an inquiry being undertaken by Wiltshire Police. We were very simply engaged to review and report upon the costs incurred by the States of Jersey Police in their Operation Rectangle investigation, which remained ongoing at that time, and to consider where the rules and procedures governing expenditure were effective and were being properly adhered to. While Operation Rectangle was a deeply distressing investigation for all of those concerned with it as well as for the Island community generally, it is not the first and it will not be the last complex, distressing and highly emotive investigation that the States of Jersey Police will deal with. That is their job. However, the size of Operation Rectangle was unique in Jersey, as was the level of expenditure, and I would add at this stage that the level of spending drew attention from a very early stage from both within and outside of the force. Our review sought to understand the level and nature of the costs incurred, to consider the robustness of financial governance surrounding that spend, and to make recommendations to assist in the management of the costs of future major police operations. The States of Jersey Police force is a professional police service. As a result, and irrespective of the size and nature of any particular investigation, it is necessarily conscious of the need to manage its finances in accordance with financial policies and directions in place. In this case, there was no instruction to spend outside of established policies and frameworks or to ignore financial controls. Rather, the Chief Minister made a commitment to provide all necessary resources to the investigation, and by doing that he provided an assurance to the victims, the people of Jersey and the States of Jersey Police that this investigation would not be constrained in any way by a lack of financial resources. In our opinion, the Chief Minister's statement did not remove the need for that spending to be properly planned, monitored and reported upon, nor did it provide for the usual rules governing spending to be disregarded. As a result of our detailed review, we prepared a report that contained a total of 19 recommendations. This provides a point of reference for Home Affairs and the States of Jersey Police when considering how to implement appropriate financial governance in future major police operations. That is the background to our review and report and I hope it provides some further context to this Sub-Panel prior to answering your specific questions.

Deputy T.M. Pitman:

Thank you very much for that and thank you for your written submissions as well. I should just point out that the Panel is now down to 3 Members, Deputy Tadier having resigned, nothing to do with this particular review. The 3 of us will jump in with questions as and when points arise. Could I begin? You properly(?) explained to us how you understood the task you had been set for that review, but can you enlarge for us how you set about obtaining the evidence you required for your review?

Managing Director, BDO Alto Limited:

Yes. Our review was to, as I have explained, look at the financial spend associated with Operation Rectangle. That was a live investigation; it had been ongoing since 2007. The costs of that investigation had become quite significant and the Minister and the Accounting Officers at Home Affairs wanted some assurance that that financial expenditure had been incurred with due regard for value and efficiency from spend and in accordance with the accounting policies and processes that are in place within not just the States of Jersey Police but the States as a whole. We were formally engaged in March 2009. The way that we gathered information for our review was primarily from accounting information at Home Affairs. The Home Affairs Department account for the expenditure of the police force, among other things, so they were able to provide a full data dump of all of the costs relevant to Operation Rectangle, and that was our starting point. Having categorised the various aspects of the investigation spend, we were able to then start to obtain detailed documentation and evidence to properly interpret firstly what that spend was and secondly that it had been procured in a

way that is consistent with the policies and procedures in place in the States of Jersey and in the police force.

Deputy T.M. Pitman:

Were there any limitations or boundaries set upon you in gathering that evidence?

Managing Director, BDO Alto Limited:

No, there were no limitations, sir.

Deputy T.M. Pitman:

No limitations.

The Deputy of St. Mary:

Who did you interview?

Managing Director, BDO Alto Limited:

During the course of our review, we interviewed a wide range of people. We interviewed staff within Home Affairs and we also interviewed numerous individuals within States of Jersey Police as well as at least 2 of the contractors involved in the Operation Rectangle investigation.

The Deputy of St. Mary:

All right. There is no list, is there, in the report of who you interviewed, who you spoke to?

Managing Director, BDO Alto Limited:

No, there is not.

The Deputy of St. Mary:

What other sources did you use, in terms of written sources? You have mentioned all the costs in the records of Home Affairs. What other sources did you use?

Managing Director, BDO Alto Limited:

This is probably a good time to introduce [Police Consultant] and explain [Police Consultant]'s involvement with this review in terms of evidence-gathering within States of Jersey Police.

Police Consultant:

I access the investigations database, the H.O.L.M.E.S. (Home Office Large Major Enquiry System), the States of Jersey Police's internal databases such as email and the related databases. I interviewed quite a large number of police officers and police staff and other people involved in the investigation. They provided me with documentation.

Deputy R.G. Le Hérissier:

Sorry, before [Police Consultant] continues, it might be worth for the benefit of ourselves and people observing if you could explain how you were recruited and what you were recruited to, because we have heard about other reviews going on and we have heard about relationships to Wiltshire or not to Wiltshire. It is getting quite complex, so could you explain how you were recruited and what reviews you ended up working on and how these reviews related to each other?

Police Consultant:

Yes. As you know, and I am not sure that the other people here know, I am a former Senior Police Officer. I retired from the Lancashire Constabulary at the end of 2006, and in early March 2009 I was approached by somebody working in Operation Rectangle and asked if I would be available to speak with [retired D/Superintendent], the then Senior Investigating Officer, with a view to carrying out some review of part of Operation Rectangle. I agreed to have a telephone conversation with him and as a result of that I came to Jersey and was given some draft terms of reference, as they were at the time. We discussed whether or not I would be willing to be involved, and I agreed to be.

Deputy R.G. Le Hérissier:

Sorry, this whole thing sounds slightly mysterious. You were approached by someone in Operation Rectangle.

Police Consultant:

Yes, just a member of staff whom I knew. I knew [retired D/Superintendent] before because we had worked together some years ago.

Deputy R.G. Le Hérissier:

Who did you conclude was the person with authority in these approaches? Who said: “Yes, we want you and we want you to do this”? Who said that?

Police Consultant:

Formally, it was the acting Chief Officer at the time, although of course [retired D/Superintendent] was acting on his behalf, and before I was formerly appointed, as I understand it, he went to [then Acting Police Chief]. At that stage he met [then Acting Police Chief]. He went to him and discussed it, and then I was told: “If you are willing to come and work, we are willing to have you.”

Deputy T.M. Pitman:

This was police, then, not Home Affairs at this stage?

Police Consultant:

No, this was the police.

The Deputy of St. Mary:

Can you comment on the terms of reference of that review?

Police Consultant:

The terms of reference that I was given and that I worked to are those that I set out in my written submission, and those were the only terms of reference I was ever given, which are self-explanatory.

The Deputy of St. Mary:

Sorry, can you just refer me to the right page? They do not match the other terms of reference. We are on page 2, are we, of your ...

Police Consultant:

That is right. In paragraph 4 of my written submission, on pages 2 and 3.

The Deputy of St. Mary:

Those terms of reference are in relation to, in effect, the BDO review?

Police Consultant:

Yes.

[11.15]

The Deputy of St. Mary:

So they link up? They are like a specific subset of what BDO were looking at?

Police Consultant:

I am not sure whether that is the right way exactly of describing it. BDO clearly had some terms of reference from Home Affairs Department, which are not exactly the same as mine, but clearly, from my terms of reference, the intention was for us to work together, for reasons that have been stated in the written submissions, and my reading of it is that there are some specifics that the States of Jersey

Police wished to be looked at in addition to the wider issues that I referred to in my terms of reference and in BDO's terms of reference.

The Deputy of St. Mary:

So these terms of reference on pages 2 and 3 of your written submission were set by whom?

Police Consultant:

The States of Jersey Police. I was handed them by [retired D/Superintendent], but I understood at the time that they had been approved by [then Acting Police Chief].

The Deputy of St. Mary:

And you had no input into them?

Police Consultant:

No. That was what I was given.

The Deputy of St. Mary:

That was your working document. What I am looking at now is [then Acting Police Chief]'s written submission. I do not know if you have seen that.

Police Consultant:

I have, yes.

The Deputy of St. Mary:

On page 4 of that there is a completely different review. Was that related to you?

Police Consultant:

[then Acting Police Chief] says that it was, but the first time I saw those terms of reference was yesterday when [the Scrutiny Officer] forwarded [then Acting Police Chief]'s written submission to me. The first occasion that I became aware there might be other terms of reference that [then Acting Police Chief] wanted me to work to as well as the terms of reference that are in my written submission was towards the end of July 2009 when I had a meeting with [then Acting Police Chief] and he mentioned these in passing. Apparently they had been set by the Gold Group of Operation Rectangle towards the end of 2008. I was never given them. I asked [then Acting Police Chief] at the time of the meeting if I could have a copy of them, and he had a look in a file and could not find them and did not forward them to me subsequently. As far as I was concerned at the time, before and since, the only terms of reference that I was given were the ones that are set out in my written submission.

The Deputy of St. Mary:

I can see that. These are the terms of reference you thought you were working to, and I know it is putting you in a bit of a difficult position, but who appointed you to do the other review with these terms of reference that you only knew about in July 2009?

Police Consultant:

The last time I spoke to [Then Acting Police Chief] was in July 2009. I have never seen or been given those terms of reference. Until July 2009, I did not know that there were any other terms of reference. The only terms of reference that I have been given and that I worked to were those set out in my written submission.

Deputy T.M. Pitman:

With due respect, does that not seem a bit incredible? Does it not bother you?

Police Consultant:

Yes. It is odd and I cannot really explain it.

Deputy R.G. Le Hérissier:

Just pursuing that, [Police Consultant], the situation as we find it is that you worked with BDO to their terms of reference. You then sort of stumbled upon the fact that there was another review taking place, which was an internal police review, and [then Acting Police Chief] offered to brief you but for various reasons the terms never arrived. Were you aware all the time that this review was going on with other people or was it just some ghost in the background?

Police Consultant:

No. I do not think your summary is quite correct, if I may say so. That is not my interpretation of it. This other review was not taking place. I think [then Acting Police Chief], clearly from his written submission, intended that as well as assisting BDO Alto in terms of the terms of reference that I was working to and that had been agreed by [then Acting Police Chief], he appears to have believed that I was also working on some specific issues that were internal to States of Jersey Police.

Deputy R.G. Le Hérissier:

Why do you think he believed that?

Police Consultant:

These terms of reference, as I understand it because of what he told me, had been set in the Gold Group towards the end of 2008, but I was never given them, and I cannot explain why they were set in 2008, I was appointed in March 2009 and I was never given them. I really have no idea. When he mentioned them to me in July 2009, that was the first I had ever heard of them. He was not able to provide me with a copy, did not have a copy of them, and he did not provide me with a copy subsequently. I did not form the impression at the time that it was a major issue for him. It was mentioned in passing, in effect. It did not seem important to him, although it was a great surprise to me.

The Deputy of St. Mary:

Can I ask, then, who you reported to as you were doing your work?

Police Consultant:

I was reporting on a ... I was going to say "daily basis". It is not quite true to say I was reporting on a daily basis. As and when I was completing elements of the terms of reference that I had been given and producing written documents, I was reporting in effect to [then Acting Police Chief]. I simultaneously sent copies of the work that I was producing to [retired D/Superintendent], the Wiltshire investigation and BDO Alto.

Deputy T.M. Pitman:

Can I take us back a step? I asked you if any limitations or boundaries were set and you said no, so could we get to the issue of Mr. Harper and why he was not interviewed? As I understand it, you attempted to Mr. Harper but access was denied by [then Acting Police Chief]. Could you just enlarge on that for us?

Police Consultant:

The only restriction that was placed on me was that I was not able to see Mr. Harper, and that was not made plain to me at the outset. I have explained the circumstances in my written submission, how that came to my notice, and as you see from my written submission, I took steps to try to get the decision reversed, unsuccessfully.

Deputy T.M. Pitman:

Sorry, and for BDO Alto, because you obviously have 2 reports here for BDO?

Managing Director, BDO Alto Limited:

Yes. When we were being engaged to undertake the review, there were no restrictions put on our work. As our submission states and as [Police Consultant's] also states, when it came to our request

to be allowed to take Mr. Harper's comment, we were declined access. At the time of entry into the agreement with Home Affairs to undertake the review, there were no restrictions placed on it, and we were then at a later date basically told that Mr. Harper was out of bounds.

The Deputy of St. Mary:

You said "we" were denied access. Who is "we"?

Managing Director, BDO Alto Limited:

BDO and [Police Consultant], i.e. "we".

Deputy T.M. Pitman:

This is the issue, is it not? In [then Acting Police Chief]'s submission he is saying quite clearly and quite strongly that [Police Consultant] was denied access from the police side of it but there was no reason why BDO should not speak to him.

Managing Director, BDO Alto Limited:

This is unfortunately where we have to look at where each person was sitting and what was seen by that party at the time. At the time of our appointment it was very clear that [Police Consultant] was working with us to produce this report. We are a firm of accountants; we do not have intimate knowledge of how police operations are run, and therefore it would have been very difficult to make any reasoned comment and prepare reasoned analysis without the input of an experienced police officer, hence [Police Consultant]'s involvement. We saw [Police Consultant]'s same terms of reference that he had been provided with at that point in time, and from that point in time, 2nd April, I think we first sat down with [Police Consultant] and started working together. It was on the basis that BDO were undertaking financial analysis that [Police Consultant] was assisting BDO in interpreting that numerical data, and was as part of that task interviewing officers and civilian staff within States of Jersey Police. We then requested or, rather, notified Home Affairs, and it was covered in an email on 28th May 2009 that we sent to Home Affairs saying: "It is hoped that [Police Consultant] will be able to meet with Mr. Harper as part of this process if he is permitted to do so by the Chief Officer, and also assuming that Mr. Harper agrees to be spoken to." We did at the time not know for sure whether Mr. Harper would be amenable to be spoken to, and therefore we also said: "Whether or not the Mr. Harper meeting occurs, we would intend to present a full draft of the report to you [Accounting Officer, Home Affairs] in the future."

The Deputy of St. Mary:

Who did that email go from to?

Managing Director, BDO Alto Limited:

It went from BDO to Home Affairs.

The Deputy of St. Mary:

BDO to Home Affairs?

Managing Director, BDO Alto Limited:

Yes. Sorry, just to complete, from BDO's perspective and from Home Affairs' perspective, it was very clear that the only person who was going to interview Mr. Harper was going to be [Police Consultant], and it was on that basis that [Police Consultant] then approached [then Acting Police Chief] and asked for permission to meet and make contact with Mr. Harper.

The Deputy of St. Mary:

I may be missing something here. Why did BDO think that they could not interview Lenny Harper?

Managing Director, BDO Alto Limited:

We could only interview any police officer or, for that matter, retired police officer with the permission of the Chief Officer, because this a live police investigation and Mr. Harper's

confidentiality obligations did not disappear just because he retired from the States of Jersey Police.

Deputy R.G. Le Hérissier:

I wonder if we can follow up with [Police Consultant], because we have had these exchanges of emails between yourself and [then Acting Police Chief]. What we read in [then Acting Police Chief]'s statement from as recently as yesterday is that he was talking to you simply, as my colleague said, about the States of Jersey internal report. Did you think you were doing that or did you think you were talking about the BDO report?

Police Consultant:

The BDO report, because that, as far I was concerned, was the only role I had been given. The terms of reference that I was handed when I arrived in Jersey, which are set out in full in my written submission, were quite specific about what my role was. Clearly, for whatever reason, [then Acting Police Chief] thought that I had been given in addition ... He certainly had never made any effort to give me any other terms of reference, but I assume that he thought that I had been given these other terms of reference that he mentioned in his written submission of yesterday. I cannot answer why I was not given those terms of reference. As I said, if I can repeat, the first time I saw those terms of reference was yesterday, and the first time I heard of any possibility that there may be other terms of reference was towards the end of July 2009, 4 months after I had started work with BDO.

Deputy R.G. Le Hérissier:

But surely there must have been alarm bells ringing, because it seemed unbelievable that in a major investigation, one person had been identified as (shall we call in inverted commas) the "main accused" and yet that person was not going to be interviewed. Surely both yourselves and [then Acting Police Chief] must have been incredulous that this apparently was going to happen.

Police Consultant:

First of all, if I can just respond. Nobody was identified as accused. A review of a major investigation is not about accusing anybody. As the terms of reference for the ones I was given and the ones BDO Alto were given make it very clear, the idea of the review is to learn lessons and to make recommendations for the future, and not just learn lessons about bad things that happen but identify good practice. A review is to look at an investigation in the whole, so nobody is accused. Mr. Harper was not accused of anything in the report that we submitted. Now, there was no reason for alarm bells to ring with me, because I was working to the terms of reference that I had been given. Now, I was concerned that I was being denied access to Mr. Harper, and my concerns are set down, I think in very plain terms, in my written submission. Yes, I am concerned, and I am still bemused as to why I was denied access.

[11.30]

Deputy T.M. Pitman:

Can we move that sideways slightly? In [then Acting Police Chief]'s representation, which you have obviously seen, he says that he never agreed or approved this joint report, which eventually came out. If I could just quote him directly, where he says: "Indeed, I did not feel it was appropriate for [Police Consultant] to carry out any further work as my original instructions had not been complied with and the review had become overly focused on Mr. Harper, lacked objectivity, had the potential to be unfair to [former Police Chief] and could have seriously undermined the investigation by Wiltshire Police." What is your reaction to that statement? Because it does seem a very strong one.

Police Consultant:

Yes.

Managing Director, BDO Alto Limited:

Yes. I mean, we were very surprised by that statement. I think, to put things back into context again, the only material that [then Acting Police Chief] was seeing at the time were working notes being

prepared by [Police Consultant]. That is all he was seeing. He, to my knowledge, did not see a final draft of the report that was issued. There is a huge amount of work that was done that does not feature in the final report that was issued in terms of all the conversations that were had with various people. So, if you like, sitting behind that final report is a huge amount of verification and evidence, and part of that evidence were the notes being produced by [Police Consultant], so that is the first point. In terms of [then Acting Police Chief]'s comment, I do not think that his comments are directly relevant to the financial review that was ongoing. I think, unfortunately, for whatever reason, [then Acting Police Chief] does not appear to have been aware of the terms of reference under which [Police Consultant] was working in assisting us, and therefore his views possibly relate to the work that he thought [Police Consultant] was undertaking for him.

The Deputy of St. Mary:

This is something that is really bothering me. Let us go back to the beginning, if you like. What did BDO think was the working relationship between yourselves and [Police Consultant]? Maybe you tell us first and then [Police Consultant] does. What is going on?

Managing Director, BDO Alto Limited:

From our perspective, it was the case that [Police Consultant] had been brought in by States of Jersey Police. He was sitting in his own office within the police headquarters and had access to the police investigation system and the records, and as a senior ex-policeman he was able to interpret the information and provide a means of filtering the information that was relevant to our financial review to us. He was also, given his expertise as a senior policeman, able to have conversations with serving officers as well as States of Jersey Police civilian staff. That information formed part of the total evidence and information that we used to put our review report together. We also have to remember that this was not an inquiry. It was not an investigation. It was a review. We were simply interested in whether or not financial spend on Operation Rectangle had been done in accordance with all of the usual controls and governance that surrounds any sort of spend within the States of Jersey or within States of Jersey Police, and to summarise what our conclusions were and to make some recommendations to help Home Affairs and the States of Jersey Police in managing that spend going forward. It is very, very different to an inquiry or an investigation.

The Deputy of St. Mary:

That is a separate point. I might come back to that, but sticking with the working relationship, I put it to you that one could say that BDO and [Police Consultant] are working very closely together.

Managing Director, BDO Alto Limited:

That is absolutely correct.

The Deputy of St. Mary:

That is absolutely correct, and indeed, paragraph 38 of your written submission, a week after the final engagement terms were not signed: "BDO met with [Police Consultant] and commenced working together."

Managing Director, BDO Alto Limited:

Yes.

The Deputy of St. Mary:

All right. I have one other question, which is slightly separate. This goes back to a conversation we have just had. Can I just ask whether you agree that it was unfortunate that Lenny Harper was not interviewed?

Managing Director, BDO Alto Limited:

It was unfortunate, of course, in that, as we have both indicated in our written submissions, it would have been preferable to have had an opportunity to discuss with Mr. Harper some of the findings that were emerging from our work. I think we were aware that we were not going to get any further

documentary evidence from Mr. Harper, and therefore it would be a case of asking specific questions. Again, as we have said in our written submission, by not being able to interview Mr. Harper there were certain areas that we had reviewed but were unable to report upon because the documentary evidence that we had obtained was not on its own sufficient to be able to draw a final conclusion and make a recommendation. So, if you like, the content of the report, the format of the report, was influenced by the fact that we could not speak to him. Having said that, no information has come to our attention subsequently that would need us to change any of the findings and recommendations as presented.

The Deputy of St. Mary:

You would not put it stronger than that? You said it “would have been preferable to have an opportunity” to interview Lenny Harper. You would not put it stronger than that? We will come back to that later if you maintain that position.

Managing Director, BDO Alto Limited:

Yes. “Preferable” is the word we ...

The Deputy of St. Mary:

Because there is a view that it would have been essential to absolutely try to see Lenny Harper.

Managing Director, BDO Alto Limited:

I think, as the written submissions state, we did try to see Lenny Harper, and that unfortunately was declined, and therefore, when you are undertaking a review you have to accept that and move on. There was still a job to do in reporting our conclusions.

Deputy T.M. Pitman:

But we come back to that issue of being declined, where, as a conflict to what [then Acting Police Chief] is now saying, for your side of things, you were not declined. I still cannot get my head around where this confusion has come in, that [Police Consultant] could not speak to him but you could. That is essentially what [then Acting Police Chief] is saying.

Managing Director, BDO Alto Limited:

I accept that. You have to remember that [then Acting Police Chief] and ourselves are talking about different terms of reference. We are talking about the terms of reference for [Police Consultant], that were handed to [Police Consultant] and a copy provided to ourselves, and our instruction from Home Affairs, and we were very clear from the start with Home Affairs, as evidenced by the email communication with them that is included in our submission, that it was going to be [Police Consultant] who was interviewing Mr. Harper on behalf of this review. That is the basis upon which [Police Consultant] approached [then Acting Police Chief] and permission was declined. It was not a case of we ask, it gets declined, that is the end of it. There were a number of conversations and a number of communications seeking him to reconsider that decision.

The Deputy of St. Mary:

When [Police Consultant] discussed with [then Acting Police Chief] repeatedly: “Please can I interview Mr. Harper?” was that with the full backing of BDO?

Managing Director, BDO Alto Limited:

Absolutely.

Deputy R.G. Le Hérissier:

Just coming back to this, because when one reads your submission there are not contradictions, but there are sort of counter-arguments. You say you could not get hold of Mr. Harper, you went through the procedures, and putting aside the confusion about what he was being interviewed for, you then put forward, in your submissions from about 31, reasons why you think Mr. Harper would not appear. For example, he had not appeared with day books when he had been required to appear with them in

another location and so forth. You put these reasons why he probably would not appear. Did anyone inform you of these happenings, and did they suggest that they were such as to say that Mr. Harper, no matter how much you pleaded with him, was not going to appear? That is the impression you get from having put these arguments forward.

Managing Director, BDO Alto Limited:

That is not the impression and that is not what we have sought to state in our report. What we have said is that, firstly, this was not an inquiry or an investigation, and therefore while it would be preferable to speak to Mr. Harper, we were not able to. Secondly, he was not the subject of this review and he was certainly not singled out for criticism in the report. Mr. Harper has clearly taken a number of the comments on board, and as the ex-Senior Investigating Officer, that is not surprising, but he was not the subject of this review. We were declined permission to interview Mr. Harper and we simply, for balance, say that at that point in time it was not totally clear that he would have met us anyway. It would have been nice to have had the opportunity to ask him, and therefore those points are put in for balance and not to say that he would not have seen us, because clearly we do not know that, and that would only be for Mr. Harper.

Deputy R.G. Le Hérissier:

But it is just in this heavily tendentious and polarised interpretation of events that has been in a sense the story up at Haut de la Garenne. It happens; you have got information here that is quite specific information about why you assume he would appear, and it strikes me, reading this, you would not have got this information walking down ... Who would have told you this? This is quite specific.

Managing Director, BDO Alto Limited:

If we are talking with regard to 20(a), as we say, that was an article that was posted on This is Jersey on 22nd August 2009 reporting that Mr. Harper had defied a Royal Court order to return to the Island to give evidence and to produce his day books, and secondly we were quoting from an article that was on Newsdesk International, because, as you know, there was a lot of press at that particular time.

Deputy R.G. Le Hérissier:

But do you think (and I will have to stand corrected by [Police Consultant]) given he was a leading participant, it must have left a major hole in your investigations? And do you really think the fact that he is reported as not having done that was sufficient grounds for you to assume it was necessarily true?

Managing Director, BDO Alto Limited:

No, we only put this in as balance to say that at that time he was less talkative, than he is now.

Police Consultant:

If I can come in on that, there was no assumption on our part that he would not talk to us, but there was obviously some discussion as to whether or not he would, as well as, as [the Managing Director] and I and other people from BDO are also discussing, whether he would or would not, I discussed it with the Wiltshire investigation, because as you see from my written submission, the intention initially was that Wiltshire and I would go and interview, not together as such, but at the same time, because of course we were looking at different things, but we were dealing with many of the same issues. The intention was that Wiltshire would ask Mr. Harper on my behalf whether or not he was willing to talk to me about the financial and resource issues, but we never got to that stage.

Deputy R.G. Le Hérissier:

So you never got an answer because the question was not posed?

Police Consultant:

The question was never put because [then Acting Police Chief] refused authority to go and see him.

Deputy T.M. Pitman:

If I can just push that, you state quite clearly that as far as you are concerned, Mr. Harper was not the subject of the review or singled out for criticism. Nevertheless, he was the Senior Investigating Officer responsible for the key decisions, and he was inevitably going to be the focus for media coverage, and of course he was. Now, where does that separation of understanding between you and [then Acting Police Chief] begin? I mean, again I come back to it. [then Acting Police Chief] is saying that the review had become overly focused on Mr. Harper, lacked objectivity and had the potential to be unfair to [former Police Chief], and could have undermined the Wiltshire investigation. I just cannot understand, as such, a major review, investigation, call it what you will, could have these misunderstandings.

Police Consultant:

I am just as bemused as you are. The first time I saw or heard anything along those lines was yesterday when I read [then Acting Police Chief]'s written submission, and I cannot understand why he said those things. Just to deal with one word there, "objectivity", I refute that, but in support of that I would quote the Wiltshire findings in relation to the findings of Operation Rectangle in which they say that they have had the benefit of consulting with me and they agree with my conclusions. There has clearly been a breakdown in communication somewhere within police headquarters centred on [then Acting Police Chief]. I assume [retired D/Superintendent] would have been heavily involved in it, but at the end of the day I cannot say any more other than the only terms of reference I was given were the ones set out in my written submission, and I have never seen any other terms of reference until yesterday when [then Acting Police Chief] sent his written submission. I can speculate, but there has probably been a surfeit of speculation without sufficient background knowledge and knowledge of facts in this affair already, and I do not really want to speculate on what was in [then Acting Police Chief]'s mind and what went on in his private office. I think that is probably more a question that is suitable for you to ask him rather than me.

[11.45]

Deputy T.M. Pitman:

That is fair enough, but you are obviously a very experienced police officer. In that past experience, have you ever experienced such a situation as is now unfolding, where it seems people do not ...

Police Consultant:

No. Oh, in terms of breakdowns of communication. Sorry, I thought you meant in terms of not seeing Mr. Harper. Breakdowns in communication happen in any organisation, no matter how efficiently it has gone before.

Deputy T.M. Pitman:

But in such a major review, you would not expect that, surely, with your experience.

Police Consultant:

I am surprised that [then Acting Police Chief] thought that I was working to terms of reference that had never been communicated to me. Yes.

Deputy R.G. Le Hérissier:

[Police Consultant], did you have any contact or direction from Home Affairs as distinct from the police?

Police Consultant:

I had contact with Home Affairs, absolutely, quite frequently, but no direction at all. As I have said, the terms of reference that I worked to were entirely the ones that were given to me, which of course necessitated me having regular contact with Home Affairs.

The Deputy of St. Mary:

Sticking with this question of the non-interview of Lenny Harper, I quote back to you a sentence from

your opening statement that I think is absolutely right: “Our review sought to understand the level and nature of costs incurred” and so on. That is exactly what you need to do in order to achieve what you say is the goal, which is to improve quality of public service and derive value and efficiency from spending, so you have to understand. How can you have that understanding when you are getting evidence from [Police Consultant], various police officers and interrogation of the H.O.L.M.E.S. database, but at the end you have a pile of evidence and criticism, really, and the person who authorised the expenditure is not asked? I just do not see how you can understand the level and nature of costs incurred.

Managing Director, BDO Alto Limited:

The level and nature of costs incurred was able to be analysed based on the financial data and all of the invoices and other documentary evidence that supports it. The discussions with the officers, with civilian staff, with contractors very much supported that process, but if we put our audit disciplines hat on, then the majority of our evidence is linked to documentary evidence and is also linked to compliance with procedures and financial policies in place, and that was abundantly clear in the majority of cases without recourse to anyone else, and certainly it is not right that any one individual, whoever that is, would be the one person who could answer all of the questions. That is not how organisations work. Organisations rely on financial decisions to be documented, for there to be a robust documentary audit trail supporting decisions and supporting individual aspects of spend. That is what we focused our attention on primarily and that was supported through discussions with other individuals involved in the investigation. Unfortunately we were unable to see Mr. Harper. It would have been preferable to see him. We were not allowed, and therefore we formed our opinions based on all of the other evidence that we had available to us. It is not appropriate to consider that Mr. Harper was the one person in the whole world who could answer our questions. That is not the case; he was working as part of a larger team and there were a lot of other senior people involved in this investigation aside from Mr. Harper, so while Mr. Harper as Senior Investigating Officer takes overall command, it is not the case that he is involved in every single piece of detail, much as the C.E.O. (Chief Executive Officer) of a large company is not involved in every piece of detail, so there are lots of other people that you can get that evidence from.

Deputy R.G. Le Hérissier:

As I said, we are not here to assess the correctness or otherwise of this expenditure, because we could be here for ever, obviously, if we did that, and as to whether the dog was employed correctly and whether he got better breakfast rates and so forth. But there is no doubt the political imperative, it appeared, was to get this investigation moving. Money was poured in; some people feel it was given too unconditionally, and he was the Senior Investigating Officer allowing lines of inquiry to open, thereby in the process allowing large quantities of money to be spent. Surely his decisions as to the direction of the investigation were bound to have a major impact, given that that quote I have described of “spend what you want”, which is apparently what they were told. Surely the way in which he took the investigation forward was bound to have major financial consequences, and therefore it was imperative that his thinking be examined.

Managing Director, BDO Alto Limited:

Absolutely, but that thinking should be recorded by way of contemporaneous notes in the various policy files that we reviewed as part of this exercise. For example, we spent time looking at the financial policy log. It did not take very long, and that is the point. One of the strong points that comes through this review is that there was not proper documentation of decisions that were taken from a financial governance perspective. The policies that were put in place were not routinely followed, and what the investigation lacked fundamentally was a finance manager who, among other things, would have shouldered the burden of financial management and taken that off Mr. Harper, who had enough to be dealing with, quite honestly, without having to be worrying about accounting for particular items of spend on a day to day basis. The report acknowledges that that person was missing from this investigation team.

Deputy T.M. Pitman:

To take that on from the previous point and for the record, how much do you think that was influenced by the probably quite unique setting in Jersey where you have the Home Affairs, the Chief Officer, and then you have the police who have no qualifications, et cetera, as financial managers? How much do you think that situation came about because, really, it was a fudged setup, it was a deeply flawed setup, as you have acknowledged?

Managing Director, BDO Alto Limited:

Yes. I think we make comments in that in our report. I believe that the Controller and Auditor General has made comment on this. It was a difficult set of circumstances for everyone concerned, because of course while the Accounting Officer at Home Affairs has oversight of police finances, he has no operational line of sight, so he has no control or influence over investigations being undertaken by the States of Jersey Police. On a day to day basis, that is probably manageable on the basis that the States of Jersey Police will have a budget at the beginning of the year and that will be staffing costs and other costs, and therefore it probably runs reasonably well. As soon as you have a major investigation and a lot of costs being spent very quickly, without having the right financial governance and the right people in place, of course that can become very unstructured and it makes everyone's lives far more difficult, hence one of our recommendations was that in future major inquiries, a finance manager be appointed. In fact, the manual that governs how senior investigation officers run police investigations itself says that a finance manager is an integral part of your team.

Deputy T.M. Pitman:

For you as a professional forensic accountant, would you, with the benefit of hindsight obviously, say that anyone put in this position would have struggled? There would almost certainly be problems because it was such an appropriate system, for want of a better word.

Managing Director, BDO Alto Limited:

It was inappropriate in this situation because there was not sufficient support for Mr. Harper from a financial perspective. Now, as we have briefly touched on, the rules around who is responsible for the police budget are an aspect of that, and of course Home Affairs did not have huge visibility on the costs on a day to day basis. The appointment of a finance manager would have assisted with that greatly, and as we point out in the report, it would also have removed the burden from Mr. Harper because the costs that were being incurred in this investigation were very significant and they were covering a very, very wide range of service providers and other costs. It is just not practical for him to be able to sign off all costs over £1,000, which is what the original policy decision was. It became completely unmanageable for him, so he did lack support in that area. Under the Major Incident Room Standard Administrative Procedures, the MIRSAP guidance, he would have appointed a finance manager if not immediately in that investigation then certainly when the investigation became far wider following the discovery of JAR/6, but that did not happen.

Police Consultant:

If I could come in to supplement that, as you have correctly alluded to, the structures as they existed then of financial support and budget control within the States of Jersey and the States of Jersey Police were not adequate to deal with this kind of incident. However, I think it is important not to overlook the fact that the responsibility to ensure that the spending that was carried out was done so correctly and in accordance with the existing policies was Mr. Harper's as the Senior Investigating Officer, and the standard administrative procedures that formed part of the policies of States of Jersey Police dictated that he should have appointed a finance manager for the investigation, and he did not. He appointed other specialists that States of Jersey Police lacked at that time and they still do: specialist dogs to detect bodies. He appointed somebody to carry out that role, leaving aside for the moment whether or not the person and the dogs and so on were appropriate. There was a logistics officer appointed because there was not that post in place but it was judged that that kind of support was needed. Leaving aside, for the moment, some of the issues as to whether or not the logistics officer was used correctly. There should have been a finance manager appointed and there was not, and that is one of the major reasons why expenditure on Operation Rectangle was not kept under control.

Deputy R.G. Le Hérissier:

Just following that, although not too far (which sounds contradictory) of course he adduces different evidence. He says he did press people that there should be proper structures, et cetera. As far as you were aware, [Police Consultant], did Home Affairs step in and say: "Look, this is an incredibly large investigation. We have got to put some structure. All the police side with Mr. Harper and we have got to have a finance manager." Did you ever feel ... that evidence? Did you pick up evidence that that was the case?

Police Consultant:

There was a finance manager appointed, but only after Mr. Harper had left. There was a structure put in place to liaise between the police and the States, the Home Affairs Department, only after Mr. Harper left. The proper structure that according to the procedures that form part of the States of Jersey Police policy, the Major Incident Room Standard Administrative Procedures and the Murder Investigation Manual, were only implemented after Mr. Harper had left the investigation. Prior to that, yes, this topic had been raised by people within Home Affairs and from elsewhere, and most of that I think is documented in our report.

Deputy T.M. Pitman:

We have changed tack slightly.

The Deputy of St. Mary:

I want to look at this "understanding the nature of the costs incurred" but from a different angle, because you lay quite a lot of stress in the report on the triggers, the things that led to huge costs going forward, and we know what the triggers were. I just want to look at the validity, or ask you to comment on the validity of some of your assertions. We are not now looking at the actual costs, the meals or whatever. We are looking at what triggered these major expenditures. On page 8, second column of the fourth bullet point: "However, and for whatever reason, this position changed and on 20th February 2008 we have been told that it was suggested sending Mr. Grimes' dog into the Haut de la Garenne building for a quick look." So, before you point out there was no intention to enter Haut de la Garenne and then you say: "However, and for whatever reason, this position changed." The implication of wording it like that is quite clear, that it was suggested sending the dog in for a quick look. That is the first one. The second is the piece of wood, the second bullet [point] on page 10, JAR/6, and of course this is a trigger, is it not? "It was subsequently examined on 31st March by a scientist from the University of Oxford Radiocarbon Accelerator Unit, and by a scientist from the British Museum, and was found to be a piece of wood or coconut shell." Now, that is a bold statement, and I just want you to comment on the validity of that assertion. The third one, and I pick out the most controversial or the biggest issues, is the partial remains of a child, and you call this "the significant decision": "He drafted a press release describing the item as 'the partial remains of a child'. While of course at the time this was believed to be literally true, it has been pointed out elsewhere that it was perhaps an unfortunate choice of language, and to describe a piece of material 6.3 by 4.4 cm in such a way and without any qualification might be, in our opinion, regarded as somewhat exaggerated." Can you comment on the validity of those 3 statements?

[12:00]

Managing Director, BDO Alto Limited:

I think we are slightly straying off the agenda ...

The Deputy of St. Mary:

No, I ...

Managing Director, BDO Alto Limited:

No, let me carry on. There is a huge amount of work that sits behind this report. We did not challenge the operational decision. The point of writing about the trigger events was to explain why all of a sudden the spending on Operation Rectangle went from being relatively contained to being

very, very significant, and the trigger events that caused that were: firstly, the decision to go into the building, because as we say in our report, up until that point in time, the planning for limited excavations in the ground were very well planned and thought out. There had been meetings in the U.K. (United Kingdom). They had engaged the experts. They had obtained quotes. We have no issue with any of that. There is a lot of documentation and emails and other material that then discusses whether or not the police investigation should be extended into the building. For whatever reason, it did. Once it was in the building, they obviously decided to undertake some excavation work and located items now known as Exhibit JAR/6. That was the catalyst for very significant spend, and that was raised in our report for exactly that reason, because up until then, the spend had not been very considerable. I guess what is important is because Operation Rectangle had up until then been a child abuse inquiry, at that point in time it developed and, in effect, went down 2 paths, because you had the child abuse inquiry ongoing and you also then had a homicide investigation ongoing. It was important in our report to explain why those costs had suddenly begun to be incurred.

The Deputy of St. Mary:

All right. I asked about the validity of those statements. You see, the problem I have with this report or this aspect of this report is that these are the triggers, we both agree, that going into Haut de la Garenne, JAR/6 and the statement to the media were the 3 major things that ballooned the expenditure, and I asked about the validity of these assertions. What we have in the report is what Lenny Harper and the people who take his point of view would say was a one-sided version presented as the facts, and this is the problem. I go back to the fact that there is no challenge, because Lenny Harper, who took these decisions ... All right, he did not identify JAR/6 as one thing or the other, but I know there is a huge argument around the identification and all the emails and conversations, but none of that is here, so no one can make that judgment, and that is how you have.

Managing Director, BDO Alto Limited:

They are trigger events. We are not judging the operation, and as we say, we are not saying whether or not the correct operational decisions were taken. What we are saying is that there was a sequence of events that led to the spending on Operation Rectangle becoming very significant and very outside of the norm, and it is those costs that we then go on to look at. Our report is accepting that operational decisions were made, and having made those decisions, was the money spent wisely with due regard for financial policies and procedures and with due regard for efficient and effective use of resources? That is what we are going on to say. There is a lot of information contained, for example, in the Wiltshire Report from page 310 onwards, which goes through in a lot of detail all of the different scientific analyses of those finds and the opinions that were made by various scientists and forensic experts, so we are not repeating all of that in that report. All we are trying to do is to identify why the costs of Operation Rectangle suddenly became so much more significant.

The Deputy of St. Mary:

Do you agree it is unfortunate that you say that Lenny Harper talked about the partial remains of a child “without any qualifications” when that is what he did not do?

Managing Director, BDO Alto Limited:

I am not here to talk about that today. All I would say is that on that same day within the policy logs it was being referred to as a “bone fragment”, so it was very emotive language. The reason it is important in terms of our introduction is that of course the term “partial remains of a child” is very emotive, and in our opinion certainly would have influenced the wording of a subsequent statement by the Chief Minister that all resources, all necessary financial resources, would be available to the investigation.

Deputy T.M. Pitman:

I am conscious of the time, and obviously we want to avoid having you back but we may have to kindly offer that opportunity. But if I could just move backwards, the issues around the Haut de la Garenne inquiry obviously received huge media coverage. We have had your submission about how

you go through your staff and you check that no one is conflicted. What steps, for the record, did you take to ensure that all of those BDO staff involved were completely objective? How were any conflicts monitored?

Managing Director, BDO Alto Limited:

Firstly, there were only 2 staff involved from BDO in the compilation of this report for any extended period of time, and much as we deal with any piece of work, at the outset and before we accept an appointment, we understand whether or not any conflict exists, and to the extent that there is even a potential conflict then we will discuss that with our client. We were very comfortable here that there were no conflicts.

Deputy T.M. Pitman:

Only 2 staff; that is interesting. A big report and only 2 of your staff involved in this.

Managing Director, BDO Alto Limited:

On a day to day basis, yes.

Deputy R.G. Le Hérisier:

I wonder I can just, again, ask more a wrap-up question, [Police Consultant], but before I do that I would like revisit this issue about the fact that this inquiry grew very quickly. All of these specialists were appointed and yet there was not a finance manager. Would you not accept that it seems incredibly remarkable that there was not? Because people on the Island obviously were starting to talk of things about the cost of the call: "Look at all that lavish overtime" et cetera. There are very quick feedback loops in a small community. People notice things very quickly and jump, as you well know, to all sorts of conclusions. Did you not think it was incredible that a senior police officer working in a hierarchical organisation allegedly could just sort of run away and spend money in a totally indiscriminate fashion, according to the allegations?

Managing Director, BDO Alto Limited:

Yes.

Deputy R.G. Le Hérisier:

Yes. I am always conscious I must not lead you into the specific allegations, but there is no doubt that underlies a lot of the criticism made, and there is a lot of stuff (and I have for apologies for Mr. Harper) that he has not been allowed to publicly answer to. As an experienced officer, you must have observed a lot of organisations. Why was that situation allowed to happen in such a small, apparently tight-knit organisation?

Police Consultant:

I have some views on it, but I am not so sure that it would be appropriate for me to state them, because I would be doing so without full knowledge of the facts, i.e. in this case, his take on it. As I mentioned before, I think probably there has been too much speculation without full knowledge of the facts in this affair already that has not been helpful to the core issue that Rectangle was set up to establish. But yes, I was astonished at the lack of financial control during this major investigation.

Deputy T.M. Pitman:

I accept what you are saying there, that obviously you do not know his take, but as an experienced officer, you must be able to make some sort of assessment how it might be that this case came about, which would be useful to us, I think.

Police Consultant:

I think I would rather not do that in public, because I think I would say some things that probably would be confidential and I would want to consider more carefully as to whether it was appropriate to say them in public.

The Deputy of St. Mary:

They might be splashed in a meeting in a way that is inappropriate.

Police Consultant:

Yes.

The Deputy of St. Mary:

Can I move on, perhaps, to the Wiltshire Police statement and my surprise that you had access to, as I understand it from, [Police Consultant], your report to us, your submission to us. You had access to a draft statement ... Sorry, the statement was drawn up as a result of the interview that Lenny Harper had with Wiltshire, quite a long interview, I think, and you had access to that draft statement. Can you elaborate on that?

Police Consultant:

That is not a surprising thing in this kind of review process. Clearly, Wiltshire were doing an investigation with very different terms of reference to what I had been employed to do, but as I point out in my written submission, many of the issues that we were dealing with were the same and it made sense to talk to each other, because, as I pointed out, I, during the process of my investigations, uncovered evidence that was relevant to their inquiry that they had not already found, and it was proper that we talked to each other because, as [then Acting Police Chief] rightly points out in his written submission, the primacy in this affair was the criminal investigation that Wiltshire were carrying out, and nothing that I was doing and nothing that BDO Alto were doing should interfere with that process. So, in the course of one of my meetings with them, I learned that they had already seen Mr. Harper, that they had this draft statement (because as you say, it was quite a lengthy statement) and that again is not an unusual investigative process that a draft statement is taken before the typed up version is taken back to the witness. I asked if I could see that statement. They took legal advice before they allowed me access to that statement, quite properly, and I was told that I could see it, that I could not have a copy but that I could take notes of it, and in due course, in the written work that I was producing, I quoted from that statement or referred to that statement. Wiltshire were given copies, as I have already pointed out, contemporaneously with everybody else who was getting copies of my work. These very restricted people were getting copies of my work, and in due course they had a copy of the final report in draft form before it was published.

The Deputy of St. Mary:

Two questions. Firstly, just for the record, I think Wiltshire was not a criminal investigation but a disciplinary investigation.

Police Consultant:

Sorry, disciplinary investigation, but the same principles applied.

The Deputy of St. Mary:

The same principles applied.

Police Consultant:

That takes primacy.

The Deputy of St. Mary:

I just wanted to make sure.

Police Consultant:

Sorry, that was a slip of the tongue.

The Deputy of St. Mary:

The other thing is that I am still surprised. Maybe you suggest we should not be surprised, but my

understanding is that if it is a disciplinary investigation, then the whole lot comes under quite a cloud of privilege and/or confidentiality, and you are given access by Wiltshire, after Wiltshire have taken legal advice, to a draft statement by a witness to a disciplinary inquiry. There are no issues there for you?

Police Consultant:

I understand why you might be surprised, but I was not surprised, because it is not common that the disciplinary investigation is going on at the same time as a review of this nature in the circumstances that applied to Rectangle. Clearly, the fact that it was slightly unusual is evidenced by Wiltshire taking legal advice, but the legal advice they received was that I was able to do what I did. I am not able really to say anything more about it than that, and as I pointed out in my written submission, I was not there and I was not told about any assurances that Mr. Harper was given, so that is something that you may have to ask Wiltshire.

Deputy T.M. Pitman:

Is not "slightly unusual" an understatement, surely, if it was made and it was meant to be confidential? Did they then take that legal advice at your request because you felt you needed to see it?

Police Consultant:

No. They took legal advice because they thought that was the right thing to do. The fact that the statement is confidential does not mean that it cannot be used in circumstances other than purely for the reasons that it was given. As an example, if I give a witness statement in connection with a discipline inquiry, it does not matter what stipulations I put on it or what assurances I am given.

[12:15]

If there is something in there that is relevant to a criminal investigation, for example, those assurances do not count for anything if there is evidence of a criminal offence there. That was not the case in these circumstances, but I do not know exactly what the detail of the legal advice they were given was. I was just told subsequently that I could read the statement, take notes from it and in due course make reference to it.

Deputy R.G. Le Hérisier:

Just jumping, [Police Consultant], an issue has been raised that you rebut very strongly in your submission. It is basically about the alleged relationship between yourself and [retired D/Superintendent] and that this would have compromised your independence. You have mentioned it, obviously, in your submission, but would you for the purposes of the record like to repeat what you have said?

Police Consultant:

Yes, absolutely. As I indicated at the very beginning of this session, I used to work with [retired D/Superintendent]. I have known him for about 25 years. A period about 20 years ago, we were quite colleagues, but in the last 10 years, certainly in the decade or so roughly of me coming to Jersey to carry out this review, I have had little contact with him. I had been seconded overseas for a while, and then on my return to the U.K. I had been involved in work outside our force area, or I was based outside our force area, and had not had any contact with him. The fact that I knew [retired D/Superintendent] is not a reason to question my independence in my view. Reviews of major investigations have been a feature of criminal investigation in the U.K. for 2 decades and it is quite usual for senior officers to review each other's investigations in an objective, professional and independent manner. That is how we are trained. Now, I am not saying that somebody may pull some punches if they are reviewing somebody, but to say that that happens regularly or in any serious level is absolutely false. That, I do not think, is what Mr. Harper is saying here. He is saying that I was influenced in the way that I worked by [retired D/Superintendent]. That is absolutely not true. I was given terms of reference to which I worked, and we had a professional working relationship, the

same way that Mr. Harper was mentored or reviewed (he uses the terms interchangeably) by a senior officer from the Metropolitan Police whom he knew. I do not think he would concede that his previous relationship with that senior officer interfered with any independent work that was being done by that senior officer.

Deputy R.G. Le Hérisier:

As you know, in the end, [retired D/Superintendent] was to leave under what might be described as a “blaze of publicity” and it was very uncomfortable for various people because he took a very strong position, as we know. When you were carrying out this review, were you in close touch with him over various matters? Were you in contact with him on a regular basis?

Police Consultant:

Yes, and yes, I was giving him copies of the work I was producing and I was asking him questions that he was able to answer about aspects of the investigation, but I understand what you are saying in terms of the views that he expressed.

Deputy R.G. Le Hérisier:

Had he at that point formed very strong views about how the investigation had been handled?

Police Consultant:

I think probably he had, yes, but I do not accept that that influenced the way that I worked, because I was carrying out a review objectively based on evidence. The only things that influenced the way I worked were the terms of reference that I was given, which are quite plain. I examined the issues that I was asked to examine. Now, whether people accept my independence or not is a matter for them, but the fact that I heard views from [retired D/Superintendent], it did not influence me. I heard contrary views from other people in the investigation. I spoke to a lot of people who had worked very closely with Mr. Harper, some of whom had negative views about him, some of whom had positive views about him. Finally, I came to conclusions about certain aspects, which I discussed with the Managing Director and colleagues from BDO before we completed our joint report.

Deputy T.M. Pitman:

Just one point on that, because we need to get on to the media issue: on reflection, do you think it is fair to judge the 2 together, because to me in my past career, if someone is mentoring you, that is fine, they are a mentor. But that is a different situation surely virtually having someone reviewing and analysing? It is a much more stringent process, I suppose, what you were doing. Is that really a fair conclusion?

Police Consultant:

Absolutely, absolutely. I mean, you are referring to Mr. Harper and the mentoring. Absolutely. I mean the roles were not compatible. A mentor is one thing. A review is something totally different. Both will hopefully result in useful suggestions about how you can achieve the objectives that you set out to achieve in your investigation, but the processes and the relationship between the person being mentored and reviewed are different with each person carrying it out. I think that is another area where Mr. Harper confused policies and procedures set out in the Murder Investigation Manual and the Major Incident Room Standard Administrative Procedures. The 2 roles were not compatible.

Deputy T.M. Pitman:

Okay, do you have anything?

The Deputy of St Mary:

Yes, I do. Sources. We were talking about Wiltshire and the fact you had access to a statement made to Wiltshire. I want to ask perhaps the Managing Director about the references. First of all, why is there no list of what documentation? There is no bibliography here and it is difficult to see ... some of these reports, I am not quite sure which report is being referred to. Would you say maybe there should have been a list to make our job easier?

Managing Director, BDO Alto Limited:

The report that the Minister ultimately published is a summary report. It does not list every information source and it does not list the people who were interviewed. That was done for a purpose, because this was an ongoing investigation, and the persons who were spoken to by and large were still employed within States of Jersey Police et cetera, so that report was depersonalised for the purposes of reporting to the Minister.

The Deputy of St Mary:

Okay, all right, now following on from that, what concerned me was to see a reference to the Met interim report on your page 9, bullet 2. You have quoted the conclusion expressed by the Metropolitan Police review team in their report dated December 2008. Based on that review, they concluded that, at the time the searchers conducted it, Haut de la Garenne and Victoria Towers could not be justified by the available facts. How did you have access to the Metropolitan interim report or the Metropolitan report? I am not sure whether it is the interim or the final.

Managing Director, BDO Alto Limited:

It was one of the documents that was filed in the major incident room, which [Police Consultant] reviewed as part of our review.

The Deputy of St Mary:

My understanding is the Metropolitan review was highly confidential and was only to be used as what you were saying, as a review to improved performance. It is like a performance appraisal. You go through the way it was done to improve matters. That is what Wiltshire says the Met review was. Now we find it is sitting on a database. Sorry, I am not clear of the status of the Met review, then, in terms of confidentiality.

Police Consultant:

Well, it was not sitting on a database. The copy that I had was a hard copy. The report was not seen. I read the whole report. Parts that I considered to be relevant and that could be shared with BDO Alto staff, I shared with them. As you point out, the purpose of the Metropolitan Police review was as you have stated. It was to improve performance, but that was also the purpose of our review and the conclusions, some of the conclusions of the Metropolitan Police review, were directly relevant to what we were doing and it would have been foolish to have ignored what they had said. It was entirely relevant to what our role was and what we were producing.

The Deputy of St Mary:

Okay, perhaps we see that their purpose and your purpose was the same - to improve performance - and that there were relevant things in there for your work. What puzzles me is that we, as States Members, get told by the Minister that this is absolutely confidential: "No one has seen it and I have not seen it." Now I find that you have seen it. I do not follow with the fact that maybe it is a good thing that you have seen it. What I am sort of questioning is what this word "confidential" actually means.

Police Consultant:

Well, there are elements of that report that it would not be appropriate for anybody outside the police service to see.

The Deputy of St Mary:

Elements of it.

Police Consultant:

Yes, and there are some elements of it that were referred to in our report that were relevant and which I took the view could be quoted or referred to. Bear in mind that this was not done in isolation. I did not do this just on my own initiative. The drafts in which I referred to the report was seen by [then

Acting Police Chief] and by the Wiltshire team and by [retired D/Superintendent] before they appeared in our joint report.

The Deputy of St Mary:

One last point on this: I have just remembered what the problem with the Met review is; it is the same problem as with the BDO report. From the point of view of people who are looking at this as a process issue, which I am, again the protagonists were not interviewed by the Met review team. I do not think Graham Power or Lenny Harper were interviewed as part of that review. It is the same issue. What I am saying is it is the same issue. What we are doing is referring to a report in a report that suffers from the same problem. **[Laughter]**

Police Consultant:

Well, no, I disagree with you there because, as the Managing Director has pointed out, the process is not about individuals. Yes, I cannot honestly recall. I take your word for it that [former Police Chief] and Mr. Harper were not seen by the Met team, but the Met were not investigating [former Police Chief] or Mr. Harper. They were looking at the entirety of the investigation. The information that they obtained was from the H.O.L.M.E.S database, which contained literally thousands of documents and details of exhibits and policy logs. They interviewed key players. Yes, I am sure ... I am not speaking on their behalf, but I am sure they would feel the same that I do in relation to our report that they would far rather have been able to interview Mr. Harper and [former Police Chief] if, indeed, they did not, but they were given a task to do, to carry out a review and to make recommendations. That is what they did.

Deputy T.M. Pitman:

With due respect, you use the term “key players” and there is not a more key player in the whole scenario. What I wanted to build on from Deputy Wimberley is: with hindsight, had you been able to interview Mr. Harper, we would probably not all be sitting here now, because he could have put his counter-view to you. You could say: “Actually, we have got the evidence to dismiss that.” With hindsight, would that not have been the way to go and so we would not be here now.

Police Consultant:

Deputy Pitman, it is not with hindsight. It was with foresight. **[Laughter]** You have seen the documents that I put forward.

Deputy T.M. Pitman:

Yes, thank you.

Police Consultant:

I wanted to interview Mr. Harper.

Deputy T.M. Pitman:

Yes, we also ...

Police Consultant:

I made the request quite forcefully as you see from my written evidence.

Deputy T.M. Pitman:

Yet, [then Acting Police Chief] has a different angle on it. That is how difficult you mean.

Police Consultant:

As I have said ...

Deputy T.M. Pitman:

Where have you tried to find out what ...?

Police Consultant:

Absolutely. I have been bemused by [then Acting Police Chief]'s written submission, because ...

Deputy T.M. Pitman:

Could you explain it, do you think? Have you got any idea how it could come about?

Police Consultant:

Well, once again, I could speculate, but I do not think it would be appropriate for me to do that in this forum, because it is ...

Deputy T.M. Pitman:

No, but it is a surprise to you. It is fair to say it is a surprise to you where you get that difference.

[12:30]

Police Consultant:

Yes.

Deputy T.M. Pitman:

Okay, sorry.

Deputy R.G Le Hérrisier:

Okay, I wondered if we could move to possibly our final topic, the leak. I wondered, Managing Director, as you know, your report appeared in the ... either the report or words that were remarkably similar to your report appeared in a national newspaper. What is your explanation of this if, indeed, you do have one?

Managing Director, BDO Alto Limited:

Yes, just to clarify, and it is in our written submission, the material that was leaked to the newspaper was not a BDO work product. I cannot comment on what was leaked to the media. As again we say in our written submission, we provide you with copies of the correspondence with Home Affairs on 5th October 2009. This matter was clearly brought to our attention. We were concerned that anything that was related to our review was finding its way into the national media. As I say, it was not a BDO report. There was not an interim report at that point in time. What appears to have been leaked were, again, some of the early drafts of some of [Police Consultant]'s work. He might want to say something about that.

Deputy R.G Le Hérrisier:

As a result of your subsequent inquiries and your contact with Home Affairs, did you come to a considered judgment as to how it had occurred and who had done it?

Managing Director, BDO Alto Limited:

I think, when we had an opportunity to have a look at the article that had been published on the *Mail on Sunday*, it became clear to us what material was being quoted from. Therefore, from our perspective, we were able to narrow down where that material had gone, but as I say it was not a BDO interim report. It was not an interim report at all, in fact.

Deputy R.G Le Hérrisier:

But it was material that came from your office, so to speak.

Managing Director, BDO Alto Limited:

No, it did not come from our office.

Deputy R.G Le Hérrisier:

You do not think so.

Managing Director, BDO Alto Limited:

No.

Police Consultant:

The circumstances of the source are as set down in my written submission. The source was [retired D/Superintendent]. He has admitted that to me in telephone conversations. He first telephoned me about a week or so after the article appeared. I had already worked out that it was probably him.

Deputy R.G Le Hérrisier:

Yes.

Police Consultant:

I deplore what he did. I have told him I deplore what he did. In terms of why he did it, you would have to ask him. He says - so what he told me - and he has repeated that in recent telephone conversations that he has made to me arising out of the establishment of this Panel that he did not give copies of my written work, but he disclosed the contents of some of them to a reporter. It was not BDO at all. It is not me. It was not Wiltshire or [then Acting Police Chief]. It was [retired D/Superintendent].

Deputy T.M. Pitman:

Out of interest, did he seek to justify what he had done to you?

Police Consultant:

He gave a reason, but I think ...

Deputy T.M. Pitman:

Well, we do hope to speak to him. We do not know whether he will.

Police Consultant:

I do not think it is appropriate for me to ...

Deputy T.M. Pitman:

Just for the record, you are saying he said he did not actually show documents to a journalist. He verbally, because you said he had not shown. That is what you have just said.

Police Consultant:

I cannot remember at this distance to say his exact words. What he says is content. Whether he handed documents or whether he had no idea, I am not sure.

The Deputy of St Mary:

If we cannot talk to [retired D/Superintendent], we will be able to fire you off a letter to ask for a bit more detail on the contents of that particular conversation.

Police Consultant:

I would be happy. I would be content to do that if he ...

Deputy T.M. Pitman:

Obviously, if we can get to have him in front of us.

Deputy R.G Le Hérrisier:

He will be able to tell us that, yes.

Deputy T.M. Pitman:

As we are drawing to the end, can we just touch on the letter, the engagement letter, because that has

obviously drawn some fair comment. Can you, just for the record, explain how that process came about? I think you said in your submission that the date there was a leak to the media is completely coincidence, you are saying. Could you just explain that some more.

Managing Director, BDO Alto Limited:

Yes, I will. We sent our first draft engagement letter to Home Affairs on 18th March 2009 and on 25th March 2009 Home Affairs confirmed that they were happy with the draft engagement terms. They also confirmed that the relevant BDO employees had been security vetted by States of Jersey Police and, therefore, later that day on 25th March 2009, the initial financial information pertaining to Operation Rectangle was sent to us and our work commenced on that date. It was not until 29th September that we confirmed the terms of engagement in a final signed letter of engagement. There was no adverse reason for that other than we had not at that point in time determined how we were finally going to report. When we started the process, we were not entirely sure what information we would be receiving. The investigation was clearly an ongoing investigation and, therefore, the format of the final report had to be determined. We sent out our final letter on 25th September 2009. In that interim period between March and September, clearly, we had confirmation from Home Affairs that we were engaged on the draft terms as previously provided and our engagement letter does confirm that our continuing instructions amount to acceptance of it, so from a contractual standpoint we were happy. It appears to be a coincidence that 5 days later the *Mail on Sunday* ran an article, but it is no more than that.

The Deputy of St Mary:

Does your engagement letter ... Forgive me. I have it somewhere in this pile. Does your engagement letter refer to [Police Consultant] and your working with [Police Consultant]?

Managing Director, BDO Alto Limited:

No, I do not believe it does.

The Deputy of St Mary:

It does not. I just want to take up the other side of this story from [Police Consultant]'s submission. Yes, paragraph 5: "Whilst it was not explicitly stated, it was my understanding from the outset that BDO Alto and I would prepare a joint report of our findings." So [Police Consultant], you are saying that, having been given these terms of reference to look at all these financial things, you assumed that you would be working with ... I do not know. Can you enlarge on that? What went through your mind when you get the terms of reference and then you said: "It was my understanding that BDO and I would prepare a joint report"?

Police Consultant:

It is implicit in the terms of reference I was given. I'll just quote from one or 2 points.

The Deputy of St Mary:

Paragraph 3: "The accountants had no knowledge ..."

Police Consultant:

In paragraph 4: "The Home Affairs accounting officers employed accountants to carry out a review. They have not got any knowledge of management of police operations or police regulations. The review will benefit from the involvement of an experienced police manager. As a former senior investigating officer, [Police Consultant] is ideally experienced to work with the accountants."

The Deputy of St Mary:

Fine.

Police Consultant:

"Where able, he will comment on the expenditure and potentially identify future best practice for States of Jersey Police." This finance review, i.e. the review that BDO also have been engaged to

carry out, is related to a particular item in the terms of reference for Operation Rectangle. So the way that we were working together dictated a joint report. I did not think it needed to be stated explicitly. It was clear that I was going to carry out the role that the Managing Director has already explained.

The Deputy of St Mary:

Okay, I can understand that. Now, I have it absolutely clear. You were engaged by the States of Jersey Police Chief Officer with those terms of reference and you automatically assumed because you talk about the firm accountants that you were working with them, but in BDO's terms of engagement letter there is no mention of yourself or someone who ... Is there a mention that someone would be helping you with better knowledge of the way the police operate than you have?

Police Consultant:

I am puzzled by this. There is this gap.

Deputy T.M. Pitman:

This gap between the chairs.

Managing Director, BDO Alto Limited:

Yes, I understand your question entirely. It was completely implicit that from day one we would be working with [Police Consultant]. We were approved to start work on 25th March 2009. [Police Consultant] arrived in the Island a week later. We met in our office on 2nd April 2009 and that is when we commenced the work. We met Home Affairs together on a number of occasions. We clearly were updating them and asking questions and requesting information on a regular basis. Both [Police Consultant] and ourselves were involved in all of that communication. In fact, going back to our ability initially to undertake this review, it was very much on the basis that we would have some support from a senior policeman with experience of policing ... large policing investigations.

Deputy T.M. Pitman:

We have overrun, so could I just end with 2 questions and then I will ask if there are any final points you want to make. First of all, obviously, you have said that only 2 of your employees were involved in this report. Can I ask if those 2 individuals are still with you should we need more information. Are they still employed for BDO?

Managing Director, BDO Alto Limited:

No.

Deputy T.M. Pitman:

They are not.

Managing Director, BDO Alto Limited:

No.

Deputy T.M. Pitman:

The other point is, and I suppose it is a key one: if you did all this again, how could it be done differently. You can have 2 minutes.

Managing Director, BDO Alto Limited:

To be honest, the review itself was conducted very, very thoroughly. In fact, the only thing that would have been preferable would have been to have met Mr. Harper. Otherwise, the interaction with both Home Affairs and States of Jersey Police and provision of information by them to us was very effective. We felt that they were supporting and engaged in the process. We had no real complaints. As I say, the only disappointment was not being able to take Mr. Harper's comments, but as a result of that we ensured that our reporting was diluted or did not cover matters that would have required his comment to be able to report on.

Deputy T.M. Pitman:

Are there any final points that you wish to add to that, either of you?

Police Consultant:

No.

Deputy T.M. Pitman:

Can I thank you for your evidence. There is a lot for us to sift through and we appreciate you coming in. Hopefully, we will not need to see you again, which I am sure you will look forward to. With that, I think we will have a 10-minute break because we have overrun slightly. Thank you.

[12.42]

STATES OF JERSEY

Education and Home Affairs Scrutiny Panel Issues surrounding of the Review of Financial Management of Operation Rectangle

FRIDAY, 15th JULY 2011

Panel:

Deputy T.M. Pitman of St. Helier (Chairman)

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

Deputy R.G. Le Hérissier of St. Saviour

Witness:

Chief Officer, Home Affairs Department

Also present:

Mr. M. Haden (Scrutiny Officer)

[15:16]

Deputy T.M. Pitman of St. Helier (Chairman):

We welcome you once again to Scrutiny. I know you are very familiar with the oath, so I am sure I can take it that you are fully happy with that; I do not need to run through it. To begin with then, could you just outline for the record why it was necessary in your opinion to commission an external review of financial management, in a nutshell?

Chief Officer, Home Affairs Department:

Yes. I think you have to go back quite a long way to I think the sort of genesis of expenditure, if you like. So I think I will start with the former Chief Minister's statement on 26th February 2008 where he said that all necessary resources will be made available to the investigation. That had various interpretations at the time and I think the former Chief Minister himself sought to clarify it later what he meant by that. But, as we now know, because it is a matter of record, that gave rise to quite an unprecedented level of spending, during the course of which, because I am the Accounting Officer for the Home Affairs Department and I am legally accountable for public money, I clearly had an eye on expenditure right the way through. So, in the course of the next few months, we did have 2 sample audits, one was on the police budget, which was a routine audit of expenditure. I then followed that up with a sample audit of some of the expenditure, which was just to check that some of the invoices had been correctly authorised. At the same time, I was in liaison with the Treasury and Mr. Harper and [former Police Chief] over what arrangements were being made to make sure that money was being spent appropriately. I will not go into that unless you want to, but I think that then culminated, towards the end of 2008, with a situation where most people still, including me, still wanted some reassurance about what had been spent, how it had been spent, whether it was value for money, and so there seemed no alternative than to authorise a value-for-money audit. That was first authorised by the former Minister, the then Deputy Andrew Lewis, but because of the timing, it was December 2008, we then had a new Minister, and it was the current Minister who then made the Ministerial Decision to commission the audit in February 2009.

Deputy R.G. Le Hérissier:

Did you have a major part to play in framing the terms of reference?

Chief Officer, Home Affairs Department:

Yes,

Deputy R.G. Le Hérissier:

Did you discuss those with the Minister?

Chief Officer, Home Affairs Department:

The Minister was aware of them because they were attached to the Ministerial Decision.

Deputy R.G. Le Hérissier:

Did he question them?

Chief Officer, Home Affairs Department:

I recall we had a discussion at the time; the Minister is not in the habit of just signing Ministerial Decisions, and we always put a report with a Ministerial Decision so that [the decision] is a matter of audit what it was taken for. So he would have been aware at the time what was being agreed, yes.

Deputy R.G. Le Hérissier:

I may be running slightly ahead; at that point, were you aware that there was, or was about to start, an internal police review, which was going to look at some areas, which it appears overlapped with the BDO report?

Chief Officer, Home Affairs Department:

Well, I have read [then Acting Police Chief]'s submission, but when I read it I did not know at the time that there was such a detailed review going on that [Police consultant] was involved in. [Police consultant] was taken on by [former D/Superintendent] I think it was to assist with the BDO report, but the significance of why else he might have been in Jersey was not apparent to me at the time.

Deputy R.G. Le Hérissier:

Did it become apparent to you?

Chief Officer, Home Affairs Department:

Not until I read the submission.

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

Sorry, I did not quite catch it; you said the significance of what, of being in Jersey?

Chief Officer, Home Affairs Department:

[Police consultant]. Yes, I mean my understanding of why [Police consultant] was in Jersey was to help BDO do what was a very unusual value-for-money audit, because of course they have no pre-knowledge of police procedures or how the police do their business, other than what is common knowledge, and so to do an audit of that fashion it was decided that they should have an advisor who knew about those things and that was his role.

Deputy T.M. Pitman:

Obviously you were following this closely, were you surprised when you read [then Acting Police Chief]'s submission?

Chief Officer, Home Affairs Department:

I was mildly surprised that there was that other review going on, but then again I am fully conversant with need-to-know principles, so why I say "mildly surprised", because there is no reason why I should have known; it is a police matter. There is no reason why [then Acting Police Chief] should confide in me deeply as to what else he might be doing.

Deputy T.M. Pitman:

While we are on that issue, the view very strongly expressed by [then Acting Police Chief] that he was not happy with this joint report, as he had never agreed to that. Was that more than a surprise to you?

Chief Officer, Home Affairs Department:

No, in fact I had a conversation with [then Acting Police Chief] about broadly whether a joint report should be produced, so I was aware of his concern at the time, I just did not fully understand the context in which we were having that conversation until I read his submission.

The Deputy of St. Mary:

I am just looking at the engagement letter and I cannot find [Police consultant]'s name in it. Maybe I am wrong; maybe it is there somewhere, but it looks as if BDO are contracting to provide certain services and they will review the documentation, identify further documents, prepare a written report, and then they specify how that report is to be distributed, and then the fees and so on. But no mention that there is going to be someone to help them with the interface with the police, with getting into the whole setup and finding out the things they need to find out.

Chief Officer, Home Affairs Department:

No, in the terms of reference we just asked for an audit job to be done, with these terms of reference. We did not say how they should go about it; that was a matter for them.

Deputy T.M. Pitman:

So to take on from Deputy Wimberley's question, because it has been quite difficult for us, and especially the Minister seems to be having memory problems, he is struggling with what he can remember and what he cannot. Were there any boundaries or limitations set by you in your role on the review that was going to take place. Obviously you set the terms of reference, but was there any: who could be spoken to; who could not, I mean what part did you play in that?

Chief Officer, Home Affairs Department:

No, not at all. We did not specify that and I mean I must stress it was a request to do a value-for-money audit, pure and simple, for the purposes of checking that taxpayers' money had been wisely used. To anticipate your next question, I did ask in a meeting, I think we had in July with the auditors, whether Mr. Harper was going to be interviewed, because I thought he should have been, not because the report was about him, it was not, or the audit was not about Mr. Harper, but you cannot escape the fact that he authorised most of the expenditure. So I then remember having a conversation with [then Acting Police Chief] about Mr. Harper's contribution, so I was not surprised in his submission that he laid out what the issue was. He did not tell me precisely what it was at the time, again I did not inquire, it was just explained to me that, for policing reasons, he did not think it was the right thing to do. Bear in mind that the Wiltshire investigation was ongoing and I think it was connected with that. I now know more precisely why he had an objection to it.

Deputy R.G. Le Hérissier:

You are now aware, having read [then Acting Police Chief]'s submission, that he thought or he believed he was saying he cannot be interviewed for the internal report for the States of Jersey Police, but he put no proscription on having him interviewed, or him being interviewed, for the BDO report. Was that your understanding?

Chief Officer, Home Affairs Department:

No. My understanding at the time was that any interview with Mr. Harper in his estimation might have cut across the Wiltshire investigation.

Deputy R.G. Le Hérissier:

Did you contest this with him?

Chief Officer, Home Affairs Department:

No, I trusted his judgment in that, and ...

Deputy R.G. Le Hérissier:

Did you feel it was possible to write the report without input or without the leading participant contesting the evidence; did you feel it was possible to write a fair report on that basis?

Chief Officer, Home Affairs Department:

Well let us be clear, this was not an investigation; it was an audit, and ...

Deputy R.G. Le Hérissier:

But it was inevitably going to lead to possible accusations against people, was it not?

Chief Officer, Home Affairs Department:

I am sure you have read the BDO report. If you read the report, it is not couched in accusatorial language; it makes a number of recommendations. In fact when I read it, if in fact you read it, I picked out 9 places where it says: "This was good practice." Maybe it is me, but I read it in that light. It was an audit report based on evidence, based on financial evidence, which in my view tried to be objective about what they found. It was not an investigation. I am not naive enough to think it would not impact on certain people. Frankly, it was quite a risk for me to commission this audit, because I am the Accounting Officer, but I felt it was the right thing to do, I was prepared to stand by the decisions I had made over the last 2 years, at the time, it has now been 3 years, and so I was prepared to take whatever they concluded.

Deputy T.M. Pitman:

While you are on that subject, we have considered quite a lot today that Jersey is quite a unique system and not a normal system you find for the police to work in, in a big case like this. How did you feel in your position, because clearly your position was less than perfect in that you have got no power over the police but, as you say, you are the accounting officer?

[15:30]

Chief Officer, Home Affairs Department:

Yes, it is and remains an imperfect arrangement, I will call it that, but we have strengthened it since. I had a written memorandum of understanding with [then Acting Police Chief] about the interface between the Home Affairs budget and the police budget and I have got a similar one with Mr. Bowron which we signed in January. I think what Rectangle showed up was the imperfection in our system when it comes to the control of the police budget and hopefully that will be fully put right when we get the police authority. At the moment the M.O.U. (memorandum of understanding) that I have, which sets out in 2 pages what I expect the Police Chief to do for me and what he can expect from me, does give us something better to work to.

The Deputy of St. Mary:

Going back to your statement that there was a risk in commissioning this audit, and I can see what you mean, how do you react, maybe, to the criticism that some have expressed that the BDO report looks at the way the police spent the money and does not look at the way Home Affairs could have had responsibility there, that the torch was shone more on one side than on the other?

Chief Officer, Home Affairs Department:

Bear in mind that the BDO report is one thing, the Wiltshire finance report is another and the Comptroller and Auditor General's report is another. I think if I had been found seriously wanting I would be gardening by now but the Comptroller and Auditor General summed it up in his report of 14th July 2010. If you have not read that then you need to read that because that sums up all the reports and gives his view on whether I did enough, frankly.

The Deputy of St. Mary:

It is not so much whether you would be gardening now. I think gardening is nicer than sitting here.

Chief Officer, Home Affairs Department:

I like gardening but it does not put bread on the table.

The Deputy of St. Mary:

My question was about the balance of the report and it is not what I am saying. The whole thing is about what different people are saying about this and there is a view that BDO were very intent on looking at the expenditure of the police and what occasioned it and the triggers and then the details of the dog and so on but they were not as interested in if expenditure is running at £300,000 a month or £400,000 a month, something like that. Home Affairs is where the accounting expertise is; there is none in the police. I seem to have read that they have not got much in the way of that. So was there not room at that point to say: "Hey, come on, let us sit around the table and get somebody with their hands on the purse strings inside the police"? I know it is hindsight.

Chief Officer, Home Affairs Department:

Yes, but that does raise a number of issues. The first thing is that we are way off terms of reference here but you have asked me the question. To take that point though, I will say this - it is not my knowledge, it is obviously in other reports - that it is part of the procedures with major inquiries to appoint a finance team to cope with the expenditure. That was not done. The police had access to the Home Affairs finance staff, as they do every day of the week. The problem we had was that we were always looking in the rear view mirror. There was no budget for this operation or investigation. If you have read the reports, one of the first things I had to do was ask the Treasury how I am supposed to account for all this, and I did that right at the beginning. It is very difficult to run a proper set of accounts with no money upfront. The other thing, of course, is we were not party to any of the spending decisions so things were being looked at in retrospect and we had to build a pattern of expenditure based on what had already happened rather than what was going to be authorised. So it is not right to say that there was not access to financial knowledge or expertise. One of the finance managers in the department sits on the Force management board as a finance adviser, so there was finance advice available continually. I met Mr. Harper myself in person once on finance specifically but we were in contact through most of May 2008, because the expenditure was starting to kick off in a big way, about what exactly was happening. So it is not true to say or suggest that they were cut adrift from a financial point of view.

Deputy T.M. Pitman:

Obviously I am not a forensic accountant, none of us are. I do not think I would want to be either, but from your position - and we put this question to the Minister so I will ask you - when you compare, say, the Wiltshire expenses, which I have questioned myself. The Minister in his answer said he was quite happy that was above normal expense, £80 or whatever it is, for a room but he justified it by saying they were close to where they were working. What sort of guidance, if any, were BDO given in coming to their conclusions on what was good value? Could you just clarify that for me? As I say, I am not an accountant. What I am trying to say is are there some sort of consistent guidelines for all these exercises?

Chief Officer, Home Affairs Department:

The Force themselves have policies on things like entertainment and travel, so they have got their own rules. That is where you would go first of all to have a look to verify things. Then I think it is generally known that the States has got, through procurement, approved rates on hotels and accommodation. So those are the non-specialist areas of expenditure. Of course there are things like the drugs dog and the cordons and that sort of thing, which are more specialist, but for these things which are common or garden expenditure anybody who is a public servant would know what you are supposed to do.

Deputy T.M. Pitman:

Yes, I fully appreciate that but I am saying the Minister's answer was he brought up the fact these

people were put up on the other side of the Island from where they were working, and you have to say again Jersey is 9 by 5. Now, if it can be justified on the one side, all I am asking is is there consistency and would BDO have been given guidance on anything specifically from Home Affairs? What I am trying to establish is if there is consistency in the approach to what is appropriate and what is not.

Chief Officer, Home Affairs Department:

I did not give them any guidance on that but then it is part of an audit function to find that. I do not think that is a particularly complicated area. From reading the report, they benchmarked what was being spent in various places against the rates that they knew were about or against where other people were staying.

Deputy R.G. Le Hérissier:

Again, I may be exceeding the terms. You said and you implied it was a bit of a courageous thing to have commissioned this report, but do you think we should never have been there in the first place? In other words, people knew there was not a structure to financial management and that there could have been and should have been much stronger intervention at an earlier point when it was quite obvious to some people that things were not right.

Chief Officer, Home Affairs Department:

I knew from 26th February 2008 that I was on a bit of a sticky wicket. I am old enough to know that this was going to be difficult. Here is a huge amount of expenditure, unprecedented really, no budget, nobody telling me how the money is going to be refunded, no control over instructing the police how to spend it, and yet I am legally responsible in law. All I could hope was that in the fullness of time people would take a broad-minded view of it, weigh up all the factors involved and reach a sensible conclusion. Bear in mind, and this is a serious point which I have not made yet, we did think at the time we were talking about child genocide. I am not a dyed-in-the-wool civil servant. In February 2008, when the former Chief Minister made that statement, I was going to be the last person to interfere with what the police were doing and the last thing they needed was me on their backs saying: "Have you filled in these balance sheets?" There was a time and a place for that but it was not just then. So I think here we are in the cold light of day 3 years later. What you have to do is remember that the Island was potentially, and we thought we were, dealing with something really horrible and the focus at the time was on what exactly had gone on, not about whether we are spending the precise amount of money on this or that. So I did want to let the police get on and do what they had to do.

Deputy R.G. Le Hérissier:

Okay, although the irony is, of course, as the situation was to unfold it was then alleged by some parties that the eye was taken off the child abuse allegations and it became this pantomime about finance. The whole thing then became a scandal about finance. So it is hard to judge.

Chief Officer, Home Affairs Department:

But I, in my water, knew that would happen eventually.

Deputy R.G. Le Hérissier:

Looking at the report, so the report is going on, we have the role, as we find [Police consultant], who seems to pop up in various capacities. Did BDO come back to you regularly and say: "This is what we have found. These are the issues. Can we sit down and discuss them? These are the steps we propose to take for the future"? Did that discussion take place?

Chief Officer, Home Affairs Department:

We had 3 meetings in person, which I have got file notes of.

Deputy T.M. Pitman:

Sorry, what period was that over, roughly?

Chief Officer, Home Affairs Department:

From about March 2009 to the end of 2009. During that time they were involved in the grinding out of the evidence and looking at the stuff. We did not question findings at that point. Where we got more involved was late 2009, early 2010 when the first drafts of the report started to come out. Originally it was very detailed and I did see an early draft, which was their working draft if you like, and the main observation I had at the time was that you could not put it into the public domain. I said to BDO: "Look, this is all very good stuff, very detailed, but the public are going to want to see this. We need a report that you can put out." It did take them quite some time to then change that. For example, there was lots of email correspondence and quoting of people and what they had written, this sort of thing, rather than things written in reported speech, which would be right. They had a number of iterations of editing the report so that you have what you have today.

Deputy R.G. Le Hérissier:

But when you read it, aside from the presentational issues, did you spot anything, for example: "This conclusion is not sound. I do not think you can say that without more evidence. You have jumped too many steps here"? Did you come across any of that?

Chief Officer, Home Affairs Department:

There was no need for that, no. They had done what I thought was a professional audit. They had based their conclusions on evidence and what they had looked at and, no, I did not have any reason to question that.

Deputy R.G. Le Hérissier:

There is a strange form of logic. There is a discussion about Mr. Harper and why he would have been essential and so forth, and they answer their own darts because they then give a list of reasons - it is under 20, [in BDO Alto written submission] I got it wrong this morning - why they did not expect Mr. Harper to turn up. Surely it was not their prerogative to determine whether or not he was going to turn up. They assume he is not going to turn up so do not invite him. Did you pick that up?

Chief Officer, Home Affairs Department:

Turn up for which?

Deputy R.G. Le Hérissier:

Turn up to give evidence, were he to be given an invitation.

The Deputy of St. Mary:

They assume that in their submission, or they suggest that.

Chief Officer, Home Affairs Department:

Yes, but he never was going to be asked to turn up, was he, because they followed [then Acting Police Chief]'s advice on that?

The Deputy of St. Mary:

So you were aware of this advice? You were aware of the conversations between [Police consultant] and [then Acting Police Chief]?

Chief Officer, Home Affairs Department:

I was aware from [then Acting Police Chief] himself that he would not sanction Mr. Harper being asked to give a statement.

Deputy T.M. Pitman:

I am sorry. To make that quite clear, from what we have heard today, yes he was going to be prevented from speaking to [Police consultant] on the internal inquiry, but from what we have heard, he could have spoken to BDO.

[15:45]

Chief Officer, Home Affairs Department:

No. It is not ... I think I answered the question, and that is not my understanding.

Deputy T.M. Pitman:

I am saying, that is not what was said to us today, so ...

Chief Officer, Home Affairs Department:

I can only tell you what I understood.

Deputy T.M. Pitman:

I just want to get that ...

Chief Officer, Home Affairs Department:

I am quite firm on that.

The Deputy of St. Mary:

Right. So you had this view from [then Acting Police Chief] that it is not possible, for reason X, to talk to Mr. Harper, and did that give you ... did that give you ... not sleepless nights, but did that give you cause for concern? Did that worry you that [then Acting Police Chief] was saying no, they cannot speak to Lenny Harper, given his role in the whole ...

Chief Officer, Home Affairs Department:

My judgment was, he had a good reason for saying that.

The Deputy of St. Mary:

Did it worry you?

Chief Officer, Home Affairs Department:

No.

The Deputy of St. Mary:

You did not think it might affect the credibility of the report, given that the report also refers to the Met report, where the same situation attained that Lenny Harper had not spoken ... that they had not spoken to Lenny Harper or Graham Power, for that matter.

Chief Officer, Home Affairs Department:

No, because my frame of mind was that, as I said before, it was an audit, and it was an audit for the Minister and for me. I would accept the criticism, that it is preferable, or would have been preferable, for Mr. Harper to have been interviewed because, as I said before, I thought he should have been. If I had had a free hand, he should have been asked about it, yes.

Deputy R.G. Le Hérissier:

What I was wondering is, you did not think it was worth then saying, or it was worth suggesting to BDO: "Look, the main participant, the person who drove the expenditure, has not been interviewed, and this must inevitably short change the report. It cannot be a complete report."

The Deputy of St. Mary:

It would taint it. It would taint it, as well. The point about this whole investigation, the whole lot was tainted, is it not? It is like people do not believe anything, and so you have to make this report bullet-proof, clear, and you have to have the main protagonist. It may be that it would not have changed the report in any way other than that. What matters is that he was not able to give his view. Question mark.

Chief Officer, Home Affairs Department:

Yes, you can take that view. It was not one I held at the time.

The Deputy of St. Mary:

I want to pick up on what you say about ... and I was very surprised when I read it in the document by [then Acting Police Chief], I think, where he says that it was not a ... it was not an investigation, it was a review. You say the same thing, it was an audit, it was: "Just an audit." Whether you would like to comment on what the *Jersey Evening Post* termed "just an audit", on the 15th of July, when this became public, where we see 4 pages of "just an audit", of sensational headlines. Would you like to comment on how "just an audit" becomes ...

Deputy T.M. Pitman:

We appreciate that you do not control the media.

The Deputy of St. Mary:

It is a problem, though, with something that is an audit.

Deputy T.M. Pitman:

It must be disappointing for you, though, I would have thought?

Chief Officer, Home Affairs Department:

You have to have a thick skin if you are a public servant.

The Deputy of St. Mary:

But the point is it is not covered as an audit is covered as an investigation. I mean, quite plainly, that is ... it comes out as a hatchet.

Chief Officer, Home Affairs Department:

If you gave the BDO report to a civil servant and said: "Do me a précis of this", it would not look like that.

The Deputy of St. Mary:

The problem is that it does look like that.

Chief Officer, Home Affairs Department:

But we are in different professions, are we not?

The Deputy of St. Mary:

But you see, now I am getting sort of twitchy, I am getting kind of shades of Murdoch and saying: "I did not really mean to do that, these guys just did it, you know, I do not know anything about it." Yet, this is how it ends up in the paper, and so on. I just put it to you there is something ... there is something worrying about this process where an objective report, as you are saying that it ... well, are you saying ... Do you think that is a thorough and objective report?

Chief Officer, Home Affairs Department:

Yes.

The Deputy of St. Mary:

So then the question is, how does he get it turned into this? Or is this thorough ...

Chief Officer, Home Affairs Department:

I am not a journalist. I mean, I cannot possibly explain or justify why journalists make that of an audit report. Not as Chief Officer for Home Affairs, I could as a member of the public.

The Deputy of St. Mary:

But you might be able to as a politician, though.

Chief Officer, Home Affairs Department:

Sorry?

The Deputy of St. Mary:

As a politician, you might be able to predict how the report would look in the *J.E.P. (Jersey Evening Post)*.

Chief Officer, Home Affairs Department:

Well, I thought it was an objective report.

The Deputy of St. Mary:

It is not really a fair question to give you.

Deputy R.G. Le Hérissier:

I was going to make the point that there was no doubt that this was being played out almost as a massive propaganda battle. Even though you had, for the finest of motives, commissioned this report and reports like that, they were clearly moving in a certain direction, and there was a view that if you rubbish the investigation officer (not you, but if the system does) then you rubbish the inquiry, that the 2 things were becoming conflated, as they say. There was an awful lot of evidence starting to appear in the public domain, which seemed to be focused on, and I think my colleague put it well, Deputy Wimberley: I am investigating the senior investigating officer. I am not defending him; I am not an apologist for him at all.

Chief Officer, Home Affairs Department:

For the record, you are not suggesting I commissioned it to rubbish the ...

Deputy R.G. Le Hérissier:

No, but what I am suggesting is that it was moving very strongly in that direction, and there was an unending sort of supply of notes of information, ending up in the public domain. Do you think that is what was happening? Not with your active connivance, I should say, but that is essentially what happened.

Chief Officer, Home Affairs Department:

Well, it is mere supposition, is it not? We do not go to work every day to indulge in any of that. It is not part of being in the public service. I do not know what other people do, but certainly, you know, I can talk for Home Affairs, me and my staff. That is not what we get up in the morning to do.

Deputy T.M. Pitman:

Something that has worried me today at the hearing, and obviously, we have to check it out. You said you are happy it is an objective report to the best of your knowledge. Obviously, you did not write it. But if you are going to engage a firm of accountants to do that, and we know, we have seen the document from BDO, they did conflict of interest checks on those staff, which apparently is quite normal, I can imagine. As I say, I am not an accountant. But when we hear that allegations that one of the key people who wrote this was actively involved on the internet in an anti-Mr. Harper group, would that worry you? You obviously do not know that, so I am just putting it to you. Does that not concern you, if that is true?

Chief Officer, Home Affairs Department:

Until you just said it, I had no knowledge of that. But if it is true, of course it would, yes. I mean, if that had been ... if that is true, and generally known at the time, you would not ignore that, would you?

Deputy T.M. Pitman:

I would hope not.

Chief Officer, Home Affairs Department:

No, we would not. But until you just said it, I had no prior knowledge of any suggestion of that at all.

Deputy T.M. Pitman:

If something like that would have been brought to your attention, then what could you have done? What would happen, I mean, how would you take that up with the people doing the review?

Chief Officer, Home Affairs Department:

I think you would have to see if there was anything in it. There is so much supposition and accusation around, you would have to verify it. If it was found to be substantiated, you know, you could not end up appointing a firm, you know, who had had a conflict like that.

Deputy R.G. Le Hérisier:

Can we move to the allegations of a leak, and again, we are not accusing you of this you, by the way, but it is more to explore the issue. Were you aware that there was leaking, initially to the local press, and then there was this major leak to an English national paper of information derived from or replicating the BDO report?

Chief Officer, Home Affairs Department:

No. The first we knew about it was after (it was the 4th of October, was it not) was the first working day when we came to work. Then our first thought was to ask BDO what was going on, because it was not from the Home Affairs, obviously. I was sure of that, so we asked BDO if they knew anything about it. That was our first reaction. I think it is in the submissions, it is clear now what happened.

Deputy R.G. Le Hérisier:

Had there been any other leakings, as far as you are aware?

Chief Officer, Home Affairs Department:

Not that I am aware of, no. Other people may have been, if they were closer to other information, but we did not have much meaty information.

Deputy R.G. Le Hérisier:

This sounds an astoundingly naive question, but it has to be asked (not because I am naive ... well, I might have been) what are the major lessons you have learnt from all of this?

Chief Officer, Home Affairs Department:

Despite all the problems, and I knew there would be problems, and here we are, 3 years down the line, I think as the Home Affairs Department, we tried hard to let the police get on and do their job, but in the real world, you have to be able to back everything up, justify what you did, account ... you know, I am accountable, I am the Accounting Officer. So at the same time you are giving people latitude to do an important job, you do have to spend some time making sure that you can account for decisions. Now, I found that very difficult, because the system was not perfect, as we now know. You know, we have mentioned all the other problems, like not having a budget. All those things made it very, very difficult. One of the reasons I said I found this quite an objective report was because if it happened again, and God forbid it ever does, but if we had anything similar, you could go to that [BDO Alto report]. If you look at the recommendations in there, even if you did not go to the major incident procedure manual that the police have to work to, you could pick this up and say: "Well, hang on a minute, what did we miss last time?" So for me, this is a good reference document. So a lot of the lessons that, from an accounting point of view, were there to be learnt, are in there and in many ways it vindicates the reason for commissioning the value for money audit, because it has been very helpful from that point of view.

Deputy T.M. Pitman:

You just reminded me of one question I wanted to follow up before, from Deputy Le Hérisier. When speaking with Mr. Harper, and [former Police Chief] I suppose, as well, why things were unfolding, Mr. Harper has expressed the view that Home Affairs were always happy with the explanations given and how things were being spent, it would seem. Is that a fair reflection, what he said, or is it only later when you were ... dissatisfaction emerged? Could he have gone away with that impression wrongly, that everything ... you were all happy with?

Chief Officer, Home Affairs Department:

No. That was his way of expressing it. I think, if you had been a fly on the wall, you could not say I was happy with everything that was going on. Bear in mind, I was questioning everything in retrospect. I did not have a chance to be happy, because I was not ever being approached and asked whether: “We are about to spend this large sum of money, is that okay?” Or what could we be doing to put in place measures to make sure that there is an appropriate use of funds. That is a different way of doing it. The only conversation that we have ever had was (and bear in mind, I was the instigator of these discussions) saying: “You have done these things. How can you assure me that you have spent the money appropriately?” Or efficiently and effectively, to use the right words. He would then explain, and he would give a justification. All I could do was ask questions and accept the explanation or otherwise. It is not me endorsing what had happened. I was not in a position to do that.

Deputy T.M. Pitman:

Perhaps I am getting confused, and correct me if I am, but one of the big expenses would have been the serious crime incident room, would there not? Is that fair, to say that was? Should that have been an expense attributed to the general police budget, rather than unfolding of the Haut de la Garenne?

Chief Officer, Home Affairs Department:

No. You mean the Holmes investigation suite?

Deputy T.M. Pitman:

Yes.

[16:00]

Chief Officer, Home Affairs Department:

No, because they would not normally have a need for anything of that scale, so that, in my view, is correctly attributed to the investigation. But bear in mind, you know, you have to maintain some balance here. I appreciate that Mr. Harper and anybody involved with the inquiry was having to make decisions on the hoof, half the time. You do not have the chance to sit back with your feet up on the table, mulling over what to do, necessarily. Some things ... there has to be ... the BDO report says there was not the need for urgency, but there was ... But there were a lot of difficult decisions to be taken, and so we forget that in the calm of today, but in the cut and thrust of the time, people had to make some pretty serious operational decisions.

The Deputy of St. Mary:

But I still have to come back to ... I just quote what Mr. Harper said, which is fine, and I think you have just spoken about it, you have given your version of this. He says he got very little guidance from Financial Affairs. “The nearest we got was sitting down and talking with the Chief Officer and the Head of Finance, and going through the expenditure, and both of those always, at every stage, expressed satisfaction.” You have a slightly different gloss on that, you asked questions. “And I have to say, some frustration as well with the fact that they were aware that we were trying to keep costs down to a budget that we did not have.” So there you are, each month, having these meetings, roughly? And it was looking at this quite big river of money going, and asking questions as well as you could. But was there not a point at which you thought: “Gosh, can we not set up something a bit better than this, to manage the expenditure, so that it is not Mr. Harper who is saying: ‘I will decide

on this and I will decide on that, and what about the transport, and what about the hotels, and ...” You know, which is what the BDO report ... that is what they say: “Should have happened”, in quotes. So my question is, I suppose, why did it not happen?

Chief Officer, Home Affairs Department:

Well, it did. As I said, during May 2008 there was a lot of correspondence between Mr. Harper and myself about whether he could justify the amount that was being spent, and he gave me those assurances. But as part of questioning and verifying that I wrote twice to Chief Officer. So I wrote to [former Police Chief] saying: “I have been told this, I need an assurance from you that this is right.” It was not answered the first time, but [former Police Chief] did suggest that we set up an oversight board to meet on a monthly basis to look at financial expenditure, which was a good idea, and we set it up. But I did have to write to him another 2 weeks later and say: “You know that question I asked you, I still need your assurance.” Then he wrote back and said he had been assured by the people in charge that expenditure was being appropriately made. So that was me trying to get, from the top, the fact that they were looking after public money. But to answer Deputy Wimberley’s question, we did set up this board. When [then Acting Police Chief] came in, I think it was August 2008 when Mr. Harper had gone, he set up a different group. He ran it more on operational lines (it is referred to as a Gold Group in some of the literature) which was a more formal board, where financial matters were part of that, and I attended those meetings, where part of that was, if they were going to incur significant expenditure, it had to be agreed at that meeting, in advance. So that was an improvement.

The Deputy of St. Mary:

Can you tell us when the F.O.B. (Financial Oversight Board) was kicked off? I know it is in one of the documents, so maybe I can just find it.

Chief Officer, Home Affairs Department:

No, no, I will find it. The first meeting was on 23rd July 2008, the second meeting was on 3rd October 2008, and the third meeting was on 12th February 2009.

The Deputy of St. Mary:

By then it was running in parallel with the Gold Group?

Chief Officer, Home Affairs Department:

Yes. But we subsumed it within for obvious reasons. [then Acting Police Chief] and [former D/Superintendent] were at the last meetings, obviously, because they had now become the new team.

Deputy T.M. Pitman:

Can I just ask then your feelings when this leak, which allegedly came from [former D/Superintendent]; it seems that way, [Police consultant] told us it had been confirmed to him by [former D/Superintendent] it was him. What concerns did that raise for you at that time, the fact that it ... did you worry it was going to undermine the inquiry that was going on, the review? Did you wonder what the motivation was for that?

Chief Officer, Home Affairs Department:

I think it was a personal decision taken by [former D/Superintendent], obviously, to go public with his feelings.

Deputy R.G. Le Hérissier:

Have you told him these feelings?

Chief Officer, Home Affairs Department:

No, I never spoke to him personally. I doubted the wisdom of that at the time. I remember thinking I would not have done it myself. But I think, again it is only my view. He obviously felt very strongly about the issue, and felt that that was his way of dealing with it. It is not my style, but we are not all the same, are we?

Deputy T.M. Pitman:

Do you have any other points that you want to make to us?

Chief Officer, Home Affairs Department:

No. Only that it is easy to reflect in hindsight. I think people forget too easily that at the time ... We may be all divided now, but at the time, I would say everybody in this room had one objective, and that was to get to the bottom of whatever it was that caused this investigation. In many ways, ironically, we are glad it did not precipitate into something else. I think one of life's ironies is that we were all united in early 2008, in trying to get to the bottom of something completely ghastly. It is just a shame now that we all have different positions on it. But that is a personal thing.

Deputy T.M. Pitman:

Thank you again for giving evidence, and I will end it there. I am sure if we need to speak to you again, you will be more than happy to spend some time. Thank you.

[16:07]

STATES OF JERSEY

Education and Home Affairs Scrutiny Panel Review of Issues Surrounding the Review of the Financial Management of Operation Rectangle

THURSDAY, 25th AUGUST 2011

Note: The witness has not corrected the transcript

Panel:

Deputy T.M. Pitman of St. Helier (Chairman)

Deputy R.G. Le Hérissier of St. Saviour

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

Witness:

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

Present:

Scrutiny Officer

[10:02]

Deputy T.M. Pitman:

Minister, thank you for coming back a second time. A lot to get through, as I say, so perhaps we could start on what [the former Acting Chief Officer of Police] had to say about the supremacy of the Wiltshire inquiry. To put it in a nutshell, he felt that it could have seriously undermined the investigation by the Wiltshire Police doing this BDO Alto review at the same time. So, in a nutshell, would you agree, Minister, that the timing of BDO Alto was inappropriate and that it would have been much better to deal with the disciplinary matters first and separate out the other issues?

The Minister for Home Affairs:

Well, I am very surprised that [the former Acting Chief Officer of Police] raised that because clearly he never raised his concerns with me at any stage. I think his concerns were a bit overrated in the sense that all these reports were fundamentally being produced for me and at the end of the day it was my task in terms of the way in which I used the reports and information and what happened with them and when to ensure that there was not any prejudice to the Wiltshire inquiry. I agree that the Wiltshire inquiry takes primacy in relation to that, but of course the purpose of this inquiry was much wider. Indeed, if you think about it, if I had basically said: "No, we are going to have to wait until the end of the Wiltshire inquiry", we would have been waiting a very, very long time and people would be saying: "Why are you not looking into these other aspects?" et cetera. The other factor, of course, is that at the time when I dealt with this, if you recall, both the previous Minister and myself were initially told that the inquiry would be completed by March of 2009. So by the time I signed this off, which I think was in February, I was probably still under that impression. I remember the dates going back; I remember at the end of the suspension hearing they conducted in this room for Mr. Power, being told then it was going to be May and it then slipped and slipped and slipped. So, you can see that, in fact, I probably was under the impression that the Wiltshire stuff would be completed well before BDO Alto. But as I say, no one ever raised this issue with me and I think he has overcooked it a little there because at the end of the day it was me that was going to look at the stuff and decide what was going to happen with it.

Deputy T.M. Pitman:

When you say “overcooked” why would [the former Acting Chief Officer of Police] ...

The Minister for Home Affairs:

I think his concerns are a bit overrated.

Deputy T.M. Pitman:

... come up with that argument now? It must ... I would assume his thoughts were consistent all the time. Why would he be saying that now and you say he never mentioned it to you?

The Minister for Home Affairs:

I do not know. I do not know. He clearly had concerns; I have read his statements. But what puzzles me in relation to this, where there were concerns why was no one actually coming to talk to the Minister about it and saying: “Minister, I think you need to be careful here. Can you not put this back?” or whatever? That clearly did not happen.

Deputy T.M. Pitman:

Put what back?

The Minister for Home Affairs:

Put back the date for the BDO Alto report. It is fine raising concerns now but if no one actually raised these concerns with me at the time how am I to know that there were these concerns in existence? I would then have considered them, of course.

Deputy T.M. Pitman:

But, of course, [the former Acting Chief Officer of Police] says that his decision - and he makes it very clear - not to let [Police Consultant] interview Mr. Harper as a part of the States of Jersey Police was purely into advice received about the primacy of the investigation.

The Minister for Home Affairs:

Well, I think also my reading of his statement he is saying that that was only police officers he meant and that he did not mean BDO Alto. I think that is what he is saying in his statement. If you remember there is a passage where he talks about there being no property - I think it is misspelt in the report - in a witness and that is what he is talking about there. Now, I do not know if that is right or not but that is what he is saying. Can I just interject something because I went into - and I apologise for this - the previous hearing a little underprepared because I had not, in fact, focused sufficiently on the initial report documents which I got. As a result of that I am afraid I was rather vaguer than I should have been. I actually prepared reading other areas and did not focus sufficiently, but I subsequently discovered you will, of course, have received the copies of the supporting report. But you will find, in fact, that attached to that was attachment A, which were draft terms of reference. Now, clearly I had forgotten about that. You will find at the end of the section called “scope” ...

The Deputy of St. Mary:

Sorry, can you just clarify, supporting report, which supporting report?

The Minister for Home Affairs:

This is the report provided to me by, not [the chief Officer, Home Affairs], I think the chief accounting person in the department, which was the basis of my ministerial decision to do this.

The Deputy of St. Mary:

Oh, fine.

The Minister for Home Affairs:

I was asked questions on that previously and I am sorry I was underprepared and had not read this

adequately. But if you look at the bottom of the first page of attachment A, which is effectively the draft terms of reference for the report - I have not checked the wording against the final terms of reference but I am told they are substantially similar - you will see it says there: "Direct contact should be made with the appropriate key individuals to secure a full and thorough assessment." That is clear. I was actually asked that question by Deputy Wimberley as to whether there was anything in the documents about seeing Mr. Harper, but in fact there was that clear statement. It was part of the terms of reference.

The Deputy of St. Mary:

Sorry, I am not finding what you are referring to. Is this the M.D., the ministerial decision?

The Minister for Home Affairs:

This is the report attached to the ministerial decision.

The Deputy of St. Mary:

Which page are we on of the report?

The Minister for Home Affairs:

Well, you find that there is a 2-page report and then there is attachment A which is marked "draft".

The Deputy of St. Mary:

Yes, fine.

The Minister for Home Affairs:

If you go down to the bottom of the section marked "scope" you will see: "Direct contact should be made with the appropriate key individuals to secure a full and thorough assessment." So that was always envisaged from the start and so again I am slightly surprised that when issues arose in relation to that, as I said last time, that it was never referred back to me.

Deputy T.M. Pitman:

We did not think you were vague. I thought you were doing an Oliver North impersonation.

The Minister for Home Affairs:

Sorry?

Deputy T.M. Pitman:

I thought you were doing an Oliver North impersonation.

The Minister for Home Affairs:

Well, I know nothing ...

Deputy T.M. Pitman:

If you remember Oliver North.

The Minister for Home Affairs:

Yes, he was a general, was he not?

Deputy R.G. Le Hérissier:

Colonel North.

The Minister for Home Affairs:

No, I can only tell you the things I know and ...

Deputy R.G. Le Hérissier:

On this point, Mr. Minister, sorry ...

The Minister for Home Affairs:

... frankly, I have discovered this subsequently.

Deputy R.G. Le Hérisier:

Okay, but you never had any indication that Mr. Harper had been - shall we put it in inverted commas - "overlooked" as the thing was proceeding?

The Minister for Home Affairs:

Well, I did, I did in the report itself. The report is quite clear on that, that he had not been seen, but then, as I think I said last time, it then contained all sorts of references to his statement and so on which clearly gave any reader the impression that his account and views on the matter had been considered and taken into account. Now, I accept that is not ... I accept that that is not sufficient, I said that last time, and it was not good practice. I suppose I could be criticised for at that point not having picked up that point, but I obviously was of the opinion that they had taken the view they had sufficient knowledge of what he was saying in relation to things to formulate an opinion sufficient for the purposes of this report.

Deputy R.G. Le Hérisier:

But you still hold to that view even though there was this incredibly feverish attitude around, there were people saying: "Why are all these police officers earning these fabulous amounts of overtime on manning the cordon?" and so forth and so on, and it was inevitable that the finger was being pointed at one individual, and yet having taken account of what was going around the situation you still felt there was no real issue in not having interviewed almost the prime accused?

The Minister for Home Affairs:

Well, I think that is the view I took, yes, and obviously I was comforted by the fact that this is a professional body. They, of course, say in the statement ... sorry, say in the report that they had interviewed key people like the dog handler, like the forensic company for whom they were still charging on an hourly rate when they should have been on a daily rate and things like that. Now, some of those issues, no matter what Mr. Harper might say, the criticism would still be there. I think that is undeniable.

The Deputy of St. Mary:

Yes, but the criticisms are then put in the report without any opportunity being given to Mr. Harper in particular to ...

The Minister for Home Affairs:

No, I accept that. I accept that.

The Deputy of St. Mary:

It is untenable as a position, really, is it not?

The Minister for Home Affairs:

I accept that is good practice.

The Deputy of St. Mary:

More than good practice, it ...

The Minister for Home Affairs:

It is clearly good practice and clearly that is what was initially envisaged.

Deputy R.G. Le Hérisier:

It is natural justice, surely.

The Deputy of St. Mary:

Minister, it is more than good practice. It means that the report, really you can hold it up and say that because the person who is responsible for these various financial decisions, as he was ... and we are going to come to why he had that responsibility and maybe he should not have had, but he did have it and he accepts that in his statement, I think. He did not have any opportunity to explain these different allegations, if you like, or these different statements by BDO one by one to say: "Well, that was because of this and this was because of that and I did not have a right-hand person" and so on, whatever he would have said. But the fact that all that is missing is not just something that is sort of ... that is acceptable and is, as you say, not a real issue. You said: "That is the view I took."

The Minister for Home Affairs:

I think the view I took was here I had professional people who were reporting back to me and clearly they were satisfied that they had a sufficient basis upon which to reach judgments.

The Deputy of St. Mary:

[Police Consultant] actually resigned over this issue. He left the inquiry because he said: "I cannot work without having interviewed ..." and he made that clear to [the former Acting Chief Officer of Police]. He said: "Look, if I cannot interview Mr. Harper I am going" and he went.

[10:15]

The Minister for Home Affairs:

Well, I know that from his statement now but that is the first time I had any knowledge of that because, as you know - and again I had not checked the detail sufficiently - the report itself does indicate that it is a joint report. So I am not quite sure as to why if he had resigned why he was happy that this still be a joint report.

Deputy T.M. Pitman:

If I can jump in there, you view it as the professional people. If nothing else, so far we have learnt the whole basis for BDO not speaking to Mr. Harper was allegedly instructions from [the former Acting Chief Officer of Police]. [the former Acting Chief Officer of Police] has told us that is not true; he had only said that [Police Consultant] could speak to him in one aspect. You have [Police Consultant] working to terms of reference that he did not even understand. Nobody checked on him for 4 months. You then had the fallout and, as Deputy Wimberley said, [Police Consultant] actually walks. How can that leave you confident to say that this was professional people and professional review? There are huge problems there.

The Minister for Home Affairs:

Hang on, I am telling you what I thought at the time when I received the report and when I put it into the public domain in relation to that. Yes, I agree, questions are raised but at the end of the day fundamentally the money was spent. The actual accounting aspects of what happened still fundamentally remained. Some of these matters, I am afraid, are not capable of being explained away in terms of mistakes having been made, but I accept that the failure to give Mr. Harper an opportunity to comment is a significant procedural failure. Whether it has any significant effect on the outcome is, of course, another matter.

Deputy R.G. Le Hérissier:

This issue, if I can revert - and the Chairman will stop me if I have digressed too much - this issue, Mr. Minister, of running in parallel with the Wiltshire report, which, of course, was also looking in a fashion at finance and financial management, albeit not from the same angle and perhaps not to the same detail, it has been put to us that there is a procedure in the police service, indeed in most big organisations, a learning from mistakes procedure. Did you feel let Wiltshire proceed, albeit under the belief it is going to finish at a fairly reasonable time, which we all know was not to be, let it proceed and then, okay, that will be when the discipline issues will be dealt with, I will consider and

make decisions, and then can we all step aside and try and learn from this. Did anyone ... because Mr. Power has argued that he was very ... he was very persuaded by that view that that sort of exercise should happen, albeit when the feverish thinking and emotions had died down, that there should have been a learning from mistakes session, but all it seemed to be was a lay the blame kind of culture had taken root.

The Minister for Home Affairs:

There has been a learning from mistakes in relation to this and [the Chief Officer, Home Affairs] will be able to tell you if you ask him about the additional safeguards which have been put in place. The fact is that at the time in all the different sections of Home Affairs you had senior officers who had the power to ... customs, prison, police, whatever, to authorise expenditure and there were very limited controls in place, with double checking procedures in place, as to whether there was proper value for money, et cetera, and we will come to that in more detail. That applies right across the board. Indeed, you will see some references to accountants having checked whether there were appropriate procedures for authorisation and things of that nature, of payments as just referred to in the start of the report. But what I understand is now happening, in fact, is we now have a situation where finance officers or the equivalent of finance officers in different departments are checking samples of other things from other departments, so there have been lessons learned. The lessons have been learnt I think also in relation to the issue of the accounting officer. Home Affairs should always have had 2 accounting officers; there is no question about it. Mr. Power should have had the position of being an accounting officer with responsibilities. Ironically, I have a draft letter here in which [the Chief Officer, Home Affairs] actually invites him to take on that role during the investigation and he declines to do so. He is actually offered essentially that and you may wish to look at that.

The Deputy of St. Mary:

With respect, how can he possibly offer Mr. Power to be chief accounting officer when the law prohibits that? The 2005 Finance Law does not allow the police officer, police chief, to be an accounting ...

The Minister for Home Affairs:

Well, [the Chief Officer, Home Affairs] will show you this letter in which in order to try to deal with any difficulties he invites him to effectively take on responsibility for ensuring there is proper financial management of resources, investigation being administered in a prudent economic manner, resources being used efficiently and effectively. He will show you that letter.

The Deputy of St. Mary:

What date is that email?

The Minister for Home Affairs:

I do not know because it was an attachment to an email so it is best if ... Mr. Power declined to sign that, although clearly he was aware of his responsibilities ...

The Deputy of St. Mary:

He could not possibly sign it, Minister, because he had no accounting staff.

The Minister for Home Affairs:

No, hang on, can I say that ... we are going to go on to that area. Can I say that Mr. Power's statement and evidence to you is grossly misleading in this area in a whole number of ways. He has, frankly, misrepresented in a big way the nature of the financial set-up and the safeguards and so on. If you want to double check this, you must look in detail at the analysis contained in the Wiltshire finance report which analyses this very carefully in relation to that. You must also obviously look at the BDO Alto report, which has a section which also analyses all this. But at one point Mr. Power was even implying that officers of the Home Affairs Department would have been countersigning individual payments and he knows better than that. Surely he cannot have forgotten exactly how

things run from a financial point of view at that time within Home Affairs. My understanding of the situation, and again [the Chief Officer, Home Affairs] will confirm this ... I am speaking quite strongly on this because what he is saying is clearly wrong and if you wish to have independent confirmation on that then you should call a witness from the Treasury or someone like that who can confirm what the arrangements were at the time if you feel that there is a dispute here. But essentially the system that operated at the time was that individual officers in individual departments authorised payments. That happened right across the board. The Home Affairs Department did not authorise payments other than payments for monies expended within the Home Affairs Department, a small department that sits across the road there. So you have a system in which there is effectively authority given to officers in each individual department. They know what they have ordered. They know the basis on which they have ordered it and the way the system is supposed to work is that the person who authorised it will approve that and then it will be countersigned by somebody more senior. Now, in practice in relation to the historical abuse inquiry, very, very many of these actual payment instructions - I will call them that - were authorised by Mr. Harper personally in relation to that. Now, that is the way the system ran. The functionality of the Home Affairs Department was to provide central accounting services, to manage the overall budget, to tell departments how much money they had spent, how much money they had left, et cetera, but not to make any individual decisions as to whether to employ a particular dog handler or a particular contractor or whatever. That is where it is very, very misleading for Mr. Power, particularly in the context of the meals, to be saying: "I did not countersign" ... sorry, can I just finish? I will come to you very quickly. "I did not countersign any of the meal receipts." He is correct, he did not countersign them, and to imply that Home Affairs therefore did, it simply did not. It was countersigned, in fact, by a more junior officer than ...

Deputy T.M. Pitman:

Can I come in there because you are saying we should really look at certain documents? What about us looking at the 62,000 words from Mr. Power because surely it is equally valid that we finally see that? It would certainly help.

The Minister for Home Affairs:

Yes. Can I say that I came today intending to provide you with a redacted version of the financial part of the statement. Work has been going on on the redaction, as I indicated, as I promised, of the whole. I received a draft of the redaction of the whole of that statement just before I went away on holiday. I have looked at it. I am about to arrange a meeting to continue work on that, but I accelerated forward this particular part I intended to come with today. Then I had pointed out to me that the agreement with Mr. Power was that we would go back to him and say: "Look, this is the form of the proposed redaction. Are you happy with that?" It so happens that that particular section has a section already which was redacted out of it, believe it or not, by the Wiltshire Police. So when it was presented to me there was a section which they took the view should be redacted out in the first place. So that is redacted, where I have tried to put some words back in there. But I am sorry that I have not come today ... that was my intention and as soon as we get the confirmation from Mr. Power on the financial section you will have that. I would have brought it today otherwise.

Deputy T.M. Pitman:

Second point. You are explaining to us all the reasons why things were not as they should be and it seems again it is all down to Mr. Power. In July 2008 - that is a month before Mr. Harper went - there was a letter, I think it was from [the Chief Officer, Home Affairs], saying everything was hunky-dory, so to speak. None of these real problems, although we all know there were rumblings publicly, none of these real problems were highlighted until the December.

The Minister for Home Affairs:

[the Chief Officer, Home Affairs] can better argue for himself, but all I am saying is that which has been said in the different reports in relation to this. Because bearing in mind not only did BDO Alto look at this but also the Wiltshire financial report looked at it. Subsequently, the Comptroller and Auditor General looked at it, although he did not go into any detail. He merely looked at what had

been said elsewhere. Again, you must understand, as I said before, that when I set out on this road with BDO Alto I was fully aware that it might lead to a situation where there would be potential disciplinary matters concerning the staff of the Home Affairs Department. So I might have both my chief officers in trouble at the same time. Now, on the basis of the reports which I received there was no basis for that. [the Chief Officer, Home Affairs] can better answer himself, but you can see that essentially what he did was he sought confirmations from people. He could not get from Mr. Power the overarching confirmation he requested here, but he got confirmations from Mr. Harper that money was being properly expended, that there were proper controls in place, et cetera. [the Chief Officer, Home Affairs] will present those to you himself. I have looked through his file in relation to that and you will see the detail. That was the best he could do because in a sense on the accounting officer issue the theoretical problem is this. An accounting officer should be in a position to control monies by virtue of all the people spending it being his subordinates. In the case of the police force, they are not his subordinates. The police force is a second organisation which has its own chief officer and there is no line of accountability from the Chief Officer of Police to the Chief Office of Home Affairs. There is in all the other Home Affairs Departments. He is the boss of the Prison Governor and so on and so forth. So that puts the Chief Officer of Home Affairs into a very difficult position. The other thing that has to be said is that, rightly so, the States of Jersey Police under the leadership of Mr. Power and subsequently have been very jealous of operational freedom and any impinging on that and, therefore, have said: "We must be free to get on and do things and make decisions and so on and so forth." That leaves the Chief Officer of Home Affairs in a position in which he is entirely reliant upon their assurances as to what is going on.

Deputy R.G. Le Hérissier:

We do not want to unscramble everything, but one of the very important statements, Mr. Minister, made by Mr. Power was that when the Finance Law came in, he had strenuously objected to this arrangement.

The Minister for Home Affairs:

Yes.

Deputy R.G. Le Hérissier:

He apparently was told by [the Chief Officer, Home Affairs] that it was workable. Then as, of course, the Haut de la Garenne thing flowed on, in his view it patently proved unworkable. So the compromise was then suggested of the Financial Oversight Board where all relevant parties would be together, admittedly at a fairly high level. They would not be looking at receipts for meals and so forth but they would be setting policy. Were you aware that that was the background? Because if indeed Mr. Power's assertions are true, it suggests that Home Affairs had accepted that situation and they thought it could work.

[10:30]

The Minister for Home Affairs:

Was I aware when? Because ...

Deputy R.G. Le Hérissier:

Well, when you assumed office, shall we say?

The Minister for Home Affairs:

By the time ...

Deputy R.G. Le Hérissier:

Because this issue is raised all the time to basically excuse Home Affairs from responsibility for what proved apparently to be a mess.

The Minister for Home Affairs:

By the time I assumed office, which was in December 2008, of course completely different arrangements had been in place for some time because the gold command group had been set up by [the former Acting Chief Officer of Police] and was in place and that brought into place much better financial control measures, so in a sense the situation had been diffused. The basic problem here, to put it simply, is this, that for whatever reasons Messrs Power and Harper decided to run the investigation and to control it between the 2 of them and excluded the next 2 levels of management. They did not want a gold command group. They had their reasons in relation to that, but that is what happened. Clearly, their priority was getting on with the investigation, getting on with what they would have seen as the real key issue, which was finding out were there bodies, what was happening and so on. They simply were taking their eye off the financial ball. Their focus would have been elsewhere.

Deputy R.G. Le Hérissier:

But why ... if what I am saying is true and, okay, it predates you but it is very important because it contradicts the version of history you have put forward that Home Affairs could not work with this situation. If Home Affairs thought it was a manageable, workable situation why did they not assert themselves?

The Minister for Home Affairs:

How was Home Affairs going to assert themselves?

Deputy R.G. Le Hérissier:

Well, presumably when the receipts came in and people or the public started saying: "Why are all these people on the court and earning these fabulous rates of overtime?" and so forth, surely the message got through and somebody said: "What is going on here?"

The Minister for Home Affairs:

Well, what you are saying is that as public concern started to come in Home Affairs should have taken a more controlling attitude. You need to talk to [the Chief Officer, Home Affairs] about that because I think you will find that he sought yet further assurances. But the mechanism was that monies were being committed; decisions were being made by the police; monies were being committed; monies were being expended; contracts were being entered into. Those are then reported in, as it were, to the central system and Home Affairs could start looking at them but would have great difficulties in evaluating whether this was money properly spent or not properly spent because they are not police officers, et cetera. Also, you must understand the resourcing of Home Affairs' account team is actually quite small. You have a senior person and you have 2 other people, one of whom works mainly with the police and one who works mainly with the prison. They are essentially supporting the individual sections but they are not running their finance departments for them as such. They are not making decisions. They are not making evaluations.

The Deputy of St. Mary:

Can I say in a sense your response a while back was the answer that you came to office in December 2008 so this was all water under the bridge, the details of it was water under the bridge. My question to you is, or my first question is, the terms of reference of the BDO report, you signed these off effectively in the ministerial decision, is that right?

The Minister for Home Affairs:

I approved the ...

The Deputy of St. Mary:

You must have approved the terms of reference.

The Minister for Home Affairs:

... on the basis of the draft terms of reference, yes.

The Deputy of St. Mary:

They say that the review should consider the following: the costs associated with personnel, the costs associated with external supplies, the internal governance arrangements. Now, my first question to you is when you took office, December 2008, were you at all aware, did you become aware, that there was this issue of financial tension between Home Affairs and the police in general?

The Minister for Home Affairs:

Yes.

The Deputy of St. Mary:

You must have become aware?

The Minister for Home Affairs:

Yes. Right from the start I was of the opinion that the Chief Officer of Police should be a separate accounting officer. That was my view right from the start.

The Deputy of St. Mary:

That is a generally held view and, indeed, Mr. Power expressed it strongly in 2005, or pre 2005 as the arguments raged.

The Minister for Home Affairs:

Yes.

The Deputy of St. Mary:

Okay. So my question now is the terms of reference are all ... we are talking about the financial, whether the money was spent effectively and efficiently to further the aims of the investigation, and yet no terms of reference ... there is not a term of reference exploring this relationship between, if you like, the accounting officer side of it, which is Home Affairs, and the operational side, which is the police?

The Minister for Home Affairs:

Well, I expected that to happen and, indeed, it did happen insofar as there was the chapter in the report ...

The Deputy of St. Mary:

BDO do, in fact, ignore the terms of reference and go there. It is just a bit odd that it was not in the terms of reference.

The Minister for Home Affairs:

It is not expressly there, yes. I am surprised because I think with the evidence I gave to you last time, which was without having looked at this document in detail again, I was clear right from the start that part of the functionality of that was to see whether there was fault in the Home Affairs Department.

The Deputy of St. Mary:

Good. Well, I am glad we are clear that although it was not in the terms of reference that should ...

The Minister for Home Affairs:

That was always in my mind. That seems to have ended up in the ...

The Deputy of St. Mary:

It has ended up in the report.

The Minister for Home Affairs:

Yes. No, that was quite clear and this is one of the reasons that made this a much wider thing than

issues in relation to Mr. Power.

The Deputy of St. Mary:

My next final question on this particular line is do you think that the report then gives a balanced view of the difficulties inherent in the 2005 law as expressed to us by Mr. Power, and we will go into it in more detail with your Chief Officer because he was there and you were not at the time, but how the inquiry was managed financially in the overall sense? Do you think it gives a balanced view of that tension and those issues?

The Minister for Home Affairs:

It does not go into the detail, which is why you may have been in some confusion as to how in practice things were working. It does not actually explain who authorised payments, where the information went, what the role of Home Affairs was in ...

The Deputy of St. Mary:

Well, that is interesting, is it not? It does not look at the role of Home Affairs, as you say. It does not really go into detail in that. It focuses on expenses in restaurants; it focuses on Australia; it focuses on the dog handler. Well, fair enough, but there is no emphasis on what the control mechanisms were, where the challenge was, why it was not there, who wrote to who about that and so on. It did not seem to cover that at all, or not in detail.

The Minister for Home Affairs:

Of course, if you look at the Wiltshire financial report, which you must in detail because this is the more authoritative and more detailed report, it is highly critical of the failure to create posts within the police force of a finance officer, highly critical of the police not having established within the organisation a person whose role was going to be to go out and get the best value for money and so on. Now, I am quite clear that that is not a Home Affairs function. That was a policing function. It is no different if we were talking about the Customs Department or the prison service or whatever. The individual department has the responsibility within States of Jersey financial guidelines to go out and ensure they are getting value for money.

The Deputy of St. Mary:

They may have that responsibility, Minister, but the law says that the Chief Officer of Home Affairs is the accounting officer for the States of Jersey Police. So one would assume that BDO would look at that aspect and ask questions around the issue of should that chief officer have made provision to manage this huge extra expenditure which suddenly appears outside the normal operations of the police, should that have been in place and why not, and now you are saying Wiltshire say the Chief Officer of Police should have done that. But BDO do not go anywhere near this issue of how this might have been arranged better in advance.

The Minister for Home Affairs:

Well, I think it is clear that there should have been put in place better arrangements for ensuring that there was good value for money at the nitty-gritty level. The decisions were actually being made by the police, particularly by Mr. Harper, in relation to that and there were failures. Now, there were also failures on the part of Mr. Power as set out in the Wiltshire reports for not having put in place the appropriate systems to ensure that best value for money was being obtained. What you are suggesting, I think, is that there may in addition to that be failures on the part of the Home Affairs Department. That is what you are suggesting and that in a sense was looked at to a degree by BDO Alto, it was looked at by Wiltshire, and my understanding of it - in the sense that I had responsibility to consider whether there was any disciplinary matters which could flow - is that they concluded that by seeking assurances from the individual departments that they were operating correctly and properly that they did the best with a bad job. That is what the report said.

The Deputy of St. Mary:

Just to conclude, in my view - and I put this to you - Wiltshire actually say there is a debate here.

Chief Officer Power said this; we were told that by Home Affairs; and then they come down on the side of that is another case for disciplining Mr. Power.

The Minister for Home Affairs:

That is correct, yes. They ...

The Deputy of St. Mary:

But it is a debate, you see, and I would have expected BDO Alto to have followed that debate through and to have really looked at those issues.

The Minister for Home Affairs:

I presented to the public, as you know, the outcome of the reports in relation to this. I presented them into the public arena as I have received them. Now, other people may take a different view of these matters, but was I supposed to impose my own views over the top? Where there was a conflict between the 2 reports, between the finance reports and BDO Alto, particularly in relation to the area of the decision to start digging at Haut de la Garenne, I have expressed a view because there was a conflict there. If you go back, as I am sure you will, to my text, the written text of my statement to the press, you will see that I express a clear view on that. I had to because there was a conflict. But in other areas, I am just reflecting the reports as I have received them.

Deputy T.M. Pitman:

I have 2 questions and then I will come to Deputy Le Hérissier to move to the next point. Firstly, I really cannot understand what you have said about how Mr. Power was offered the accounting officer role when, as I understand it, under the Jersey Finance Law it could have no legitimacy whatsoever. How could that be a realistic option, with due respect?

The Minister for Home Affairs:

No, he was not offered the accounting officer role, but he was ... you have to read the text of ...

The Deputy of St. Mary:

Could you let us have the text of that, please?

The Minister for Home Affairs:

[the Chief Officer, Home Affairs] will show you. You may say it cuts both ways so it is a question for him, because he is actually being asked to assure that he is running it and managing it as if he were the accounting officer, taking full responsibility. He comes back and says: "I cannot do that because I do not have the necessary accounting staff" and so on. In fact, as I said before, the conclusion of Wiltshire was that it was a police responsibility to put in place, embedded within the investigation, somebody who was going to seek to get best value for money. It is very difficult for anybody from outside the investigation to do that because of the confidential nature of information floating around. They would then get privy access to the names potentially of individual suspects.

Deputy T.M. Pitman:

But with due respect this comes back to the flaw in the system, that if it was not there, that problem was not there, arising from that law ...

The Minister for Home Affairs:

I agree there is a flaw in the system. Interestingly enough, although we have now agreed in principle that the law will be changed and, in fact, it will be written into the new Police Law, the old system is still in operation for the purposes of this accounting year and will change over from the start effectively of next year.

Deputy T.M. Pitman:

One final question and I will move to Deputy Le Hérissier. Given the fact that I think we have agreed it is the system that initially is to blame and sets this all in motion and clearly there has to be

questions on both sides, Home Affairs as well as the police, what attempts did you do to try and correct some of the media assumptions, the way ... really, let us be fair, what we were seeing was almost character assassination. There was no mention of the Home Affairs side. What did you do to counter that focus just on meals and things and taking it away from a child abuse inquiry? To be honest, look at the breakdown of the money. The £7.5 million that is often talked about, 50 per cent of that was spent by [the former acting Chief officer of Police and retired D/Superintendent]. Now, you do not read that in the media. What did you do as the Minister because surely you have the duty of care to those individuals as well?

The Minister for Home Affairs:

I was very careful, as I said before, to produce a written statement and to read it out at the initial press conference, which I think I said before caused great impatience among the press who just wanted to get on and question me. I was very, very careful to do that so that the text would be correct and accurate.

[10:45]

But, of course, you must understand that we had already had the situation in which the allegations of [retired D/Superintendent] had been given massive publicity some months before, so you already had a view out in the public domain of this and that and the other in relation to that. Frankly, all I could do was make a clear statement which I believed was fair and balanced as to what the reports were saying. Inevitably, you are going to get misstatements of detail in various different areas. You cannot go chasing all those hares, as it were, around. It is just impossible.

The Deputy of St. Mary:

On the [retired D/Superintendent] issue, if he was supervising directly [Police Consultant] who was doing the police side of the BDO, do you think there is an issue there? Did you follow that issue at all?

The Minister for Home Affairs:

I have only become aware of that issue, of course, during these hearings because ...

The Deputy of St. Mary:

But [retired D/Superintendent] ... oh, you did not know [retired D/Superintendent] had ...

The Minister for Home Affairs:

I was not even clear what the role of [Police Consultant] was in relation to this. It comes down, does it not, to the integrity of [Police Consultant] and whether [Police Consultant] allowed his views to be influenced by [retired D/Superintendent] in a way that was unfair? That is the key issue, is it not?

The Deputy of St. Mary:

That is an issue.

Deputy R.G. Le Hérissier:

But following on from that, Mr. Minister, [retired D/Superintendent] was a very vocal person and he made some quite dramatic comments, as you have just said, which seemed to sort of obviously change the whole direction of things. He was technically, as my colleague has said, supervising [Police Consultant]. Of course, [the former Acting Chief Officer of Police] has told us that the review had become overly focused on Mr. Harper, it lacked objectivity, and it had the potential to be unfair to Mr. Power. So you had the situation of a very senior officer who appears to be at odds by his statements and so forth with his own chief officer, acting chief officer. So how did you ... did you become aware of that, that this had the potential to really destabilise the report and that there were competing versions, so to speak, of the truth being placed in the public domain?

The Minister for Home Affairs:

Obviously, I became aware of the fact that [retired D/Superintendent] had gone public in a big way with his statements when that occurred. I made statements in the Assembly in relation to that which were very critical of that. But because I did not understand the interrelationship of the different people until the evidence was given, I think even at the last hearing I did not really understand the interrelationship of the people, it is only reading the most recent set of statements that I can actually see what [the former Acting Chief Officer of Police] intended to set up and how in fact the role of [Police Consultant] became different to that.

Deputy R.G. Le Hérissier:

Did you actually ...

The Minister for Home Affairs:

Because no one was speaking to me about these issues.

Deputy R.G. Le Hérissier:

Despite the sacrosanct nature of police operational independence, did you, for example, sit down with [the former Acting Chief Officer of Police] and say: "Look, there are some terribly controversial and mixed messages coming out of the police. What is going on here?"

The Minister for Home Affairs:

Do you mean when [retired D/Superintendent] went public?

Deputy R.G. Le Hérissier:

Yes.

The Minister for Home Affairs:

Well, obviously I did discuss that with [the former Acting Chief Officer of Police] and he was very upset - I could actually use a stronger word than that - because he had become aware there was a risk that something was going to happen and had sought assurances from [retired D/Superintendent] that he was not going to do anything of this nature in relation to that, and then discovered that even before they had held some of the meetings ... I think he may have said before there was a meeting where the Attorney General of the day was involved to try to persuade [retired D/Superintendent] not to do whatever it was thought he might do, and he then subsequently found, if my memory is correct, that he had already given his press interviews prior to that.

Deputy R.G. Le Hérissier:

Were you aware that [retired D/Superintendent] through this ... not mythical but through this sort of ephemeral States of Jersey Police inquiry which [Police Consultant] was initially helping with, were you aware that he had the potential to have a great influence obviously on the outcomes of these inquiries because he was involved in supervising in a sense or overseeing [Police Consultant]? He had gone very public with a certain view of the situation.

The Minister for Home Affairs:

I did not understand the structure because, as I say, I did not understand the role of [Police Consultant] until very recent times.

The Deputy of St. Mary:

Do you think your new understanding influences your view of the report, of the BDO review, sorry? Now that you have understood, you have seen [former Acting Chief Officer of Police], you have seen Kellett, you have seen Power and you have seen these various bits of evidence we have been given, a lot of new information, has that affected your view of the report?

The Minister for Home Affairs:

I think there must be a very significant risk that the view of [Police Consultant] will have been influenced by the view of [retired D/Superintendent]. I think that must be right, yes.

Deputy T.M. Pitman:

Can I ask something? Sorry, Minister, but I found what you said there quite profound. You seem to say that [the former Acting Chief Officer of Police] became aware that there was really a threat that [retired D/Superintendent] was going to go public, totally unprofessionally it has to be said. How did he become aware of that threat and would that not have been a disciplinary matter?

The Minister for Home Affairs:

Yes, except that, again if my understanding is right - and I have not checked documents - [retired D/Superintendent] was seconded from another force and was about to retire from that force. Under the Police Force (Jersey) Law you cannot ... Jersey cannot discipline seconded officers. It can only discipline Jersey officers. It can send them back but it cannot discipline them.

Deputy T.M. Pitman:

So if he had been a Jersey officer he would have been disciplined, is that what you are saying?

The Minister for Home Affairs:

Well, no, because he had retired by the time. He had retired by the time that this came up.

The Deputy of St. Mary:

So had Lenny Harper but he could not be interviewed.

The Minister for Home Affairs:

I am sorry?

The Deputy of St. Mary:

So had Lenny Harper retired and, as Mr. Power said to us, he was a civilian but he could not be interviewed for the purposes of BDO.

The Minister for Home Affairs:

I do not think that is right. I do not personally think that I can see why he could not be interviewed, particularly in the latter stages. I said this last time, particularly in the latter stages because ...

The Deputy of St. Mary:

Wiltshire had already finished, in fact, in the latter stages.

The Minister for Home Affairs:

Well, it had not ...

The Deputy of St. Mary:

Yes, it had. The final report was December 2009.

The Minister for Home Affairs:

Oh, I am sorry, Wiltshire had finished and had delivered their reports, yes. Yes, that is absolutely right. That is why I am left slightly puzzled as to why in the latter stages they did not think: "Well, now that that has been gathered, let us put it to Mr. Harper."

The Deputy of St. Mary:

They certainly had the opportunity. They had months.

The Minister for Home Affairs:

Yes.

Deputy T.M. Pitman:

Sorry, Deputy Le Hérissier wants to come in, but you have not answered my question. It is like

question time.

The Minister for Home Affairs:

Sorry. Well, I think another question came in and it superseded.

Deputy T.M. Pitman:

How did [the former Acting Chief Officer of Police] become aware of this threat, then, from [retired D/Superintendent] that something was about to be ... and he was going to really try and discredit the whole operation? That is what it boils down to.

The Minister for Home Affairs:

Well, no, I think that is unfair to [retired D/Superintendent] in relation to that. I do not know, it may be that there were rumours flying around. It may be he was talking about ... you would have to ask ...

Deputy T.M. Pitman:

We would like to ask [retired D/Superintendent] but he will not speak to us.

The Minister for Home Affairs:

No, you have to ask [the former Acting Chief Officer of Police] but I know that he became aware. I know that he intervened to try to prevent it. I think I have said this previously in the Assembly.

Deputy T.M. Pitman:

But what would his motivation be to do such a thing? This is a professional you have brought in to do a job, he has been seconded here. What would a professional's motivation be to go and act so unprofessionally?

The Minister for Home Affairs:

Okay. Well, I did have a conversation once with [retired D/Superintendent] - I think I mentioned that to you last time - and that was after I had answered some questions in the Assembly giving my opinion as to what his motivation had been. He rang me up because he was upset by what I had said and he wanted to make it plain to me what his motivations are. So this is hearsay but obviously I can tell you. I had assumed that his motivation initially had been because he felt he had been unfairly treated by blog sites, et cetera. There had been all sorts of allegations of a coup d'état between himself to push out the existing leadership, his integrity had been called into question in various different ways, and I had initially assumed that what he was trying to do was to put the record straight, to say: "Look, all these things went wrong" and, as it were, to fight back with countering matters. That is what I had assumed had been his primary thing. He rang me upset at that kind of suggestion and said: "No, no, my primary motivation in relation to doing this was that the truth came out." That is what he told me. "I felt it was very, very important that the truth came out. There was so much misinformation about the mistakes that had been made." Of course, from my perspective that just was not his role. At the end of the day, it was going to be my decision on the basis of all the reports I received at the end of any disciplinary proceedings or whatever to decide what should properly go into the public domain, not his decision. That is what he told me. I can only reflect.

Deputy R.G. Le Hérissier:

Two issues, Mr. Minister. Some are being dealt with as we go through in an intermingling kind of fashion. The first one, it was said about the ... we mentioned the focus on the guest who was not at the wedding, you know, for the BDO, in other words Mr. Harper, and it was also said, asserted by Mr. Power in fact, that the BDO Alto report lacks a strategic focus. There is this almost I suppose relatively easy obsession with restaurant bills and hotels and all that, issues it should be said, of course, where there are clear States standards. So if Home Affairs had wanted to assert itself it is very easy to get policy on hotel prices, on restaurant prices, et cetera.

The Minister for Home Affairs:

Except bills ...

Deputy R.G. Le Hérissier:

You are not totally at the mercy of the police here. There are very clear States standards.

The Minister for Home Affairs:

No, except that bills were being split and there were occasions when the bills were split between 2 charge cards, I think on one occasion 3 charge cards. Well, you would have to be very astute to ...

The Deputy of St. Mary:

Here we are going into the detail again and then Lenny Harper has a different version of why they were split, because the States cannot keep its credit card accounts in functioning order, so there are different accounts. But we are looking at the strategic ...

Deputy R.G. Le Hérissier:

Well, yes, what I was about to ask ... sorry, it is my fault in a way. I pressed that restaurant bill button again which seems to get people excited.

The Minister for Home Affairs:

You did take us there, yes.

Deputy R.G. Le Hérissier:

What I was asking was did you think that the BDO Alto report, as Mr. Power thought, did you think it lacked a strategic focus and it really should have come down to this issue of who on earth is responsible? A second not terribly related question but it is one you have been asked time and time again in the States as the frustration builds up about the Wiltshire report, about the reporting day which receded, time and again it receded into the future. Do you think that it imposed a blight because it was a disciplinary report or it was associated with a disciplinary outcome; it imposed a blight on all other associated reports and it took on a life of its own? It should never, never have been allowed to run to the extent that it did?

The Minister for Home Affairs:

Sorry ...

Deputy R.G. Le Hérissier:

Two separate issues.

The Minister for Home Affairs:

Two separate, I have now forgotten the first one. I will have to come back to that.

Deputy R.G. Le Hérissier:

The first is strategic focus, was it missing in the BDO report?

The Minister for Home Affairs:

No, because the primary purpose of the BDO report is to look at whether monies had been spent efficiently and effectively and, therefore, by its nature it was always going to be delving into a great deal of detail and producing some sort of view - we now know with the help of [Police Consultant] - as to whether or not this was the proper use of expenditure. It was always going to be focusing on the ... I forget the one that annoys the Deputy of St. Mary, but it was always going to be focusing on the dog expenditure, it was always going to be focusing on the hotel expenditure, it was always going to be focusing on the outside company being paid an hourly rate rather than a daily rate, it was always going to be focusing on the overtime at double time running on, et cetera. It was always going to be focusing on those individual things because that was the nature ...

Deputy R.G. Le Hérissier:

But should it not also ...

The Deputy of St. Mary:

But, Minister, you said yourself that it should have covered the term of reference that was not there and, in fact, it did cover that; in other words the arrangements for controlling expenditure and the relationship between Home Affairs and ... but it did not cover them in detail and that is what other people are saying. They are saying to us this strategic focus was absent, and we would like you to comment on that. Sorry, it was not ...

The Minister for Home Affairs:

It does not cover it as well as the Wiltshire report, I have to say. The Wiltshire financial report actually does really go into much more detail on that. Of course, if you like, I think I have said this before that I treated the Wiltshire financial report as the primary report and the BDO Alto report essentially as providing me with detail in relation to areas which were controversial.

[11:00]

The Deputy of St. Mary:

Yes.

The Minister for Home Affairs:

Shall I try your second question now?

Deputy R.G. Le Hérisssier:

Yes.

The Deputy of St. Mary:

Wiltshire being pushed ...

Deputy R.G. Le Hérisssier:

Did Wiltshire take on a life of its own and by doing that it totally obscured and took away from all these other reports and learning from mistakes exercises you should have been undertaking?

The Minister for Home Affairs:

I think that the problem that I faced for a very long period in relation to Wiltshire, firstly it was the problem that it took much longer than expected and so time was drifting on. Then there was a delay when they would not provide me with statements which I needed to have because they were not happy with the nature of the disciplinary code and wanted to receive assurances on that. So that further delayed matters. Then, of course, the financial report came in as a separate report later and then I had the same problems repeated with the statements in relation to that. Now, all that led to a situation in which that which initially I thought was going to be reporting quite quickly and with me being able to then proceed on to hearings if that was appropriate, quite quickly drifted on. This then created concern in the Assembly as to what was happening and why. Then we had the unfortunate situation where there was selective leaking of parts of Mr. Power's defence case, which caused me enormous difficulties. You will recall when there was leaking of the A.C.P.O. (Association of Chief Police Officers) Homicide Advisory Group's reports and so on. All that created great difficulty. So in addition to what had happened initially, I was then faced with the unfortunate situation in which the way in which the disciplinary process was going was in itself becoming controversial with selective leaks of partial information, and all this at a time when I was still bound by the confidentiality aspects contained in the disciplinary code. So I find that all unfortunate. Mr. Power has commented that ... I was going to paraphrase what he said but effectively some sort of tactic going on here to distract attention away from the main issue of there being victims of sexual abuse, et cetera, et cetera. Well, it was not my doing that caused what should have been allowed to proceed as a disciplinary matter in an orderly fashion to suddenly become politicised and to become a political football.

The Deputy of St. Mary:

With respect, Minister, the question is about ...

The Minister for Home Affairs:

That was not my doing.

The Deputy of St. Mary:

The question was the delay, I have not sure that you have explained why Wiltshire took one and a half years, or whatever it took, and therefore blighted the other inquiries.

The Minister for Home Affairs:

I am not sure what you mean by blighting other inquiries.

The Deputy of St. Mary:

Well, it means that ...

Deputy R.G. Le Hérissier:

Because it was disciplinary, it has been argued that, for example, Mr. Harper could not give evidence.

Deputy T.M. Pitman:

It effectively shut up a lot of people and was that possibly not the motivation for letting it drag on?

The Minister for Home Affairs:

It was not within my control. You have got ... I produced you again the timescales of various different things, the dates on which I got reports, the first report, which at that stage was an interim report because I had not yet spoken to the former Minister in October of 2009, then a month or so later confirmation that it was going to be ... that there was no change to that, and then a delay of 2 or 3 months before they released the statement. Until I could start looking at the statements, start looking at what people had said, I was no in a position to make a final decision as to whether I was going to proceed with disciplinary hearings and on what basis. Then, of course, you have further delay while the financial report came out, which I cannot remember when that was, a further delay in relation to that and then, of course, in addition to that I had the other disciplinary matter, Operation Blast, and the reports on that came out even later in relation to that. It was never any part of my doing to delay the process in relation to it, and I had that put to me many times. I had no possible motivation to do that. I wanted to get on with it. But the fact that it, in itself, became a political football is regrettable. It did. It did distract and in a sense we are still there. I have no motivation ... can I say this very clearly, I have no motivation, I never had had any motivation, I never will have any motivation to take away from the fact that there was abuse of children in children's homes and other institutions.

Deputy T.M. Pitman:

Although you probably accept that that is what has happened? I am sure you would accept that.

The Deputy of St. Mary:

That the spotlight has been turned away.

The Minister for Home Affairs:

You may think this is unfair but what I do regret is that Mr. Power, when he realised there were serious issues, was not prepared to say: "Yes, maybe I could have done things better" and held his hand up, as it where, and said: "Look, there were ..." and accepted some degree of fault, instead of fighting to the last drop of blood. Once he made that decision, to fight to the last drop of blood, it was always going to distract matters away from the core issues.

The Deputy of St. Mary:

Would you say then that the problem that you have just alluded to ... Mr. Power says there was a confusion between disciplinary and learning from and those 2 things, because they were confused, muddled things. You have just alluded to the problem that Mr. Power felt he was on the back foot, had to defend himself rather than having a learning from type appraisal which would have been completely different.

Deputy T.M. Pitman:

Sorry, just to back that up, we have got [the former Acting Chief Officer of Police] saying he would have gone for focus on learning for mistakes, not a blame game. That is really what happened. You share that, as Deputy Wimberley is saying.

The Minister for Home Affairs:

The disciplinary process had started before I arrived. You know that I was not involved in the initial discussions with Mr. Power and the initial suspension. It had already happened by the time that I arrived and very shortly ... there was a debate, if you remember, in January 2009 about some procedural aspects initiated by the Connétable of St. Helier and so on and so forth. Then very shortly after that Mr. Power launched a judicial review of the initial decisions, and then continued that after my decision, which was unsuccessful. So, in a sense, the whole issue had already become adversarial to a degree even before I had come on the scene. Whether or not another route could have been achieved, I do not know. If at the end of the day Mr. Power was always going to say: "I do not accept any blame in relation to this" I think it was inevitable that we would go down this route. But it has had a side effect of distracting away from the main issue. It has become a show in its own right, as it were. That is not of my volition.

The Deputy of St. Mary:

Okay, can I ask you a couple of quickies? A nice easy question. The Wiltshire inquiry, was it funded from the Haut de la Garenne ... from the historic child abuse inquiry budget? The Wiltshire inquiry?

The Minister for Home Affairs:

It was funded from various different sources. I have asked questions on that in detail. I have not got the information in my mind but there were various different sources that it came from. I have answered questions fairly recently from the Deputy of St. Martin on that. There was a variety of different sources.

The Deputy of St. Mary:

The same question for the BDO Alto report, where was that funded from?

The Minister for Home Affairs:

I do not know. I do not know the answer to that. You will have to ask [the Chief Officer, Home Affairs].

The Deputy of St. Mary:

Lastly, and this is the bigger one, revisions. I am troubled by the fact that the BDO interim report ... well, the BDO report, bits word for word appeared in the *Daily Mail* early in October 2010. So it was in some state of readiness at the end of September and yet 9th July the following year was the final report. Can you comment on that delay? That is 8 or 9 months.

The Minister for Home Affairs:

I think what you are talking about we have established were working papers of [Police Consultant]. I think the ...

The Deputy of St. Mary:

No, the working papers go back even further so the interim report ... in fact it is referred to in the

timeline that you gave us as the report. It is denied that it was an interim report, it is called a report, it was already there at the end of September and then it took October, November, December ... 9 months for it to be finalised. I will give you a clue; it was redacted - fair enough - to take out names and so on, that is fair enough, that would take a few months.

The Minister for Home Affairs:

It was very detailed with a lot of financial information.

The Deputy of St. Mary:

No, no, sorry, there was a separate process ... no, Minister, there was a separate process. There were the background papers which were too long and they were told to write a report, so then they wrote the report, that was ready at the end of September and from then on there was redaction necessary and there were revisions. I would just like you to comment if you can, maybe as Minister you have no idea what these revisions entailed, what this process of revising involved. Maybe you do not know.

The Minister for Home Affairs:

I cannot remember the detail. I can tell you that basically questions were asked by the Public Accounts Committee and at that stage I looked in more detail at the various stages of generation of different matters. The date when the report went final was May 2010.

The Deputy of St. Mary:

9th July, Minister.

The Minister for Home Affairs:

No, it is May if you look at the document, and it preserved that date although further revisions were made to it. I afraid I just do not have this level of detail as to what had happened. I cannot recall ...

The Deputy of St. Mary:

My question really is only about the revisions, did you have any input into the revising process that went on between 24th March, when the first draft of the shorter report went to Home Affairs and 9th July when the final, final version went from BDO to Home Affairs.

The Minister for Home Affairs:

I had some involvement in that. Can I just find notes which have been provided to me by [the Chief Officer, Home Affairs] in relation to this. Okay, these are the notes that have been provided to me, this is not from my own memory, this is notes provided by my Chief Officer. It says: "14th December 2009, timescales for BDO report discussed at informal meeting. Other discussions on progress were ad hoc." But the timeline indicates we at least had discussions as follows: "February 2010, BDO told the Minister had views on circulation; April 2010, reports released to the Comptroller and Auditor General." He utilised his power under the law to require me to provide that to him, if my memory is correct. "June 2010, received a final report; July 2010, final signed report received."

The Deputy of St. Mary:

Yes, so my question to you is did you have any ...

The Minister for Home Affairs:

So clearly in those stages, as we were coming towards the end, I was getting involved. But I must have had ... this is not from my memory but this is just thinking back, I must have had concerns in relation to the fact that report could not be going out to general circulation while the disciplinary process was still continuing. I would obviously have had concerns in relation to that. I could not possibly allow anything which would be expressing a view in relation to Mr. Power's disciplinary matter to be going out while the disciplinary matter was continuing.

The Deputy of St. Mary:

So that means, as were talking about before, the existence of the disciplinary process was having an impact on the BDO review and its release?

The Minister for Home Affairs:

It was probably slowing down that, yes. As I said, that is not from memory but that is from logic.

Deputy R.G. Le Hérissier:

Just another wrap up question, Mr. Minister. You said in a BBC interview not too long that you did agree on one area with Mr. Power, that was the politicisation of policing in Jersey. I wonder if you could elaborate on that and I wonder if you could give your assessment of how you felt that did affect the abuse inquiry.

The Minister for Home Affairs:

Yes, again, when eventually - hopefully in all our lifetimes - you see the redacted version of what Mr. Power was saying, you will see it is quite an interesting and incisive section about this sort of issue.

[11:15]

What he was talking about primarily was issues where, shall we say, there was some accusation against a particular politician or whatever. He would say well, if there is an accusation against a particular politician then all the politicians' friends would say, if it then went ahead: "Foul play, this is politically motivated" et cetera. But if it did not lead to charge then all the people on the other side would say: "Cover up." I am afraid there is some degree of truth in this. The difficulty is this, the work that we did on advisory group, and particularly the final piece of work which was done between myself and Mr. Bowron in seeking to define Operation Freedom has been very helpful indeed, and I think will be very helpful for the future because there is no doubt that when matters arise, when policing matters arise, which may be of a controversial nature, it does sometimes become a political football. People get involved. My own person view is that it should not be in the political domain unless it is in a legitimate area for me to intervene at that stage. This is quite complicated. As you know I will not intervene in operational matters but now in accordance with definition that we have agreed ... but this is now well understood I would say generally by politicians and members of the public. The difficult area that arises is where there is some concern that the police may have acted overly heavy-handedly but it is with an operational context. Although it is maybe right that that concern be raised, it is a matter that cannot be looked at effectively until the end. Can I give an example of that? If I give the example of the way in which the police handled the arrest of former Senator Syvret. Obviously there was concern in relation to that. I was saying in the Assembly: "Well, hang on, this is an operational matter at this stage, we cannot be getting involved at this stage." Now, it is not wrong that the issue, the concern, is raised but it is not a concern that can be pursued at that time. The process of that example, I have now that the matter is completed - and as I said I would - called for a formal report from the police. I will consider that, I will consider the judgments and I will then express my view in relation to that. But can you see how difficult it is in relation to these things. Now, if we come back to the Haut de la Garenne matter, obviously I can only speak from direct knowledge during the period when I have been Minister and hypothesise as to what happened earlier, there has been absolutely no attempts that I am aware of to politically influence the conduct of the investigation during the period that I have been Minister. If there had been I would have been very sharp about it in any kind of operational matter. But clearly there were concerns raised prior to my time, and some of those concerns have continued to be flagged but they were initially raised, as to various different issues, some of which have become subject to the disciplinary hearings and so on and so forth.

Deputy R.G. Le Hérissier:

You say that there were no attempts ... like a politician did not go there and say: "You must arrest so and so or you must unarrest so and so" but to what extent were there more general concerns

expressed: "This is prejudicing the reputation of the Island" and the famous phrase: "Something must be done." Do you think that happened?

The Minister for Home Affairs:

I told you from the time when I took over, no, because there was obviously there was a disciplinary process in place and so on. I had private comments made to me by individual Members of the States and told them that is most inappropriate, they should not be talking to me at all and sent them away so that I could be objective in relation to things. But clearly there were concerns before and, of course, part of the difficulty here is as to what is operational and what is not operational. We now have a better definition in relation to that. Frankly, some of the concerns that have been expressed, if one looks ... I am talking back in time. If one looks at an issue such as the way in which the press matters were being handled, which is obviously part and parcel of other reports and other matters. My own view is that that went beyond operational. It went beyond operational. It went into an area which would be a legitimate area as to whether this was the right way to be handling this. I think that the onus would have been then, or should have been then, upon the Minister of the day to intervene, to ensure that the right advice was being obtained, to ensure the right standards were being followed. But it is a very delicate thing. It is a very delicate thing. But if I can give you an example, if we had a situation 2 weeks ago in which the police had been providing masses of information about the tragic case of the 6 deaths in such a way as to potentially prejudice fair trials, then I would have intervened. There is no question about it.

Deputy R.G. Le Hérissier:

Okay, thank you.

Deputy T.M. Pitman:

To wrap up, Minister, can I ask you 3 points. I do not think they are too difficult to answer. Firstly, when you look at what has unfolded and been put to us by [the former Acting Chief Officer of Police], [Police Consultant], BDO, would you not share the view that if Mr. Power had initiated this report he would be heavily criticised, because we have seen really one hand not knowing what the other is doing. My second point is - and it is hindsight - could you not really see, like many of us could in the States, that this disciplinary process was never going to come to fruition so it would have been better to scrap that and go down this one route with BDO, if that is what you wanted to do. Finally, BDO made this point to us, they pointed out how they had praised Mr. Power and Mr. Harper significantly in 9 particular areas yet that had never come out in the media. Even now, do you not concede that perhaps, given your position, that you have a duty of care to try and at least rectify that balance, because it is a very negative picture up there. I have got no allegiance to anyone but do you not feel that you have got a duty to do that?

The Minister for Home Affairs:

In my statement to the police I did try to rectify the situation ...

Deputy T.M. Pitman:

To the media?

The Minister for Home Affairs:

I am sorry, in my press statement I did try to rectify the position in relation to the issue as to whether or not initially it was appropriate to go ahead with the digging and exploration. If you go back to my press statement, you will see that I express a view there that, once there had been this false identification of what turned out to be a piece of coconut, it was not unreasonable that they carry on with digging and investigation and so on and so forth, I then take a view thereafter. So I tried to balance that in what I said. There are also, you are quite right, areas in which there were successes. I will quote one, the police managed to negotiate a lower daily rate for officers from away, for some of the officers from away than would have been the standard according to the Cambridge rules or something of that nature. Yes, I accept there were some areas in which there was good practice in relation to that and that is reflected. But, of course, again I put virtually the whole of the report,

because the redactions were very small, into the public domain so people could see the whole of what it is saying. So it was not just what I was saying in relation to that, they could read it for themselves and get a complete balance in relation to that.

Deputy T.M. Pitman:

To go back to the disciplinary, if you come to the same conclusion many of us did then a lot more information possible could have been in the public domain. Would you not agree that is where a lot of people's concern lies, seeing one side of the story, is never given the defence case, if you like?

The Minister for Home Affairs:

Well, as you know, I have agreed to redact it, this is not going to be easy for a variety of different reasons, I have agreed to put into the public domain the key statements of Mr. Power, and we are working on that and I am content to do that. But you asked me a question in relation to the point at which it was clear that the disciplinary matters would not proceed to a final conclusion. I entertained serious hopes of conducting a disciplinary hearing in relation to Operation Blast until very late on in the day. Very late on in the day. I accepted, I think I have said before, that by the time I had received all the reports in relation to the historic abuse aspect, and by the time I had received the report from the Deputy Chief Executive, which was the next stage as I understood the procedure, it was so late on in the day that I realised it was not going to be possible to complete a full hearing. But I did entertain serious hopes of conducting a hearing in relation to Operation Blast until well after that. Subsequently, in fact we got into an odd position towards the end where Mr. Power wrote to me, returned his badge of office or whatever it was, his warrant card, and left the Island. So effectively he was accepting that he was going to remain suspended until the end of the process. I maintain that I had very substantial grounds for his continuing to be suspended; I maintain I had sufficient grounds right from the start and that was upheld by the Royal Court. But certainly once I had seen the first Wiltshire interim report it was quite clear there were very serious issues, very serious disciplinary issues. So what are you suggesting? That I should have lifted the suspension and he should have come back to work for 3 or 4 months? That simply was never going to be possible. There was one more question there, can you remember the third one.

Deputy T.M. Pitman:

It was probably about the duty of care, do you feel any obligation as Minister to try and put things right to a degree?

The Deputy of St. Mary:

In the media. That is where these messages are going out.

Deputy T.M. Pitman:

We saw it only last week.

The Minister for Home Affairs:

Yes, I am happy to agree if you want me to agree with yourselves, insofar as I can agree it, a statement which will say I have never taken the view that he should be blamed for this or that or the other. To reiterate, in a sense, with the digging point - to reiterate the statement I have made initially, I do not have a problem with that. I am happy to indicate, yes, there were some areas in which there was good practice, but at the end of the day I am afraid there were some very serious mistakes made on the financial management and one cannot get away from that reality.

Deputy T.M. Pitman:

Okay. I think the Chief Officer is still sitting outside, so as much as I would like to go into how we find collagen and coconut and things like that, I will draw a line under it and thank you for coming in. Thank you.

The Minister for Home Affairs:

Okay, thank you.

STATES OF JERSEY

Education and Home Affairs Panel Review of Issues Surrounding Review of Financial Management of Operation Rectangle

THURSDAY, 25th AUGUST 2011

Note: The witness has not corrected the transcript

Panel:

Deputy R.G. Le Hérissier of St. Saviour:
Deputy T.M. Pitman of St. Helier (Chairman)
Deputy D.J.A. Wimberley of St. Mary

Witnesses:

Chief Officer for Home Affairs

In attendance:

Scrutiny Officer

[11:41]

Deputy T.M. Pitman:

When you look back now, Chief Officer, what do you think about the Finances (Jersey) Law 2005 and its impact on everything?

Chief Officer for Home Affairs:

Before I answer that, can I say something else?

Deputy T.M. Pitman:

Of course you can.

Chief Officer for Home Affairs:

A lot of the questions which I think you might have and a lot of the ground that I want to cover today arise out of [retired Chief Officer of Police]'s last transcript. If it helps for good order it might help to turn the pages on that transcript at some point, but you are in charge. Because a lot of the documents I have produced, which are evidential, refer to the things that he has said, or he has raised. So, that would be a way of proceeding which I think would be an organised way. I will come back to your question.

Deputy T.M. Pitman:

I should say we got some of this information in very late, which is not our fault, or probably your fault.

Deputy R.G. Le Hérissier:

I have not read your memo about the evidence of [retired Chief Officer of Police].

Deputy T.M. Pitman:

That is fine. If we get back to the Jersey Finance Law and its impact on how we got where we are today.

Chief Officer for Home Affairs:

Well, in many ways I think it is a side issue because ever since 2005 we have had to run the departmental accounts in accordance with the Finance Law. It is something we do every day and in many ways the fact that there was a major investigation which spent £7.6 million should not have made a lot of difference because we run and manage the accounts in accordance with the law every day. All we are talking about here is the number of transactions and the quantum, from my point of view. The other issue, I think, which is why we are here is whether the resources were used properly and that is where I think I then depart from my job and I would expect to look to the head of whatever service it is to see that those resources are used properly.

The Deputy of St. Mary:

Can I come back on that? To repeat the question really, what do you think now about the Finances (Jersey) Law 2005 and how it impacts on Home Affairs and, say, to Jersey Police? What do you think now about that law? What is your view of it?

Chief Officer for Home Affairs:

Well, it is such a broad question. It is unspecific.

The Deputy of St. Mary:

All right. Do you think that that law should be changed so that the Chief Officer of Police is an accounting officer?

Chief Officer for Home Affairs:

Well, that is a specific question.

Deputy T.M. Pitman:

I gave you lots of leeway. Be fair.

[11:45]

Chief Officer for Home Affairs:

Yes. I now think the Chief of Police should be an accounting officer. I did not. [retired Chief Officer of Police] is quite right in that part of his transcript of what he said, that when we were setting up the arrangements for the move to ministerial government we had a difference of opinion. I thought that we could run things as they are now. I will tell you why if you like before that. I think with the benefit of hindsight when you have a major inquiry like this whatever weaknesses there are, and Mr. Warcup described them as systemic, whatever weaknesses there are show through and where you have a service that is entirely its own master, except that it clearly reports at the moment to the Minister and does not report to me, then there will be a tension set up at times like this and it would be far better in hindsight if the Chief of Police was an accounting officer. Do you want to know why I thought otherwise?

Deputy T.M. Pitman:

Yes.

Chief Officer for Home Affairs:

[retired Chief Officer of Police] arrived in November 2000. Coincidentally I was appointed director of the Home Affairs Department in November 2000 as well but I have been on secondment since that February to set up the department; it was a new department. One of the first things I did after we were both in post, and I remember it well, I went to see [retired Chief Officer of Police] because one thing I had to do setting up a department was to bring together those functions of it which were generic to the whole department; in other words they serve the prison, the fire service, into one place because it is just a sensible and efficient way of running things. The 2 entities that that referred to were Finance and Human Resources. At that time the police had a finance and administration manager and other finance staff, so I went to discuss with [retired Chief Officer of Police] whether

he would agree to those staff coming with me to the Central Home Affairs Department and running it from there. His actual words were: "I have no problem with that provided there is no degradation in service." That is what he said and we agreed. So, the point I am making is that for 5 years before ministerial government and for 3 years since we have run the Home Affairs financial management and accountability without any problem.

The Deputy of St. Mary:

Can I just clarify that? My recollection of [retired Chief Officer of Police]'s evidence, and I am not absolutely sure, I have it here but I will not read it all to check, but I am pretty sure he said that from the outset when he came to Jersey he felt that he had to have accounting authority as well as operational authority and that was on the table from the word go. So, I just wanted to clarify that your recollection and his recollection seem to be different.

Chief Officer for Home Affairs:

Well, I stand by what I have said. The fact is he had a very good service from the 3 accountants that make up the House Affairs Finance Department throughout the time that he was in Jersey and he acknowledges that in a lot of the papers. The fact that they are sitting with me and not down at Police Headquarters is immaterial. One of the finance managers goes to the force management board meetings, provides all the updates and this is why I say, in answer to the first question, in a sense it does not matter because we have had to abide by those regulations and the law for the last 3 or 4 years and we were operating successfully for 5 years before it.

Deputy T.M. Pitman:

If I could ask one related question and then I will let my colleagues step in. Something very surprising the Minister just said to us was that according to him the offer was made to [retired Chief Officer of Police] to effectively take on the role of accounting officer. Now, as I understand it, and I am not an expert, that could have had no legitimacy under the law, so surely that could not work because where would he stand if a problem came up, as of course it did, and disciplinary issues followed. How could that offer have really been made? How could that have worked? I do not understand.

The Deputy of St. Mary:

Can I rephrase that as well, was the offer made, or was the Minister's recollection wrong?

Chief Officer for Home Affairs:

Well, not by me it was not, but with the current Chief of Police we have already discussed it and we are planning to move to a system of 2 accounting officers from January.

Deputy T.M. Pitman:

But if the offer was not made by you, who could it have been made by?

Chief Officer for Home Affairs:

Well, the Treasurer has a role. Various people have opinions and can be influential. If the Treasurer, for example, thinks it is best practice, or if the Comptroller and Auditor General wanted to insist then they would make that point, but nobody has pushed it to the point where it has to happen.

Deputy T.M. Pitman:

But you would have known if that offer had been made, surely?

Chief Officer for Home Affairs:

Yes, I would. Yes. There has been another driver of course. We have been waiting to get police authority up and running, or established in law, and I would say for a long time the most logical time for the Chief of Police to become an accounting officer is when we move to a police authority system. I now think: "Well, let us not wait for that; we will do it in advance of that."

Deputy T.M. Pitman:

But for the record, you are completely unaware that offer was ever made, from what you said.

Chief Officer for Home Affairs:

An offer made to [retired Chief Officer of Police] to become a ...

Deputy T.M. Pitman:

Yes.

Chief Officer for Home Affairs:

I think so, yes. Nothing stands out in my mind. I hesitate because it is difficult to remember.

Deputy T.M. Pitman:

It is quite a big issue though, you would think it would stand out if it had been put to you. What do you think? It impacts on your power so you would think you would recall it, would you not?

Chief Officer for Home Affairs:

It is probably true that it has been discussed but it has never been formally. I think that is the way to say it. Nothing has ever formally been put to me that somebody has written to me and said: "We want to make the Chief of Police an accounting officer, please can you submit your reaction to that" or whatever. No.

Deputy T.M. Pitman:

Okay.

The Deputy of St. Mary:

Okay. Well, thank you for that and maybe we can pursue it through the office. I want to ask about this business of the relationship between Home Affairs and the police in terms of oversight of the inquiry, which is why we asked the first questions around what you thought about the Finance Law. I am referring to [retired Chief Officer of Police]'s evidence to us on his page 12. He says: "When it became clear that Rectangle was likely to have significant financial implications I asked the Chief Officer for Home Affairs [I think it was you] what arrangements he wanted in respect of financial management." Can you remember this communication from [retired Chief Officer of Police]?

Chief Officer for Home Affairs:

No. Can you show me it?

The Deputy of St. Mary:

Sorry, it is page 12 of his evidence.

Chief Officer for Home Affairs:

No, the communication.

The Deputy of St. Mary:

Well, no, we cannot because I think we have asked him for this exchange but he only spoke to us quite recently. But I am asking you whether that letter reached you.

Chief Officer for Home Affairs:

I do not have a letter like that.

The Deputy of St. Mary:

It is in his evidence to you. He quoted it from his statement to the Wiltshire Inquiry and that has now been redacted and it has to go to him for release and then it comes to us. We have asked for it. So, we do not have the detail. We do not have the date or the actual detail but I am putting it to you and you cannot remember receiving that request?

Chief Officer for Home Affairs:

No, the only letters I have specifically with [retired Chief Officer of Police] are the ones in June 2008 that are in your bundle.

The Deputy of St. Mary:

Okay. Well, that leaves us in a bit of a quandary. He goes on: "I was conscious that it was his decision to take. He was the accounting officer and he had a legal responsibility for the budget" which is true under the Finance Law.

Chief Officer for Home Affairs:

Yes.

The Deputy of St. Mary:

"He said that he would appoint the senior finance officer, who I know, to work directly with the Rectangle team."

Chief Officer for Home Affairs:

No, that was in connection with the F.O.B. (Financial Oversight Board).

The Deputy of St. Mary:

Okay, so you are saying that this must refer to the F.O.B. it cannot refer to something before the F.O.B.?

Chief Officer for Home Affairs:

No, and in any case I have just had a meeting at 8.30 a.m. this morning with the Gold Group finance sub-group on the current murder investigation and the person at the meeting from the police is the Police Finance and Administration Manager, set up under the major incident room admin procedures, which are the procedures that they did not set up under for the Rectangle Inquiry. The point I am making is that it would appear that the proper procedures are being followed for this one and if you have read the Wiltshire Police Report one of the things that they remark on is that that did not happen. So, here we are 10 or 11 days after a major incident and the police have already swung into action. So, despite the fact that they are heavily involved with interviewing the prime suspect they have already set up those procedures and I am already able to have a meeting with the person who, from their end, is organising all the financial issues to do with the murder.

The Deputy of St. Mary:

Well, that is clearly a good outcome, if you like, a lesson learned. I am just trying to chase down this exchange which either did not happen or you are saying that it relates to the Financial Oversight Board only, which was set up in July, and it does not relate to the arrangements previous when a lot of the money was being spent very quickly.

Chief Officer for Home Affairs:

I have never set myself up in opposition to [retired Chief Officer of Police].

The Deputy of St. Mary:

No, we are not saying you should.

Chief Officer for Home Affairs:

We enjoyed a working relationship for 8 years ...

The Deputy of St. Mary:

So, then ...

Chief Officer for Home Affairs:

I was just going on to say, that was a preamble, that there is an email in there where he very correctly flags up in February 2008 shortly after the then Chief Minister made his now infamous statement about all necessary resources, where he was the first to flag up, where do we stand in terms of spending the police budget? If you want I will find it for you.

The Deputy of St. Mary:

No, I can remember that.

Chief Officer for Home Affairs:

I am not saying that he never thought about finance.

The Deputy of St. Mary:

No, and the response was what ended up happening was he took it from his police budget and ran on air and hope until it was organised and then the money was ...

Chief Officer for Home Affairs:

Yes, and I think that is what the Wiltshire Police have concluded.

The Deputy of St. Mary:

I am concerned with what the oversight was on the inquiry and how it was set up or not. You are saying that with this most recent event the police have a financial manager set up by themselves. I will just carry on with the transcript: "There you go: 'There is the man with the big stick' I say. [retired Chief Officer of Police] says, 'Yes'. I say it never happened because it is not in the BDO report, this person from your department working directly with the Rectangle team and then [retired Chief Officer of Police] says: 'I think that person was appointed to work with the Rectangle team. I know it became a concern as to how effective that arrangement was.'" So, I am just saying that this is a different version. It is not about the F.O.B., the Financial Oversight Board, as I understand it, and this person was appointed to work with the Rectangle team and he had concerns about whether it worked and yet I do not see this in the BDO report. So, this is what I am putting it to you.

Chief Officer for Home Affairs:

Go back to where we started in terms of the way we normally operate. Right as far back as when we both were appointed in 2000 [retired Chief Officer of Police], and they still do, enjoy a finance manager sitting on their monthly ...

The Deputy of St. Mary:

Yes, S.M.T. (Senior Management Team).

Chief Officer for Home Affairs:

It happens to be the same person. Nothing has changed. Now, that person was also providing the financial management backup in terms of the analysis of costs during the time of Rectangle and then a finance director, who works directly to me, both of us were on the Financial Oversight Board and then the Gold Group which succeeded it, but at no point did the police appoint their own finance manager sitting inside the investigation team to manage all their costs and resource handling and that is a point criticised by Wiltshire. Not for me to do that, that is standard operating procedure for major enquiries. If [retired Chief Officer of Police] had asked me: "I cannot get anyone, I need to have one of your 3 people" we would have talked about it but that was never requested.

The Deputy of St. Mary:

The problem from my point of view is that [retired Chief Officer of Police] in his evidence, and I am just trying to clarify this because this is an absolutely critical issue, [retired Chief Officer of Police] in his evidence to us said that he did ask you what arrangements you wanted in respect of financial management and presumably he asked you that because you are the accounting officer for his department. This is the issue, is it not, what feels to me like 2 stories. You are saying: "They should have set up under M.I.R.S.A.P, they should have set up their own financial person" and [retired

Chief Officer of Police] is saying that he wrote to you saying: “What financial arrangements? Can we talk about it? Can we sort this out because I have an unbudgeted huge expenditure coming up” and then there is the division between the 2 stories we are getting.

[12:00]

Chief Officer for Home Affairs:

Unless I am missing something or correspondence, but I suppose another thing I would say to you is, why would I on 27th May 2008 write to [retired Chief Officer of Police] seeking assurances about the way that he is handling the spend on the inquiry? Again, I think his transcript gives the impression that he was the instigator of those. No. I would go as far as to say that if I had not written to him in May about it I would never have had any contact with him about it because it was not uppermost in his mind.

Deputy R.G. Le Hérissier:

If I can jump in now, what were the precise circumstances, or immediate circumstances, that led you to write that letter?

Chief Officer for Home Affairs:

Well, I do not have the monopoly on wisdom so ...

Deputy R.G. Le Hérissier:

Neither do we.

Chief Officer for Home Affairs:

As soon as the then Chief Minister made his fantastic statement I thought: “We are not going to have enough money” so at various points I sought advice. The first time was in March after 26th February to say to the Treasury, and the letters are in there with the Treasurer: “Excuse me, what am I supposed to do here? Who is going to give me some money? How do I account for it?” I did a similar thing at the point where it was becoming apparent to me that there was a lot of money going out and I was not really sure how it was being accounted for. I took advice from the Treasurer and when you look at them you will see there are emails in there from the Treasurer. When the Treasurer says to me: “Are you sure you have done everything you should be doing?” In fact he said: “If I were you really you ought to seek formal assurance from the Chief of Police about the spend.” That was the trigger for these letters. I am not claiming that this was all my original thought. One takes advice. So, because of that I wrote to [retired Chief Officer of Police] saying: “You need to assure me. You are in charge of the Force, are you using your resources to the best effect?”

Deputy R.G. Le Hérissier:

But from your knowledge of your own role as an accounting officer, do you think a letter was sufficient?

Chief Officer for Home Affairs:

Well, how else does one start?

Deputy R.G. Le Hérissier:

Well, presumably receipts were coming through to your department and people were making ... I know the argument has been put forward, and in fact you may have put it forward at the last hearing, that these were operational issues and we have to take them at face value as they are presented to us but of course there were issues that are states-wide like hotel bills, restaurant bills and so forth where there are standards that apply throughout the service. Were you alerted to any unusual patterns of expenditure that would have demanded strong and immediate intervention?

Chief Officer for Home Affairs:

Do you mind if we go to page 11 of his transcript?

Deputy R.G. Le Hérissier:

Okay.

Chief Officer for Home Affairs:

What he said there is outrageous and it is more than that, it is dangerously outrageous. It is the bit that starts a quarter of the way down. He starts to say that the Deputy could not incur any expenses unless I had signed them off and then he says at the end: "The rules were bypassed and it could only be bypassed by the staff in the Home Affairs Department." Because you are talking about signing off bills, Deputy Le Hérissier?

Deputy R.G. Le Hérissier:

Yes.

Chief Officer for Home Affairs:

That statement was put to me before 17th August when you heard [retired Chief Officer of Police] by the Scrutiny Officer and words to the effect: "What have you got to say about this allegation?" I put in a written rebuttal of that and from what I understand that was not put to [retired Chief Officer of Police] at the hearing. The result of that was that Channel Television in the 1 hour 40 minutes that you talked to him the only thing they reported on Channel was that all the bills had been signed off by the Home Affairs Department.

Deputy R.G. Le Hérissier:

Yes.

Chief Officer for Home Affairs:

I was sick to the pit of my stomach when I heard that. It is just not true. We do not see any bills in the Home Affairs Department. The process is that the person who makes the order or incurs the bill signs it off. I have brought some with me. The vast majority of them were signed by Mr. Harper. The next signatory to that is the clerk who checks that it is completed correctly and has been signed. That clerk at that time did not work for Home Affairs, they were part of the Treasury shared services section. The first we know of expenditure is when it comes up now on the J.D. Edwards system and we are able to make our financial profiling in our reports. I never see any of this stuff and this either needs to be retracted or corrected because at worst it is a lie, but I would not accuse [retired Chief Officer of Police] of lying, it is just ignorant and he shows an ignorance of the process. He did not know how the bills in his own service are being processed.

The Deputy of St. Mary:

Can I say that from our point of view we are looking at a review by BDO Alto who are a professional accountants firm, about whether the expenditure was efficient and effective and in fact they added to their terms of reference about the oversight. This is one of the issues which we feel should have been looked at in some detail in their report. This is the kind of thing that their report should have covered as well as restaurant bills and the detail and yet here we have a big difference of opinion between yourself and [retired Chief Officer of Police].

Chief Officer for Home Affairs:

It is not a difference of opinion, it is fact.

The Deputy of St. Mary:

Well, that is right, I stand corrected. It is a difference of fact and yet BDO have not covered this. I do not recollect reading in BDO that there is an argument about who was signing off ...

Deputy R.G. Le Hérissier:

You are right.

The Deputy of St. Mary:

This is a big part of what they should have been looking at.

Chief Officer for Home Affairs:

In the section on purchase cards there is and that is why there is a focus on entertainment because it happens to be that that is where most of the purchase card stuff is. But the nature of the audit was on how the resources were used and whether they were used in an efficient way. It was not particularly about the minutiae of signing off individual bills. There had been an audit prior to that, which again is in the bundle. There had been an audit in October done by KPMG which did look at a sample of bills and they valued over £1 million and they could not make any adverse observations about them because these are done correctly. It is not about whether they were signed correctly or whether they had been processed correctly. The BDO audit is about the effective use of resources. It is a higher level thing.

The Deputy of St. Mary:

But the issue of authorisation does come up and you and [retired Chief Officer of Police] are totally disagreeing on the facts of that and that disagreement is part of the wider issue of the relationship between the Home Affairs Department and the police and how what is going to be a huge expenditure can be effectively controlled financially. So, those sorts of issues we would expect to be in the review.

Chief Officer for Home Affairs:

Yes. Any senior public servant who handles money, it is common sense. I am legally accountable in the law, that is accepted, but anybody who is spending public money knows that it has to be legitimate and 90 per cent of the time that was Mr. Harper because he was approving most of the bills.

Deputy R.G. Le Hérisier:

Can we come back to that?

Chief Officer for Home Affairs:

Can I just say I am not suggesting it was all illegitimate in that case because he had a lot on his mind at the time.

The Deputy of St. Mary:

Well, C.T.V. (Channel Television) certainly suggested that, so you and we have issues with the accuracy of some of the media.

Chief Officer for Home Affairs:

We all forget, do we not, what was going on at the time? What we thought we had on our plate.

The Deputy of St. Mary:

The pace of it.

Chief Officer for Home Affairs:

The pace of it, what we thought we were dealing with and as I have just said to the Finance Manager this morning: "You do not want me picking my way through everything becoming a blinking nuisance when you have a major murder inquiry." But it is up to the person authorising bills to make sure that that is a legitimate charge to public funds.

Deputy R.G. Le Hérisier:

Can I ask you, and I know this is focusing a bit on your own role, but it is important and although you say BDO is about effectiveness, of course it is about effectiveness based on a proper structure of control. In other words, that there are proper paths of accountability. You as accounting officer, other than this general letter you sent to [retired Chief Officer of Police] in which you asked him to

essentially sign as evidence that everything was honky dory, what did you as accounting officer think was sufficient evidence to prove that expenditure was being correctly and effectively handled within the police? What evidence did you seek?

Chief Officer for Home Affairs:

I think it is in his transcript. He refers to: "I express satisfaction" I think those are the words used. Bear in mind that I do not have any specialist knowledge on police functions and what they do. So, if the senior investigating officer says to me in writing in his email: "I have had A.C.P.O. (Association of Chief Police Officers) over here. They have been over, they have said that my inquiry is an example of best practice. I have had the National Policing Improvement Agency over here. They have not adversely commented on what I am doing. I have my inquiry policy file up and running and I am making entries in there and more than that, in writing, which I have, it is in there, he says that all the expenditure I am incurring is necessary to further the aims of the inquiry. Then I am hardly likely to say: "No, I am sorry, I do not care what you say, I need further evidence" and all that is in there. Those were the professional assurances that were being given at the time.

Deputy R.G. Le Hérissier:

You mentioned this was all going honky dory, this system, from your inception in Home Affairs, when did you realise, or come to the realisation that things were not going well financially?

Chief Officer for Home Affairs:

I hesitate there because it is like that film which has 2 scenarios running at the same time. God forbid, say that there were bodies at Haut de la Garenne, and say this was a multiple homicide, we could postulate whether we would be here today and whether there would be any query on the spend, but after 31st March 2008 when what had been described as a piece of juvenile cranium was later described as a bit of coconut and the thing started to take a different complexion, at that point I think it would be fair to say I probably started to think: "We have spent a lot of money on something which perhaps is not going to turn out on what we thought." So, you then get a concern. I think most people would. States Members staff have a concern. A lot of people started to have a concern about: "What exactly have you been spending all this money on?" At that point, and I think the correspondence bears it out, I sought advice from the Treasurer and I ended up writing to [retired Chief Officer of Police] about whether he could give me the assurance that what has been spent is an effective use of the money. That is about as fair an account as I can give you.

The Deputy of St. Mary:

Would you agree that there is a substantial body of opinion which would say that those issues of the juvenile skull turning into a bit of coconut and the charred corpses and so on, the various issues that do not seem to be resolved, the teeth, that there is a real doubt? You are saying: "Well, the thing turned on 31st March and it suddenly all became, 'Well, frankly why are we doing this?'" In fact, there are quite a lot of people who think: "No, the account given in BDO of those questions is partial and one-sided." So, there is still a debate about that. I am saying you cannot just rubbish it and say: "Well, all that expenditure in 2008, what a wild goose chase" or a lot of it. There have been prosecutions for a lot of it. I mean, there were 1,500 witness statements or something.

[12:15]

Deputy T.M. Pitman:

Before you speak, just because we will get pulled up on it, you said "charred corpses" it was charred bones, fresh and flesh, otherwise we will get accused ...

The Deputy of St. Mary:

Sorry, yes. No, fair enough.

Chief Officer for Home Affairs:

I am not qualified to criticise the conduct of the inquiry myself. Anything that I have said about that

is purely what I have read in here which is the thing that is on the internet which says what, in the opinion of the Wiltshire Police, was wrong with the inquiry.

The Deputy of St. Mary:

But Op Haven said, and the Minister has backed their version and not BDO's, they have said that the decision to excavate was legitimate, the expenses incurred up to a certain point were legitimate. There may have been no issues. What we are looking at is issues around how that expending was controlled, whether it was effective and efficient and so on. We are not looking at whether these police procedures were correct.

Chief Officer for Home Affairs:

No, and that is not part of my ...

The Deputy of St. Mary:

Oh, I thought you were questioning them.

Chief Officer for Home Affairs:

Not at all. I am not qualified to do that.

The Deputy of St. Mary:

Can I take you to the file note, 4th June 2008, which is in the bundle that I think you and our scrutiny officer provided us with. Now, there it says June 2008 you are present, Lenny Harper is present, the Director of Finance is present, and you just go through this. It is looking at the meetings, looking at financial management controls that have been put in place by the S.I.O. (Senior Investigating Officer). That is in part 1.

Chief Officer for Home Affairs:

Yes, I have it.

The Deputy of St. Mary:

At the commencement of the investigation he has followed A.C.P.O., accommodation was checked with States Procurement. A trip to Australia, taking all the factors into account, could be justified. Summary of key statistics was reviewed and expenditure we have put the extent of the investigation in proportion to the level of expenditure. In other words it was proportionate to the scale of what was going on and that gets a tick as well, but it just says: "Was reviewed." So, in June 2008 that meeting was an opportunity for challenge. I am just sort of trying to get hold of where the BDO review comes from with its extensive basically criticisms and that file note which says in June that ... well, what does it say?

Chief Officer for Home Affairs:

Well, what that was was me seeking assurances from the senior investigating officer about the money he was committing and Mr. Harper was able to do that at that time. I did not have a bad feeling after that meeting because I was basing it on those professionals who had come over and he relayed to me what they had said. But irrespective of this meeting on 4th June I still decided to seek verification of what I was being told from [retired Chief Officer of Police], expecting that he was supervising all of this, or supervising the S.I.O. and that was the purpose of the letters in June. I now know of course that perhaps that was not quite what the situation was at the time.

The Deputy of St. Mary:

Sorry, the letter in May? The letter that you wrote to [retired Chief Officer of Police] was 27th May.

Chief Officer for Home Affairs:

Well, the first one in May and June, yes, that is right.

The Deputy of St. Mary:

Your concerns were: "I will be meeting with Lenny to review some of the detailed expenditure."

Chief Officer for Home Affairs:

Yes, which one are you looking at? Oh, are you looking at the email, are you?

The Deputy of St. Mary:

No, 27th May letter in part 2 of the bundle. It is the first letter in the second ...

Chief Officer for Home Affairs:

First letter, yes. Yes, that is right. Well, that is referring to the 4th June meeting.

The Deputy of St. Mary:

It says: "As I am sure you are aware through my staff I have been monitoring expenditure on the historic child abuse Investigation and advising the Treasury through reports."

Chief Officer for Home Affairs:

Yes.

The Deputy of St. Mary:

Then you ask for confirmation from [retired Chief Officer of Police] that ...

Chief Officer for Home Affairs:

I did and I did not get it the first time so I wrote again.

The Deputy of St. Mary:

And then he wrote back saying: "I accept my responsibility as Chief Officer in the matter but in doing so encountered the customary difficulty of having no appropriately qualified staff within my direct command."

Chief Officer for Home Affairs:

That is true.

The Deputy of St. Mary:

Then after that between you you ended up setting up the F.O.B.

Chief Officer for Home Affairs:

It is true, but it is not true to say that he did not have access to qualified financial advice because he had it since 1st November 2000.

Deputy R.G. Le Hérissier:

On that, I think it is the same period again, we have what appears to be 2 divergent sets of evidence. One is that [retired Chief Officer of Police] was attending meetings presumably of the F.O.B. and the inference is from his evidence that he expected to be brought up at the F.O.B. if things were going wrong, expected concerns to be laid out. He says that there were no concerns raised with him, so he drew the inference that people were satisfied with his financial management, but yet apparently at the same time your finance and administration manager was expressing concern, which has been written about in the BDO report, that this person was getting very little information from Mr. Harper. So, (a) what was going on on the F.O.B? Was it all hunky dory? Was everybody sort of happy? And (b) did you hear from the finance and administration manager? Did that person come to you and say: "Look, I am not getting the information I require to make sensible assessments"?

Chief Officer for Home Affairs:

On the point of things not being flagged up; the whole point of these letters in May and June was because I was concerned and I do not think he is being totally up front. He is an intelligent man, he will know that the purpose of these letters was because I was not happy. He will know that. He has

not said it, but he will know that. This was me saying to the Chief of Police: “I need your assurance that what is going on you are happy with.” So, that is a written challenge. There is no other way of describing it. In terms of the finance manager, we are in the tearoom every day. He works downstairs. I suppose the best way I can portray it is if you look at tab 9; have you all got it?

Deputy R.G. Le Hérissier:

Yes.

Chief Officer for Home Affairs:

About 4 pages in the finance manager emailed the police in February seeking information and if you want the mood of things, if you look at the top thing there is a reply from Mr. Harper to the finance manager on 22nd February. It says: “At the moment it is a historical abuse inquiry. Details are confidential and I have no idea at present when it will end.” That was the reply to the request for financial information. Well, it was not easy, put it that way, but we did stay with it. From the records that are available electronically we were able to pull together financial reports which were provided to the police regularly and I think there is an example of one in there.

Deputy R.G. Le Hérissier:

Did you ever sit down with [retired Chief Officer of Police] and say: “Look, things do not seem to be going right here. Could we discuss how we can improve matters?”

Chief Officer for Home Affairs:

No, but we thought they were. I think that is the point I am trying to make. Up until it seemed that the inquiry was not going to do what it said it did, I think that is when the trigger was for my concern and at that point I decided to confront the Chief of Police with that.

The Deputy of St. Mary:

No, sorry, the matter of whether the inquiry was going to do what it said it would do on the tin; that is not the same as controlling the expenditure and you refer to this email from Lenny Harper on 22nd February: “I have no idea at present when it will end.” He turned out to be absolutely right because 4 days later they took the decision to ... they found then JAR/6 and so on and then the whole thing went stratospheric in terms of expenditure. So, he was right not to answer. He had no idea. I think I want to repeat the question of Deputy Le Hérissier which I do not think you answered. Did you hear from your financial manager, your person on the S.M.T. at the police who was a regular member of the team and was updating and so on and doing the analysis? Did you ever hear formally, or informally if you like, but formally preferably from that person about any misgivings about specifically Rectangle? Because they are in the senior management team every fortnight, is my understanding.

Chief Officer for Home Affairs:

Only that we had discussions about the size of the expenditure but I cannot recall specifically any conversations about anything else because of course do not forget we are not seeing the bills, like I said before. We are not seeing what is being signed off. We got to know about it retrospectively several weeks later because the financial information appears on the system. So, it is only from a sense of how much is being spent from the discussions of the group.

The Deputy of St. Mary:

You see, this is problem, is it not? There is someone who has a place on the S.M.T., it is a standing item on the agenda, the finances of the police, including Operation Rectangle, and yet in terms of strategic: dog-handler, big item; overtime cordon, big item. These are big items and apparently nothing is getting back to you at all, even though there is somebody ... You can imagine, you can see how this confusion arises; [retired Chief Officer of Police] is saying to us: “Well, there was somebody in on it” maybe he was referring to this person who was on the S.M.T. and there every time and yet nothing is coming back to you about any disquiet. I am not talking about a bill for this and a bill for that; I am talking about the overall thing, big costs, £100,000 here, £500, 000 there and

yet nothing is coming back to you.

Chief Officer for Home Affairs:

No, that is wrong; I was aware of that, yes.

The Deputy of St. Mary:

What about the challenge then on these items because obviously you go for the big items, do you not?

Chief Officer for Home Affairs:

Well, that is right but you have got to get back to the point that this is a major inquiry and people who had been brought over to look at the way they were conducting it were apparently saying that this was okay, this was being conducted in the right fashion. I am not going to question that. Why would I challenge that? The Wiltshire report says ... I mean I am going to have to quote it to you.

The Deputy of St. Mary:

Sorry, the Wiltshire Financial Report?

Chief Officer for Home Affairs:

Yes. Have you got a copy?

The Deputy of St. Mary:

Yes, I have.

Chief Officer for Home Affairs:

If you look at paragraph 1.5 in the executive summary: "Whilst it could be argued that Steven Austin-Vautier could have challenged either D.C.O. (Deputy Chief Officer) Harper or Chief Officer Power over the increasing costs of Operation Rectangle, the fact remains that he had no managerial or operational responsibility over them."

The Deputy of St. Mary:

Yes.

Chief Officer for Home Affairs:

So, unlike the Prison, the Fire Service, the Customs and Immigration Service, the Superintendent Registrar and the Territorial Army, where I can say: "Stop doing that and do not do any more until I have said otherwise." I cannot do that with the police.

The Deputy of St. Mary:

Which is why I asked right at the beginning, why we asked right at the beginning the question about the Finance Law and whether you felt it was satisfactory and you said your views changed and you now know that it is not satisfactory or words ...

Chief Officer for Home Affairs:

It has not stood the ultimate test.

The Deputy of St. Mary:

[retired Chief Officer of Police] said at the time: "It will not stand up to any of the stress."

Chief Officer for Home Affairs:

He had a lot of foresight.

The Deputy of St. Mary:

Yes.

Deputy T.M. Pitman:

I have sat very quietly because both my colleagues are on a roll here and that is fine, got my share last time. What I still find hard to get my head around is [retired Chief Officer of Police] is effectively saying that most of the concerns, the worries, the questions, only came to a head after he had been suspended almost. How could such a scenario be plausible? I know there are difficulties, we all know that now, between the lack of an adequate relationship between Home Affairs and the police but how could he come to that conclusion?

Chief Officer for Home Affairs:

Well, you are asking the wrong man, are you not?

Deputy T.M. Pitman:

Well, no, we have put questions to [retired Chief Officer of Police] but I think it is quite relevant to ask you because you are his friend.

Chief Officer for Home Affairs:

No. Well, look, [retired Chief Officer of Police] is a colleague, he is a colleague. You cannot ask me, as a colleague, why it is that people start to question [retired Chief Officer of Police], put some doubt on whether he should be in office, question whether he should be ...

Deputy T.M. Pitman:

Well, I can ask you if you respect why it sort of apparently took so long; July everything is great apparently, or that is the perception and then he is removed and suddenly December, a different ball game. That is what I find hard to understand. I am not casting any aspersions on yourself ...

Chief Officer for Home Affairs:

No.

Deputy T.M. Pitman:

I am just trying to get my head around this.

Chief Officer for Home Affairs:

Are you saying what happened in that, say perhaps 6 months that we ended up where he was suspended; is that the question?

Deputy T.M. Pitman:

Well, I suppose that it is a degree, yes. That is; I mean he is suspended and then I just do not understand how he got there without it being much more in the ...

Chief Officer for Home Affairs:

Yes. Well, lots of people caused that but I am not one of them. I am busy getting on with my job in Home Affairs.

[12:30]

Neither me nor my staff are saying: "Why is Graham Power still the Police Chief?" Lots of your brethren were, lots of Members, lots of members of the public, other people but we have got no axe to grind. We have got a job to do and it is busy.

Deputy R.G. Le Hérisier:

I have got to press this issue again, if I may; this issue of your officer attending meetings and not getting sufficient information, it appears, from Mr. Harper and yet somehow this concern, which must have been a major concern, does not sort of find its way to you and start alarm bells ringing or find its way to the Financial Oversight Board, which is meant to be the repository for all these concerns.

Chief Officer for Home Affairs:

Well, I think that the only thing I can say is that ... and it is the mildest answer; I was prepared to accept, at the time, that the A.C.P.O. group had been over, the N.P.I.A. (National Policing Improvement Agency) group had been over, the assurances that Mr. Harper himself formally had given about the fact that everything he had spent he needed. When you piece that all together it was a plausible account as to why we needed to spend the money we were spending. As I have said, it was only when it was quite apparent that the inquiry, the operation, was not achieving what it was supposed to achieve or it was portrayed as, that there then became a worry over whether we needed to be spending as much as we did. But up until that point everything looked quite plausible at the time.

Deputy R.G. Le Hérissier:

See the interesting thing is that a lot of the subsequent press media coverage was ... some of it was questioning professional policing decisions, like was a dog needed? But there are others, as I intimated earlier; essentially they were about extravagance, that there was extravagance in expenditure. Things that strikes me; lay people could judge. They were either staying in over-luxurious hotels or they were not and of course that is where it all ended up; the publicity, that is where the adverse publicity ended up. That was not picked up as an issue, was it, because it subsequently became a major issue?

Chief Officer for Home Affairs:

Well, it was. Well, it was because we had new ... we spent a lot of our time answering numerous States Members' questions around it and I have got it all. So, we did have to, I had to ask the questions. A classic example were the trips to Australia, for example; I had to go into all of that. We had a meeting with the police; they provided, again, a plausible reason why they had spent the money they had on going to Australia or to do with the length of the travel they had to endure, the work they had to do while they were airborne and you cannot do that sitting in the 3 and 4 pennies when you are juggling your tray of food with muggins looking over your shoulder at what you are writing; all good reasons, all perfectly plausible. So, we were dealing with those things at the time; there were numerous questions about hotels. I know that they did go to length to try and get one of the bills in now; I brought examples with me in case you wanted to see them. But there is a receipt in it or a bill in there, quite a large one, for the Hotel de France; £70 a night bed and breakfast. Well, you cannot say fairer than that; that is a good rate for the Hotel de France. There was some trouble being taken over things like that; it was not all ... and I said that the last time I appeared. The impression has been given that the BDO report just rubbishes everything that the police did. It does not; there are 9 examples at least of where they are saying steps were taken to be careful.

The Deputy of St. Mary:

This is the problem, is it not, that the public perception is totally different from what you have just said?

Chief Officer for Home Affairs:

Well, who is putting that about?

The Deputy of St. Mary:

Ah, I know, it is the media.

Deputy T.M. Pitman:

We discussed this with the Minister.

The Deputy of St. Mary:

We have referred to the Channel T.V. (television) who have used the Australia example as an example of profit and expenditure only last week and you are saying and of course we all know that that expenditure was justified and it is on record in your documents that you have given us. So, there

is a problem with the way the media goes about reporting this whole issue and I wonder if you have any comments on what could be done about that in terms of rectifying, getting them to put out the micro version corrections to the mistakes they are making?

Chief Officer for Home Affairs:

We are on an impossible mission.

The Deputy of St. Mary:

But you do share that concern.

Deputy T.M. Pitman:

But can I have some insights into how that came about?

Chief Officer for Home Affairs:

Well, sorry, Deputy ...

The Deputy of St. Mary:

Well, sorry, there are 2 questions.

Chief Officer for Home Affairs:

I share the concern because of the mass indignation I felt last week. I mean I just found it extraordinary; one hour 40 you had him on the phone and the one thing they report is tosh, sorry, it is drivel. They are both in the dictionary actually.

Deputy T.M. Pitman:

We can agree on some things then.

The Deputy of St. Mary:

Tosh is fine, so what do you ...?

Deputy R.G. Le Hérissier:

I wonder if I can jump to a new issue, although we do have a tendency to keep being drawn back; the lack of a finance manager. [retired Chief Officer of Police] of course, just as we are following this theme, he says of course he had asked for such a person to be appointed and so forth. Were you convinced that you moved as quickly on this one as you could have and were you convinced, once you had made the appointment, that you were getting the right information to start making some fairly informed judgments and assessments of what was going on?

Chief Officer for Home Affairs:

Well, there always was a finance manager; there has been for 8 years.

Deputy R.G. Le Hérissier:

Within the operation team?

Chief Officer for Home Affairs:

Yes, but as I have said before, that was Mr. Harper's responsibility to appoint his own finance backup for his operation in accordance with police procedures. That is not me; I have got a department to run.

Deputy R.G. Le Hérissier:

Presumably though you would have been of the view ... say, for example, you follow the argument; Mr. Harper, as you have said earlier, was running a very fast-paced investigation. He may not have had very recent experience of running such investigations and certainly you ...

Chief Officer for Home Affairs:

They do.

Deputy R.G. Le Hérissier:

Yes, well quite; bureaucratic niceties were not going to be sort of top of his agenda as he tried to get things moving. You did not think that there was a role for your department to intervene and say: “Look, we have got to push this along and it will help me because it will ensure that I am getting right from the frontline the right kind of financial data and I do not have to rely on these sort of letters from [retired Chief Officer of Police] that everything is hunky-dory.”

Chief Officer for Home Affairs:

Well, 2 things to say about that; the first is there has been a very sad incident in Jersey in the last 10 days but the senior investigating officer found time to, in the first week, sort out his admin and finance, point one. Point 2, this was all very new; we had not been here before. I am the first to admit we are all human beings and fallible.

Deputy R.G. Le Hérissier:

Absolutely.

Chief Officer for Home Affairs:

I, despite my 18 years in the Air Force and things I have seen and done, this was new for me. Nobody knew how it was going to unfold. It is great in hindsight but I am sure Mr. Harper, [retired Chief Officer of Police] and me, we would all do things differently but at the time you just do not know exactly what is coming up. I did not know that 4 weeks later we would still have a dog roaming around and we would have all these policemen still on a cordon. It was all new, never been there before and we all learned from those sorts of experiences.

Deputy R.G. Le Hérissier:

In a way, we are not here to assess your performance but obviously we are there ...

Chief Officer for Home Affairs:

I wondered.

Deputy R.G. Le Hérissier:

Because obviously one of the issues that has arisen is the balance of the findings of the BDO report and while we are not here to sort of engage in equal opportunity of allocating blame obviously there is a distinct trend in that report and it is to put the bulk of the blame upon police and certain named officers. So, we have to find out the workings of the Home Affairs Department. You gave a long list of the people Mr. Harper had sought advice from and that is a well known police thing; try and break down cultures and open up to new thinking. That did not apply to your side of the work. You could not pick up the phone to someone in the Home Office and say: “Look, we have got this massive operation in Jersey. I am in this position. What are the things I should be focusing on?” That did not come up?

Chief Officer for Home Affairs:

No. There is not that sort of thing. I mean we plugged for the Jersey public service. We do get on with it and sort things out. No, there is not the panoply of managerial oversight and advice that there is within the police force U.K. (United Kingdom)-wide. No, there is not and in any case, come back to what I said, at the outset why is it any different? We have managed £48 million every year or whatever it is; it happens to be that this year and this was just another operation at the beginning but it clearly unfolded into something much bigger.

Deputy T.M. Pitman:

If I can just take you back a bit; [retired Chief Officer of Police] stated at the early stages of the inquiry, when he was receiving responses, regular responses, that there were no concerns about the financial arrangements, he began to feel uneasy, to use his words, that: “There was not sufficient

rigour in the Home Affairs approach. I just came towards the end of May 2008, 22nd May” and he says he took the initiative to propose the Financial Oversight Board in an email he quotes, 9th June. He said that this was eventually accepted but not acted upon with sufficient speed and the first meeting is not held until 23rd July. What would have been the reason for that delay?

Chief Officer for Home Affairs:

Right. Well, the answer to the question, before I come back on from there, is I do not know because I have looked at that. I imagine it is something as simple as people not being available in July. It is right in the middle of the summer, other things going on. I honestly do not know of any other reason why there was a delay.

Deputy T.M. Pitman:

But something that would have seemed so important he has recognised as important.

Chief Officer for Home Affairs:

Yes.

Deputy T.M. Pitman:

Is that ...?

Chief Officer for Home Affairs:

No, it is a fair observation. I cannot honestly account for anything other what was said. I come back to; he says “insufficient rigour” and he suggested that ... I will submit that unless I had written to him in May and again in June that he would not even have thought of the Financial Oversight Board because he was not focused on the finance at all. That is an opinion; it is not backed up by anything I have given you.

Deputy T.M. Pitman:

Yes.

Chief Officer for Home Affairs:

But the only reason it popped up was because of the correspondence.

Deputy R.G. Le Hérisier:

Going to a slightly more micro issue, Mr. Austin-Vautier, as you know [retired Chief Officer of Police] claimed that the rules on expenses were bypassed, that they were never signed off and then of course this was heavily criticised in the BDO report. We are into detail again, sorry about that.

Chief Officer for Home Affairs:

Yes, that is all right.

Deputy R.G. Le Hérisier:

Can you explain to us how police claim for expenses were signed off or should have been signed off?

Chief Officer for Home Affairs:

Well, you are talking about purchase cards now, that sort of thing?

Deputy R.G. Le Hérisier:

Yes, well, alongside it, yes.

Chief Officer for Home Affairs:

Yes. Well, with purchase cards you have to have 2 signatories. You verify the bills yourself but you did incur those and then another officer has to verify that. Then, in addition to that, then the Finance Officer does the computation check and allocates the business unit, so there are 3 people; that is with

the purchase cards. That is why in the BDO report there is quite a long section about what happened at the Bondi Brassiere and other places and the fact that bills were split, it observes. With other bills and then ironically they could be a lot larger and I mean we are talking £90,000 for dogs, for example; with those it just has to be certified by the person committing the expenditure and most of those are signed by Mr. Harper, nobody else. They then go through to the Treasury clerk who then checks the computation and checks that it has been properly authorised. So, there is a difference between purchase cards and other types of bill.

The Deputy of St. Mary:

Is there no counter-signing for the items, for instance, where Lenny Harper might have thought there was going to be a counter-sign?

Chief Officer for Home Affairs:

No. No, not necessarily, no. No. I mean you might find it strange but not under the current finance directions. It comes back to the point that the person incurring the expenditure has to have the integrity to say: "I am satisfied, certified, that this is the correct charge to public funds" and every public servant in a managerial position knows that.

Deputy T.M. Pitman:

Yes.

The Deputy of St. Mary:

Which is why normally there is a right-hand person within a major inquiry to challenge and check that a competitive process has been gone through properly, et cetera, et cetera, when it is a bit item and this was not that.

Chief Officer for Home Affairs:

Yes, although, just to say on that, yes, in the ordinary run of events big things you would competitively tender things but clearly with something like this; we have had it this morning, I will tell you now ...

The Deputy of St. Mary:

Exactly.

Chief Officer for Home Affairs:

They have not tendered.

The Deputy of St. Mary:

No.

Chief Officer for Home Affairs:

I mean they have to get forensic people in like now and they go to the people who can do the job. They do not go out to tender in the time or anything like that.

The Deputy of St. Mary:

No, no, I am sorry. Yes, but I just mean looking at things where there is a lead time and so on.

Chief Officer for Home Affairs:

Yes.

The Deputy of St. Mary:

But some element of challenge; we are looking for some element of challenge.

Chief Officer for Home Affairs:

Okay, well, it is in there, is it not? It is in there, Operation Haven.

[12:45]

Deputy R.G. Le Hérissier:

One of the ways of dealing with this where you do give, shall we say, unilateral signing-off powers to an individual is the sum of money which they can sign off. What is the limit that can be signed off? Is it totally attached to rank in the police?

Chief Officer for Home Affairs:

I do not have that information readily to hand and I would not try and guess it but I think I can find out for you, if you would like me to, yes?

Deputy R.G. Le Hérissier:

Well, in the sense that if the allegations being made that expenditure is running out of control and someone can sit in front of a desk and sign off a whole series of £90,000 claims, obviously there is very little ... when you look at the system like that ...

Chief Officer for Home Affairs:

That is what happened.

Deputy R.G. Le Hérissier:

There is very little control in a system like that, other than presumably your department commenting on the trend of expenditure.

Chief Officer for Home Affairs:

No, but in a sense it should not matter for the reasons I keep saying. If there is proper professional oversight of what it is that is being done ...

Deputy R.G. Le Hérissier:

Yes.

Chief Officer for Home Affairs:

... and it is in accordance with procedures and policies and where you could tender, you have time to you did, there is no question. The fact that you are signing the bill for £156,000 should not make any difference because of those challenges and checks, professional ones, not from an accountant but from somebody who knows the business.

Deputy R.G. Le Hérissier:

Yes, I take your point. But in what you might call a steady state, as opposed to the kind of obviously urgency that governed a lot of this, you of course would do it against a budget, would you not?

Chief Officer for Home Affairs:

Yes.

Deputy R.G. Le Hérissier:

If it was not indented within the budget then obviously approval could not be made.

Chief Officer for Home Affairs:

Well, you have come back to one thing that was difficult with this whole thing and why I wrote to the Treasury in March in the first place to say: "Unless you give me any more money, I have only got the police budget; if you do not give me any more money I am telling you now it will overspend." We never, at any point, did as just for the record; the budget was never overspent. But, yes, unless you have got both sides of the balance sheet it is very difficult to profile a budget. You cannot say: "Well, hang on a minute, if we go on like this we are going to be overspent in 3 weeks" because you have got nothing to measure it against.

Deputy R.G. Le Hérissier:

Again, reverting to a broader question, we had the BDO report; obviously there has been considerable criticism of the absence of the main witness and we have heard explanations that the ongoing disciplinary inquiry in a sense sort of blighted that because everything had to be put on hold, in retrospect would you have handled the investigation into the alleged overspends by a mechanism like BDO or would you have taken a different approach?

Chief Officer for Home Affairs:

Let me think about it, the alleged overspends, yes. I am quite happy that ... because I was instrumental in asking BDO for it, yes. In fact I would go as far as to say it was my suggestion to the Minister that we do this because if I had not asked for it somebody would, if it was the Comptroller and Auditor General or a States Member maybe. I just knew that somebody was going to say, if I did not: "Was this money used efficiently and effectively?" which are the words in the Finance Law. So, we just did it. I am still happy that that was the right thing to do but it was not about overspend. It was, what it says on the front, about the efficient and effective use of resources. I think I read it; there was an observation on the minute that the Scrutiny Officer sent out about whether that might have interfered with the Wiltshire inquiry, whether it was the right time. I saw it as quite discreet from that because it was an audit and they had [Police consultant]. If, at any point, [Police consultant] had spoken to Wiltshire and they said: "Back off, this is going to seriously interfere with our inquiries" it would have stopped but that did not arise, as far as I know.

Deputy R.G. Le Hérissier:

There was an apparent understanding that there were Chinese walls between Wiltshire and BDO but apparently, as you know, the allegation has been made that [Police consultant] was able to procure the statement of Mr. Harper to the Wiltshire ... you were aware of that, were you?

Chief Officer for Home Affairs:

Not at the time.

Deputy R.G. Le Hérissier:

Did that strike you as rather strange, that ...?

Chief Officer for Home Affairs:

What, now?

Deputy R.G. Le Hérissier:

Yes.

Chief Officer for Home Affairs:

Yes. Yes, obviously but just speaking as a man in the street, it did strike me as a bit strange, yes but I did not know until this Scrutiny inquiry that in fact he had, I think I am right in saying. But we should say that Wiltshire do not appear to have had a problem with that; they appear to have taken legal advice.

Deputy R.G. Le Hérissier:

Legal advice, yes.

Chief Officer for Home Affairs:

So, it is not quite as perhaps wrong as it might appear.

Deputy T.M. Pitman:

When you say it appears a bit strange, I mean you have obviously read all the transcripts you have had; do you find it a bit strange the way things have been working behind the scenes with [former Acting chief Officer of Police] has obviously completely gainsaid the excuse for not talking to Mr.

Harper. He has totally denied that but he prevented [Police consultant] from doing so. I mean were you aware of any sort of unfolding concerns at the time when all this was going on or were you completely removed from that?

Chief Officer for Home Affairs:

I found that odd because I remember having a meeting with [former Acting Chief Officer of Police] where he was quite firm that Mr. Harper should not be approached. So, I heard that with my own ears.

Deputy R.G. Le Hérissier:

What reasons did he give you?

Chief Officer for Home Affairs:

I did not ask for them. Well, no, that is wrong; I did say: “You have got a reason for that” and it was along the lines of ... well, it was a potential judicial reason why it might interfere downstream with anything that might arise as a result of the Wiltshire inquiry. I did not question it further because from my own background that was a good reason. If there was a chance that would happen then that was a good reason for not approaching Mr. Harper to talk about finance.

The Deputy of St. Mary:

Do you remember roughly when that meeting was, when you spoke with [former Acting Chief Officer of Police]?

Chief Officer for Home Affairs:

It was certainly near the beginning of the BDO work. It was fairly early on in the BDO work.

The Deputy of St. Mary:

There were a couple of beginnings, which beginning? February, as in February 2009, when the M.D. (Ministerial Decision) was initially an issue.

Chief Officer for Home Affairs:

Yes, it would have been in the summer of 2009 I imagine. It was quite early on.

The Deputy of St. Mary:

So, it was before Wiltshire was concluded.

Chief Officer for Home Affairs:

Yes.

Deputy T.M. Pitman:

Just going back to the formation of that Gold Group; [retired Chief Officer of Police] said to us that he was discussing that with Warcup very early on. Why did that take so long to establish, can I ask you that? He felt that Gold Group would have absorbed the work of the Financial Oversight Board.

Chief Officer for Home Affairs:

Well, again, I must doubt that because I did not know that Gold Groups were the order of the day as a policing thing. I did not know that it was in their procedures to establish the Gold Group for things like this, when they had established one right away for the current one. So, that is very much police procedure.

The Deputy of St. Mary:

To be fair the initial view of Harper and Power was not to have one anyway and then that evolved to: “Oh, we need one” that was all outside your camp(?).

Chief Officer for Home Affairs:

Yes. Once one was established and I was going to them I could see that there was a value in them because you are able to talk real time with the senior management running the inquiry. Just I said to them at those meetings: "Look, what is coming up that I need to be cited on? Have you got any big items?" the sort of things we have been talking about but there was no platform for that before the Gold Group. The F.O.B. was but that is not the Gold Group.

The Deputy of St. Mary:

I think the key issue is going to turn out to be whether before F.O.B. there was some kind of process set up by somebody to monitor this thing better.

Chief Officer for Home Affairs:

I would submit that that is a police procedural issue.

The Deputy of St. Mary:

Yes, we know that is your view, yes.

Chief Officer for Home Affairs:

But I would say that.

Deputy T.M. Pitman:

Something that underlies a lot of these decisions that were taken and actions that were not perhaps pursued seem to go back to [retired Chief Officer of Police]'s and Harper's concerns about political interference; were you aware of that from your side at Home Affairs?

Chief Officer for Home Affairs:

No, no.

Deputy T.M. Pitman:

In no way whatsoever?

Chief Officer for Home Affairs:

No, we are not ... I mean the ...

Deputy T.M. Pitman:

No pressure has been put on you?

Chief Officer for Home Affairs:

None at all. We are obviously very close to the political machinations because we are a central department and we are working with the Minister daily. But I was not aware of any what might be called political interference at the time.

Deputy T.M. Pitman:

But yet you did say that you were aware of comments being made by politicians; I thought you said that earlier.

Chief Officer for Home Affairs:

Yes, but those are comments which are things that you read and hear about. They are not more Machiavellian, if I could put it like that; what you would regard as some sort of undermining, put it that way, if indeed that happened I really do not know.

Deputy T.M. Pitman:

Was that even the case when you had the problem ... well literally, the Home Affairs Minister at the time went and was replaced; it was Senator Kinnard then, to be replaced by Deputy Lewis? Was there any concerns being expressed at that time as to any political motivations there or concerns being fed through to the department?

Chief Officer for Home Affairs:

Then?

Deputy T.M. Pitman:

Because it seemed to be a very messy situation at the time and I just wonder if that filtered down into ...

Chief Officer for Home Affairs:

No. No, but of course the circumstances around why Senator Kinnard left office and then Deputy Lewis came in for a short period were very specific and were for particular reasons which we will not go into here.

Deputy T.M. Pitman:

But what I am getting at is did that impact anything on the way things unfolded and the relationship between the Home Affairs Department and the police? I do not want to go into the case, it was going on and ...

Chief Officer for Home Affairs:

Not as far as I was concerned because ours is a ... you will understand that for officers it is a very businesslike thing; you are interested in getting on with the business. Really we have to be politically aware that we do not get involved in anything like that.

Deputy T.M. Pitman:

Is there anything that you think we should have asked you to draw out, Chief Officer, and we have not?

Chief Officer for Home Affairs:

Yes, there is one thing, if you do not mind, that you have not covered; it will not take long. It was, if I can find it, the thing to do with why there has not been so much apparent focus on the Home Affairs Department than there has on the police. Do you know what I am alluding to? Yes, in fact I think it was something you might have said. Oh, there it is. Yes. Why the Home Affairs side has not really been given the same scrutiny and that was a question you put to [retired Chief Officer of Police]? What I wanted to say on that was that I had to give a fairly detailed statement to the Wiltshire Police more than once, just the same as [retired Chief Officer of Police]. I clearly then, although I was part of the instigator of BDO, had all of that; they interviewed me and wanted to know what my take was on it. Me and the department then had the Comptroller and Auditor General's interest in all of this. For the last 3-and-a-half years we have also had all the media attention and the copious questions from States Members to deal with and questions from members of the public. Right throughout the last 3-and-a-half years the very few people that work over there with me, we have been at our post for 3-and-a-half years just getting on with the job that we are paid to do. All I would like to say is it does not feel to me like we have not had the same level of scrutiny. It has been a rough ride. So, I just wanted to counter the impression that there has been all this focus on [retired Chief Officer of Police] and Mr. Harper and the police. We have just been getting on with it in all this time and we have had a lot to endure rightly but we have, all of us, just been getting on with it in the meantime. We are a very busy department. So, I do not want people to run away with the impression that we have not been under scrutiny; we most certainly have.

Deputy T.M. Pitman:

I think we would probably say it is a difference between scrutiny which I am sure you would agree is completely valid, that is what we are here to do, obviously here to do and some of what has gone on in the media which has bordered on almost character assassination or certainly the way it has come across; perhaps that is the difference, which is not your fault, it is not my fault.

Chief Officer for Home Affairs:

Okay, well, that qualifies it. Yes, it is just that from the question you asked ... you have put it in a way that makes better sense.

[13:00]

But from the question you asked it sort of gave me the impression that we are almost spectators in a side show; we just wait for the next episode. We have been very much part of this.

Deputy T.M. Pitman:

Well, I think, for the record, it is quite clear there are 2 sides to this story. I mean there are 2 people involved; Home Affairs have been involved, the police are involved, so we are about to ask those questions and I think you would accept that.

Chief Officer for Home Affairs:

Yes.

Deputy T.M. Pitman:

But it is certainly not meant as a slight on the Home Affairs Department.

Chief Officer for Home Affairs:

No. There is one other thing I would just like to ask; have you read the Comptroller and Auditor General's report as well?

The Deputy of St. Mary:

On this?

Chief Officer for Home Affairs:

Well, on the whole of the Wiltshire inquiry. Well, Deputy Wimberley gives the impression that maybe not.

Deputy R.G. Le Hérissier:

He has read everything. If he has not read it the rest of us are in trouble.

The Deputy of St. Mary:

I have got to go, Chairman, because my son is just leaving the Island.

Deputy R.G. Le Hérissier:

We had better listen to this statement.

Chief Officer for Home Affairs:

Yes, it will take 30 seconds.

Deputy R.G. Le Hérissier:

Thirty seconds.

Chief Officer for Home Affairs:

Thirty seconds. He wrote his report in July 2010. He waited for the Wiltshire report and the BDO report and at paragraph 10 he says: "I accept the Chief Officer of the Home Affairs Department was throughout mindful of his personal responsibilities and took reasonable steps to discharge his responsibilities within the constraints I have described." Now, we know the Comptroller and Auditor General; I do not think he would write this unless he had thought about it and that is my last comment.

Deputy T.M. Pitman:

Okay. Is there any ...? Well, thank you coming in and for your answers and I will end it there.

Thank you.

Chief Officer for Home Affairs:

Thank you

Quarterly hearing with Minister of Home affairs dated 11th February 2011

Extract

Deputy R.G. Le Hérisssier:

The Repatriation Law, Mr. Minister, it has been talked about for a long time and I suppose the panel is quite concerned about when it is coming in, any issues that have arisen in the drafting stage and, if I may pile on a third question, how does it interact with the power that a court presently has and which often surprises people because it is happening within, in a sense, the E.U. (European Union). How does it interact with the power of deportation, which the court sometimes exercises?

The Minister for Home Affairs:

Right. The Repatriation Law is obviously a key issue from the point of view of Home Affairs for 2 reasons. Firstly, because we need to reduce the size of the prison if we are going to achieve our C.S.R. (Comprehensive Spending Review) targets, and secondly because it is in the interests of prisoners who have no ties with the Island for them to be able to return and to maintain contact with families and so on, particularly where you have drug mules who come here and may be arrested immediately, and have seen nothing of Jersey other than trips to and from prison, Magistrates Court or court, et cetera. Our target is to get it to the Corporate Management Board on 9th March - that is the Chief Officer's meeting - the Council of Ministers on 24th March and to lodge in time for debate on 17th May. We have not yet, I think, sent it to your good selves. Is that because we are still in a drafting phase?

Chief Officer:

We should have sent the latest draft through to the Scrutiny Officer. It went to Ms. Lydiard, I think.

Mr. M. Haden:

She has been on leave this week.

Deputy R.G. Le Hérisssier:

Okay, yes, I think it was coming through ...

The Minister for Home Affairs:

Okay. As I think I said to you on the previous occasion, it is pretty boring stuff, it is pretty technical in its wording, but it does achieve the objective. We have since our previous informal discussions met with the Bailiff and Deputy Bailiff to discuss the implications as between the different groups and had a very useful discussion with them, which will go on at some stage fairly shortly to a meeting with the superior number, with the jurats, so I can talk to them and see what they think in relation to different issues. If you recall, the issues that arise relate really to the issue as to what we should do in relation to prisoners who currently return at their request to serve their sentences in the U.K. (United Kingdom), who currently serve their sentences under what we call restrictive transfer - in other words on a regime which is the equivalent to our regime in terms of equivalent parole and so on - rather than on a U.K. regime. The difficulty being that essentially once this comes into existence you will have 3 different groupings potentially. You will have non-British prisoners who would be eligible to be returned to their home country where they would serve according to the rules of that country and, frankly, although we have not done a detailed survey on this, my understanding is the rules of the different countries are all massively different. There is no unified system. But that has been accepted as part of the internal convention or whatever it was within the E.U., the direction it was on this. Then you have prisoners who would be of U.K. origin who would want to return to the U.K. Now, the question is do you send them back on the same basis as our people in order to maintain parity between those bearing in mind that there would then be a difference. If you hypothetically had Mr.

Eccofeshon(?) from Jersey and Mr. Smith from Liverpool and Mr. de Sousa from Madeira as co-conspirators in bringing heroin into the Island, then, of course, there could be issues of difference. Now, one could simply take the view that it is entirely consistent with the principles of the ... I am calling it different names. It is a direction, is it not?

Chief Officer:

The E.U. Directive?

The Minister for Home Affairs:

Directive, the E.U. Directive. One could simply say it was completely consistent with the principles of the E.U. Directive that they would serve according to the principles of the country where they served, in which case we would no longer return people to the U.K. on restrictive transfer, which means on our rules, but we would return them on the basis of their system. But that is why there has to be further discussion. Now, the issue in relation to the interplay of that with ... I have lost the word.

Chief Officer:

Deportation.

The Minister for Home Affairs:

Deportation, with deportation, in a sense they are separate concepts because deportation has got to do with what happens after you have completed your sentence, whether you can come back or not. So we do not envisage any change in that; that would still operate in the same way. I can outline to you how that operates if you would like me to, but I do not think it will make any difference whatsoever because that has to do with where you serve your sentence; it has to do with whether you can come back to Jersey once you have completed your sentence.

Deputy R.G. Le Hérissier:

I think that is sufficient. I do not know, Members, do you want more elaboration on deportation?

Deputy J.M. Maçon:

Just 2 questions because you have talked about the C.S.R. What percentage of prisoners that are currently serving break down between the local and non-local roughly?

The Minister for Home Affairs:

We have not brought the numbers with us. We have about 24 off the top of my head.

Chief Officer:

Yes, that is the easier way to look at it, I think.

Assistant Minister for Home Affairs:

I think it is mid-30s including Poles and Madeira ...

The Minister for Home Affairs:

Portugal, and about 8 from Poland.

Chief Officer:

That is right.

The Minister for Home Affairs:

But we are not sure that it would break in that way in this sense, that the classification depends upon whether or not they have ...

Chief Officer:

Local ties.

The Minister for Home Affairs:

Well, is it local ties or is it housing rights? I am just trying to remember.

Chief Officer:

Well, I think both are a factor but when we transfer them to England it is done on local election.

The Minister for Home Affairs:

Yes, but the trouble is the statistics that I am getting which are saying Portuguese or Polish ...

Assistant Minister for Home Affairs:

It does not indicate what their ties are with the Island and so that is an additional piece of work we are doing at this moment to see, okay, they might not be locally housing qualified, but if you have somebody from Madeira who has children here who has lived here for 8 years, then that casts a completely different picture on it. So we are doing that piece of work right this minute.

The Minister for Home Affairs:

That sort of numbers, 30-odd out of a prison population which has been about 180, 190 ... or 170, 190 ... but we do not think the whole of the 30 ...

Assistant Minister for Home Affairs:

It does not include the British prisoners either, that figure.

The Minister for Home Affairs:

Well, yes, but that does not change the situation for them because they go back voluntarily and we do not pay for them. So British prisoners who go back voluntarily for whom we do not pay will just continue, so there is no change.

Deputy T.M. Pitman:

Just to clarify - I think Jacqui probably has - but the number then who are non-U.K., but like Holland or whatever, that is 30, did you say?

Assistant Minister for Home Affairs:

It is around the mid 30s to 40 because I was only including Polish and Portuguese there, not the other nationalities, of which we have a few.

The Minister for Home Affairs:

There are some others.

Assistant Minister for Home Affairs:

Yes, but I do not know off the top of my head.

The Minister for Home Affairs:

There is a particular issue in relation to a particular person of a different nationality at the moment.

Deputy T.M. Pitman:

Then just going one step further, how do you have the ... I would see it as a treaty or

something, but how do you ... when you want to return someone to a country, how does that process work?

[10:15]

The Minister for Home Affairs:

Okay. Well, first of all, you have to have an understanding with a specific jurisdiction, so we have been talking to the Chief Minister's Department in terms of starting to make contact with the key jurisdictions, which are, of course, going to be Portugal/Madeira and Poland in terms of numbers. I think there is also another jurisdiction we would probably want to make contact because of a particular case. The way the system works is that in relation to an individual prisoner, the sending country has to want to send them and the receiving country has to agree to receive them. We had this discussion on a previous occasion about whether or not the prisoner had to consent.

Chief Officer:

Yes, the original 83 E.U. Directive required the prisoner to consent, but it was amended by an additional protocol later which removed that. So the situation now is that you do not require the prisoner's consent.

The Minister for Home Affairs:

Although, of course, if the prisoner was very unhappy they could make representations to the receiving country.

Deputy T.M. Pitman:

Could I just ask in that direction ... I am not working with anyone at the prison but I know Deputy S. Pitman is. Is there a feeling among the prisoners in that situation that they would ... you know, they are fully supportive of this repatriation?

The Minister for Home Affairs:

Well, one would expect so.

Deputy T.M. Pitman:

Is there any ... did people take their views or ...?

The Minister for Home Affairs:

We have not been talking to them but one would expect so because in ... one would expect people to want to go back and ...

Deputy T.M. Pitman:

Because of their children, et cetera.

The Minister for Home Affairs:

Be close to their families. There are all sorts of sad circumstances which could arise particularly with drugs mules. Apart from that, of course, there may be issues in which the regime in their country allows them to be released earlier so there may be advantages for them from that point of view. But no, we have not been talking to them. In a sense, this is an E.U. Directive and we are not bound by that, but nevertheless it is an international agreement. We talk about repatriation of prisoners or ... and it seems desirable for a whole number of reasons to go down this route.

Deputy R.G. Le Hérissier:

Okay. We will leave it there for the moment.

Deputy M. Tadier of St. Brelade:

First of all, my apologies, I sent a message that I got held up.

The Minister for Home Affairs:

Yes.

Deputy M. Tadier:

I just had a question about ... I know we spoke about the repatriation of prisoners briefly at the last one. Is it possible for it to be phased in and perhaps on a voluntary basis so that those who ... there obviously needs to be consultation I would imagine anyway with prisoners because there will be scenarios, I imagine, where appeals would happen where somebody for whatever reason - it may be in a minority of cases - does not want to be repatriated, perhaps because the conditions would not be as favourable for them.

The Minister for Home Affairs:

There is going to be a situation obviously in which there will be individual prisoners who potentially could be repatriated. We have to reach an agreement with the other jurisdictions and other countries so that they are happy to have a reciprocal arrangement with us. Then in an individual case we might say: "We do not think the ties are sufficiently close. It would be in your best interests for you to return." You could have a situation, I suppose, where a prisoner would say: "I do not agree with that." But as Mr. Austin-Vautier explained, under the current arrangements there is no requirement for the prisoner to consent. Having said that, the receiving country has also got to agree to take the person. So in a sense you have to have agreement both locally and also you have to have agreement from the receiving country, otherwise it will not happen. So there is a kind of double safeguard. We cannot be turfing people out just to reduce our prison numbers willy-nilly as it were. Obviously, in looking at who would be suitable candidates, we have to look at issues like the nature of their ties with the Island, whether they want to go or not, et cetera. But as I say, there is no requirement under the E.U. Directive for the consent of the individual prisoner.

Deputy J.M. Maçon:

Sorry, just one small ... what have you done looking into the other side of other countries accepting their prisoners back into their countries? Have you found that some countries are much better at doing it than others or ...?

The Minister for Home Affairs:

Well, that is where we are, through the Chief Minister's Department, seeking now to start engagement with the countries. One of the reasons why it would have to be without the consent of the prisoner is because there has to be reciprocity, and because the E.U. Directive is on certain terms in a sense it is one of these situations where we have to buy into the wider rule.

Deputy M. Tadier:

Although you could argue that you still need the consent of the country, so if the country itself is not giving consent for whatever reason, then that is a similar problem, is it not?

The Minister for Home Affairs:

Well, it is a safeguard, I think, of the individual's rights. Sorry, have I misunderstood you there?

Deputy M. Tadier:

I do not think so, but I think the issue you have raised there about you could not base it on the consent of a prisoner, but we still have the consent of both countries. So if the other country or our country did not want to receive the prisoner then there is nothing to do to

oblige the transfer?

The Minister for Home Affairs:

No, that is absolutely right. That is absolutely right. We will receive some prisoners back. For instance, I know of a number of prisoners who, for instance, have been serving sentences in French prisons because they were apprehended by French police or customs in the process of bringing stuff into Jersey. They would be eligible to return to Jersey and if their ties are here then I would expect us to say yes they should return.

Chief Officer:

If it helps to put it in context, I was at M.O.J. (Ministry of Justice) 2 weeks ago. There are currently 20 bilateral agreements between the United Kingdom and other jurisdictions and the U.K. returned 65 prisoners in 2010. That will contextualise it for you.

Deputy R.G. Le Hérissier:

Just a final question, obviously one of the big issues with people moving back to the U.K. was that they did not get the U.K. parole benefits.

The Minister for Home Affairs:

Yes.

Deputy R.G. Le Hérissier:

That was always seen ... other than the fact some of them did not really want to go into U.K. prisons; they found the Jersey prison more congenial. How is that going to be resolved?

The Minister for Home Affairs:

Well, as I say, this is part of the ongoing discussions with the Royal Court. My understanding is that there was a period in which people were being returned to the U.K. on the U.K. terms and then concerns were raised - I am not sure whether they came from the courts or whatever - as to the fact they were sentencing 2 people and they would be receiving their sentence under different conditions, as it were. So a decision was made by ... I think we go back to the Prison Board, do we not?

Chief Officer:

Yes, we do.

The Minister for Home Affairs:

Even before the start of Home Affairs.

Chief Officer:

It was the 1997 Crime (Sentences) Act that they used.

The Minister for Home Affairs:

Right, to go down the route that we have gone down. But I think my own personal view is the logical situation would be to accept that we treat the U.K. as if it was in the wider system. That would mean that they would serve according to the regime where they served. That would be consistent with the E.U. Directive.

Deputy T.M. Pitman:

Just picking up what you said, Steven, was that 65, and that is a population of what, 84,000 or something, is it not, U.K. prisons?

Chief Officer:

Yes, in relative terms it is a small number.

Deputy T.M. Pitman:

If we transfer that likelihood to Jersey it is pretty miniscule.

Chief Officer:

Although here I think that the size of the prison, we have quite a high number of people who do not actually come from here. Because as I said the other day, there are people in the prison who have only seen the airport, the custody suite and the inside of La Moye.

The Minister for Home Affairs:

And the Magistrates Court as well.

Chief Officer:

Oh, yes. **[Laughter]** Not wishing to leave the court out of ...

Deputy R.G. Le Hérissier:

What about a Jersey ... sorry, this has gone on a little longer than I thought, but what about a Jersey prisoner who is serving a very long and serious sentence - and I know there are a few in the U.K. prison system - for a crime committed in the U.K.? Could they apply to come back here even though the Jersey prison probably does not have the ability to deal with long-term prisoners who need all kinds of programming support?

The Minister for Home Affairs:

They could apply but, of course, we would have to decide whether we were able to cope with them. Obviously, we have recently coped with a very high-level risk prisoner, as people now realise, but that would have to be looked at in terms of that. At the moment, of course, a Jersey-based prisoner serving a very long sentence would serve their sentence in Jersey, so it is not that different.

Deputy T.M. Pitman:

Will the agreements take into account places perhaps like Thailand, which do not necessarily have the best prison system, if somebody is being sentenced in Thailand, perhaps for a drug-related charge which we would consider particularly harsh?

The Minister for Home Affairs:

Well, we are only looking within the E.U. so we are not going to be sending people back to Thailand.

Deputy T.M. Pitman:

No, I was thinking the other way round, though, because there are people serving sentences under very ...

The Minister for Home Affairs:

Oh, I see.

Deputy T.M. Pitman:

I suppose that is a future consideration, is it?

The Minister for Home Affairs:

Yes. No, we are only looking within the E.U.

Chief Officer:

I do not think we would run before we could walk on this one.

Deputy T.M. Pitman:

Also it is the E.U. Directive partly, is it not? That is the reason.

The Minister for Home Affairs:

It is the E.U. Directive.

STATES OF JERSEY

Education and Home Affairs Scrutiny Panel Review of Issues Surrounding the Review of the Final Financial Management of Operation Rectangle

WEDNESDAY, 17th AUGUST 2011

Panel:

Deputy T.M. Pitman of St. Helier (Chairman)

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

Deputy R.G. Le Hérisssier of St. Saviour

Witness:

Mr. G. Power (via conference call), retired Chief Officer for the States of Jersey Police

Also Present:

Scrutiny Officer

Deputy T.M. Pitman:

Well, it is a bit of a strange situation again. You cannot see us, we cannot see you. For the record I will get us all to introduce ourselves in a minute. Welcome, though, audience. There is no mainstream media filming but I must point out we have had a request not to film the audience so if they do come in I will stop proceedings. You have not had the oath so can I just run through the oath so that you are familiar with what we are working to?

Mr. G. Power:

Yes, sure. Sure.

Deputy T.M. Pitman:

Okay, so it is: "The proceedings of the panel are covered by parliamentary privilege through Article 34 of the States of Jersey Law 2005 and the States of Jersey (Powers, Privileges and Immunities) (Scrutiny Panels, P.A.C. (Public Accounts Committee) and P.P.C. (Privileges and Procedures Committee) (Jersey) Regulations 2006 and witnesses are protected from being sued or prosecuted for anything said during the hearing unless they say something which they know to be untrue. This protection is given to witnesses to ensure that they can speak freely and openly to the panel when giving evidence without fear of legal action although the immunity should obviously not be abused by making unsubstantiated statements about third parties who have no right of reply. The panel would like you to bear this in mind when answering questions." Is that okay?

Mr. G. Power:

Yes, okay. Yes, I will carry on.

Deputy T.M. Pitman:

We have got quite a lot to get through so we will do our best to press on. You are aware of the terms of reference obviously?

Mr. G. Power:

Yes, yes, I am.

Deputy T.M. Pitman:

Okay. Could I first ask you, Mr. Harper states in his submission, without reading the whole thing out, that the report in question, BDO, totally misunderstands and represents a situation of the Jersey Police as it was at the time of the investigation in relation to the management of its budget. Would you agree with that assessment from Mr. Harper? Perhaps you could enlarge on that if you do not.

Mr. G. Power:

Yes, I suppose what you are doing is asking me to make an assessment of the value of that specific report. My understanding is that we were not going to get into a detailed discussion of it and so I do not claim to have studied it in more depth. I think ... the comment I would make is this is perfectly proper that politicians would wish a report that looks in a challenging way at lessons that can be learned from major inquiry, there is nothing wrong with that in principle. But it is equally right that it should be even-handed. Mr. Harper knows a great deal more about the detail of the investigation than I do but I think that opportunity is the victim of the report that it does not ... it is insufficiently strategic and it is frustrated, particularly with the almost impossible situation that we found ourselves in in operating the system of financial management that was imposed upon us contrary to best practice advice, and how that arose and how responsibility for that ought to be shared. I think there was an inordinate emphasis on the detail of expenditure in restaurant bills and matters of that nature rather than how did you get into a situation where there was so many fingers in the pie of financial management and no clear line of accountability. I mean that is the bigger question.

Deputy T.M. Pitman:

When you say “so many fingers in the pie” can you just enlarge on that?

Mr. G. Power:

Yes, I mean there is one thing I think everybody agrees on and I could be wrong about that but this system had the Chief Officer of whatever department, namely the Chief Officer of Home Affairs having responsibility for financial management in the police service and the Chief Officer of the police force not having any financial staff under his management, which is quite a bizarre arrangement. All good practice in relation to policing would tell you, or all best practice advice, that there ought to be a qualified accountant as part of the senior management team for the police force. That was the arrangement in Jersey when I started and that was a time when everything was to budget and there was no queries regarding the financial management of the force at all. Then along came the Finance Law, I think it would be the Finance Law 2005, which created the position of accounting officer. Proposals were then put forward to make the Chief Officer of Home Affairs accounting officer for the force and also guidelines were produced which had the accounting officer responsible for setting objectives for line managers for monitoring performance and so on. It left the Chief Officer of Police with nothing to do apart from day to day administration. That was subject of some heated exchanges. Had those proposals not got amended I think I would have had to have gone outside the Island for support. As it was, the management proposals, the proposals to make the accounting officer, the Chief Officer of Home Affairs, responsible for setting objectives for the police line managers themselves were withdrawn with the outcome that the management of the force remained with the Chief Officer of the force but financial management would then come under the control of the Chief Officer for Home Affairs. I opposed that strongly but I was not supported. The Chief Officer for Home Affairs was keen to go along with that arrangement in spite of me producing copies of the best practice advice from other jurisdictions which say you should not do that. You should not split financial control away from the operational management. The Minister for Treasury at the time and the Chief Minister were very determined to impose that arrangement. So I think all of the financial staff were taken away from police headquarters so we were operating around the £20 million a year budget and we did not have a qualified financial person within line management within the police service. So I think a good strategic report which looked at this would identify that is where the problem began because I do not think anybody is disputing that there were problems.

Deputy T.M. Pitman:

Could I just come in there and say when you say you were not supported, who was that specifically by; the Chief Minister at the time or ...? Because you said you made your case very strongly.

Mr. G. Power:

No, the Chief Officer for Home Affairs was not persuaded by my arguments. I went into it in some detail in the statement that I made to Wiltshire. It is just frustrating to be going through this in detail over the phone to some extent when there already is a substantial written submission on the issues relating to the financial management of the historic abuse inquiry which has been sitting on the Minister's desk since July 2009. If the Committee could read that it would ...

Deputy T.M. Pitman:

Believe me, Mr. Power, we share your frustration. I will let my colleagues come in.

The Deputy of St. Mary:

Just staying with this history in a way around 2005 you say that the Home Affairs Chief Officer assisted you but at that level of decision making it is going to go to Ministers, is it not? So what was the ministerial attitude around this issue?

Mr. G. Power:

I had a quite heated meeting with the then Chief Executive, the then Treasurer of the States, the Chief Officer of Home Affairs and myself and we discussed our ideas, I will not say evidence, with this proposal to effectively give the Chief Officer of Home Affairs control of the force. That would have significant constitutional implications and to give credit people could see the trap in that arrangement. But to date the Chief Officer of Home Affairs as the accounting officer for the force did seem to me ... I did say in my statement that I speculated at the time were we being set up to fail with the Chief Officer of Home Affairs in the police force but it was nevertheless an arrangement which every expert on the proper governance of a police force would tell you it is one that would not work most days and certainly would not work under pressure as proved to be the case. Again, I do go into some detail about processes I put in place to try and make a bad system work and us police officers often think ourselves quite good at making bad systems work. What I did was institute ... make sure that the senior management meetings that we had, which occurred on average every couple of weeks, were attended always by a member of the Home Affairs Department finance section. So we also had a qualified accountant sitting at the table of the management meetings representing Home Affairs and we always had a financial report as a standard item. They were minuted meetings with an agenda so there was always the opportunity for the financial person to raise any concerns and if there were any they would be recorded in the minutes.

Deputy R.G. Le Hérissier:

Thank you, Mr. Power, can I follow up on that because we are now in the curious situation of if we read the Home Affairs evidence from the Chief Officer what he was saying was, for example in terms of invoices: "We had to accept them we could not question them." So that could be read by some people as being an abdication of responsibility but yet you attended meetings where this system was argued to be a workable system. At what point in your view, Mr. Power, did the system start manifestly breaking down and it was obvious that despite assurances you had had at the earlier set up meetings the system was not working?

Mr. G. Power:

Yes, okay. At the earlier stage of the inquiry I was receiving regular assurances. These were verbal, they were minuted in meetings and there exists, for example, an email chain from 2008 which refers to meetings between the Chief Officer of Home Affairs, the senior accountants and Lenny Harper which discussed issues such as the Financial Policy Group and travel costs and indicated that there were no concerns. These reassurances were coming on a fairly frequent basis but I was getting an uneasy feeling that perhaps there was not sufficient rigour in the Home Affairs approach. If I was asked to say what was the sort of turning point in a sense, it was on 22nd May 2008 with the Treasurer of the States at the time. He had got in touch with the Chief Officer at Home Affairs and reminded him of the responsibility of the accounting officer and the assurances he was expected to give. The Treasurer said to him ... the accounting officer reminded him the accounting officer is

personally responsible for prudence and economic administration and that the resources are being used efficiently and effectively. Now this led to contact between myself and the Chief Officer of Home Affairs on 27th May and the Chief Officer of Home Affairs asked me to sign a letter saying that I had a finger on everything and everything was fine and providing such assurance. I really was not comfortable with that because I kept repeatedly having to point out: "Look, if I want to know what is going on the in police budget ..." I will not mention it again but the accounting officer obviously was not (inaudible 11:16:08) but if I want to know what is going on in relation to the police budget then really I have to ask the person who is sitting a few feet from where you are sitting now in your office who has all the information because I do not. I then made a suggestion. I discussed it with him and I firmed it up in an email and that was on 9th June 2008, and I said: "Look, we need to have more effective officers, we need a more robust arrangement" and I recommended the establishment of what I called the Financial Oversight Board. I suggested the membership would be himself, a senior accountant from his department, the Senior Investigating Officer who was Lenny Harper and myself. A proper structured body with minutes and an agenda to scrutinise the expenditure. Now, that eventually was accepted that proposal but I felt that it was not acted on with sufficient speed and for whatever reason was not able to call the first meeting until 23rd July 2008. At that meeting I was able to make some proper recommendations, the concept of constructive challenge, the idea that we should bring in some independent auditing procedures. Of course the Senior Investigating Officer was present and was able to answer some of the issues that were raised there and were recorded in the minutes. I do not have a copy of the minutes of that meeting, I obviously cannot remember exactly what was said. There is very clearly a body of which anybody with financial knowledge who had any concerns about any of the procedures could have raised a query, was expected to raise a query. That is what the group was for so if anyone had financial issues they could put it on the agenda, discuss it at the meeting, have it recorded in the minutes and something would have been done about it. Nobody ... if a matter had been raised at that meeting which required me to do something I would have been rushing out and doing it at full speed. That was the way things happened. The minutes will show that nobody raised any concerns and so whatever I might have felt intuitively the fact is that the people who had the knowledge of financial procedures, who had daily access to all of the accounts was unanimous in telling me that there was nothing I needed to do and nothing I needed to worry about. You know whatever people are saying in hindsight what they said at minuted meetings is simply a matter of record and what is a matter of record is that nobody had any concerns.

Deputy R.G. Le Hérisier:

Thank you, Mr. Power. Obviously that seems very much at odds certainly with the understanding that was put in the public domain that there was allegedly a high degree of irresponsible and misdirected spending going on, for example.

Mr. G. Power:

I am not sure that the 2 are necessarily incompatible. I do not know because any alleged revelations regarding irresponsible spending that came to light came to light after I was no longer in post. I would say there that I cannot really comment. But I am not saying that there was not irresponsible spending taking place. I do not necessarily think there was but they are not in a position to give evidence of that, that is not the substance of the evidence I have just given. What the substance of that evidence is, what I am saying is that at minuted meetings with the accounting officer and his financial team I was told that there were no concerns. I am not saying that is true or false I am saying what is true is that that is what I was told and that is according to the minutes of those meetings.

Deputy T.M. Pitman:

Can we just ...

Mr. G. Power:

It was when I was no longer in post when people started telling a very different story, okay, but I would be astounded if any member of the Home Affairs Department or the Minister or anybody has

produced minutes or have documented any meeting at which I was present in which any concerns were raised to me. Ask them to show you.

Deputy T.M. Pitman:

Okay, that is a very interesting point.

Deputy R.G. Le Hérissier:

Thank you for that, Mr. Power. Just to confirm, when you were at these meetings did the representatives from Home Affairs give you an analysis, for example, of the invoices that had come in? Did they say: "Oh, there appears to be exceptional expenditure here which we really cannot explain, could you explain it further?" Did these kinds of discussions take place with that group?

The Deputy of St. Mary:

Can you clarify which group?

Deputy R.G. Le Hérissier:

The financial oversight.

Mr. G. Power:

It is hard to remember the detail of discussions that took place years ago but in essence it was a strategic meeting, I think it is right to say that. It would be very unusual in a meeting which was attended by people at executive level that was addressing strategic expenditure issues got into the detail as to whether you were paying too much for the hotel or whether anybody ordered a meal that they were not entitled to. I think that would be unusual. But my question was are you getting access to the financial account information for Operation Rectangle? Yes, I am. Is that to your satisfaction? Yes, it is. Have you any concerns you want to raise with me? No, I have no concerns I want to raise with you, it all seems in order, it all seems to be well documented. Now this is as far as this discussion went. I never at any stage sort of said: "Well, can you tell me what sort of invoices you are getting for hotels or for meal orders and so on?" You expect those things to be gone through on a standard rate of charges and if any of it is looking odd then somebody has to bring it up at that meeting and say: "Well, Chief, now you ask, I have got a bit of a concern about the entertainment" or whatever it is.

Deputy T.M. Pitman:

Okay, Mr. Power. I just want to point out that you referred to the document which obviously we have never seen, only the Minister has. We have requested paragraphs from 265 to 284 so hopefully we will have the benefit of seeing those. Deputy Wimberley.

The Deputy of St. Mary:

Just following on from that point, first of all before I go back to the Financial Oversight Board, would you agree to make public the paragraphs in your statement referring to financial management, because there is a slight doubt in your submission? I just want it on the record that you are happy for those paragraphs to come to this panel.

Mr. G. Power:

Well, let me respond to that. It is 2-fold. I do not mind it being public but would I object to supplying them a scrutiny panel, no I would not. If the proper request is there then I am happy to oblige the scrutiny panel. I think making it public in principle is fine but there are matters ... we do mention people's names for example and so I think there would need to be some modest redacting required before they put it in the public domain. But it would be a pity if the fact that individual's names are mentioned stopped quite a detailed narrative of these issues being available to people who have an interest. So subject to appropriate redaction I think, yes, that is fine.

The Deputy of St. Mary:

All right, thank you. Now, going back to the Financial Oversight Board, first you said that - there is

a few points here - on 9th June you first raised the issue that there should be such a board and you said it was eventually accepted and the first meeting was over a month later. Can you give any account of why you think that delay might have happened because it is an obvious thing that should have been put in place?

Mr. G. Power:

Well, I do not know why there was a delay. There were other things happening in the background because I did not see the Financial Oversight Board as a permanent feature because clearly that was going to be absorbed into the Gold Group, and parallel with that I had been having discussions with David Warcup about making the establishment of a Gold Group one of his first priorities and would have absorbed the work of the Financial Oversight Board. I just felt that ... in terms of financial management I just got the feeling that we needed to get hold of that and we could not wait for the Gold Group to be established.

The Deputy of St. Mary:

Okay, fine.

Mr. G. Power:

I do not know why the delay occurred.

The Deputy of St. Mary:

The next question is when did the Financial Oversight Board meet? You said it met on 21st July, have you any recollection of whether it was quarterly, was it monthly, because my recollection is that it did not meet very often.

Mr. G. Power:

I think the intention was to meet once a month. Now I note ... I am sure we intended to meet about once a month. I am fairly sure it had at least 2 meetings but then at some stage we became satisfied that the Gold Group was in a position to take on the work of that board and it did not meet any more but the work was transferred to the Gold Group. I am sorry I cannot be more precise about that but I do have a recollection, I think it was monthly; that is the best I can do.

The Deputy of St. Mary:

All right, that is fair enough. My next question you have answered already about how it met and what sort of things went on at it so that is all right. Another thing you said was that no concerns were brought to you as a result of minutes of other meetings, the meetings before the Financial Oversight Board and I am very interested in those meetings. You talked about that an accountant was part of the senior management team of the police force, was that ... can you describe how that arrangement worked?

Mr. G. Power:

It was not part of the senior management team but it had been prior to the Finance Law so what I tried to do is to compensate for that by making sure that whenever the senior management team were to meet ... the senior management team always had regular scheduled minuted meetings. Obviously we talked to each informally every morning but there is a standard process that every now and again we would sit down, we would have a proper minuted meeting of people doing ... it was mostly operational matters, you know we are going to bring in a new system for speed enforcement, these are the crime statistics, these are the problems, this is what we are doing about the problem areas, it was largely operational. But I always made sure that a member of Home Affairs, an accountant from Home Affairs, attended those meetings and there was always a standing item on financial reporting. That was when the person from Home Affairs would present a briefing saying: "Here is a paper on the police budget, this is expenditure, this is where we are in relation to the budget. Here are the issues that I think this meeting needs to consider." You know: "You have spent too much money on D.N.A. (Deoxyribonucleic acid) testing, you have money left in the fuel budget but you ..."

The Deputy of St. Mary:

Okay, fine, I get the picture there, if I may cut you off there. But what I am interested in is did those meetings of the S.M.T. (Senior Management Team) cover the abuse inquiry and the financial aspects?

Mr. G. Power:

The abuse inquiry was referred to in the financial report in the sense that the person was saying: "As far as the force budget is concerned this is the position. As far as the abuse inquiry is concerned the Treasury has a fixed amount of money, it is based on this and that, I am meeting regularly with the Senior Investigating Officer and we are dealing with the issues about whatever it was. Is there anything else you need to bring to the attention of this meeting that is causing you concern?" "No, there is not." That was basically how that was done. Again, I felt that that was ... I was torn between 2 things, one was the feeling that such an arrangement was not sufficiently robust and I recognised that really I was treading on somebody else's toes because it was the accounting officer who had a handle on this and had the legal responsibility and I should have been, in truth, telling him: "Look, I think you have got this all wrong." As I did describe, it got to a stage where I thought: "Well, I need to make some positive suggestions about this" and that is why I suggested we beef up the process by having an additional financial oversight board.

The Deputy of St. Mary:

Okay. So the abuse inquiry financials are buried in the report that went to the S.M.T. when it met the financial person from Home Affairs. But behind that there is meetings between the Home Affairs financial people and the S.I.O., Lenny Harper?

Mr. G. Power:

Yes.

The Deputy of St. Mary:

Could you tell us how those meetings went? What I am looking for is challenge; what I am looking for is at what point was there supervision of the expenditure?

Mr. G. Power:

I think that is a fair question. The briefings from all sides was that regular meetings were taking place between the Senior Investigating Officer, members of the Home Affairs Department and none of the parties involved in those exchanges raised any concerns. I think the first line of challenge would have to be the accounting officer who had the responsibility of saying: "I am not happy about this or that aspect or the story that is coming back to me through my accounting team." With hindsight, perhaps I was a little bit too intimidated about the fact that ... the law was very clear on the subject. The law was very clear that the responsibility for financial oversight was not mine it was the Chief Officer for Home Affairs and although I was getting assurances from his department, as I think I discussed already, I thought: "No, this really is not good enough, I have got to get some rigour around this" which is why ...

The Deputy of St. Mary:

Okay, I do have a clear picture now.

Deputy T.M. Pitman:

Can I take from that, Mr. Power, and ask you, in light of all you have said and your thoughts on the Jersey Finance Law - interesting to say the least - why do you feel that there has been all this focus on the police side of the matters, which I think is understandable that is to be looked at, but there has been very little focus on the other side of what was clearly a system that was not working and was recognised that it was not working. Have you got any explanation for why the Home Affairs side has not really been given the same scrutiny?

Mr. G. Power:

Well it depends what mandate people were given and it seems to me very clear that substantial amounts of investigative effort has been ploughed into making critical comments regarding the police service. It was a very difficult and long-running suspension because we had a judicial review pending in the Royal Court which they anticipated, correctly, would at the very least make some strong critical comments of the way the matter was being handled. They were facing critical comments in the States about the expenditure on the investigation and I suppose this - in my reading of it - caused a lot of energy to be directed towards finding critical things to say about policing which perhaps justified, the long-running suspension, the anticipated inquiry, the £2 million of expenditure, there is a whole saga (inaudible 11:32:57) in relation to this issue. I think the opportunity was lost when you look at how we managed to get into a situation where effective financial management was ...

The Deputy of St. Mary:

So what you are really saying is you feel there was an ulterior motive for the direction that this all took.

Mr. G. Power:

Yes, I think there is an ulterior motive (inaudible 11:33:23) but I feel ... the actions of the police in this have been subjected to very intense scrutiny against best practice guidelines in other jurisdictions. There was, for example, best practice guidelines as to how these cases should be prosecuted. I am not aware that anybody has been appointed to audit the prosecutions against these best practice guidelines or anybody has been appointed to look critically at the actions of Ministers or senior civil servants in establishing arrangements which prove to be if not unworkable at least very difficult.

The Deputy of St. Mary:

Okay, could I take you on to a slightly different point? You said in your submission that it appears that some person had made payments to the Deputy Chief Officer in breach of the rules governing such payments. Could you enlarge on that?

Mr. G. Power:

Yes, it is a simple point ...

The Deputy of St. Mary:

It is a simple point but an important one.

Mr. G. Power:

Yes, it ... I have been frustrated as a lot of people have that whenever the debate seems to shift towards where it probably belongs in my view, which is towards to the victims and to asking the hard questions about how was that the abuse was not challenged for so many years and why it took some rather exceptional police interventions to bring it within the criminal justice system, the conversation seems to be turned away to restaurant bills in London and who has had a second helping or whether there is ... I mean, this whole business about personal expenses has, I think, been used in particular to trivialise what ought to be a rather more serious debate. But to return to your point, in my early stages as Chief Officer we had the States auditors as they were then look through the whole issue of expenses and do some spot ... I wanted the reassurance of some spot checks on everybody's expenditure, everybody's credit card bills, including mine, and the auditors produced the report which largely supported that there needed to be a few more checks and balances, which was that the Deputy's expenditure needed to be signed off by the Chief, it needed that oversight and that scrutiny, and credit bills incurred by the Deputy. That was accepted as a recommendation by the Home Affairs Committee, I think it was then, and that became the rule that the Deputy could not incur any expenses unless I had signed them off. The frustration I have with listening to this debate is they are referring to expenses that I never signed off. I am not saying that the expenses were unjustified, or justified, I have no information which entitles me to come to a firm conclusion but somebody decided in a sense to go behind my back and to sign off expenditure on behalf of the

Deputy which they had no authority to sign off. They should not have paid tuppence without my signature on the bottom of the page. I just wonder at the gall of people who breached the rules for financial expenditure and then seem to feel free to pontificate about expenditure in the police service. The rules were bypassed and it could only be bypassed by the staff in the Home Affairs Department ...

The Deputy of St. Mary:

Okay.

Mr. G. Power:

... spend money without my signature on the page as it should have been.

Deputy R.G. Le Hérissier:

Thank you, Mr. Power, I wonder if we can follow that up. You said someone, could you identify who this someone was by name or office held and, second, could you tell us when you were aware that you were being bypassed and what you did about it?

Mr. G. Power:

Yes, I been aware since I was suspended ... I learned about these issues about meals and hotel bills in the same way largely as anybody else did. I picked up it from the Jersey media and I thought: "What is all that about?" Then I thought: "I do not remember signing off any of that" and I looked through the disclosure papers that Wiltshire had given me and there is no allegation at any stage that I had signed off any of this expenditure that some people think was inappropriate expenditure and so I concluded that somebody other than me has signed that off. I could not really believe ...

Deputy R.G. Le Hérissier:

Who was that someone then, Mr. Power?

Mr. G. Power:

Well it has to be somebody in the Home Affairs Departments who is authorised to make payments out of public funds to an individual or member of staff for expenditure. Now, I could not say who that will be but it would be one of a handful of people for sure.

Deputy R.G. Le Hérissier:

Okay, thank you.

The Deputy of St. Mary:

I suppose following on from that, Mr. Harper says in his evidence: "The nearest we got to financial control was sitting down and talking with the Chief Officer of Home Affairs and Head of Finance and going through the expenditure and both of those always at every stage expressed satisfaction, and I have to say some frustration as well with the fact that they were aware that we were trying to keep cost down to a budget that we did not have." Can you confirm that that is your understanding of what happened and that that was the first stage before it came to the S.M.T.?

Mr. G. Power:

I did not catch the last part of your question but I think that what Mr. Harper is describing there will be possibly his recollection of meetings of the Financial Oversight Board. He comments regarding a budget that we did not have I think does touch a relevant nerve because perhaps he is describing his attempts to bring it about. I know it is mentioned in the accountant's report but the political background was very difficult because in one sense we were trying to produce financial rigour and on the other hand the Chief Minister at the time, no doubt for reasons of reassurance or whatever but possibly with different motives was making public statements to the effect that money was no issue. With Jersey being what it is the people we were dealing with were acting on this so I find myself intercepting the expenditure which was being made on the strength of Chief Minister's promise that we were not going to worry about money and Home Affairs said: "No, you cannot do this because

there is not a budget approved by the States.” To a degree I am sure some just slipped through the net but the lack of rigour, I think, began, I have to say, with the Chief minister’s statement and what we should have had is a full allocated budget, proper lines of financial reporting, clarity about who it was supposed to be and who it was that was expected to go around in the inquiry ...

The Deputy of St. Mary:

Yes, exactly, now what ...

Mr. G. Power:

... to put some rigour around it.

The Deputy of St. Mary:

You are quite right, there should have been someone with a big stick and what surprises me or what the question to you is BDO Alto are very strong saying there should have been a financial manager within the inquiry to track the expenditure and do the ordering and the commissioning and so on or to have a handle on that. It did not happen. Where does the responsibility for that lie? BDO simply make a recommendation that it should have happened but ...

Mr. G. Power:

I am not sure that it did not happen. Let me just go back to what I say about that. I think at the early stage the person who was appointed - and I do give a name in my statement at paragraph 271, 270 - when it became clear that Rectangle was likely to have significant financial implications I asked the Chief Officer for Home Affairs what arrangements he wanted in respect of financial management. I was conscious that it was his decision to take. He was the accounting officer and he had a legal responsibility for the budget. He said that he would appoint the senior finance officer, who I know, to work directly with the Rectangle team.

The Deputy of St. Mary:

There you go, there is the man with the big stick.

Mr. G. Power:

Yes.

The Deputy of St. Mary:

It never happened.

Mr. G. Power:

I think that person was appointed to work with the Rectangle team. I know it became a concern as to how effective that arrangement was.

The Deputy of St. Mary:

If that man was there with his big stick inside the Rectangle team, what is the BDO Alto report about and why does that person not figure in the report?

Mr. G. Power:

You have me there. I really do not know. The appointment of the person whose name appears in my statement as the person who would be, if you like, the eyes and ears of the accounting officer inside the Rectangle team, that person that I have identified I am sure did an audit trail at a very early stage because there was no argument when the person was appointed. I think with experience we learned that that relationship was not working well and as I have described to you the various stages that we took to put rigour around it.

Deputy T.M. Pitman:

I am sure you will be reassured to know that our scrutiny officer has asked for those paragraphs of the statement but the reason I ask that other question about whether you were happy with that was

just to have that on the record. Can I move on from there, Mr. Power, and take you back to Mr. Harper's statements in evidence to the panel that when he mentioned the cost of the inquiry in a public interview with the media, in his words, he was immediately slapped down by Mr. Ogley in an email: "Who told me in no uncertain terms 'that I was letting the side down by even suggesting that cost was an issue' and by telling me 'cost is irrelevant'." What are your observations on that?

Mr. G. Power:

Well I go back to the statement made by the Chief Minister ... you know, the Chief Minister was handling it under pressure, he assured us he knew what he was doing in his public statement that cost was no option with the best of motives but he effectively undermined those of us who were working to try and bring some control. In the email exchange dated 1st May 2008, which I put forward as one example, with a senior member of the operation team saying: "Look, I know that the Chief Minister has said this publicly, this means I can now go ahead and appoint these additional officers to the position" or whatever it is. They said: "You will see it from the email if you can get your hands on it." I said: "No, look, it might even be the Chief Minister is actually *ultra vires* in making that statement but this really has to go before the States and you cannot just go ahead and spend because he said something on the radio." In the political mood of the time there was a desire for Jersey Limited to position themselves in a way which they were saying to the world: "Money will be no object, this inquiry will go wherever it needs to go, we will not put restraints on what the police can purchase", and so on. That is well documented. There are 2 opinions, I think. There is a more conventional approach which ...

Deputy T.M. Pitman:

Okay. Did you want to come in there?

Deputy R.G. Le Hérissier:

On that point, Mr. Power, when that statement was made, and presumably the Chief Officer of Home Affairs was somehow in the loop, was there any meeting between you, he and the senior investigating officer about the implications of that statement?

Mr. G. Power:

I think that my email of 1st May 2008 was shared with the accounting officer. I am fairly confident of that, and I think that at one of the early meetings with Mr. Harper they have gone over that ground. There was not, I think ... yes, there was a discussion. It was discussed at the Corporate Management Board because I recall that there was one meeting of the Corporate Management Board, whether it is in the minutes I do not know, with myself and the Chief Officer for Home Affairs along with the Treasurer. He seemed quite taken aback by the [Chief Minister's] statement and we said: "Look, the Chief Minister just cannot do this." I hope nobody takes offence but people will say that it is typical that a political commitment was given to expenditure when there is not any budget for this expenditure. We may have got away with that before the Finance Law where somebody would have found a pot of money in a quiet corner but under the Finance Law you can only spend what is in the budget. That is the way the law is now and the Chief Minister had not got his head around that and what was then necessary was for the Treasurer to produce a paper for the States asking the States to vote for the official budget. I understood all that. When I went back to the office you find this email from a senior police officer saying: "Good to hear about the Chief Minister's statement. Can we now spend X thousand pounds? No, you cannot." So that was the sort of process that was going on.

Deputy R.G. Le Hérissier:

Okay, and did you get supported in your stand by the accounting officer?

Mr. G. Power:

Yes. I did, yes. I think he was very clear. I am fairly sure that people who had ownership of the problem had sight of what I had done. I think I asked for assurance. I might have asked the accounting officer for assurance, saying: "Have I taken the right line here? Oh yes, that is what you

got to do. You have got to hold the line until there is a proper budget approved by the States.”

The Deputy of St. Mary:

My understanding was that the Minister for Treasury and the accounting officer of Home Affairs were talking with each other quite seriously about this because obviously there was unbudgeted expenditure. But you were out of the loop because you are not the accounting officer so all you can do is kind of make sure that the arrangement that ends up makes any sense.

Mr. G. Power:

I would make sure that relevant emails were always copied to the accounting officer but, yes, I have described trying to make a very difficult arrangement work. This episode I described was one of the things that had me going: “Oh no, I think we have got to do a little bit more here”, which is why ... and I think already we had an issue about the financial oversight board, how we evolved that into the (inaudible 11:49:31) group and so on, because I think everyone agrees that long before I left office in November 2008 that there were very robust arrangements in place. Nobody is accusing anybody of not having a sound arrangement in place, say, in July, August, September, October or November 2008. That is where we had got to. I fully agree with hindsight we did not get there quickly enough but it was all rather moving very fast and unfamiliar territory for everybody, including some of the senior politicians.

Deputy T.M. Pitman:

I will cut in there, Mr. Power. We do need to get a lot more in yet. Can I just ask you an issue? It is a wider issue but it is troubling me. Consistency in financial management. I have raised questions on this myself. Subsequently since your departure we have seen quite considerable expenditure on putting police up, say, in the Radisson for the Wiltshire inquiry, acknowledged as being out of the norm yet really waved away by the Minister as not important. Have you got an explanation for this inconsistency that there appears in how what is proper and what is not is looked upon, perhaps from the Home Affairs Department? Is there any explanation for that?

Mr. G. Power:

I can offer some professional views on that and some ...

Deputy T.M. Pitman:

Please do.

Mr. G. Power:

There has been a lot of work done on the area. For example, there was an operation called Operation Lancet which ran in Cleveland, I think about 12, 15 years ago, which involved somebody who is now Mayor of Middlesbrough, a long running disciplinary inquiry, and that is one of a series which triggered some very high level reviews of police discipline investigations. It identified a number of cases. One report was by Bill Taylor who was Chief H.M.I. (Her Majesty's Inspector of Constabulary) at one time. It identified a number of cases where inquiries had taken on a life of their own, had gone on fishing expeditions and had perpetuated themselves to a point where the original purpose had become lost. They spent years producing nothing apart from a van full of paper. Best practice guidance was produced and the guidance was about things such as ring fencing, about tight budgets, about keeping to original, tightly defined objectives and not wandering off on fishing expenditures, interviewing people from 20 years ago, or developing tangents in terms of lines of inquiry. I think a lot of people look at the Wiltshire inquiry and say: “There are some of the classic elements.” Poorly defined terms of reference, ambiguity as to what they are entitled to achieve and an inquiry that just went on and on and on and kept going on long after it become clear it was never going to finish within the prescribed time. Even after I had finished work, even after my last working day when I was effectively a pensioner ... what I mean by my last working day, clearly there is a day on which you are officially retired but there is your last working day which takes account of any outstanding entitlements that you have, and that is usually a couple of weeks before your official retirement day. But even after my last working day I was receiving correspondence inviting me to a

disciplinary meeting to discuss the Wiltshire Report and I think the Chief Police Officers' Staff Association had to write to the Minister and say: "I think we ought to draw your attention to the fact that the police discipline law does not actually apply to civilians and what are you doing this for?"

The Deputy of St. Mary:

No, I think we know where you are coming from there. Deputy Le Hérissier.

Deputy R.G. Le Hérissier:

On that issue, Mr. Power, following that up, we had BDO Alto but we had reference to the fact that Wiltshire had looked at finance even though, obviously in terms of your submission and other things, we have not by any means seen the full picture. In terms of your professional judgment, do you feel that the BDO report was really needed or do you feel that there was utter disorganisation, given the whole number of reports that appeared to be running at the same time, overlapping with each other, and some of which were not known?

Mr. G. Power:

I think Wiltshire did produce a report on financial management but I am really confused about the financial management aspect. No doubt they are going to come round to it but, of course, it was in 2009 that the Minister told me that he had already commissioned a report from a firm of accountants so I knew that something was entering the process. I knew that Wiltshire were producing a financial report. I think the answer to your question, I am sorry to keep taking the thing back to sort of strategic principles but you have got to say: "What are you trying to achieve in this? Are you trying to produce evidence which justifies somebody being suspended or disciplined or are you trying to learn lessons which enable you to improve quality and service delivery and consequences in the future?" I think what has been going on over the past few years it has continually got stuck between those 2 objectives and we have got some strange hybrids which certainly have not delivered in the discipline sense, that have been inhibited from learning the lessons in the sort of lesson learning sense. I will just give you an example of this. In the very early days of 2009 my professional association wrote to the Minister, and wrote to the Wiltshire Police, and said: "Would somebody tell us what is going on here? Are we having a management review of the historic abuse inquiry, because we are happy to help? If you want to sit down and learn lessons, have a candid discussion as to where things went right, where they went wrong, mistakes that were made, lessons for the future, we will have that discussion. We will eagerly engage in that process." It seems after weeks of deliberation they eventually got a letter back saying: "No, this is a disciplinary inquiry and we will remind you that you should not be saying anything and anything you say might be used in evidence against you." So that was the end of any co-operation that we might have given to that. So that choice early on was to say: "No, we are not going to turn it into a learning exercise. We are going to turn it, if you like, into a disciplinary hunt of one individual, who incidentally should have retired 2 years ago" meant that a lot of the lesson learning opportunities were lost because quite clearly obviously when Wiltshire were asking some questions I would say: "Well, I want to reserve my position on. I could offer you some very helpful information but (several inaudible words 11:56:53)." That is where I think we have got stranded between the lessons learned and the disciplinary. The Minister was desperate to defend the actions taken: "We were right to suspend, we were right to have a disciplinary inquiry, we were right to spend all this money on Wiltshire", but at the same time they want to learn lessons for the future. The 2 are not always compatible. If I can give an example of one investigation that I did in another force in Scotland where a murder investigation had gone horribly wrong and I said at a very early stage: "Look, I need to know if you want any scalps out of this because if you do I am going to go around all the key people and tell them they do not have to tell me anything because that is the rules. If, on the other hand, you are willing to sign up a chit of a paper that says there will no disciplinary outcome then I am going to go around everyone to say you have got to talk to me because we want to learn and there is no disciplinary outcome." Now, I got the response to say: "Yes, we are willing to sign up to say nobody is going to face any disciplinary proceedings because we want to learn all the lessons."

Deputy R.G. Le Hérissier:

Thank you, Mr. Power. That is very well explained. Can you tell us, just for the record, who did you put this view to that these reports were seemingly running off in the wrong directions or they were taking on lives of their own and if you really wanted to learn, as opposed to sort of be involved in focusing on one or 2 individuals you were not going to get a good open sort of culture where you would learn? Who did you put these views to and what was the response when you put them?

Mr. G. Power:

Bear in mind that I was under caution, I was told that anything I said might be used in evidence against me, so I took advice and I was very restricted on what I said. But my professional association wrote to Wiltshire and I believe in a meeting repeatedly spoke to the Minister, a very substantial meeting, the transcript of that I think is publicly available, saying: "Look, what are you after here? Do you want to learn lessons or is it a disciplinary inquiry?" I think at the first suspension meeting the Minister made it very clear it is a disciplinary inquiry, in which case the advice I was getting is: "Do not say anything. Do not say anything until you have had disclosure and then we will decide what it is you have got to say and what the other side are saying."

Deputy T.M. Pitman:

Was that the July meeting, Mr. Power? What date was that?

Mr. G. Power:

I do not think it was the July meeting. I think that was the very first meeting which would be February (several inaudible words 11:59:28) trying to obtain some further clarification as just what is intended by this whole process.

Deputy R.G. Le Hérissier:

So there was never any chance for you then to have what I might call a heart to heart with the Minister and say: "Look, this is the situation. We have got to learn. This is what I suggest"? That never occurred, essentially?

Mr. G. Power:

Every time I stuck my head above the parapet I was warned that I was not supposed to say anything and so that was the end of that.

I did eventually decide that I should record it in a written statement for posterity, which is what I have done, and I am sure it will emerge in time that there are lessons but I think the lessons would have been learned earlier if they had been allowed earlier, if people had realised that the disciplinary inquiry was not going to come to any conclusion and it was far better to have an inclusive, candid review of the lessons learned to which I would have contributed willingly.

Deputy T.M. Pitman:

On that point, Mr. Power, for the record you would have contributed to the BDO review and you obviously think that your contribution would have been very relevant?

Mr. G. Power:

Yes. I did not know anything about the BDO review when it was happening but if they had asked me to contribute I would have referred them to the relevant parts of the statement that I had already submitted in relation to financial management and, yes, I would have contributed because I still think there are some important lessons. It is just not good enough to say that: "The senior investigating officer at the time did not control expenditure properly and so let us criticise him and we can all go home." I think that that are some serious issues about how Jersey runs and funds policing and lines of accountability, both professionally and politically, which need to be taken on board and I think that opportunity perhaps has been missed.

The Deputy of St. Mary:

You have just said that if BDO had let you know that the review was happening and if they had

asked you to contribute you would have agreed, but would that not have come under the sort of Wiltshire embargo? Would there have been problems there?

Mr. G. Power:

Well, no, because by then I had left the service and none of the inhibitions of the disciplinary code would continue to apply.

The Deputy of St. Mary:

In 2009?

Mr. G. Power:

By then I had left the service so none of the restrictions of the disciplinary code would have applied. It was always when I was still a serving officer, and I was a serving officer until July 2010, that I was bound by the rules of confidentiality. After that time I was free to speak. So I am not absolutely certain about the timing of BDO's work. I suppose if they were doing work prior to ... yes, good point. I assumed that they were doing the work after I had retired. If they were doing the work before I retired then I would have been subject to the rules of confidentiality and could not have spoken to them. That is true.

The Deputy of St. Mary:

That is the problem, is it not? Do you accept the view of Mr. Warcup that they could not approach Lenny Harper? He blocked them approaching Lenny Harper. Do you have any comment on that?

Mr. G. Power:

I cannot see why they could not approach any private citizen who they felt was relevant to their investigation. It is not for police officers to tell investigating bodies which members of the public it can and cannot speak to, I would not have thought. Who Lenny Harper speaks to is nothing to do with David Warcup, nothing to do with the States of Jersey Police and nothing to do with anybody else that I can think of.

The Deputy of St. Mary:

But he cited the Wiltshire inquiry. He said that the reason that Lenny Harper could not or should not talk to BDO or [the Police Consultant] was that the Wiltshire inquiry had primacy and that in some way Lenny Harper speaking to BDO might undermine something or other, the disciplinary process I suppose, and it is very important for us to get your comments on that.

Mr. G. Power:

I can see there may be an argument for that but by then, if we are talking about some period in the middle of 2010, everybody knew that the Wiltshire inquiry was going nowhere. Everyone knew it was going to run out of time but it kept running and we can speculate as to why. You can speculate as to why the Wiltshire inquiry was kept going when it was clear it was never going to reach a finish in time before I retired but one of the effects was it shut a lot of people up because it was saying: "Sorry, you cannot talk about that because there is still the Wiltshire inquiry."

The Deputy of St. Mary:

It was in 2009 that BDO were working, you see, so the Lenny Harper thing and the relationship to Wiltshire comes under the 2009 timescale.

Mr. G. Power:

I can see why that argument might have been put. I do not think it is a very strong argument but I can see why it might have been put, yes.

Deputy T.M. Pitman:

Interesting what you say there, Mr. Power, because it comes back to my earlier point about an ulterior motive and when you say about by keeping the Wiltshire going it shut a lot of people up. Is

there anything else you can share with us on that?

Mr. G. Power:

I do not have enough evidence to be sure. It is, I think, highly curious that a disciplinary investigation is kept running long after it became manifestly clear that it was not going to reach a conclusion before the person subject to the investigation had retired, I know of no precedent for doing that. I can think of no justification for doing that, particularly because it is costing money. I just do not know how you defend spending money on an investigation where you know that the bird has already flown. I just think it is remarkable. There might be a good reason for it but I cannot think what the good reason might be.

The Deputy of St. Mary:

You have mentioned several times going back to strategic principles and something that puzzles me is this ... and another thing you said was everything was moving very fast and that might have been part of the reason for the financial problems. BDO refer at length to the golden hour principle and point out that it could not really be said to apply in this case, that it was not a live murder investigation, as we are seeing now in Jersey, for instance. So the hurry was not necessary and therefore a lot or some of the expenditure might have been avoided because it would have been taken in a more leisurely fashion, a more reflective fashion. Would you like to comment on that passage in BDO where they spend half a page talking about the golden hour?

Mr. G. Power:

I am not an expert on criminal investigations. My qualifications in this area are redundant, which is why it is a matter of record that I relied on my U.K. (United Kingdom) experts throughout and I was heavily bound by that advice. I do not think I know the argument, the level of momentum. You are talking here about victims who are substantial in number, victims and witnesses who have either remained silent for decades or, by the account of many of them, tried to bring their reports to the attention of the authorities over decades and have been rebuffed or not responded to. There was, I think, in the early stages a momentum which was bringing a cascade of fresh reports, almost on a daily basis. I think that that initial rush was greater than any of us anticipated, that it was quite overwhelming for the organisation and we had to rush about very quickly trying to put structures in place to manage the deluge that was pouring upon a small police force in response to that. Let us not forget at the same time responsibilities were partitioned, rightly or wrongly: Mr. Harper was leading on the abuse inquiry and I was still trying to run a police force with whatever resources we were left with.

The Deputy of St. Mary:

Thank you for that explanation. That is really helpful and it shows to me that when BDO write a full half page on the golden hour and there is nothing on the other side, if you like, would you like to comment on that? They did not come to you, for instance.

Mr. G. Power:

Yes. I think I could say I was fairly sure this pressure is going to come off at some stage, it was not going to go on with being flooded with reports in the way that we were, but we were for much longer than I thought, but at some stage it was always clear that we were going to stop, catch our breath and put some more conventional management structures around it. I mean, let us not forget that I was talking about this with David Warcup, the need to apply a more structured management, according to my statement, on Wednesday, 20th February 2008. This is months before he was appointed, when he was only showing an interest in the post. So I was having these discussions then of the need to bring his particular expertise to bear on the inquiry. I think there is a long audit trail showing that at some stage we were going to have to catch our breath and we were going to get some structure around it in a more conventional way, and the evidence is that we did. I think by the summer of 2009 we had quite a solid corporate governance around the inquiry.

Deputy T.M. Pitman:

Can I come in there, Mr. Power? It is Deputy Pitman again. In your submission you said: “At some stage prominence was given to aspects of the financial management of the abuse inquiry and the attention shifted away from the systematic abuse of vulnerable children in States establishments and towards detailed examination of bills in a London restaurant.” What is your view on that as far ... is it the media who are chiefly responsible for misrepresenting the findings of the BDO Alto report and highlighting what are comparatively peripheral aspects of the inquiry?

Mr. G. Power:

I think the media are following the debate of what I think, if you really want to know, is what you are doing is in the wrong place and most of us are talking about the wrong things. We are talking about the abuse inquiry when we ought to be talking about the abuse and we are talking about spats between senior well paid public servants when we ought to be talking about the people who have had their lives damaged and the victims and all of the horrible things that went on and asking some really hard questions about what is there about Jersey that makes it possible for this sort of thing to go on for decades, undiscovered, covered up. Clearly, senior responsible people knew that things were not right and did not do enough about it and why when somebody did bring it all to light, albeit in an unconventional sort of way, so much almost hatred and energy and critical comment was directed to the abuse inquiry and we seemed, in my perception, to have stopped talking about the abuse.

Deputy R.G. Le Hérissier:

Sorry, Mr. Power, let me put you on the spot. What do you think it is about Jersey that led to that situation?

Mr. G. Power:

I think there are issues around checks and balances and the ability of people to speak out. Jersey does not have to beat itself up about this in the sense that we are unique. I am widely experienced in policing. I have worked in inner cities in England, I took responsibility for towns in the Scottish borders, and there are plenty of communities that have their own unique culture, are somehow a little bit inward looking. It is a problem that needs to be addressed. There are parts of some very large police forces that would always make sure that they rotated staff regularly and you did not necessarily employ people to police the people they went to school with, and that probably was present in Jersey historically. I say it is historically because some people have done some very good work in recent years. There just has not been enough openness, enough transparency, and the freedom and willingness of people to speak out. These are things that are capable of being addressed and are capable of being confronted but it does frustrate me. I was listening to a States debate, it might have been on Radio Jersey, some months back and somebody, it might have been somebody present on your panel, was trying to focus the debate on the abuse: “The abuse, how did this happen and what are we going to say about it?” I went to make a cup of tea or something and I came back and the next thing there is a spat going about bills in a London restaurant. It just seems to me there are some people who would rather talk about whether somebody had a second helping of pudding when they were on a trip to London than talk about systematic abuse and why it happened. I just think we have got to be cautious about it and I would rather see the interests of the victims given a higher priority and a little bit more serious discussion about are we sure this could not happen again, have we put the corrective measures, the checks and balances, in place and are we sure that anybody who was responsible for a cover up is not still in a position of authority. So those are the questions I think where the energy ought to be put. It is left almost that you are having this conversation around expenses and who signed them off when there are so many big issues out there that really you wonder if they are being taken hold of.

Deputy R.G. Le Hérissier:

Thank you.

Deputy T.M. Pitman:

I think that was me who was asking those questions, but I understand your frustration. What I wanted to ask you, and it is very difficult, we are trying to stick to our terms of reference but there is

always the feeling behind that there is a bigger picture. When you look at the way this has unfolded and the shift, and no one, I am sure not you, is disputing that finances have to be looked at, they have to be controlled, but this shift which you have stressed from the systematic abuse and unravelling that to finances, does it still deeply trouble you that there is still sitting there at the very top in Jersey a situation where people really do not want to go down this avenue, that really it would be rather swept under the carpet? Are you left with that feeling?

Mr. G. Power:

I think there is a cultural resistance in some quarters to the lifting of stones and why the stones were not lifted. If the stones get lifted then what is found under the stones will be dealt with but they would rather the stones were not lifted in the first place. I do, in my statement, go through a rather candid discussion I had with senior politicians at the time who were debating the appointment of Lenny Harper initially to the force, looking at his professional background and I did say then: "This is a person who is going to lift stones because all his professional history shows that he is fearless at lifting stones and dealing with what is underneath them. Unless you are willing to have stones lifted and deal with what comes out, think about appointing someone else." We know the history that Lenny was appointed and stones got lifted. I am reluctant to go down the conspiracy theory route. It is not as simple as saying that there were certain senior people who would periodically meet in secret rooms and put together a conspiracy. I think there are a number of people in senior positions who are like minded. If it is a conspiracy it is sometimes an unconscious one, that people simply think and behave in the same way and think that it is the natural thing to do, and not wanting to lift stones is a characteristic, I think, of part of the culture. I would say that. Again, it is not just Jersey; it happens in some other places. Perhaps in real life there are some stones that are best not lifted but once the genie was out of the bottle in the early part of 2008 I was very clear in conversation with senior people, some of whom were quite uncomfortable with what was taking place, I said: "Whatever happens, there is only one way out of this now and that is for Jersey to be able to say that everything was thoroughly investigated, we took it as far as it was and if there are many prosecutions or there are no prosecutions we have just got to be able to say nothing more can be done. We have beaten this issue to death." I think that the way events turned left in the minds of a lot of people that there was something desperately being covered up and that is unfortunate.

Deputy T.M. Pitman:

I have got to ask you a question. It may be unfair but it is the way this review impacts on the bigger picture. I have got to ask it and then I will let my colleagues come in. When you look at the way the focus has gone with the BDO review and how it has been reported, or how it has been used by the Minister, are you left with the feeling that there is a connection? Your suspension; the bigger picture, I believe, that there were incidents where emails sent to you by a States Member ended up in the hands of the former Bailiff; then we have got the issue of the raid on a former States Member's home. Do you see there being a link there? I know you may not be able to prove it but what is your feeling? That seems to be what you are saying: we need to get to a position to move forward and we cannot if we do not tackle these issues.

Mr. G. Power:

I really find this a very difficult subject because I have been asked many times about conspiracies and the fact is I simply do not have enough evidence to be sure. I was asked did I think that senior people in senior government positions in Jersey, legal positions, were involved in some sort of collective conspiracy and in an attempt to be light hearted about it I would say: "Well, I think if you believe that you might be paying them a compliment they do not deserve." I have seen conspiracies and they do take rather a lot of planning, a lot of organising and a lot of skill and that is not always present. But I go back to what I think is nearer the mark, which is sometimes a collective state of mind, we would rather ... we just want things to be normal and pleasant and we regard any disruption of that as being unfortunate, and also a failure to think through the consequences of actions and to be taken continually by surprise by what are common reactions to events. What on earth did they think would happen when I got suspended? Did they really think that I was going to go quietly away and everybody in Jersey would shrug their shoulders and say: "That is life", or did they think that they

were igniting something that would still be burning years later, whereas I just think sensible people would have realised that there they were unleashing some fairly significant events in November 2008. Likewise with the police, I have submitted an affidavit in relation to Stuart Syvret's situation and the raid on his house. I really cannot comment on it from a professional evidential point of view because I do not know enough about it but what I can say with absolute certainty is that anybody should have seen that that was going to ignite significant public reaction and conspiracy theories, and that needed to be managed and handled and I am not sure that I saw a great deal of that in the aftermath. I am sorry if that does not go to the heart of your question but I just think to say there is half a dozen people involved in some secret society and they meet in funny clothes and run the Island is rather overdoing it, but I do think there are a number of people who have a very similar point of view about the world in an environment where there are insufficient checks and balances on what individuals can sometimes do.

Deputy R.G. Le Hérissier:

Following on that theme, Mr. Power, and sorry we are slightly away from BDO but, as Deputy Pitman keeps telling us, it is very hard to separate out the bigger from the micro picture. When you felt that this was happening, were you totally isolated or did you find any resonance with anybody in an influential position who was prepared to listen to you and say; "Well, that is a point of view which we really have to consider"? Or did you find yourself totally isolated in this situation?

Mr. G. Power:

When I was serving you have got to work within the system you are in and I was accountable to a single person, who was the Minister for Home Affairs at the time who was, I think we can say with absolute certainty, not one of the inner circle of powerful individuals and was seen as something of an outsider and something of a radical, but people will have views about her political effectiveness as you always do when you are in politics. But the line of accountability was to a person who I think was largely on the same wavelength on many issues. So far as the whole lack of checks and balances, well, I am now on record and was on record as beating the drum pretty hard for a properly constituted police authority in Jersey, independent of politics, with proper lines of accountability. It was what I was promised on the day I joined. If I knew that promise was not going to be kept I would probably never have come to the place in the first place. The whole issue about the constitutional position of the police, lines of accountability, who can tell the police what to do and who cannot, is just a big running sore and unresolved issue. I put substantial energy into that during my time and I am sorry that I was not able to get all the political support I needed to solve that particular problem.

Deputy R.G. Le Hérissier:

Thank you.

The Deputy of St. Mary:

I just wanted to go back to the missing man with the big stick, this financial person who you asked very early on should be working within the Rectangle team. You mentioned that there are paragraphs in your statement to Wiltshire which cover this aspect. Do you include in your paragraphs in Wiltshire the actual emails that you sent on this matter or is that something else that we have to ask for?

Mr. G. Power:

I do not include the actual emails in my statement. I do refer to emails and the dates on which they were sent and who to, so it should be very traceable.

The Deputy of St. Mary:

Thank you very much. That is useful. I think we shall ask for those.

Deputy T.M. Pitman:

A completely different issue that I think we need to touch on, Mr. Power, is the quite topical issue of

leaks. We have heard from the Minister for Home Affairs that leaks, he believed, seemed to be accredited to ~~Mr. Gradwell~~ [\[retiredD/superintendent\]](#). I believe you have some evidence on a leak that took place while you were there to the media. I think a conversation was recorded. Is that correct or have I got that wrong?

Mr. G. Power:

Yes, I think so.

Deputy T.M. Pitman:

What effect did that have on the ...

Mr. G. Power:

I had an email exchange with a Senator who asked me, because he had heard some rumour relating to the first find, the one that was originally described as a piece of skull and which I think is now disputed, but let us not go there because it is a long journey. He had an interest, he had heard something about that. So I forwarded his email to Lenny Harper and said: "Lenny, can you comment on this? Where are we with this?" Lenny replied with some assurances and I responded to the Senator. I think that is the exchange that this is about. I then received a telephone call from a journalist very quickly afterwards who was in possession of the email that I had sent to the Senator. He was able to read from it. I believe, my recollection is, that he told me that in fact he had got it from the Senator. I do give a narrative of this in my statement. I cannot turn to the page at the moment and just find it, but what then happened is that I think the call was recorded. I would be surprised if the recording still exists. Recordings of calls are kept for a period of time and then the system is wiped or whatever. That was about the time that another scientist had cast doubts on the findings of the first scientist, because we had one forensic scientist was saying: "This is definitely a piece of child's skull" and then it emerged that another scientist was saying: "Look, I am not so sure about that." So we asked Lenny Harper to submit a report explaining where he was in relation and I packaged that together with the information relating to the Senator and the conversation I had. I said: "It looks as if there has been a breach here of the Data Protection Law." People were saying should Lenny Harper be investigating in relation to what were perceived to be misleading statements he might have made in relation to the first find. This went to the Chief Minister's office. I said: "You can have an investigation if you want but part of the investigation ought to be whether the Data Protection Law has been broken in relation to this communication from the Senator. I can think of no other way that that email would find its way into this journalist's possession." Now, I did not get a response to that and I thought about whether I should stir the pot further by involving the Data Protection Commissioner but by then we were pretty well up to our necks in events and it did not happen.

Deputy T.M. Pitman:

You are being very tactful. I can say it: was that Senator Perchard?

Mr. G. Power:

Yes, it was.

Deputy T.M. Pitman:

It has been very topical recently with leaks and we have seen the *News of World*, and again interestingly enough as we have begun this review suddenly there has been tried to throw attention away to the *News of the World*. We asked you about politicisation of policing matters. Does that seem to be an ongoing concern throughout your time there? Mr. Harper and yourself have probably been criticised heavily for relationships with the media but yet there seems to be an ongoing problem which is still there and you 2 have both gone. Have you got any thoughts on that?

Mr. G. Power:

Yes, I think in a small force you are always going to get leaks. Lenny Harper was pretty ruthless in pursuing people who were leaking confidential information and got caught doing it. He would have

to speak for himself about his dealings with the media. My experience of his dealings with the media, where I was brought into them was when Wiltshire said: "Did you challenge any of the media statements made by Lenny Harper?" I said: "Well, will you show me the transcripts of what I was supposed to have challenged?" and the only transcripts they could produce were statements which were quite impeccable. I think we did have a big problem over disparities between what the police were saying to the media and what the media were saying, and I had that experience myself. I did one interview where I was asked were we digging for 6 bodies. I said: "No, no, we have got 6 locations which have been identified as ones which ought to be explored because there was some finding on the ground radar or forensics or whatever which could mean a number of things but it means that we have got a duty as investigators to dig a hole and see what if anything is in there." But the headline the next day said: "Police searching for 6 bodies" and so that was a waste of effort. I always dealt with the media above board, on the record and that was the way in the latter years of my service that it always happened. I cannot swear that I always did that. Before I came to Jersey I was occasionally prone to off the record briefings and lunches with journalists. I got my fingers burnt rather badly in one experience and I thought: "Well, I am never doing that again" and so it was always above board, it is all on tape, it is all on record. Whatever I said I said it is there in somebody's archives.

Deputy T.M. Pitman:

Just one question I wanted to ask, because this is what I was leading up to. On 14th July last year on the publication of the redacted Wiltshire report and the BDO Alto report the Minister for Home Affairs was quoted by BBC Jersey as saying: "We have got a serious issue in Jersey, which actually Mr. Power highlights in one of his statements and I agree, of politicisation of policing matters." Do you feel that has almost fed into where we are now? For instance, I will give you an example, the [the Managing Director] from BDO, said to us, I am paraphrasing his words: "We have got no control over how our report was presented. Actually, we praised Mr. Harper, for example, on 9 occasions", I think he said, yet none of us could remember reading that. Is there a feeling from you that that is part of that politicisation which the Minister for Home Affairs is referring to?

Mr. G. Power:

I think there is still an attempt to justify the action that was taken against me and whether the action that was taken against me was really because of an issue with me or because I was, if you like, a proxy target for Lenny Harper, although I think it is right to say that some politicians hate him with an intensity that is quite tangible. To be honest, people are still fighting that battle and it is distorting judgment and I think taking the eye away from the ball of the bigger picture. The politicisation of policing in a small community is always going to be a problem. In my judicial review I give some excellent examples, I think, of where it was addressed elsewhere, in Guernsey, the creation of an independent law enforcement commission, the work that I had done in drafting a law for a police authority in Jersey, all capable of being addressed. But it is completely, to my mind, unacceptable that a chief officer of police should be accountable to one single political individual. That was always going to end in tears and it certainly did.

Deputy R.G. Le Hérisier:

Just on that line, Mr. Power, just to complete a very interesting topic, slightly off topic for us, do you feel that another aspect of politicisation is the tendency of politicians in a locality like this to always wish to micro manage or to always be driven by various agenda which for various reasons they have to make public? Do you think that is an issue in a small community?

Mr. G. Power:

It is an issue but it is one which a competent leadership ought to be able to manage. I would rather that people show a mistaken interest than no interest. I think that every States Member knows that I was always getting emails from States Members: "What is happening about this? What is happening about this?" and everyone knows I always replied within 24 hours and sometimes it was just saying: "Sorry, cannot tell you anything about that" but quite often you could do. There are some real positives about policing in Jersey and one is that we are part of the same community, everybody

cares about each other. I have worked in forces where the police officers arrived in expensive cars in the morning and drove home to a leafy suburb of a night and could not give a damn if the place they were working burned down tomorrow. They would just go and work somewhere else. This is not the situation in Jersey where I think there is a common ownership. I do feel that in the one hand I welcome the interest but there needs to be a clear line of accountability so you can say to a Deputy in St. Helier: "I am very happy to meet with you to talk about a case you are concerned with, to tell you as much as I can but you must understand at the end of the day I am only accountable to the police authority and I really cannot change what I am doing because you are asking me to do it, but I am quite willing to justify what I am doing." I think I can explain this a little bit better. I think what is not often well understood is the difference between control and accountability. If you are controlling somebody you are telling them what to do; if you are accountable then you are really justifying what you have done. I think accountability is great, political accountability is great, the police, all jobs being politically accountable, the politicians ought to set the main objectives, that they ought to hold chief officers to account and so on; I am all for that but political control is quite another matter. Sometimes people talk about it, and I think the present Minister for Home Affairs talks about political control of things when perhaps he meant to say accountability but nevertheless he said what he said.

Deputy R.G. Le Hérissier:

Okay. Thank you.

The Deputy of St. Mary:

I suppose one question would be when you arrived in Jersey you very quickly got on to the matter of having a police authority, because that is the best way to go. Just remind us when that was, when you arrived in Jersey.

Mr. G. Power:

It was the latter part of 2000.

The Deputy of St. Mary:

Okay, the latter part of 2000 and we are still waiting.

Mr. G. Power:

Yes, we are still waiting in spite of persistent efforts by myself. I really think that is regrettable and it reflects badly on the government of the Island that that has not been achieved.

The Deputy of St. Mary:

Yes, but hopefully by the end of this year. One final question I have got for you, Mr. Power, when we look at the BDO review, and we have still got to form our conclusions on this, do you see an irony there that the way that yourself and Mr. Harper perhaps have been portrayed where obviously you are not part of this information gathering, yet yesterday we heard from Mr. Warcup and we were quite surprised, I think, to hear that really for 4 months [Police Consultant] was brought in and nobody really seemed to take any interest in what he was doing. Four months of taxpayers' money being spent and no one seemed to even question what he was doing. In fact he did not apparently even know he was working to the terms of reference to which he had been signed up. Do you see an irony there that there is heavy criticism for yourself and Mr. Harper, yet nothing really being said by Home Affairs on this issue?

Mr. G. Power:

From the very beginning, from the Wiltshire inquiry and subsequently I have seen quite an irony. When people have accused me of presiding over a long-running inquiry that went on too long, spent too much money and did not achieve everything that it hoped to achieve, I look at the behaviour of the people who are making that criticism and what do I see. I see long-running inquiries, lack of any effective control, running over budget and a product that did not really address the core issue. If there is anything wrong with the way we did things then it appears to have been contagious because

everyone else has caught it.

Deputy T.M. Pitman:

We have overrun and I thank you for your time. Is there anything that you would like to say to us that you think we have missed or that you feel you have missed and would like to get in?

Mr. G. Power:

It might be that you have picked this up but I did write to you subsequently to my initial position, and just stop me if you have got this and you are on the case of it. But I did say: "Look, I have thought again and I know there is some dispute about when this accountant's review had kicked off." Well, there is a transcript of a meeting I had with the Minister for Home Affairs in July 2009 in which he had said that he had commissioned an accountant's review early in 2009 and he was expecting the report by July 2009. I cannot equate that with BDO's statement saying they were commissioned, I think, in early 2010 or something like that.

The Deputy of St. Mary:

No, BDO were appointed in March. They confirmed that in an official letter of whatever it is called, engagement, at the end of September. There was then the leak to the *Daily Mail* and then they actually reported in the middle of 2010.

Mr. G. Power:

Okay. If that fits all right with you that is fine. I just thought that might have been a missing piece of the jigsaw.

The Deputy of St. Mary:

Yes, that is clear to us. Thank you.

Deputy T.M. Pitman:

Can I thank you then, Mr. Power, for your time and for the honesty of your answers and the depth of your answers and I will end the meeting there. Thank you.

Mr. G. Power:

Thank you.

[12:40]

STATES OF JERSEY

Education and Home Affairs Issues Surrounding the Review of Financial Management of Operation Rectangle

FRIDAY, 15th July 2011

Panel:

Deputy T.M. Pitman of St. Helier (Chairman)

Deputy D.J.A Wimberley of St Mary

Deputy R.G. Le Hérisssier of St. Saviour

Witnesses:

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

Also present:

Scrutiny Officer

[14:07]

Deputy T.M. Pitman of St. Helier (Chairman):

Welcome everyone back for the third instalment of Scrutiny Sub-Panel Review, Education, Sport and Culture and Home Affairs. I welcome the Minister. He is well familiar with the oath I think, so I do not need to run through that with him anymore.

The Minister for Home Affairs:

Absolutely.

Deputy T.M. Pitman:

Okay. Thank you for coming in, Minister. Our Panel has shrunk to 3 but I am sure we will fill the gaps admirably or we will do our best, so with that I will get underway. By the way, you have said that you are happy being filmed, have you not?

The Minister for Home Affairs:

Yes, that is fine.

Deputy T.M. Pitman:

Thank you. Perhaps, to begin with, Minister, could you just outline, for the record, the purpose of the review of financial management carried out by BDO Alto Limited?

The Minister for Home Affairs:

Okay, yes. Obviously you have the Ministerial Act and you have the report; it goes with that so you have it, in a sense, more formally so I am just going to explain it in my own words. When I first became Minister for Home Affairs it was drawn to my attention very early on, I think probably in December 2008, that there were issues and concerns in relation to financial management of the Haut de la Garenne enquiry. Those issues and concerns did not just involve use of money by the States of Jersey Police but also involved the role taken by staff in the Home Affairs Department, which obviously would include my own Chief Officer at Home Affairs and his staff and so on because if

there had been serious failures in terms of financial management there were issues as to whether those failures also extended. Clearly that was going to go well beyond the remit of the disciplinary investigation which had already been begun by my predecessor in relation to the then Chief Officer. It was clearly going to go well beyond the remit of that because that investigation was going to look fundamentally at his role and any responsibilities that he had in relation to that role and this was going to go much beyond that and, as I say, would include not just police officers but also Home Affairs staff. Basically, I had been asked in principle back in, I think, as early as December in relation to that and said yes, I was in favour of there being such a report and then subsequently more formally I received papers and made the ministerial decision which started that off.

Deputy R.G. Le Hérissier:

Did you actually write the terms of reference?

The Minister for Home Affairs:

I do not think I did, no.

Deputy R.G. Le Hérissier:

Who did?

The Minister for Home Affairs:

Well, again, looking at the witness statements that I have seen, the statements of individuals, it appears that it was worked out between Home Affairs Departments and BDO Alto; that appears to be ... There was some involvement at some stage, I think, of the Acting Chief Officer of Police in relation to the details as to how it was going to happen in practice but it seems to have been dealt with entirely by them without my being involved. If my staff think otherwise then they are probably right and I am wrong but I have no recollection of dealing with it and I have not been able to come across any documentation in house which indicated that I did.

The Deputy of St. Mary:

Can I just come in there; how do you react to the fact that I am surprised when you say that you had no involvement in drawing up the terms of reference of the report which will cost a lot of money and which will come to you?

The Minister for Home Affairs:

Yes. I have to say that when I was asked the question by Mr. Harper as to whether or not I had been involved I could not recall and said to him: "I might have been" because there certainly had been instances where I have been involved with reports and had been involved with approving the terms of reference and this particular case I do not think I was. I am not sure of that but I just do not have any recollection of it.

Deputy T.M. Pitman:

Again, it surprises me that you, as the Minister, can say that it was: "I found that record that I would have agreed this or had not been involved" and it is such a big sort of commitment and obviously a lot of money would be involved, is that the way it normally works at Home Affairs?

The Minister for Home Affairs:

Yes. Remember I had in the ministerial decision defined what it was going to be. It would have been then the details of it so if you could go back to that; I have the ministerial decision somewhere among my papers.

Deputy T.M. Pitman:

It is okay, we have ...

The Minister for Home Affairs:

But if you look at the ministerial decision you will see that I have received the report and on the

basis of that report I have made a decision. There was obviously detail contained in that report which told me what was going to be done on it and that is what I approved. But I did not, I think, in any way get involved with the how it was going to be done and I have to say that there had been cases where I have been involved in ministerial decisions but again, when you see [Chief Officer]'s submission and so on, you will see that there were complexities involved in who should be appointed, who was the States approved, preferred option to do these sort of reports and the exact terms and negotiations which is why it did not come to a final, final, final agreed form until about September of that year. I was not involved in that sort of process; the staff just viewed those as an administrative organisation.

Deputy T.M. Pitman:

We have been quite surprised today to hear some quite conflicting views that we find hard to marry up but could you tell us from your point of view, as Minister, did you set any boundaries or limitations on the review, as to who they ...?

The Minister for Home Affairs:

No, no, I approved the review in accordance with the report which I received.

[14:15]

Deputy R.G. Le Hérissier:

In approving the report, Mr. Minister, were you briefed on the kind of evidence collection and the kind of witnesses that the review would be required to consult?

The Minister for Home Affairs:

I am not familiar with the details of the report; I have re-read it recently but I do not recall receiving information beyond that which is contained in the reports.

Deputy R.G. Le Hérissier:

One of the obvious things that was going to happen because obviously even at that point the whole inquiry was highly, highly contentious and people were watching it very closely and you still did not think it was worth imposing upon the terms of reference some very clear terms and ensuring that it was as independent as possible and that its reach was as great as possible.

The Minister for Home Affairs:

That is always a difficulty in relation to independent reports. My view is that the role of the Minister is to set the ambit of it and say: "Look, this is what I want you to inquire into" but not to be getting involved into the how. If there had been a specific issue, if at some stage somebody had come to me and said: "Look, there is a difficulty here; we some need guidance on it" or whatever then I would have made a decision or given direction ...

Deputy R.G. Le Hérissier:

One of the things that is perplexing the Panel or is perplexing me, maybe the others have resolved it, is - are there 2 parallel reports? There was apparently a States of Jersey [Police] internal report on matters somewhat similar and then of course there was the BDO Report and then we had the introduction of [Police Consultant] and we have been very unclear as to whether he is working for both reports, whether there was, at some point, a decision taken to merge them for conveniences sake or whatever and whether there was a decision taken on the basis of a key witness to be excluded from one report but to be apparently allowed to attend upon the other report. Were you aware that these 2 reports were running ...?

The Minister for Home Affairs:

I was aware in general terms that at some stage that the police were looking at the performance of their own officers in relation to this because there was a potential for internal disciplinary matters in relation to continuing serving officers. I was aware of that in general terms but if you ask me was I

aware that there was a specific thing taking place I am not sure that I was; I think I probably was not. I can recall the name [Police Consultant] being mentioned at different times but I have to say that until I looked in more detail in preparation for this I was very unclear as to what his role was. I was aware that somehow he was playing a role that was co-ordinating, if you like, between the Wiltshire investigation and this but I was very unclear as to precisely what role he was playing and he was ...

Deputy R.G. Le Hérisier:

Did the Chief Officer inform you that he was carrying out this review?

The Deputy of St. Mary:

The Acting Chief Officer of Police.

Deputy R.G. Le Hérisier:

Yes.

The Minister for Home Affairs:

It certainly did not lock in my mind if he did. As I say, in general terms I was aware that there were internal things going on but I am pretty sure I was not aware of the particular structure because, as I say, it was only looking at the papers in recent weeks that I realised what role [Police Consultant] was playing.

Deputy T.M. Pitman:

Taking on from that we have been quite surprised, I think it is fair to say, reading [Acting Chief Officer of Police]'s submission; he said that he had never approved the joint report between [Police Consultant] and BDO and he says, quote: "Indeed I did not feel it appropriate for [Police Consultant] to carry out any further work as my original instructions had not been complied with and the review had become inadvertently focused on Mr. Harper, lacked objectivity, had the potential to be unfair to [former Chief Police Officer] and could have seriously undermined the investigation by Wiltshire Police." As Minister, how would you react to that?

The Minister for Home Affairs:

Again, I only saw that for the first time just a couple of days ago and was quite surprised because I would assume that [Acting Chief Officer of Police] would have known exactly what arrangements were taking place in relation to things. As I say, that is not what he is talking about; the matters he is talking about there were not within my knowledge. I knew that BDO Alto were producing a report as a result of this. I knew that there was a [Police Consultant] doing something somewhere in the middle or playing some sort of intermediate role but I did not, I think, know any details at all.

Deputy T.M. Pitman:

But, with due respect, so you knew there was a [Police Consultant] doing something. This is a major ... I mean now it is run and run and the way it has been put out across the media. You say surprised but surely you must be a bit alarmed at, there you have the former Acting Chief Officer saying about a lack of objectivity; is that not a huge concern to you?

The Minister for Home Affairs:

Yes, it is a concern to me, yes, but obviously that is the first time I have seen anybody express a view. I am not sure I quite understand precisely what you are saying.

The Deputy of St. Mary:

Can I go to the nuts and bolts, if you like, updates on the progress of the review; were you getting any updates as it progressed?

The Minister for Home Affairs:

I was not getting updates in terms of draft reports or anything of that nature. There will have been

conversations between myself and [Chief Officer] about this in general terms, but my memory really jumps from setting it up to a situation where I think I saw a draft report or something of that nature, which was longer than what was eventually produced, and which had a lot of detail. I cannot remember if I read it in detail at that stage and I cannot tell you exactly when I saw it, but I have a recollection of being aware that something was in existence. Then I have a recollection that it was being transformed in terms of its format and so on, into something that would be more readable and would exclude references to individual people and other items, which should not be in the report. But again my understanding of that is in general terms because [Chief Officer] was really dealing with that.

The Deputy of St. Mary:

Can I ask a simple question: as the Minister you meet with your Chief Officer how often?

The Minister for Home Affairs:

There are 2 Chief Officers of course, but at that stage I ...

The Deputy of St. Mary:

That is Home Affairs.

The Minister for Home Affairs:

Home Affairs, we try to meet on a weekly basis relatively formally, in practice we probably meet about fortnightly, but in addition to that we meet and call into each other's office to discuss things very regularly, I mean he has an open door, I have an open door, but on a formal basis about fortnightly we will review particular matters, which are outstanding.

The Deputy of St. Mary:

That would have an agenda?

The Minister for Home Affairs:

It has an informal agenda, yes.

The Deputy of St. Mary:

An informal agenda?

The Minister for Home Affairs:

Yes.

The Deputy of St. Mary:

What is an informal agenda?

The Minister for Home Affairs:

Deputy Hilton is normally there as well when we do that.

The Deputy of St. Mary:

No, sorry, I am puzzled, I am coming to a question, but I want to test what is an informal agenda. An agenda is either: "We are going to discuss 1, 2, 3, 4, 5, 6, 7", there may even be recurring items and you say: "Number 6 is under control, Minister", and it is gone in a few seconds, but is there a list of what you are going to discuss?

The Minister for Home Affairs:

[Chief Officer] would normally prepare a list in advance and I will come with other items as well, and Deputy Hilton may come with other items.

The Deputy of St. Mary:

So on that list, would you normally have the progress of the BDO review, given that it is quite a big-

ticket item?

The Minister for Home Affairs:

No.

The Deputy of St. Mary:

No, it would not be on there?

The Minister for Home Affairs:

No, I cannot remember that appearing, not until perhaps the latter stages when there might have been some discussion in relation to changes, but no, it was not being dealt with by me in that sort of way.

The Deputy of St. Mary:

I am trying to fathom out how you did not know really much about [Police Consultant]'s role, because it was pretty important, given that he was not just the grommet in between the 2 reports, but he was doing a lot of the work on the whole information.

The Minister for Home Affairs:

Yes, I was surprised by that when I saw that, I was surprised by that, I always assumed this was a BDO Alto report, now I see that in fact it was a joint [Police Consultant] and BDO Alto report. I was slightly surprised by that; if that is in the document itself then I have missed it. But I have not spotted it in the document.

Deputy R.G. Le Hérisier:

Jumping to the report, when you received the report, Minister, what was your reaction?

The Minister for Home Affairs:

You are talking about the final form of the report?

Deputy R.G. Le Hérisier:

Yes, the final form.

The Minister for Home Affairs:

Well I read it, I noticed that obviously it contained a number of areas where opinions were being expressed in relation to areas of failure. I received the report in time ... let me just check my timescale, because we provided a timescale for this ... but I received this report I am pretty sure in time well after I had received the financial management report in relation to Wiltshire. My recollection is I think that was received in February. Yes, 10th February I had received that, so I had already read that obviously sometime before and noted the conclusions, which were reached in there, in relation to a whole lot of matters. Then, when did I receive, according to this, the final report? That seems to be in July. That was very late.

Deputy R.G. Le Hérisier:

So, having read that report, were you happy with its structure, the evidence that had been collected, the assessment of the evidence, the witnesses that had been covered, were you happy with all those aspects?

The Minister for Home Affairs:

Well fundamentally it was coming to the same conclusions as the finance report had done, except with much more detail, and in particular, if you take a particular area, which was dealt with in detail in the finance report, the expenditure of money on meals in London, that was dealt with in great detail in the Wiltshire finance report, so there was nothing new there, perhaps there was slightly more detail, but, if one looks at issues like the view in relation to whether or not it was imperative that the police operate in an efficient way, manage the thing effectively in terms of costs and so on, that is dealt with in the Wiltshire report. All those issues, which I know that Mr. Harper has been

making submissions to you on, they are all dealt with in there, so there was not anything new in relation to those kind of issues, it was merely following the same ground. The new areas I think were that much more detail was gone into, and one of the passages that I have noted, which is significant to explain that I think, is paragraph 2.1.6 of the financial management report, the last redacted version of it, the fuller version of it, because it is quite interesting because there is a cross-reference there and what they say is ... this is in relation to [former Chief Police Officer]: “He should not be held liable in misconduct terms for errors over which his governance did not directly extend such as, for example, management of the security cordon at Haut de la Garenne, employment of a specialist dog handler and the associated costs and forensic expenditure.” So it is clear that they were aware, in the Wiltshire financial report, of there being other issues, but they do not go into those issues because they do not think that [former Chief Police Officer] should be held responsible for any failures in those areas, because they do not think that was within his oversight. But they are clearly aware of that and so I viewed frankly the BDO Alto as just providing me the detail in relation to some areas where the detail was lacking in the Wiltshire financial report.

The Deputy of St. Mary:

Do you think there was anything missing from the BDO Alto report; did you read it and think ...

The Minister for Home Affairs:

Well it did say that Mr. Harper had not been interviewed, but then on the other hand it contained references to sections of things that he had apparently said, and it therefore gave me the impression that, although he had not been interviewed, that his views on different matters had been considered.

Deputy R.G. Le Hérisier:

Would you, as somebody very expert in the assessing of evidence and so forth, do you really think to take quotes of a person from another context and then use them as the basis for assessing that person’s behaviour in another context is right?

The Minister for Home Affairs:

Well it would be better to speak to the person and put the issues to them, of course that is right. What seems to have happened here is that there seems to have been ... well there seems to be some sort of misunderstanding in fact, if the statements are to taken at their face value, between [Acting Chief Officer of Police] on the one hand and [Police Consultant] on the other, as to the reasons why [Acting Chief Officer of Police] did not want, at the particular time, Mr. Harper to be interviewed, and then subsequently he could have been.

[14:30]

But, as I say, this was their report. I mean it was ... they were producing this for me, it was up to them to ensure that they had sufficient grasp of the evidence, et cetera, to be able to express a clear opinion. But, as I said, because in terms of issues of the generalities, which are perhaps the most important issue, as to whether the police were under a duty to be managing public funds properly and so on and so forth, because all that had been looked at and determined by Wiltshire in terms of, yes, they had, even on their own statements and letters and assurances, given to [Chief Officer], and all that sort of stuff. Because other parts of the data were dealt with, I merely viewed it as providing me with the extra detail in relation to areas where clearly there were concerns.

Deputy R.G. Le Hérisier:

But the result was of course, Mr. Minister, maybe none of your doing, all it did in people’s minds was just sort of basically reinforce this stereotype that Mr. Harper was spending money like there was no tomorrow, and that there were absolutely no controls over that investigation, no financial controls.

The Minister for Home Affairs:

That is not right; the financial controls were not adequate, there was no finance officer appointed,

because no Gold Group was set up. There is no question the financial controls were inadequate and mistakes were made, but there were some things that were done, which were good, I mean for instance I recollect that Mr. Harper and his colleagues renegotiated terms internally of some of the forces so that they received a lower rate of some of the staff. There were some good things, which happened. The trouble is that reports tend to highlight the bad things.

The Deputy of St. Mary:

Can I go back to when you said it is “their” report, you said, i.e. it is BDO’s report, with reference to the fact that Mr. Harper had not been seen. You are the person the report was written for, so in a sense it is your report, would you not agree with that?

The Minister for Home Affairs:

No, no, it is their report. They have been contracted to do the work, it is up to them to ensure that they are in a position to express a judgment. I mean, if they did not think that they could express a proper judgment on these matters, if they had thought: “Well we cannot do the job properly without seeing Mr. Harper and putting these matters to him, it is not enough that we have had access to ...” whatever they have had access to, again I am entirely dependent upon having looked at statements in relation to that, then it seems to me they should have then come back to me and said: “Look, we cannot do the job, we do not think we can do the job properly without doing this.” Then it would come back to me and I would have then no doubt have made sure there was a way of doing it. But they did not say that; they seemed to be content to reach their conclusions, they seemed to think that they had weighed things up sufficiently. That is the impression the report gives. I mean if you look at the report I think that is the impression the report gives.

The Deputy of St. Mary:

So what is your view then on whether it was thorough and objective?

The Minister for Home Affairs:

Well they felt that sufficient ...

The Deputy of St. Mary:

What is your view; not their view?

The Minister for Home Affairs:

My own view is it would have been better for the conclusions to be put to Mr. Harper; that must be right. It must be right. I mean even if they were not going to interview him, it would have been better for the conclusions to have been put to him so that he could have expressed his view and then they could have made a decision. Paradoxically, as I understand it, they have now seen his statements and have now said: “Well that does not change our view.” But you may say they would say that because they had already formulated a view. But, yes or no, it must be better as a process.

Deputy T.M. Pitman:

But, in fairness, we probably would not be here today if a simple step of Mr. Harper being interviewed, maybe it would have changed something, maybe it would have changed nothing, but you agree that a lot of this could have been avoided probably if BDO had interviewed Mr. Harper.

The Minister for Home Affairs:

Yes, I do, yes, I do, but of course the particular difficulty did arise because of [Acting Chief Officer of Police]’s view in relation to this, which again I only know of because I read his statement on that in the last couple of days.

The Deputy of St. Mary:

That is why I asked the questions about whether you ...

The Minister for Home Affairs:

But it is a pity that, if there was that sort of logjam situation, if: “We want to see him.” “No, you cannot.” It is a pity that nobody referred it back up the line to me to have said: “Well no, you do need to do this.”

The Deputy of St. Mary:

That is why I asked the questions about the measures taken to update you and you said there were no updates, and then I asked whether it was on the agenda of your meetings with your Chief Officer of Home Affairs, and it was not on the agenda. So I am struggling to see how this would have ... there did not seem to be a channel ready-made for this to come up to you.

The Minister for Home Affairs:

What could have happened is that BDO could have said: “We do not think that we have a full enough picture to be able to express a view.” But again I have seen their written submission to you and it is quite interesting, there is one area involving the question of the usage of a particular officer like as a chauffeur for Mr. Harper, which they did not feel able to express a view on, so they say in their statement, because they had not been able to speak to Mr. Harper. So, to be fair to them, in that particular situation, they clearly did not think they had sufficiently good ... One of the difficulties here, as I say, is that much of the work they were doing is forensic, looking at the figures, looking at the accounts, seeing what was spent, what the charge-out rates were for hotels, et cetera. Now, whether an excessive amount is being paid for a hotel or not, frankly is going to be a forensic type activity of what the going rates were, et cetera, it really does not matter what the view is of Mr. Harper on that. If they are paying over the odds for a room, they are paying over the odds.

Deputy T.M. Pitman:

But, with due respect, if they had been able to speak to him, for instance we look at the Wiltshire expenses, we discussed ... you said you were quite happy that those expenses were higher than normal, but you were happy it was good value because they were close to where they were working.

The Minister for Home Affairs:

Because they were closer, yes.

Deputy T.M. Pitman:

Now, if BDO had been able to speak to Mr. Harper, possibly he could have offered some kind of explanation like that.

The Minister for Home Affairs:

Yes. It is difficult to understand why people were being placed right across the Island.

Deputy T.M. Pitman:

But, to be fair, the Island is 9 by 5.

The Minister for Home Affairs:

Yes, I accept that. I am not denying it would have been better practice for it to have been bounced off Mr. Harper, I think that is pretty self-evident.

Deputy T.M. Pitman:

If I could take you back to what Deputy Wimberley asked about whether you were getting reports and feedback, when we hear that the Acting Chief Officer was already expressing concern about the methodology being used with this review, alongside BDO, if he was already concerned, did [Acting Chief Officer of Police] never express those concerns to you as Minister?

The Minister for Home Affairs:

No, I am sure he did not. I tried as far as possible, and he understood this and co-operated in this, not to discuss matters with [Acting Chief Officer of Police], which would relate in any way to the disciplinary matter of [former Chief Police Officer]. It was a difficult situation in the sense he was

my Acting Chief Officer for some time, but we tried to steer away from those areas, for the simple reason that he was going to be a key witness himself in relation to aspects of that, and it was a sort of off-limits area in terms of us discussing it, in order to maintain my objectivity. Now, whether that transferred itself over into the BDO Alto, I do not know, but that is possibly an explanation as to why those matters were not discussed with me.

The Deputy of St. Mary:

So he would not have mentioned to you either way: “I am not letting anyone see Mr. Harper as part of the finance review because that would prejudice the Wiltshire review”, which seems to be his position. But you are saying that he would not have ...

The Minister for Home Affairs:

I do not think he did. I mean it is very difficult to remember the details of all the conversations that I have had with different people over the period of time, but certainly absolutely nothing of that nature is logged in my mind.

The Deputy of St. Mary:

You also say you knew nothing of the internal States of Jersey Police review that apparently the Chief Officer commissioned?

The Minister for Home Affairs:

Except in general terms. As I say, I was aware at some stage that there was being some sort of internal review to try to assess the responsibility of other officers who continue to be serving officers. I was aware of that in general terms.

The Deputy of St. Mary:

That is interesting because that is a very different type of review from what we see in [Acting Chief Officer of Police]’s submission to us, which is a very fluffy review, if that is a quite specific review you are talking about, it is an extra review.

The Minister for Home Affairs:

In that case I have not understood the nature of the other review; I assumed it was disciplinary in nature.

The Deputy of St. Mary:

Maybe there are 2 other reviews.

Deputy R.G. Le Hérissier:

You say, Mr. Minister, that: “Look, they were fair, for example they said they would not proceed on the chauffeur issue because they had not received Mr. Harper’s view”, but ...

The Minister for Home Affairs:

Well that is what they say.

Deputy R.G. Le Hérissier:

But the fact remains, on a vast range of other issues, like his allegation that he was trying to get bed and breakfast rates and they were saying: “No, you were staying in very upmarket hotels at upmarket prices”, there are a vast range of other issues where basically ... and I have no apologies for Mr. Harper ... but basically he was castigated. So the balance of the report, there may have been one area where they said: “We must have his view”, but essentially the balance of the report was very much in the other direction.

The Minister for Home Affairs:

Yes, of course I do not know whether that is dealt with or not in his statements to Wiltshire, because I do not know if they went into those areas or not. We have this precarious situation where

apparently, again I have gleaned this from reading the opening statements, the written submissions of people, so I had no knowledge of this at all ... now I have lost my train of thought, oh dear. Where was I going? We were talking about the ...

Deputy R.G. Le Hérissier:

Well the balance of evidence and all the examples essentially, other than oddly enough the one you picked on about the chauffeur, they all sort of suggest that there was basically rampant spending going on and there was no real financial discipline.

The Minister for Home Affairs:

Yes, well of course I do not know what areas he went into in terms of his statement to Wiltshire on financial matters, because I do not know if they went into these areas, because, if they had already decided that [former Chief Police Officer] could not be held responsible for those areas, then they may not have done.

Deputy R.G. Le Hérissier:

You mention Wiltshire a lot, and sort of the trend of your comments seem to be that Wiltshire cover an awful lot of BDO Alto. Did anyone say at any point: "Look, this is a bit crazy, we have all this duplication going on, why are we sort of bothering?" Did anyone ever say that?

The Minister for Home Affairs:

Well, they were 2 separate reports, one was very strictly for disciplinary purposes and therefore had to be subject to the highest standards, if I can put it that way, and the other one was for purposes of determining whether things had gone wrong, if so, what had gone wrong, to learn lessons from that, to see in general terms who was responsible, but it was not a disciplinary report. It was always going to have a much lower level of ... I am struggling for the word ... not intensity; that is not the right word. It was not going to be done to the same sort of meticulous standard, if I can put it that way, because it was not a ...

Deputy R.G. Le Hérissier:

Yet the impact on people, although you argue an interesting argument that it was looking at the system and the procedures, but undoubtedly of course it was going to have a major impact upon individuals because we work in a society where it is all often down to personalities, and that is of course what happened, was it not?

The Minister for Home Affairs:

Yes, but ...

Deputy R.G. Le Hérissier:

It just continued the saga of: "Here is so-and-so and so-and-so is utterly ill-disciplined when it comes to finance and they are spending money like there is no tomorrow." This simple reinforced that, did it not, at the end of the day?

The Minister for Home Affairs:

Yes, but the criticism in my view is there in the Wiltshire financial report, as I say the key issues as to what the level of duty was and so on are dealt with there. This is a matter of detail.

Deputy T.M. Pitman:

How much, with the quite unique setup in Jersey with Home Affairs and your Chief Officer and his responsibilities financially, and the system in the Jersey Police Force, how much was, really Mr. Harper was irrelevant, anyone in that situation was in a position that was not ideal, is that not fair to say?

The Minister for Home Affairs:

The system is not ideal, but in fact, in my view, the person who should have been the Accounting

Officer at the time was the Chief Officer of Police. But frankly in practice, if he had been, I do not think it would have made any difference at all to the way things happened, in reality. Although, there are issues there, [former Chief Police Officer] has always contended that, to be fair to him, he has always contended that this arrangement caused difficulties, they did not have their own accounting staff and so on, but the Home Affairs accounting staff provide services to all the Home Affairs departments, it is just that the accounting function is centralised, as is the H.R. (Human Relations) function in relation to that.

[14:45]

I do not personally think that it would in practice have made any difference because of the failures of oversight on the part of [former Chief Police Officer] generally, I have to say sadly.

Deputy R.G. Le Hérisier:

This is a more general question, and I did pose it to [Police Consultant] as he sort of unfolded his story, did no one think it was very odd that, even if, for the sake of argument, you had a totally innocent police officer running an area where he had absolutely no financial knowledge, did no one think it was rather odd that you have this highly complex investigation, you have masses of money being ploughed into it, and apparently it carries on for ages with total financial ill-discipline, did nobody say: "There is something wrong here"? I mean how ... it begs the question, how was it allowed to run for so long without any intervention?

The Minister for Home Affairs:

That is an issue you need to talk to [Chief Officer] about, because he found himself in the situation where, because there was no budget set, and I think, if we look at the wider issues, and they are criticised in the finance report, I mean there was an extraordinary situation that the historical abuse inquiry, as it unfolded, it expanded in terms of Haut de la Garenne, had their budget, and had no additional financial safeguards, no Finance Officer, no Gold Command Group, et cetera, it is quite an extraordinary situation, I mean it is quite contrary to the normal controls that would happen where you would expect there to be a budget, it may have to be exceeded, but then you have to come back and explain and so on and so forth. I think you will find that what [Chief Officer] will say is ... and I cannot really speak for him ... is that he found himself, it was setup, and then it was: "Over to you now." But he had no managerial control, he was not Chief Officer of the Police Force, over the Police Force, they are a separate thing and operational freedom issues arise and so on and so forth.

Deputy T.M. Pitman:

But that is the point I come back to. That is the point I was trying to make, it is almost an impossibly flawed setup for anyone to be put in. That is not an excuse for Mr. Harper.

The Minister for Home Affairs:

The initial setup was flawed, yes, but, having said that, it is accepted ... and certainly that is the view of Wiltshire based upon the documentation and so on ... that all those, [former Chief Police Officer] and Mr. Harper, and [Chief Officer] accepted that the police had to run it efficiently, as it were. Now, I think you can differentiate on the one hand between what I might call the ambit of the investigation in terms of which cases they should pursue and so on and so forth on the one hand, and the methodology used to do that, which then gets down to the nitty-gritty of overtime rates and all these other things, and in my mind there is a clear distinction. Now I think there was a problem because of the ambit aspect, but then that was a political response to a particular crisis as it was then perceived, where the politicians decided that they should not seek to set the normal controls in relation to the ambit of the size of the thing, but that does not detract, in my opinion, at any stage, from the need to be operating efficiently, which is what the finance reports are about.

Deputy T.M. Pitman:

Can I just ask you from that, Mr. Harper claims in his evidence to the Panel that obviously that he was slapped down by [the Chief Executive] for even questioning the issue of costs and told: "You do whatever is necessary basically, cost is irrelevant." How do you respond to that as a Minister?

The Minister for Home Affairs:

I would be very surprised if [the Chief Executive] said that other than in the sense of the first aspect of it, and that is contrary frankly to the undertakings given to [Chief Officer] and all the other stuff. That is dealt with in detail; that is not for me to argue the case, please look at the financial report of Wiltshire and you will see the reasoning there.

The Deputy of St. Mary:

Yes, I can understand the tensions between saying: "Get on with it, spend what you need to" and needing the controls that you would have normally; that is not an issue. But what is an issue, and I want you to comment on it, is where ... I do not know in this mass of paperwork ... but somebody has said that: "Why did BDO focus on the police side?" which of course goes straight to Mr. Harper as the decider of basically most expenditure, and why does it focus so little on the Home Affairs side, where that is where the professional money counters are; that is where the people who are paying the bills are, so why did they not say: "We ought to put somebody in there to help you"? Why was there not that kind of joint approach that would have saved a lot of grief?

The Minister for Home Affairs:

Sorry, you have confused me now by saying: "We need to put somebody in there to help you." Because, by the time this was happening, by the time the report was produced, I mean we are into June/July 2010, and the whole system had changed.

The Deputy of St. Mary:

There is a question, why did BDO focus on, if you like, the police side, and not where the accounting power was, the professionals who do that sort of thing at Home Affairs, and there was a gap over here, so firstly why did BDO not focus on that issue ... well let us leave the question there, do you think the report is balanced in that sense, because that might be worth ...

The Minister for Home Affairs:

Well I thought they had reached conclusions in relation to that; that effectively it was very difficult for Home Affairs to control because they received the invoices in after the event, as it were.

Deputy R.G. Le Hérissier:

But when they have received ... just to pursue it, and this is getting almost to micro-management, but presumably when they received the invoices in, somebody, if indeed it was as bad as it has been portrayed, somebody would have said: "There is something seriously wrong here, we had better sit down and see if we can sort it out with the police." As far as you are aware, did that happen?

The Minister for Home Affairs:

I think that could not have happened, I think, in relation to some areas, like overtime system, because they simply would not have understood that. But in other areas, if the rates being paid for hotels were too high, yes, somebody could have picked that up. So there could be areas where staff might see repetitively things happening. Again, staff could not possibly have known how the dog was being used or how much the dog handler was being used or in what way he was being used, they could not possibly know that sort of thing. But things like hotel rates, yes, possibly someone might have said: "Well, is this a bit high?" when it carried on going on.

The Deputy of St. Mary:

I am not concerned with the detail, Minister, it is when the expenditure is up to ... what are we looking at ... £5 million a year, so how much is that per month? You are looking at £400,000 a month, something like that, then you start going: "Gosh, so where are the controls on this whole investigation?" and then you have a talk with the S.I.O. (Senior Investigating Officer) and then you

say: "All right" and then you have a discussion about that and then maybe he does what the recommendation is now, 2 years later, and we have a finance manager who scrutinises all this and runs the ship.

The Minister for Home Affairs:

That is where there should have been a Gold Command Group; that is where much of the managerial failures came down to the decision of [former Chief Police Officer] and Mr. Harper to centralise control in the 2 men alone. That is the core of the issue because, if you had a Gold Command Group you would have had finance people on it, you would have had other police officers, and you have proper checks and balances built in. The decision for 2 men, as it were, to take the total control of leadership on their own and to exclude the third and fourth ranks of the police force, led to a situation where unfortunately there were not the checks and balances built within the police. Now, within Home Affairs, the finance officers will log things, but there has to be a high degree of trust in the individual officers, whether it is Customs and Immigration or Fire Chief or whatever, that they are not wasting money, otherwise you can only pick it up subsequently.

The Deputy of St. Mary:

Sorry, the Gold Group is a known issue of, we know the reasons why Power and Harper did not go down that route, and it may be right that for 2 people to have the sort of say and without the checks and balances was wrong, but I am saying, was there not another way of Home Affairs relating to the States of Jersey Police that would have avoided this ghastly thing where there is no finance manager at the L.B.O.(?), no finance manager within M.I.R.(Major Incident Room) to look at the deal with all these things?

The Minister for Home Affairs:

That is an issue you would need to discuss with [Chief Officer] as to whether he made suggestions or not in relation to financial management.

The Deputy of St. Mary:

But the issue for you is the balance in the report between looking at the police's handling and when we are looking at Home Affairs' handling of money; that is what I am putting to you, as to whether that was satisfactory.

The Minister for Home Affairs:

Again, I cannot remember the timing of this, because there was another report of course, which also looked at the issue of responsibility of Home Affairs, and that was produced by the Comptroller and Auditor General. Again, I am not sure as to which order those reports came in, because I think I am right in saying that the view of the Comptroller and Auditor General was that Home Affairs did the best they could do out of a pretty bad job.

Deputy T.M. Pitman:

Can I take us back to the report itself. One of Mr. Harper's opinions expressed, and perhaps could have been avoided if he had been interviewed, was when he says how BDO seemed to deliberately play down the decision based on the evidence to excavate in Haut de la Garenne, which obviously is where a lot of expense really kicked off from there. What is your comment as the Minister on this?

The Minister for Home Affairs:

My comment is contained best in my press release in July where I discussed this very issue^[1]. The difficulty I think was that BDO Alto seemed to have been influenced by the terms of the Metropolitan Police report. The Metropolitan Police report's view, this is the report that even I have not seen in detail, and therefore I am going on my understanding of it. I have physically seen it, but I have not read it. I think this is what happened: the Metropolitan Police's view was that they should not have started digging at all in the first place. The Wiltshire view was that the decision to start digging in the first place was questionable, but not clearly wrong, certainly not a matter that should

be subject to a disciplinary matter. My own view, which, as I think was expressed in my press release document, was that, even if it was questionable to start, once the police had thought that they had found a piece of skull fragment, then I think it was not unreasonable for them to carry on. So I take a more positive view I think than anybody else.

Deputy T.M. Pitman:

But to try and get even further with that detail, and I am sure you will correct me if I am wrong, but I believe even you said that some of this confusion is led by perhaps the angle that [retired D/Superintendent] put on the decision to go in and dig, is it fair to say that seems to have influenced BDO? Because I mean it must ... my interpretation of natural justice, you would look at things and you would weigh up the evidence, where I think what Mr. Harper is trying to say, BDO just seem to have accepted one view as being black, black is black, and that seems to be the problem to me.

The Minister for Home Affairs:

I just simply do not know. I mean you would have to ask other people. [Police Consultant] no doubt you have asked about the influence of [retired D/Superintendent]. [retired D/Superintendent]'s view, certainly in terms of what he said to the press, was that they should not have gone in the first place. But, as I say, it is my understanding that was the view of the Met, although, as I say, I have never seen the report, it is only on the basis of hearsay I say that. Curiously enough, in a strange paradoxical sort of way, the fact that this situation ended up does to a degree support the view of [Acting Chief Officer of Police] that there were dangers in having 2 lots of people looking at similar issues in parallel. But certainly my view is well documented that, although it might have been questionable to start digging, once they thought they had found the skull fragment, it was reasonable to continue.

The Deputy of St. Mary:

On the Met issue, just quickly, can you see how it polarises the public and how it makes people suspicious if you get a report, BDO Alto's report, and they rely on the Met report, and the Met report also did not speak to either Graham Power or Lenny Harper, so they are relying ... they are not speaking to Lenny Harper, they are relying on a report that did not speak to Lenny Harper, so you are getting a kind of self-fulfilling look, and then they criticise the decision to go in, or whatever it might be, all these different aspects.

[15:00]

The Minister for Home Affairs:

Well, now I agree with what you are saying there, and that is why, in my own press release, I was very careful to deal with this matter and to use my own comment. Now of course the trouble is inevitably, no matter how careful you are in wording your press releases, I produced it in writing, insisted on reading it out in full, much to the annoyance of some of the press who wanted to hurry on and ask me questions, nevertheless they do not print what you say sometimes and end up putting their own spin; that is why I did it so carefully, and I did look, as I say, and come to my own conclusion on that one. I think it is unfortunate that BDO Alto did take that particular view, and I did not agree with it on that particular issue.

Deputy R.G. Le Hérisier:

Mr. Minister, I wonder if we could move to a new area, because time is of the essence. It is the question of leaks. You made a revelation in the States quite recently that the leaking of the document and whether it was "the" document, the content of the document, or a remarkably similar document, to a national newspaper was carried out by the former superintendent, [retired D/Superintendent]. Were you aware that there was another leaking going on, for example?

The Minister for Home Affairs:

Other leaking by [retired D/Superintendent], do you mean?

Deputy R.G. Le Hérissier:

Yes.

The Minister for Home Affairs:

No. The first I was aware of an issue in relation to [retired D/Superintendent] was when he went public just before he left the Island and that was the first time. I viewed this as merely a continuation of that, he had already gone public with his views to the local press, radio. It is my understanding from [Acting Chief Officer of Police] that [retired D/Superintendent], although he was asked very strongly not to do anything before he went, and not just by [Acting Chief Officer of Police], but I understand even by the Attorney General of the day, again this is hearsay, this is obviously what I have been told, that he had already pre-recorded interviews before he had left. So that is the first that I was aware of an issue, and then of course my staff picked up the *Mail* article and they did some excellent detective work, emailing, and then sent to me the consequences of that, which clearly pointed to [retired D/Superintendent]. I have to say, when the issue came up again, I had completely forgotten about this, I had just totally forgotten about it. I had to look back and find the emails and then say: "Oh yes, now I do recall it", because it was not that significant to me once I knew it was [retired D/Superintendent].

Deputy R.G. Le Hérissier:

Why do you say that?

The Minister for Home Affairs:

Well he had already done it in Jersey, so ... second leak, it is helpful to me because I have a question from Deputy Pitman in the States next week about a second leak, and I did not know what he meant by the second leak; what is the second leak?

Deputy T.M. Pitman:

Well it was said to us with Mr. Harper's evidence that there were previously emails that had gone and somehow made it into the hands of [a] journalist for the *Mail on Sunday*, which allegedly came from Senator [].

The Minister for Home Affairs:

Sorry, yes, I picked that up in ...

Deputy T.M. Pitman:

Which again must ring alarm bells with ...

The Minister for Home Affairs:

I picked that up from his statement I think. But I was not clear, I have to say, again I only just read that by reading the ... was that in his evidence rather than his statement? I think it was in his evidence.

Deputy T.M. Pitman:

Yes.

The Minister for Home Affairs:

I think it was in his evidence because he was diffident about giving the name of that. I have to say that I was not clear what it was that [Senator] was supposed to have leaked, I was left unclear about that from the evidence.

The Deputy of St. Mary:

Coming back ...

The Minister for Home Affairs:

But I had not heard about that before, no.

The Deputy of St. Mary:

Coming back to the, if you like, the leak, although we have not spoken to [retired D/Superintendent] yet, but we know that he has told people on the phone that it was him, the question is how you said you did not think it was that significant, and yet clearly the effect of the leak certainly in Jersey and his whole sort of farewell, was quite dramatic, so ...

The Minister for Home Affairs:

No, do not misunderstand me, I am not saying it is not significant, the fact that he went to the press and so on and so forth, what I am saying is that going to the *Mail* in addition to what he had already done in Jersey was not a significant level of things from my point of view. It was just the same thing, but ...

The Deputy of St. Mary:

Well how did you react then to the Jersey end of it, which was in the beginning of September I think, where he was on Channel TV and all the rest of it?

The Minister for Home Affairs:

I answered questions in the Assembly on that and very firmly indicated I viewed it as thoroughly unprofessional.

Deputy T.M. Pitman:

Is there not an irony in that one of the big criticisms of Mr. Harper is his handling of the media, and yet here you have the person who has replaced him investigating him and he is really inappropriately interacting with the media? I know you cannot control that now.

The Minister for Home Affairs:

There is, but I am afraid there is strong evidence that Mr. Harper was improperly interacting ...

Deputy T.M. Pitman:

But that is not the question. I am saying ...

The Minister for Home Affairs:

No, fair enough. Yes, it is ironical, if you are going to complain that somebody else is doing something improper, you should not be doing it yourself.

Deputy R.G. Le Hérissier:

Did you warn him not to do this after he had done it locally?

The Minister for Home Affairs:

No, the first time I ... I have only ever once spoken to [retired D/Superintendent], and that is when he rang me up to protest at something I had said in answer to a question, and he was very unhappy because I had basically said, in answer to a question in the Assembly, that I thought he had been annoyed by unfair treatment he had on blog sites and so on, and claims that he had ulterior motives, and so on and so forth, and he rang me up and said he was very unhappy with my having said that and that his primary motive was simply to get the truth, as he saw it, out into the public domain. That is the only conversation I have ever had with him.

Deputy T.M. Pitman:

Some people might say that is almost the actions of an incompetent maverick though to go and do that the way [retired D/Superintendent] did. **[Laughter]**

The Minister for Home Affairs:

It is improper. It is undoubtedly improper. I have said that right from the start, I mean you gentlemen are my witnesses, you have heard me in the Assembly whenever it has been raised, I have

said that is improper. The trouble is, it is a thin end of the wedge, once one officer does it for whatever reason, it creates a major difficulty.

Deputy R.G. Le Hérissier:

In the nature of a winding-up question, Mr. Minister, I wonder, without making it too much of a statement of the obvious, can you tell us what lessons you have learned from this episode and how in your view it should have been handled differently?

The Minister for Home Affairs:

I do not think I did anything wrong, but I would say that, but I do think that more consideration should have been given to finding a way to allow Mr. Harper to see what the report was likely to say and to comment on it; I think that is right. That is my view. I mean I could go into other areas of the financial management and so on, but I do not think that is what you are asking me, I think you are asking me in relation to the BDO Alto report.

Deputy R.G. Le Hérissier:

Yes.

The Minister for Home Affairs:

I think that is my view. I expect it would be your view as well.

Deputy T.M. Pitman:

When you, and obviously you have only just read [Acting Chief Officer of Police]'s submission, if I can take you back to that, without making any final conclusions, and you will probably want to mull it over, I appreciate it, does it not undermine the report slightly that you have had such conflicting views from people apparently working together very closely, we have heard Mr. Kellet and then [Acting Chief Officer of Police] has completely come from a different angle and said: "No, this was not how it was." Does that undermine the credibility of the report to you, because it perhaps was not as tight or as thorough as it should have been?

The Minister for Home Affairs:

I am puzzled as to why there appears to have been this misunderstanding between [Acting Chief Officer of Police] and Mr. Kellet in relation to why it was that [Acting Chief Officer of Police] did not want Mr. Harper to be interviewed at that time and that was not an indefinite thing. I am puzzled as to what happened there in terms of the misunderstanding. I do not really understand precisely the nature of [Acting Chief Officer of Police]'s criticism of the process. I have read his statement but I did not assimilate that. He is a very professional officer; I know that people have criticised him, but he is a very professional officer, and objective, and I think something of his objectivity comes out in the fact that he is prepared to criticise in this context.

Deputy T.M. Pitman:

I will leave Deputy Le Hérissier to try and clarify this, because we spent several minutes trying to get our own heads around it, when you hear a former senior police officer sitting there and telling us that he was not even aware of the terms of reference of a review that he was carrying out, that has to worry you?

The Minister for Home Affairs:

No, he was not ...

Deputy R.G. Le Hérissier:

But those are his words.

The Minister for Home Affairs:

He was not carrying out the review; the review was being carried out by ...

Deputy R.G. Le Hérissier:

But he did not know the terms of reference; he said that.

The Minister for Home Affairs:

All right.

Deputy R.G. Le Hérissier:

Of the other review.

The Minister for Home Affairs:

I am sorry, which review are you talking about?

Deputy R.G. Le Hérissier:

The internal States of Jersey Police review.

The Minister for Home Affairs:

[Acting Chief Officer of Police] is saying he did not know ...

Deputy R.G. Le Hérissier:

No, Mr. Kellet.

The Minister for Home Affairs:

I am sorry.

Deputy R.G. Le Hérissier:

That seems to be the problem, nobody knows what the other was doing at all.

The Minister for Home Affairs:

That confuses me even more as to what [Police Consultant]'s role was, I have to say. I thought I was just about starting to understand [Police Consultant]'s role.

Deputy T.M. Pitman:

Maybe by 5.00 p.m. we will know there is another role. We have our next witness. Is there anything else that you would like to clarify or point out for us, Minister?

The Minister for Home Affairs:

No, thank you very much. It has been a very fair hearing and thank you for that.

Deputy T.M. Pitman:

Thank you.

[15:11]

^[1] Statement in relation to Haut de la Garenne, dated 14th July 2010 - <http://www.gov.je/Government/Pages/StatesReports.aspx?ReportID=424>

STATES OF JERSEY

Education and Home Affairs Scrutiny Panel Issues surrounding of the Review of Financial Management of Operation Rectangle

FRIDAY, 15th JULY 2011

Panel:

Deputy T.M. Pitman of St. Helier (Chairman)

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

Deputy R.G. Le Hérissier of St. Saviour

Witness:

M. R. Sorda

Also present:

Mr. M. Haden (Scrutiny Officer)

[12.54]

Deputy T.M. Pitman of St. Helier (Chairman):

For the record, because we are being recorded, I must ask that you have seen the oath.

Mr. R. Sorda:

Yes.

Deputy T.M. Pitman:

Are you happy with that? As I say, it is just that you do not tell us anything you know to not be true.

Deputy T.M. Pitman:

Okay, Mr. Sorda, so to begin with can you explain what led you to begin investigating the issues around this review? **[Interruption]**

Mr. R. Sorda:

It all started on the ... I had seen an interview on voiceforchildren.blogspot.com with Lenny Harper and the question was asked: "Were you asked about your financial management through Operation Rectangle?" Mr. Harper replied: "No." He had not been contacted, which ... When I heard that, I just was like: "That is not right," because I remembered the BDO Alto report when it came out and the lavish lifestyle of Lenny Harper in the *J.E.P. (Jersey Evening Post)*. So I went and obtained a copy of the BDO Alto report and started looking at it and I realised something was not quite right. That is basically how I came to be looking at BDO.

Deputy T.M. Pitman:

I am sure you will enlarge on that, but what are the key issues at this review that should be addressed?

Mr. R. Sorda:

I just found it absolutely incredible that Lenny Harper was not interviewed by BDO. I just thought: "How can you come to conclusions without asking the main man?" because after reading their

report, obviously, I was aware that they had interviewed members of the States of Jersey Police, Home Affairs, and 2 outside contractors. Now, I just found it really strange how they came to conclusions without interviewing Mr. Harper, but also if you are interviewing serving police officers, not to go against their integrity and all that, but it just did not seem the right way of going around things. If you are working in the States of Jersey police and you know of all the publicity surrounding Operation Rectangle, are you in a position where you can say what you really want to say? It was that sort of line that got me looking at the whole issue.

Deputy T.M. Pitman:

So you had concerns about why the evidence was ...

Mr. R. Sorda:

Yes, especially because the main man had not been interviewed.

Deputy R.G Le Hérisier:

Okay, building on that, Mr. Sorda, you mention that you were very surprised that the main participant, so to speak, was not interviewed. Were there other issues that you thought should be addressed?

Mr. R. Sorda:

It was just the way it was brought to the public, because obviously I was not present when [the Minister] gave his presentation in May 2010 to States Members. I do not think it was transcribed, because it was not a State sitting as such.

Deputy R.G Le Hérisier:

In camera. No, that is fine.

Mr. R. Sorda:

So obviously I am not sure how he brought the report to his fellow States Members, but I am fully aware of how it was portrayed in the media, especially *Jersey Evening Post*. I was also fully aware of how Channel TV, the award-winning Channel TV piece came about and I have watched that. At the end, it just did not look right. I was just thinking: "Why is no one asking any questions about any of this? No one is asking any questions. Everyone is just like: 'Oh, there it is'."

Deputy T.M. Pitman:

You obviously made no claims to be an expert, whatever expert was.

Mr. R. Sorda:

I am not.

Deputy T.M. Pitman:

Your position in coming to this, really, is just as a concerned member of the public.

[13.00]

Mr. R. Sorda:

Absolutely, and because I knew the reports were used, in my opinion, to trash the child abuse investigation.

Deputy R.G Le Hérisier:

We know you have been quite active in trying to get answers, maybe because you think the system is not very good at following up. Can you outline to us what steps you have taken on your own initiative in trying to get answers to these - what you perceive to be - injustices and so forth?

Mr. R. Sorda:

Yes, I have emailed the Minister for Home Affairs, and he has been forthcoming. Originally, the very first outset, he was forthcoming and obviously, as it started developing, all ties were broken. My only way really of getting the information I was seeking was by doing exactly what BDO did not do and that was contact Mr. Harper. When I contacted Mr. Harper, I said: "Look, I have seen your interview with Voice for Children and I realise you are saying you have not been interviewed concerning the financial aspects of Operation Rectangle. Why did BDO Alto not contact you?" He just said to me: "Who are BDO Alto?" Straight away I am like: "Okay, we have got a problem."

Deputy R.G Le Hérrisier:

Of course, the Minister for Home Affairs will be here later in the afternoon, so obviously we will put questions to him. You said matters dried up when you were in contact with the Minister for Home Affairs. Why do you think this happened?

Mr. R. Sorda:

Because I was asking the questions I do not think he felt comfortable answering, or maybe he did not feel he legally could, or was dealing with a member of the public, especially myself who operated a blog. Maybe he just thought: "I do not want to appear on the blog." I cannot ... I am second guessing. I do not know. You would have to ask him, basically. I send the email. He does not reply. Why? Although, on a separate issue, he did say when I have asked issues concerning Graham Power, very prevalent interviews, he just said: "I am not replying to you, because you are rude" or whatever.

The Deputy of St. Mary:

Yes, you mentioned the media and, of course, you are part of the media. I think you are part of the media.

Mr. R. Sorda:

That is a grey area, is it not? **[Laughter]**

The Deputy of St. Mary:

According to some people.

Mr. R. Sorda:

I am a ... Yes, I suppose I could describe myself as a civilian investigator.

The Deputy of St. Mary:

You are certainly a notch above the *News of the World*, who were accredited media.

Mr. R. Sorda:

I just do what I do. I do not know where that lies. I just look at the evidence, follow the evidence, ask the questions.

The Deputy of St. Mary:

Yes, I just want to explore the media a little bit with you. I am going to be as tough on you as I have been on everybody else.

Mr. R. Sorda:

Absolutely.

The Deputy of St. Mary:

Would you agree that sometimes you jump to conclusions on the blog?

Mr. R. Sorda:

Yes, but my conclusions are based on all the evidence I can obtain, which from one side of the aspect - say Graham Power, Lenny Harper - I have asked proper questions of them and they have

been forthcoming in giving me replies, which you know. Then if I go to the other side - I would say Home Affairs - then it is a different story. It is harder to get information from the Ministers.

The Deputy of St. Mary:

Yes, well, the example I had in mind was about the date of the engagement letter and you went in quite hard saying: "Oh look, they were engaged and 5 days later it is in the *Mail*."

Mr. R. Sorda:

Yes.

The Deputy of St. Mary:

You kind of make quite a lot of that and then it turns out that they were engaged months before. I know it is misleading, so what is your take on that?

Mr. R. Sorda:

From inquiries, I sometimes know that afterwards I have found out that sometimes engagement letters can be signed after the initial work starts. Like was explained this morning, obviously there has been contact between the parties, but the engagement letter ... if they had started their work in April 2009, the engagement letter was not finally signed until 29th September. Did everyone know what terms of reference they were working to? Did everyone know exactly what they were doing before that final engagement letter was signed? It was still up in the air, from what I heard this morning.

Deputy R.G Le Hérrisier:

It might be worth looking at both versions. I have not done that myself yet. On the other matter of the way the media in general - the mainstream media - react to these things, would you care to comment on how they interplay with things like BDO Alto report?

Mr. R. Sorda:

Yes, I do not know if you heard, but I went to the library and dug out their archive, 15th July *J.E.P.* press release, story, whatever you call it. I do not know if you have done that, but I thought I had better go do it. There you go, the front page of the *J.E.P.* 15 "Celebrity lifestyle of Lenny Harper and his officers", meals in top class restaurants on taxpayers' expenses. We have got first class on the Gatwick Express, London restaurants. That is how they portrayed it. Did they do any work? It is like: "There you go. Okay, we will put it on the front page." Did they do any research? Did they ask any questions? That was in May 2010. If we are really going to look at the media side of this, then we have to look at the award-winning Channel Television episodes that went out on 1st and 3rd September 2009. In those 2 programmes, [retired D/Superintendent] was interviewed, quite professionally, I must add, because it is not normal. Normally, Channel TV, you get 2 minutes or 30 seconds on the couch and that is it, but this was done quite professionally for their standards. It was quite interesting listening to the pieces they had done, because [retired D/Superintendent] does not actually refer to the BDO report in those 2 pieces. The actual person who is quoting the BDO or the information that turned up in the BDO is the reporter. I believe it is Hannah Collier, who I think did the pieces. Who gave her the information? As far as I am concerned, journalists do their ... they have their sources and all the rest of it and they want to do a story, but obviously someone has leaked her the information, because what she was quoting was not public.

Deputy R.G Le Hérrisier:

Is there any way you can get that to us - a video?

Mr. R. Sorda:

Yes. That was in September. That was a month before the [Mail on Sunday] article which came out on 5th October 2009. The award-winning Channel TV [Interruption] [Laughter] Yes, so September. They came out a month before the [Mail on Sunday] article. Channel TV came out with this.

Deputy T.M. Pitman:

The big issue - and you have had the benefit of sitting in the audience, I know - the big bone of contention is the objectivity of this review and whether not having Mr. Harper there impacted on that. Now, it is not for me to comment on that with you, but being involved in what you are, citizens' media, whatever you want to call yourself, were there any other issues or incidents that began to make you think questions need to be asked here, because the objectivity has got to be examined?

Mr. R. Sorda:

Yes, no, absolutely, I just think that from my limited knowledge, if you are going to do any report ... I mean, the whole Operation Rectangle child abuse is a huge, huge issue. It is not like counting fag ends or something out on the street. It is a big, big story, so I would like to think everyone would be independent. I was quite shocked to hear this morning that [Police Consultant] knew [retired D/Superintendent] for 25 years before he turns up on the doorstep and has worked alongside him doing a report. I find it is quite extraordinary. Also, I do know someone who worked on the BDO Alto report. This is just something that goes back a long time ago, which I did not think much of at the time. I just knew someone who was working on it, but I was also a bit alarmed that they were on an anti-Lenny-Harper website.

Deputy T.M. Pitman:

Anti-Lenny-Harper website.

Mr. R. Sorda:

Yes, it was actually on a Facebook group that was started in 2008 and it went under the name of Lenny Harpic. The person who I knew to be working on the BDO report was actually a member of that group, which is not really ...

Deputy T.M. Pitman:

Can I ask how did you come to know that? Was that something that came up by chance or volunteered to you or ...?

Mr. R. Sorda:

No, obviously, I met this gentleman. We went out. We chat. We talked politics. He informed me that he was working on a review for financial auditors on the financial aspects of Lenny's spending and whatever. Then as I do, going through research and that, I came across this Lenny Harpic Facebook site and there he was. He was on it. This is something that was going back to ... this group was from 2008^[1].

The Deputy of St. Mary:

He could not be on there for research purposes, could he?

Mr. R. Sorda:

No.

The Deputy of St. Mary:

No. I do not know how Facebook ...

Mr. R. Sorda:

No, I do not know how. I am just telling you. I do not know how big an issue that is. For professional integrity and all the rest of it, not a clever move. He might have ... Everyone has opinion on everything, but for professional integrity you should not really be joining groups about someone that you are looking into.

Deputy T.M. Pitman:

I guess you would probably say that that was a conflict of interest, because we have heard that BDO and other firms in these things do conflict of interest checks.

Mr. R. Sorda:

Yes, I was quite ... yes, absolutely. It is just the whole professional integrity, is it not?

Deputy R.G Le Hérrisier:

It strikes me from a lot of the comments you made: do you think it is possible in a small society where ultimately it seems everybody is linked to everybody in some way or another to ever deal objectively with these issues or do we always have to go outside and get apparently independent people?

Mr. R. Sorda:

It comes down to checks and balances really and the vetting. Is even the vetting done properly? Surely, going back to [Police Consultant], you are bringing in someone to work on this review, say. Surely, in the world of policing in the UK, there was someone who had not worked or known [retired D/Superintendent] for 25 years. Surely, there must have been someone they could bring in who has no ties to any part of the ... It cannot be that hard, surely. Yet, this happened.

The Deputy of St. Mary:

Even in saying that, you are talking really about for appearance's sake, at least. He may have been completely above board, but from the perception - is what you are saying - it ...

Mr. R. Sorda:

That has got to be a major point, surely. It is an independent report, yes, but if you look behind it, it all seems to be a bit of a mess. From what I have heard this morning, I have got to say I was quite shocked at what I heard this morning - quite shocked.

The Deputy of St. Mary:

Would you apply the same standard to Lenny Harper himself? You have read [Police Consultant]'s submission, I ...

Mr. R. Sorda:

No, I have not. I have not got a copy.

The Deputy of St. Mary:

No, okay, because it is quite recent here. What he says here is he is talking about [Police Consultant] knowing [retired D/Superintendent], and he is getting in a tizz because he is saying Harper does not apply the same standards to himself because he contacted the guy who ended up as his mentor. I think the suggestion is that he contacted him because he knew him or because there was some kind of association before. I assume it is all verbatim, but I am not sure. He asked this officer to come to Jersey to act as his mentor and then dah, dah, dah, dah, dah. He was his mentor and review officer. How come Harper can do that and allow himself to do that when he is criticising someone else for doing it?

Mr. R. Sorda:

Do we know that is fact?

The Deputy of St. Mary:

That is what [Police Consultant] is saying.

Mr. R. Sorda:

All right. I would have to check that. I cannot take that as fact because I know, when the review team - I cannot remember the right term as what they were - 3 of them came in, the mentors came in,

[AB] was the lead. I have never heard or read anywhere before about Lenny Harper knowing [AB], so I would have to check that.

The Deputy of St. Mary:

If there were a situation like that where the mentor was known to the officer he was mentoring, would you think that was satisfactory?

[13.15]

Mr. R. Sorda:

No. I would have to, again ... You have to investigate it, do you not? You have to ask the question, get the reply and then you go from there. You work ... Again, when I say ... I do not know where [Police Consultant] got that from, because I have never heard, read or seen anything, and I think I have pretty much seen everything that is blowing around, so that must be something that has come from behind the scenes somewhere. I am surprised, to be honest. When I heard [Police Consultant] say that, I was very surprised that [the Minister] has never brought that up in any ... You know when he had the big scandal. [AB] was ... He thought he was conflicted, because he had applied for a job. Yes, so I am surprised the Senator. I am surprised he would not have used that saying, you know: "Lenny Harper knew [AB]", if it is [AB] we are talking about, but I think it must be. You have to research it, do you not? I have not taken it at face value that, because [Police Consultant] said that, that is ...

The Deputy of St. Mary:

I think the criticism is that the approach came from ... It was not like one of these blind application processes. I think the criticism was that someone was approached and they came. There is another case in the Alto report of a much smaller fish coming over because he was invited over as part of the extra 12 they needed to boost the numbers after the JAR/6 and the media announcement. I think the question is: what is sauce for the goose is sauce for the gander and I think you would agree with that; if we are talking about open applications, then you do not just go out and ...

Mr. R. Sorda:

I do not think it is quite that simple though. To be honest, I do not think it is that simple.

The Deputy of St. Mary:

It is an important issue.

Mr. R. Sorda:

Yes, it is a very important issue, but I just do not think it is as simple as how you just said it. I think you have to look. You have to take cases for what they are and what aspect they have been used in for calling people in. If Lenny Harper or Graham Power, when they called in the - I cannot remember the right term - when the 3 mentors came in ...

Deputy R.G Le Hérrisier:

Was it the A.C.P.O. (Association of Chief Police Officers) group?

Mr. R. Sorda:

Yes, the A.C.P.O. peer group. Now, what I would be asking is: if Mr. Harper has asked for mentoring, did he go to the A.C.P.O. review group and they supplied the mentors, or did Lenny Harper give a wish list? That is what I would have to be ... That is what I would be asking. I would ask A.C.P.O.: "Okay, how did you go about sending mentors over?" [AB] is very highly respected. In their view, they sent over the most qualified person for the job, but then ...

Deputy T.M. Pitman:

Can I take you back a few questions? Now, I am not going to ask you for the name of the person you say you have met who worked on that, but obviously it is something that I would imagine we

would want to pursue. How confident are you of that information? If we pursue it, will we be able to verify it, because obviously that is important so we can clarify whether there were any conflicts?

Mr. R. Sorda:

The only way you would do it is I can give you the name of the individual^[2]. You can keep it to yourselves and ask BDO to supply the names of who worked on their report. I think he said it was 2. Did they use outside ...? He did not really say. Did they use outside consultants or something? Did they bring people in? I do not know. BDO Alto is just a name. Did they outsource their work? I do not know.

Deputy T.M. Pitman:

How did this conversation, this revelation, come about then? How did he come to talk about this in the person ...?

Mr. R. Sorda:

Because of political views, as you do. You go out. Everyone has a view on everything. Now I met this chap through one of the forums, Planet Jersey. As you do, you meet up. You have got - okay, I knew straight away his view was conflicting to mine, which I quite like, because I quite like to meet people who have a different viewpoint. It is the only way of testing yourself, really, as against people who have a different viewpoint to yourself, so it is almost like having a devil's advocate or something. We went out and he just said: "Oh, I am working on this financial review, BDO." Over the head, because it was early doors back then. I did not really know: "Oh right, yes." I knew his views were different to mine, but then everyone is allowed to have ...

Deputy R.G Le Hérisier:

I wondered if I could come back to the questions you asked the Minister. You said the relationship dried up and he said words to the effect that you had been rude - I think you said. When you were carrying out your interchanges with him, what were you doing? Were you asking him a series of factual questions? Were you putting hypotheses to him and saying: "I think this happened. What do you think?" What were you doing?

Mr. R. Sorda:

Absolutely, absolutely, because of the way this was set up, the scope was not to ... I do not really want to go down the Wiltshire road, because that is not really what you are about, but then the issues are all entwined. Everything was in time. You cannot get away with it. It is all there. Now, what I said to [the Minister] - and it is in my video one on the Voice for Children. It was quite sinful. He put allegations to Graham Power. Graham Power challenged the allegations. [The Minister] dropped the allegations and, as soon as Graham Power had left the Island, [the Minister] is in the *J.E.P.* bringing out the same allegations. Now, I challenged them on that. I said: "How are you doing that? Why?" I said: "Why are you doing that?" He, to this day, has not given me an answer.

The Deputy of St. Mary:

For the record, those are the allegations about bullying in the police.

Mr. R. Sorda:

It is, yes, yes. There is a bigger picture here. There is a bigger picture. It came out this morning. You have your work cut out.

Deputy T.M. Pitman:

The question to ask leading on from that is: what outcomes do you expect this review to achieve?

Mr. R. Sorda:

Well, that is changing daily, I would say. After hearing submissions or the evidence given this morning, my own opinion is you have a whole can of worms here, because what I heard this morning

is [retired D/Superintendent], who was senior investigating officer of the historical child abuse investigation was leaking information to [journalist], a known child abuse denier, working for the *Mail on Sunday*. You have got to ask yourself: “What is going on?” What is going on? Why has the Acting Chief of Police got a number 2 that is out of control? Was there any investigation? Did he pull him in?

Deputy T.M. Pitman:

I think at the time there was.

Mr. R. Sorda:

There was a brief police investigation into the leak, but that is all we know. That was [the Minister] who gave that information out and there was a brief investigation.

The Deputy of St. Mary:

Do you know if there were any details on that?

Mr. R. Sorda:

No, because it sort of changed then, because [the Minister] said there is a police investigation, but then also in the States Chamber: “My own department had carried out an investigation” as to Deputy Pitman’s questions around those in the States. That is when he said: “It was my own officers that carried out an investigation into the leak and all those point to it being [retired D/Superintendent].” You have to remember, this is the senior investigating officer on a child abuse investigation and he is leaking information. In my book, that is pretty serious.

Deputy T.M. Pitman:

Getting back to the question: the outcome you hope to see from this, because you appreciate we are not reopening the whole, what are your hopes?

Mr. R. Sorda:

My hopes are you look at this objectively, as I know you will. You have got to be totally impartial. You just have to look at the evidence and then basically, as a member of the public, I am in your hands as to what conclusions you come up with. Now, I might not agree with what you come up with, but you just have to get all the evidence together and see what you come up with. At the moment, I have to tell you, I am in shock at what I heard this morning. I really am. If the Acting Chief Police Officer has given you a submission, which has totally been contradicted by [Police Consultant] this morning, this is serious stuff. To me, this is serious, serious stuff. The Acting Chief Police Officer and the Deputy Superintendent releasing information, giving conflicting replies to what we have heard this morning. That is pretty serious, serious, especially when you look at the allegations levelled at Graham Power and Lenny Harper, what is good for the goose and all that. What is going on? What is going on? No one is asking any questions. Why are the media not asking these questions? Why am I sitting here? I should not be sitting here. This should be the Jersey media or our journalists doing this work, not a member of the public who has to face anything that comes of it.

Deputy T.M. Pitman:

Just to jump back, Deputy Hérissier asked you about how your approach for information, for answers, had gone with the Minister. What about BDO Alto?

Mr. R. Sorda:

I never contacted BDO Alto.

Deputy T.M. Pitman:

You never contacted them.

Mr. R. Sorda:

The reason I never contacted BDO Alto is because Mr. Harper contacted them straight away. As soon as I brought up the issue of BDO Alto, he must have read it, because within hours BDO Alto had received emails from Lenny Harper and BDO Alto's reply was: "We cannot engage with you, Mr. Harper. You need to engage with the Home Affairs Department because they were the ones who commissioned the report. That was the end of the contact. That was just my own opinion. I did not think there was any point going down that road. If they are not going to talk to the main man, they are not going to talk to a blogger.

Deputy T.M. Pitman:

In fairness to them, to BDO Alto, it is a confused picture on whether they have outwardly made attempts to speak to Mr. Harper. You accept that, I would imagine, from what you have heard today.

Mr. R. Sorda:

Yes, when I heard the Managing Director, my gut instinct and opinion was that they were absolutely truthful in what they were saying. It came across to me they absolutely wanted to talk to Mr. Harper. The question would be asked is: why were they not? Did they not say that Wiltshire did not ...? Because of the ongoing Wiltshire ... Is there any case law on that? What is that based on? Is it just based on: "Oh no, you cannot talk to him"? Is it actually based on some kind of law? Obviously, Mr. Harper is a civilian now. I know [Police Consultant] said it still applies to ex-police officers, but where is the law? What is it based on? What was it based on? I do not know.

Deputy R.G Le Hérisier:

More to wrap up, Mr. Sorda: you have given the initial concerns that have led to this scrutiny; are there any other concerns that you think ... As we said, we do not want to get into the whole thing for obvious reasons, but are there any other issues that you feel we need to look at, aside from what you today.

Mr. R. Sorda:

Yes, yes, I do want to bring it up that [Police Consultant] this morning said that Wiltshire gave him a copy of Lenny Harper's Wiltshire statement. Now, Lenny Harper, as far as I know, I do not know if he has given it over to you lot, but has said Wiltshire has flatly denied handing over his statement to BDO and I think he had a signed solicitor's letter also with that. Now, whether that is: "We did not give it to BDO, but we gave it to [Police Consultant], who we did not think was there," this is ... but that has to be looked at because I think there is a grey area. Does anyone know what [Police Consultant] was actually doing? He has been pulled in. There are terms of reference and: "I have not seen that. I have seen that."

Deputy R.G. Le Hérisier:

I think my colleagues may wish to correct me, I think what [Police Consultant] was saying was they approached Wiltshire, Wiltshire then took legal advice and on the basis of that legal advice they apparently released Mr. Harper's statements.

The Deputy of St. Mary:

No, they allowed him to see it.

Deputy R.G. Le Hérisier:

Well, they allowed him to see it, yes.

Mr. R. Sorda:

You will have to check with Mr. Harper. I think that is contradictory to what I have been led to believe. I know he is away but obviously you can contact him next week. I have to say I do not feel comfortable doing this today, coming before you and all the rest of it and I do not think I should but I think it just flags up what is lacking in Jersey as in our media.

[13:30]

Media is very big in the spotlight at the moment and I think for the sake of everything, I mean for Jersey and that, we need somebody to start asking questions. It is a priority on this; it cannot carry on the way it is. The members of the public have got to be doing this, are doing it under my name and it can take its toll. You get some nasty stuff really but you do it for the right reasons and I do it mainly because of the child abuse.

Deputy T.M. Pitman:

In fairness to Scrutiny it was absolutely imperative that we bring you in and put you on the spot.

Mr. R. Sorda:

That is why I am here.

Deputy T.M. Pitman:

Just like everyone else and ...

Mr. R. Sorda:

I feel that because it was me that raised the issues of the whole BDO Alto Report it would be wrong for me not to come here because I am the one who has raised the issues; no point shouting if you are not prepared to back it up.

The Deputy of St. Mary:

For the record and I do not think it is confidential; what [Police Consultant] said about the Wiltshire statement is it was not Lenny Harper's statement, it was a written record of the interview, which I gathered went on to that, in the form of a draft statement, so presumably they wrote it up, a kind of condensed version, that had not been approved by Lenny or anybody and that was the draft that [Police Consultant] eventually got permission to seek.

Mr. R. Sorda:

That makes it sound even worse.

The Deputy of St. Mary:

What I am pointing out is that it is not a statement by Lenny Harper, just for the record but that is not reads in here.

Mr. R. Sorda:

Yes, yes, yes. I mean again, yes, it is all in wording.

The Deputy of St. Mary:

There is a difference that it is a resume of a long discussion written by Wiltshire and it is a draft.

Mr. R. Sorda:

I mean the issues are there, it is ...

The Deputy of St. Mary:

Yes, this is the same issue but whether that is properly released ...

Mr. R. Sorda:

Yes but I have to see, as a Scrutiny Panel, what you come up with because from what I have heard now, what everybody says, what I have heard this morning, even though you probably would not like to hear it, I think we are only at the beginning.

The Deputy of St. Mary:

I do not want to hear that now.

Mr. R. Sorda:

No, I know but no, because there are a lot, a lot of issues.

Deputy T.M. Pitman:

But in fairness, Mr. Sorda, without the Scrutiny Panel being in place none of this would have been coming out.

Mr. R. Sorda:

Absolutely, this is to me ... I mean I am not an expert on Scrutiny or anything but what I have seen, I have not been to Scrutiny or a hearing before and that but this is what I would expect Scrutiny to be; listening to the evidence on some very, very serious issues and in an impartial way come to your conclusion. I would not ... that for me is how it should be done; that is how it should work surely, if you look at the evidence and put it together. But I do think that we are at the beginning.

Deputy T.M. Pitman:

Okay. Are there any other points you want to make before we wind up?

Mr. R. Sorda:

I have got probably a million and one points in my head but ...

Deputy T.M. Pitman:

Well, we can always have you back.

Mr. R. Sorda:

I just know but, yes, I mean I have to digest what was said this morning because so much came up and it is fast flowing and after waiting for the transcripts, look at the transcripts and see ... look at that, sit back and look at it, what is being said and do probably what you are going to do and see if it all matches up. But I am not going on but I want to say one more time, after what I heard this morning we are only at the beginning.

Deputy R.G. Le Hérissier:

We are at the end in the sense that it will be the end of the session fairly soon so it might be for other people.

Mr. R. Sorda:

Yes and if you need to call me back and ask me anything again I have got no problems with that, no problems at all.

Deputy T.M. Pitman:

Okay. With that I will thank you for your evidence and end of session. Thank you.

Mr. R. Sorda:

No, thank you. Cheers.

[13.34]

^[1] This information was investigated by the Sub Panel. The Sub Panel was informed that the individual in question has never worked for BDO Alto.

^[2] This information was investigated by the Sub Panel. The Sub Panel was informed that the individual in question has never worked for BDO Alto.

STATES OF JERSEY

Education and Home Affairs Panel Draft Civil Partnership (Jersey) Law 201-

WEDNESDAY, 15th JUNE 2011

Panel:

Deputy R.G. Le Hérissier of St. Saviour (Chairman)

Deputy J.M. Maçon of St. Saviour

Deputy M. Tadier of St. Brelade

Witnesses:

Executive Officer, Jersey Community Relations Trust

Trustee, Jersey Community Relations Trust

In attendance

Mr. M. Haden (Scrutiny Officer)

[10:02]

Deputy R.G. Le Hérissier:

Thank you very much indeed. It is important that you read the document there which is basically, as will obviously be the case, that you promise to give truthful evidence. There are consequences were that not to be so. Okay. Well, we would like very much to welcome you here and particularly as you have come at fairly short notice. This is not a fully fledged scrutiny; what it is, it is obviously the panel wishes to brief itself on the Civil Partnership Law, and it will probably make ... as it did with the Repatriation Law, which worked very well. So let us hope this works very well. It made a comment to the States and it really helped move the law along, because the law - certainly the Repatriation Law - even though the intent was very clear, there was a lot of technical back-up to the law that was explained and Members really needed to cut to the chase; you know, and get through to the essential issues, which is what we need to do. We need to find out particularly your views, on the issue of ceremonies in a religious context as opposed to a secular context, and Deputy Tadier has given us some interesting background on that and he will lead on a lot of questions.

Deputy M. Tadier:

If I start off, obviously thanks for coming in. Just to put everything in context as to why we are doing this review, and I said it on the radio the day before yesterday, is that it is important we are able to scrutinise this law, because it is a big piece of legislation. It is complex. That said, we are also as keen as you are that the law go through straight away without any delay. So this Scrutiny is in no way designed or it will not be a by-product that the law will be delayed. It may well be that we bring some amendments forward or maybe simply that we post some comments which need to be dealt with or considered. But either way, it is not intended and it is not envisaged that this is going to delay the law going through in any way. It will simply hopefully flag up issues and maybe it will go through amended, or certainly it will go through unamended. I think that has been a concern across the board; so that does not need to be. There are several issues we have been looking at, and I think we all appreciate that the law would not necessarily have gone through so smoothly if it was not for the fact that ... or rather it was necessary to distinguish it for certain individuals in the States and in society that this law is not the same as marriage. I think in doing that, that is what perhaps has caused some of the confusion and problems in the minds of some people, because of course it is intended nonetheless to confer as great a level of parity between civil partnerships and marriage as possible. First of all, have you got any general comments you want to say about what you have read

of the law, because I know certainly, Steven, you have read quite a bit?

Trustee, Jersey Community Relations Trust:

Yes. The law itself is quite in depth and I think the law drafters have gone as far as possible looking at all the connotations to do with the inheritance tax and all the other minor laws, for want of a better phrase, that would be affected by it; and I think they have done a sterling job to cover most bases. So credit to them. I think if you could read a comment made by our chairman which sort of covers the ... do you want to read it?

Executive Officer, Jersey Community Relations Trust:

Yes. Basically: "We feel that heterosexual couples have the option of civil or religious marriage, but obviously only the latter can take place in a place of worship. Under the C.P. (Civil Partnership) Law, there will be only one option which is obviously a civil partnership, and therefore no option for this to take place in a place of worship. In an ideal world, homosexual couples would have the option of marriage in a place of worship, subject to the religious institutions obviously being willing to conduct the ceremonies, and this would put them in an equal position as heterosexual couples. However, as long as the legal rights afforded to heterosexual and homosexual couples are the same, it is a difference of title rather than a difference of substance, and it is perhaps a change that could be brought forward in the future after more consultation with religious institutions," is the kind of view from the Trust.

Deputy M. Tadier:

Okay. I think that is quite clear and quite helpful, and that can no doubt be sent to us if it has not been already.

Executive Officer, Jersey Community Relations Trust:

Yes; no problem.

Deputy M. Tadier:

Thank you. So, if we focus on that for a moment, we have just had an informal chat with the law draftsmen which was very useful ... the law advisers, sorry; thank you for the correction. Essentially, the bit to do with religious ceremonies involves 2 Articles: one of them, to be technical, is Article 3 (5) which says: "Which prohibits the partnership to be taken place in a religious place" as you know, and there is a subsequent Article 14 which is just consequential on that. That seems to ...

Trustee, Jersey Community Relations Trust:

No religious rites to be performed during the service.

Deputy M. Tadier:

Exactly; and of course that can have complications to do with what songs you can play, what constitutes a religious song. But, you know, that is already a consideration in secular marriage as well. I think there is parity in that sense, even though it is complicated. Our understanding is that if these 2 parts were simply to be removed, that would not pose any legal problem. There might be a political debate that ensues, but it simply would permit any religious institution who wanted to perform a ceremony ...

Trustee, Jersey Community Relations Trust:

Talking from a personal standpoint and not necessarily that as a Trustee for the moment, one of the things we had considered beforehand - my partner is fairly non-religious - I would like to have included the Lord's Prayer as part of the service to help with my family's religious views. The law would obviously mean that that would not be permissible during the course of the service. That perhaps is a grey area in substance, and the removal of that one line to say no religious rites are permitted would allow for that in the service; but whether that would then offend some of the religious people by bringing that into the service is then a different issue completely.

Deputy M. Tadier:

Presumably, to play devil's advocate, if that is what I am doing, is that you invite the guests to your service, you know exactly who is going to be there, presumably you are not going to do anything to offend the majority, or offend your mum or whatever. So do you think that ultimately should be for the couple and for the religious leader possibly to decide?

Trustee, Jersey Community Relations Trust:

Putting the Trustee's hat back on, it is making the legal parity between the civil partnership or heterosexual and homosexual couples the same, and at the moment you are not allowed to have those religious activities taking place in the service. I think that is where the equality issue is, the law as drafted at the moment provides perfect equality between heterosexual and homosexual. The religious argument then could be brought in at a later date to whether that should be freed up on both sides to allow for a religious service to take place in a civil ceremony for both heterosexual and homosexual couples.

Deputy R.G. Le Hérissier:

What would your view be? Should that be allowed, or should the 2 environments be kept separate?

Trustee, Jersey Community Relations Trust:

I think it is a very strong moral compass issue for some people, and while they would allow homosexual couples to have the legal rights of inheritance, et cetera, et cetera, to those people the moral side of things is also a strong function. So I think keeping them separate is the way to go, for the moment. Ten years' time, perhaps, people's attitudes may have changed.

Executive Officer, Jersey Community Relations Trust:

When we were doing initial research and things, the majority of the opposition that we encountered regarding the Civil Partnership Law were based on religious reasons rather than anything else. So separating them out and delaying that.

Deputy M. Tadier:

I think there are 2 issues - I think you brought them out - that of course secular marriage exists - the Registry Office, for example - and as things currently stand, there is no provision for any religious connotation there. But the point is you do not have the option to go somewhere else for your ceremony; you have to accept what is being offered. So what we would logically, I think, like to do is give the churches themselves the option whether they want to perform those ceremonies to be able to do that. So at least there is parity.

Trustee, Jersey Community Relations Trust:

There is a slight opening there in effect. I believe, the Quakers and the Methodists will both bless a service after the legal side of the service has taken place. You can then go off to their meeting house or church and have it blessed. So there is the ability to have moral recognition as well as legal recognition, but it is a small crack in the defences at the moment.

Deputy M. Tadier:

Jump in when you feel necessary. I will ask in a moment about the Housing laws and how you feel that will pan out. But first of all I think it would be nice just for the record, to maybe hear from your personal experiences of how this has affected you, not having a civil partnership law in place, and what it will mean to you personally to be able to have this through, if that is okay.

Trustee, Jersey Community Relations Trust:

The one that jumps to mind but hopefully will not cloud the issues, is obviously the tax benefits. I know they are being eroded over the next few years anyway. My partner being disabled is non-working; as a married couple I would have enjoyed married man's tax allowance against my income with him not earning. That has not been afforded to us, so there has been a financial lowering of our standards over the last few years because of his disability. On the other side of things, the Social

Security Department consider us cohabiting, so they considered us as partnership, and as such there are certain obligations in his benefit that are not acceptable because my money is being put in with his. So as the law stands at the moment with it being having our candle burnt at both ends, not receiving because we are and not receiving because we are not. So there has been disparity in the system, and the fact that a form of marriage or civil partnership is not available to us is a form of discrimination; whereas the Civil Partnership Law would allow the avenue of equality to take place. Whether we then like the options that are given to us under equality is a different matter entirely. That is what the law is and everybody is in the same boat then. So there are issues there. I know, for example, I will have to get my list out: not having wills, but should anything happen to either of us at the moment, we have no legal obligation to each other's estate. Our families do get on. I consider his parents as my parents-in-law without a marriage and they would entitle me to stay in the home and keep whatever property et cetera of his as you would as if you were a married couple. So I am in a very good relationship. But had I had a family on his side who did not recognise me as the civil partner, then on his death I would be out of the house; I would not be able to keep any of his property; I would have no entitlement to his estate at all without a will. So there are very big legal issues in not having this law in place. If then we choose to carry on and not have a civil partnership, then that is our fault. You know, that then is us not taking use of the system that is in place.

[10:15]

Deputy M. Tadier:

That is useful. Thanks for that background.

Deputy R.G. Le Hérissier:

Keeping on the general thrust: in looking at other jurisdictions, and I know the law draftsmen and officers have had difficulty in finding a comparable one, and of course a sticking point has been Inheritance Law, which basically it appears they have had to park. What experiences have you picked up that we should bear in mind in Jersey when you have looked, for example, at what is happening in other countries like the different parts of the U.K. (United Kingdom)?

Executive Officer, Jersey Community Relations Trust:

We have not looked so much at what is happening in other countries, but we did send the draft law to an expert that we had been using in the U.K. who did a very long report back on, nothing to do with civil partnership but the inheritance laws in Jersey. She felt that what was in the Civil Partnership Law at the moment was extremely good and had ticked off all the issues that she had originally brought up in terms of, you know, the fact that now *viduité* is going to be abolished and widows will receive *douaire* and civil partners intestate succession will receive *douaire* too. She felt that what was in the law ... so that was kind of our view that she felt it was quite well covered in there. Did not feel any ...

Trustee, Jersey Community Relations Trust:

Compliant with human rights legislation; so that is it. It is all covered, you know.

Deputy R.G. Le Hérissier:

So she had no experience or you have not picked up any experience in parts of the U.K. which suggest that, you know, we might be hitting potential problems?

Executive Officer, Jersey Community Relations Trust:

We did not ask her to. She is from the U.K. We did not ask her to do a kind of comparison, so to speak. We just asked her to review whether the Civil Partnership Law covered the issues she had brought up about how it was previously, and she felt that it did.

Deputy R.G. Le Hérissier:

Of course it was a bit ... well, it was not a remote possibility, but in an informal chat with one of the Law Officers, he said that the issue of civil partnerships' parity with heterosexual and homosexual

couples has been argued in some places, particularly Canada. There has been, he said, a bit of advance, but it has never been an issue in Europe or Britain. Is that your feedback?

Trustee, Jersey Community Relations Trust:

It does vary round the world. There are some states in America where they have just gone straight for marriage full stop, and marriage is open to any 2 people in a long-term committed relationship. In other states it is still completely frowned upon and they will not accept civil partnerships at all. So even in one country like America, you have got differences across each of the states. Europe is pretty on board with the equality factor and getting parity across the board to everybody. Some countries are a little further behind than others, but we march forward slowly.

Deputy M. Tadier:

I think that is what the panel has been aware of, and I think it is accepted in many circles that to do this logically you would not have necessarily a distinction, possibly at some point in the future you would have one institution which is either called civil marriage, a marriage, civil partnership, union or whatever and that would apply across the board. Would you agree that is probably because certain attitudes in society have not, as I say ... well, they are not homogenous, first of all, and they have not kept up with perhaps what the legal pressures and moral pressures are on politicians and lawyers.

Executive Officer, Jersey Community Relations Trust:

I would say that.

Trustee, Jersey Community Relations Trust:

Yes.

Deputy M. Tadier:

Yes. Sorry; I am putting words in your mouth.

Deputy R.G. Le Hérissier:

You have said, Steven and Kirsten, you have had this report. Did you at any point say: "Look, why do you not clean up the whole mess and simply go for one marriage law?" even though marriage itself is sometimes criticised?

Trustee, Jersey Community Relations Trust:

We did have a meeting in 2009 where Sam Dick of Stonewall came over as one of the speakers, and even back in 2009 it was being voiced in the U.K. that they should move from civil partnerships through to marriage, and his advice was "one step at a time." Get the establishment of the rights to have the relationship enshrined in law and then you can worry about finer detail once people have accepted that the state of marriage civil partnership exists. You can then expand it or move it or mould it according to what people feel is acceptable and comfortable. You do not want to impose a law that people feel uncomfortable with because they just will not accept it, and then you will get people back-lashing against it and wanting to just derail the whole situation, rather than gaining something that is so easily attainable.

Deputy R.G. Le Hérissier:

When you mentioned the 2 churches, and we are going to interview representatives, not from the Methodist church, but we are definitely going to interview the Dean and the Quaker Fellowship, obviously churches have got different structures of governance and some of them operate in quite a democratic way, some of them give a lot of latitude to the local priest or priestess or whatever, and others of course run in a very hierarchical way. You mentioned Methodism and Quakerism; are they both churches where the local group has a lot of say, or the local vicar in the case of the Methodist church?

Trustee, Jersey Community Relations Trust:

I would not know what their influence is. It is just good to know that they are on side and supporting us.

Deputy M. Tadier:

I do not want to focus on the religious side too much, but I think it is important to try and resolve it because we will need to know as a panel whether or not we put recommendations forward and what they should be. But it seems to me that there are 2 options. We can say the fact that we recognise that civil partnerships do not give any access to any kind of religious opportunity, if you call it that, and the options are either we say that because of that fact we make an exception for civil partnerships so that the secular part, the Registrar, can allow for a certain amount of religious input, whether it be a song, the Lord's Prayer or even, you know, other religious inputs; because that is not available anywhere else I think it would be quite reasonable for the State to impose that difference. Or we say we must keep both areas secular, but then open it up to the religious community to be able to perform the equivalent marriage for the civil partnerships. Would either of those seem preferable?

Trustee, Jersey Community Relations Trust:

But even in a religious in-church marriage, you do have that split of the religious and the legal. You have the service in church and then you go off to sign the register which is just the legal part of the service and the witnessing of the marriage. So there is already that split in a religious marriage in church between the legal obligation and the religious obligation.

Deputy M. Tadier:

We will have to verify it, but it is my understanding that in recent years they have extended the ability for religious leaders to be able to take the part of the registrar, just for practical reasons. So you do not need to get a registrar into the church; the vicar or the priest can act as that. If that is the case, I mean there is an argument I think for that to be extended to civil partnerships for those priests who obviously want to be able to perform those.

Trustee, Jersey Community Relations Trust:

I would think there is a case for that, but perhaps in future years once the stability of the civil partnership has been established, then to move forward and find out what the wider scope past that. I can see in the future, and I think it would be the Trust's view then in the future, that the line of "cannot be performed in churches" would be deleted. But at this stage I think to protect the people who have very high moral religious beliefs, they will sit quite happily with the Civil Partnership Law as it is, although that may offend one or 2 people who would like it to be in church. I think for the majority of people at the current time, putting it through with the proviso as it stands is the better option.

Deputy R.G. Le Hérissier:

I do not know if the Trust debated this, but there is the issue at the moment that it cannot be solemnised in a church, according to the ... But that does not mean - sorry, this sounds a bit illogical - that does not mean it can be, because obviously, as Monty said earlier, you have got to get the consent of the relevant churches. But would you like those provisions removed from the law, because some people have seen them as quite negative?

Trustee, Jersey Community Relations Trust:

As I say, as an ideal, I would personally like to see them removed. But I think that is probably one step too far for certain people at this time. To them it is a protective issue of their faith, of their religion, that I cannot come into their church and have it done under their roof.

Deputy M. Tadier:

I think that would be an interesting point to put to the Dean and to other religious representatives, because it is a case of establishing exactly how much opposition. I think sometimes there is a perceived opposition, and we will find out exactly to what extent that feeling is there. But with regards to the Housing Law and the non-quals, et cetera, are there any issues that you are concerned

about, or are you happy that they will be resolved in due course?

Executive Officer, Jersey Community Relations Trust:

I think again we are happy. We spoke to [the Chief Minister's Department] about the different points that had been made in terms of housing and [they] made us feel quite confident in fact that they were talking to the Population Office and making sure that the laws were in parity, and the Control of Housing and Work Law, which is obviously going to be debated before the Civil Partnership Law, will cater for civil partners; and in terms of secondary legislation et cetera, again [they] made us feel quite confident that everything we wanted to see from civil partnership perspective would be included, but obviously time will tell on that.

Deputy R.G. Le Hérissier:

So you were not asking necessarily for an improvement; obviously you were not asking because as you know the Housing Laws are a controversial law which a lot of people see as discriminatory in its own sort of right, so to speak. So have you just - to put it slightly facetiously - sort of acceded to the fact that the Housing Law in all its apparent illogicalities should apply to civil partnerships simply because that gives you the parity that Steven argued earlier?

Trustee, Jersey Community Relations Trust:

Yes, the parity fact is the important issue.

Executive Officer, Jersey Community Relations Trust:

It seems to be absent from the Civil Partnership Law. There was no reference. We just want to clarify that, and that obviously they are saying that it is going to be covered under the other law.

Deputy R.G. Le Hérissier:

There is this incredible list of laws on pages 19 and 20 which are all the laws where there have to be, I thought, in my naïve way ... and of course we thought this when ministerial government came in, where the word "committee" appears you just put the word "Minister", but sadly we were all naïve in those early days. So there is this incredible list of laws ranging from the Adoption Law to the Wills and Succession Law at the end, which have to be changed in various ways, and the Law Officers and the Draftsmen have apparently done a massive trawl of these laws, and of course have proposed at the end of this law the various amendments. I know it sounds somewhat over the top, but have you checked all these things? Have you checked them and as with Housing, for example, have you said: "Oh, these are possibly contentious areas. We really need to know"?

Trustee, Jersey Community Relations Trust:

No, we have not read all the subsidiary laws.

Deputy R.G. Le Hérissier:

Have you just substituted the words "civil partnership" or - as a lot of them have when you read them - added the words "civil partnership" to the word "marriage"?

Trustee, Jersey Community Relations Trust:

The Law Drafting Office did warn us that it would take about 2 years total as they have done and have been kept on target, which is credit to them for keeping up to date with what is going on. We think we just have to trust them to have been through with as fine a toothcomb as possible. We have not got the resources to sit and check through every single law. It is an open situation, so if suddenly we found out that they had missed the Dog Walkers' Law of 1847, we can come back to it and then amend it at a later stage. But these appear to be all the major ones like Wills and Successions, Income Tax Law, Financial Service Law. One that people do not realise is for Adoption and Inheritance Laws. So on a first marriage you have got 2 children; you then have a civil partnership; what right do they have to inheritance from the civil partnership as well as from the marriage? All that does appear to have been looked into; so we are quite pleased that they have done quite a sterling job.

Executive Officer, Jersey Community Relations Trust:

I think our main concerns are similar to yours in that it was inheritance and housing that were the ... obviously all the others were important, but they were the 2 main areas that we focused on with the resources that we have got.

Deputy M. Tadier:

Irrespective of the parity now, and we will focus on the inheritance, are there any changes that you would like to see ideally to the Inheritance Law as it would be applied?

Trustee, Jersey Community Relations Trust:

I have not seen anything that rings alarm bells. It is going for the parity, so long as it is the same situation for a heterosexual couple as a homosexual couple. Whether there is then an issue with the preceding laws, then that at this current stage is not an issue for us. That is something for further down the line, to get the whole law changed. At the moment, parity is the important issue which is what the Civil Partnership Law gives.

Executive Officer, Jersey Community Relations Trust:

And there is recognition for children of civil partners in there as well, so that is good.

Deputy M. Tadier:

One idea that we were looking at is that there remains an option if there are flawed areas in the Inheritance Law, for example; we could ask for those flaws to be taken out with regard to the civil partnerships, so that provisions for civil partnerships would exceed those for married couples. So there would not be parity, but then it acknowledges the fact that the 2 are slightly different, even though parity is the ideal ... and then hopefully that would in due course bring the other one up, probably with more urgency, I suspect. Whether or not that is practical to do, or if it is easy to do, is another matter, but certainly that could be an option. You could be sure if civil partners had their greater rights than married couples, that there would be a lot more social pressure for the Marriage Laws and Inheritance Laws to be changed. That is perhaps a political issue, rather than otherwise.

[10:30]

Deputy R.G. Le Hérissier:

Any further points? We have obviously covered, I hesitate to say, a waterfront because they are apt to get a wrong reaction; but we seem to have covered the waterfront. Are there any other things that you wish to tell us? I have to re-emphasise, I am interested in this issue of other jurisdictions because clearly, as the Law Officers' Department have told us in a submission, they realise it is a devolving law and they may well, despite this massive list of other laws, either have missed a law or they may well have missed a nuance or an issue within a law, you know, which will pop out of the woodwork at a later point. You have not picked any of this up, have you, from what you understand happens in other jurisdictions?

Executive Officer, Jersey Community Relations Trust:

No.

Trustee, Jersey Community Relations Trust:

No. It is very much based on the U.K. system of adopting the civil partnership, and there are different ways, as you say. In some places it is just straightforward marriage, and there does not seem to have been a problem with just adding "or civil partner" after every time the word "marriage" appears. But the law drafters have been pretty thorough in going through looking for the nuances here and coming up with a Jersey solution to the way some of the ancient laws are drafted to allow for civil partnerships then not to be in conflict with the older laws.

Executive Officer, Jersey Community Relations Trust:

Unfortunately because we have got quite limited resources we kind of have to concentrate them on specific areas.

Deputy R.G. Le Hérissier:

Yes. But there is no doubt, and of course in a sense with the economic situation as it is, Monty has mentioned Housing and you mentioned earlier, Steven, Social Security. They will be areas where how the staff there handle these new definitions will be quite important, and as far as you are aware, they are ready to roll. They are sort of fairly clear as to how, if the law goes through ...

Trustee, Jersey Community Relations Trust:

From the discussions with members of staff and personal issues, they have all been very supportive. It has usually been a case of: "We can understand the situation, but that is not how the system currently works." Whereas this will allow them then to adopt and give a level playing field on all cases.

Deputy J.M. Maçon:

Just on that question, from your discussions have you had any conversations with relevant departments about the type of training that will be given to their staff when these laws are implemented, just so you know, there are ...?

Trustee, Jersey Community Relations Trust:

I have not, but then that is an issue between the management of each department.

Deputy M. Tadier:

Yes. I am just wondering if it has been flagged.

Executive Officer, Jersey Community Relations Trust:

No, we have not.

Trustee, Jersey Community Relations Trust:

From my general view of the feelings of the population, I do not think there is going to be a problem with members of staff in a department not accepting this law. There was at one point a discussion of what happens if the registrar does not wish to register a civil partnership because of their religious beliefs? It is a case of: "I am sorry, but that is your job. You are going to have to, and if you do not like the job, get another job." I think that attitude will prevail through all the departments, you know. You have got to sign this paperwork because that is the law, that is the rules of the department. But I do not think there are many staff out there who would have an objection to doing it any way. I think society has moved on considerably in 10 years, and civil partnerships are considered a form of marriage to most people throughout Europe.

Deputy M. Tadier:

It is more of an H.R. (Human Resources) issue, is it not? I mean, there might be laws we do not agree with anyway, but ...

Trustee, Jersey Community Relations Trust:

We still have got to abide by the rules, regardless of what those rules are.

Deputy R.G. Le Hérissier:

Oddly enough - sorry I am still harping on about the other departments - this massive list of laws for obvious reasons does not directly refer to criminal justice kind of issues, but were the police brought in, the judicial system, the court system? Were they seen as people you needed to bring on board?

Executive Officer, Jersey Community Relations Trust:

Not as far as I am aware.

Deputy R.G. Le Hérissier:

No; okay. You do not see any implications in those areas of service, public service?

Executive Officer, Jersey Community Relations Trust:

There may be implications but we did not explore that area.

Trustee, Jersey Community Relations Trust:

But I know the police have their own internal equality boards in making sure there is no discrimination from their code of conducts with the police. So if they have those in place anyway, I do not think they will have any problems with accepting the situations of couples being the same sex or of an opposing sex?

Deputy M. Tadier:

Can I ask, this is probably slightly more controversial to some members in society, but with the Adoption Law, the amendments that are going to take place, have you got any comments to make on that? Are you happy with what is being offered? It should just be hopefully ... the reason I flag it up, is because I see that as being possibly being one area of contention for the States when it comes to ...

Trustee, Jersey Community Relations Trust:

I think the adoption agencies, talking again from a personal viewpoint where my mother was a temporary foster carer while the children were going through the system, is that the people who place children for adoption are very careful with who they place them to and look at the benefits to that child; and if that child is going to receive a better care of life from same sex couple, then why should that not be the case? They are never going to knowingly put a child into any danger, whether it be a same sex relationship or an opposing sex relationship. Again, I think you have to rely on the staff doing their job correctly and to the best of their abilities, and the law will allow for them to then have a wider scope of putting children where they can best be served by the community.

Deputy J.M. Maçon:

I think on that point would you not acknowledge and agree that under the current legislation, homosexual people can adopt anyway, so it is not a huge step up?

Trustee, Jersey Community Relations Trust:

It is not, but people have this blanket thing that you cannot because, you know ... but there is that thing of having the stable relationship and by having a civil partnership you are demonstrating that you have that stable relationship. But, yes, there is no reason why they cannot give a child to a couple of any persuasion.

Deputy R.G. Le Hérissier:

Okay. Any wrap up questions?

Deputy M. Tadier:

No. I think that pretty much covers the areas that we were concerned with.

Deputy R.G. Le Hérissier:

Okay. Either of you? Is there anything to wish to say, or for ever hold thy peace?

Trustee, Jersey Community Relations Trust:

Just to thank the Deputies for inviting us to put our views.

Deputy R.G. Le Hérissier:

Well, no, we thank you very much. What we will do probably, as I mentioned at the beginning, is prepare a statement for the States which is quite useful because we are finding when highly technical laws come to the States, often, you know, the essence of the law is sometimes buried under

explaining the technicalities. But more to the point, I know we have Members here and we will in any case pursue it later this morning ... we will look closely at areas that have caused concern, and obviously one is the religious area now. We do not wish to upset the applecart, because you have obviously portrayed how you approached it, but we will look at that and we will obviously discuss that with a couple of people this morning. Whether we need to remove these 2 provisions of the law is quite a neutral thing and will not necessarily lead to an adverse reaction; in fact, it may lead to some quite positive discussion.

Deputy M. Tadier:

Very quickly, because you will be aware probably that the U.K. are now in the next phase where they have had a 90-page consultation which is coming to an end about an opt-in clause for religions to be able to ... have you got any comments on that?

Trustee, Jersey Community Relations Trust:

Only that it will be interesting to see how that goes. There are some very strongly held religious views in the U.K.

Deputy M. Tadier:

Yes. I think in some ways if that had happened 3 months ago then we would be in a better position to perhaps have more leverage.

Deputy R.G. Le Hérissier:

Okay. 10.45 a.m., we have the Deputy Chief Minister, if you want to stick around. But we thank you very much for coming. Thank you for your views and as they say, we will be in touch.

Executive Officer, Jersey Community Relations Trust:

Thank you.

[10:38]

STATES OF JERSEY

Economic Affairs Scrutiny Panel Quarterly Hearing with the Minister for Economic Development

MONDAY, 21st MARCH 2011

Panel:

Deputy M.R. Higgins of St. Helier (Chairman)
Deputy C.F. Labey of Grouville (Vice Chairman)
Deputy J.M Maçon of St. Saviour
Deputy D.J.A. Wimberley of St. Mary

Witnesses:

Senator A.J.H. Maclean (The Minister for Economic Development)
Senator P.F. Routier (Assistant Minister for Economic Development)
Chief Executive, Economic Development
Deputy Chief Executive, Economic Development
Assistant Director, Performance and Operations, Economic Development

[10:34]

Deputy M.R. Higgins of St. Helier (Chairman):

Right, if I can just welcome you all to the Panel meeting and obviously we will have to take you through the formalities; we are all aware of the status of these Panels and the use of evidence and so on; the sheet is there if you wish to read it. Other than that I will just introduce myself and the other Panel members can do it; if you can introduce yourselves for the benefit of the tape and then we will go on and straight into it. Okay, I am Mike Higgins, the Chairman of the Economic Affairs Scrutiny Panel.

Deputy C.F. Labey of Grouville (Vice Chairman):

Carolyn Labey, Vice Chair.

Deputy J.M. Maçon of St. Saviour:

Deputy Jeremy Maçon, representative of Petite Longueville of the Parish of St. Saviour.

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

Deputy Wimberley, St. Mary.

The Minister for Economic Development:

Senator Alan Maclean, Minister for Economic Development.

Assistant Minister for Economic Development:

Senator Paul Routier, Assistant Minister for Economic Development.

Chief Executive, Economic Development:

Chief Executive, Economic Development.

Deputy Chief Executive, Economic Development:

Deputy Chief Executive for Economic Development.

Assistant Director, Performance and Operations, Economic Development:

Economic Development.

Deputy M.R. Higgins:

Thank you. Before we start I have had a request from Mr. Dun asking is there any objection to him video-recording this meeting? Do you have any objections on your side?

The Minister for Economic Development:

Yes, I do.

Deputy M.R. Higgins:

Okay, in that case we ...

The Minister for Economic Development:

I am happy just to elaborate on that very briefly. Quite simply there was an agreement some time ago that any recording should be from accredited media. I am very happy obviously he is here as a

witness but outside of that I do not think it is appropriate, certainly not without pre-notice.

The Deputy of St. Mary:

Is the basis of this, Minister, that you think that accredited media are more fairer in some way, less biased than non-accredited media, what is the basis of the distinction, in your view?

The Minister for Economic Development:

No, that is not the distinction. The distinction is quite simply there is a cause for recourse through the accredited media, which of course there would not be through the unaccredited media.

Deputy M.R. Higgins:

Okay, just leave it at that and we will not have the recording, although I must admit that I do not necessarily agree with you; it is not because I am on the other side of the table. I do believe in open broadcasting, however, as you do not want it done, we'll move on.

The Minister for Economic Development:

I also believe in open transparency affairs but, nevertheless, for the reasons stated, I do not think that is the case but I would suggest that the matter could perhaps be revisited by the Chairmen's Committee.

Deputy M.R. Higgins:

It is being revisited by the Chairmen's Committee and P.P.C. (Privileges and Procedures Committee); there is a meeting coming up shortly.

The Minister for Economic Development:

Fine and the Council of Ministers, I am sure, will be happy to get involved in the dialogue of future discussions on the matter in the future.

Deputy M.R. Higgins:

Okay, right, anyway that is out of the way. Right, let us start; we are going to start off with the

Comprehensive Spending Review and if you could first of all outline where you are with the process, what you have done and what outcomes you have reached?

The Minister for Economic Development:

I assume you are referring to the 2012 C.S.R. (Comprehensive Spending Review) programme; clearly 2011 is now dealt with. As far as 2012 is concerned, because of the election process and timings, the whole process has been brought forward and accelerated. As such, we have to have our plans complete and submitted by the end of April for 2012. At this stage we are working to the indicative figures provided and we will be publishing our full plans after that date.

Deputy M.R. Higgins:

End of April?

The Minister for Economic Development:

End of April, yes.

Deputy M.R. Higgins:

And you cannot give us an insight into how you are looking at it at the present time and ...

The Minister for Economic Development:

I certainly have to do so from the point of view of the highlight, the high level view; there is still work being undertaken, as you would appreciate. What I have said publicly is that for 2012 Tourism spend, for example, it is going to be protected, that is a policy decision and there are going to be no further cuts in 2012 for Tourism, and that as far as the rest of the money is concerned we will be looking at a reduction of the Jersey Finance element to offset for Tourism and apart from that it is across the board; there is no other particular distinctions at this stage.

Deputy M.R. Higgins:

When you say "across the board" are you just trying to take a certain percentage from each area or are ...?

The Minister for Economic Development:

No, not necessarily. Every area of activity of Economic Development is being looked at and we are focusing, as you probably imagine, on areas of greatest productivity and greatest impact but we will continue to focus our resources in those areas but it is right that we look at every activity that Economic Development undertakes.

The Deputy of St. Mary:

When you talk now of greatest productivity that always suggests, to my mind, one thing which is the lowest footprint and the highest yield per employee is finance(?), but the greatest productivity, do you also have a criterion about greater sustainability, in terms of the Island's future?

The Minister for Economic Development:

Sustainability from an economic point of view is an important factor, yes. I would agree with that.

The Deputy of St. Mary:

Such things as food security, wherein you weigh them orderly?

The Minister for Economic Development:

At this stage we are in the early stages of preparing an economic growth strategy for the next 5 years. All factors will be considered as part of that, in terms of a long term sustainable economic future for the Island. I might add as part of that process we anticipate that by May or June we will be in a position to publish a Green Paper on the economic growth strategy. It would be our intention that that strategy, once approved by the Council of Ministers, would be submitted to your panel, Mr. Chairman, in advance of it being formally published and you can then consider it at that stage. It is an important piece of work but I hope that you would give it your due attention, I am sure you will.

Deputy M.R. Higgins:

I can assure you we are taking a very close interest in that.

The Deputy of St. Mary:

Once again, on the Green Paper, I was going to ask what would be the inputs, how will you achieve input into this economic growth strategy, so it is good to hear it is going to go through the proper route, Green Paper/White Paper presumably, what is the date for the Green Paper?

The Minister for Economic Development:

In terms of publishing it?

The Deputy of St. Mary:

In terms of publishing so that people can contribute, yes.

The Minister for Economic Development:

The Green Paper is middle part of the year, May/June.

The Deputy of St. Mary:

May/June, I am just concerned that it is May.

The Deputy of Grouville:

And the consultation period ...?

The Deputy of St. Mary:

Yes, 12 weeks, yes, I think.

Deputy M.R. Higgins:

It needs the full consultation period.

The Deputy of Grouville:

Yes, absolutely it does. When are you expecting to finalise that?

Deputy M.R. Higgins:

Basically we know we will discuss it after the election essentially.

The Deputy of St. Mary:

There is a Green Paper, is there any chance of slippage on that timetable? When you say May/June, it sounds a bit ...

Chief Executive, Economic Development:

It is subject to final sign-off by the Minister and the Council of Ministers but subject to that then we are on schedule, we are on the second or third draft now. We are on schedule for publishing towards the latter part of May or early part of June.

Deputy M.R. Higgins:

Why was there such a gap, because I believe the last economic growth policy finished or was set out to 2009, so we have gone a 2-year period without any strategy?

Chief Executive, Economic Development:

That is not true because, with respect, the last economic growth strategy was a productivity-led strategy, which we had been following, because I do not think that it was invalidated by the turning of a calendar year.

Deputy M.R. Higgins:

Can you explain what you have been doing then on that particular ... Just go forward and tell us how you are trying to achieve economic growth at the present time under the old policy rather than working with the new one?

Chief Executive, Economic Development:

I think if you look at the activity of Economic Development it is divided up into 3 broad categories, all of which are designed to deliver sustainable economic growth across all sectors of the economy. Our support for financial services continues with the activity at J.F.L. (Jersey Finance Limited) and our legislative programme; our support for tourism and agriculture, not just supporting the marketing

promotion but also driving both the agriculture and the tourism sector up the value and productivity chain with some success; both of those sectors have shown material growth over the period. Finally, and probably the thing that has come in over the course of the last 3 years or so, is the activity of Jersey Enterprise which is about business support and development for all of the non-financial services sectors, which I think has been very successful. You have got the review in front of you there of the 2010 Jersey Enterprise activity, and if you take all of that in the round that is what our activity has done to support real economic growth in the Island.

The Deputy of Grouville:

Can I ask how you measure the success of Jersey Enterprise?

Chief Executive, Economic Development:

There in terms of the number of jobs created, in terms of the ...

The Deputy of Grouville:

With respect, you have just handed this to us; can you, for the purposes of this hearing, explain how you measure the success of Jersey Enterprise?

Chief Executive, Economic Development:

The way that one measures the success of enterprising business development activity is consistent really across any jurisdiction and you measure it in terms of the key drivers of employment, business creation, business survival, inward assessment activity, trade and export development activity and if you see in the report there, there are statistics for 2010 as to the performance of Jersey Enterprise against all of those criteria.

The Deputy of Grouville:

When you say the companies, is the concept being set up on the back of Jersey Enterprise?

Chief Executive, Economic Development:

No, not just business start-ups. Jersey Enterprise covers business start-ups, it covers the existing

businesses who require help to either put them on a growth path or increase growth. It involves inward investment of businesses from outside the Island into the Island, and it also involves opening up new export markets for companies within Jersey to trade in the U.K. (United Kingdom) and other European markets; that is what we do.

The Deputy of Grouville:

About how many firms ...?

[10:45]

Chief Executive, Economic Development:

How many firms we would have supported? How many firms would have been created? What the level of export trade with the level of investment is? Right across the piece, all of which we can legitimately say have had a material involvement of Jersey Enterprise and therefore economic development in that activity.

The Deputy of Grouville:

Material involvement; what is that, what does that mean?

Chief Executive, Economic Development:

We believe that without the support - this is followed up by feedback from the businesses - without that support those outcomes would not have been delivered. It is the difference between something happening and it not happening.

The Deputy of St. Mary:

Can you enlarge on the aspect of feedback, how do you generate the feedback?

Deputy Chief Executive, Economic Development:

Feedbacks come in a number of different ways; companies will ask you to provide feedback at the initial and following interviews. We do an annual survey every July; we look at awareness levels

and also acceptability of the service we actually deliver, just to make sure we are delivering the right kinds of products and services to the companies, and then we receive feedback through external organisations such as the I.O.D. (Institute of Directors) and Chamber of Commerce, who are influential organisations in the business community.

The Deputy of St. Mary:

Who actually carries out the survey? You said there is an annual survey, is that 100 per cent or is that a sample survey?

Chief Executive, Economic Development:

No, that is an online survey we do every year and it goes out to everybody who is on our C.R.M. (Customer Relationship Management) system. I think last year the response rate was about 12 per cent and there are about 4,500 companies on the database.

The Deputy of St. Mary:

That is entirely in-house?

Chief Executive, Economic Development:

It is, yes.

The Deputy of St. Mary:

Are the responses identifiable? Are they anonymous?

Chief Executive, Economic Development:

They are anonymous, yes.

Deputy M.R. Higgins:

In fact do you have any independent audit of these figures?

Chief Executive, Economic Development:

That is something we are working on at the moment, yes. We are talking to one of the research companies on the Island to get independent research, obviously it comes at a cost but I think as a snapshot I think it would be like a useful exercise to have.

Deputy M.R. Higgins:

I think it would be very useful because again looking at some of these figures, you see 625 start-up businesses supported by you during their initial trading period; how many of those are still in existence, for example?

Deputy Chief Executive, Economic Development:

Those are the start-up businesses that came in last year.

Deputy M.R. Higgins:

Okay, how about the year before then; of the ones who have started, how many of them are still in existence?

Deputy Chief Executive, Economic Development:

I have not got the figure off the top of my head but I can find out and send it direct to you.

Deputy M.R. Higgins:

Yes, this is what I mean about having some independent assessment of the figures because the figures, they look impressive but again, unless you ask other questions and look behind them they are meaningless.

Deputy Chief Executive, Economic Development:

One of the things we would be keen to look at is the sustainability of the start-up businesses, so Jersey Enterprise has been in business now for about 3 years and one of the U.K. parameters is the sustainability of businesses beyond year 3, and in the U.K. that is less than, I think, about 10 per cent. It would be interesting to carry out a similar exercise here in Jersey with the companies that we have been helping since 2008, to find out how many are still trading.

The Minister for Economic Development:

To be fair, it is not just about start-up businesses though, it is about developing existing businesses and helping them to grow and that is an important element of sustainable economic growth strategy. There are a range of mid-sized businesses that benefit from the input of Jersey Enterprise. In fact I was at a Business Angel's event last week; I was approached by one of the directors of Jersey Pottery who was, out of the blue, referring to the work and assistance they had had from Jersey Enterprise where their export markets were taking on growth significantly into a number of countries, which frankly would not have happened. It is that type of initiative that we need to measure and continue to measure to ensure that products and services are right and yet, Mr. Chairman, I would agree with you 100 per cent that it is important we have ongoing assessment of not just the start-ups but where, and if we are being successful in terms of supporting growth of existing businesses.

Deputy M.R. Higgins:

Yes, and although it is an expense, I would argue for an independent assessment of it because that is the only way you can be sure yourselves how well you do.

The Minister for Economic Development:

Indeed, and that is why it is being looked at now.

The Deputy of Grouville:

What is the total budget for Jersey Enterprise?

Deputy Chief Executive, Economic Development:

The figure for 2010 is - I want to get the exact figure for you - about £1.97 million 2011.

The Deputy of Grouville:

How many staff does Economic Development employ?

The Deputy of St. Mary:

Within that sector, yes.

Deputy Chief Executive, Economic Development:

We employ at the moment 11 people in Jersey Enterprise.

Deputy M.R. Higgins:

Are they full time or ...?

Deputy Chief Executive, Economic Development:

There are 5 of those getting full time business support and advice. We have 2 people on the international side dealing with them with investments and we have 2 people on the skills side.

The Deputy of St. Mary:

Sorry, just the detail, are those additional to them, a third party to them?

Deputy Chief Executive, Economic Development:

Yes.

The Deputy of Grouville:

So 11 full time staff and do you outsource a lot of the expertise; the I.T. (Information Technology), the marketing ...?

Deputy Chief Executive, Economic Development:

We do use a number of business cultures and mentors, yes, but that number is coming down as the capacity staff gain their own experience and go through various training programmes; the dependence on external advisers is coming down.

The Deputy of Grouville:

Do you have to outsource for accountants?

Deputy Chief Executive, Economic Development:

If they are looking for in-depth financial advice, yes.

The Deputy of Grouville:

In among your 11 there are no accountants there?

Deputy Chief Executive, Economic Development:

There are no qualified accountants, no.

The Deputy of Grouville:

Yes, that is what I mean by accountants.

Chief Executive, Economic Development:

It is not usually in the larger jurisdictions for business support operations to have within their body qualified accountants. They are there to analyse business plans and the market potential. It is specialist accountancy advice, which goes far beyond that that is usually contracted in and has proven to be far more effective to be contracted in by third parties in every other jurisdiction, which is the basis of the model we operate.

The Deputy of Grouville:

Jersey Business Venture, I would like to ask some questions on that and where you see the future of Jersey Business Venture vis-à-vis Jersey Enterprise?

Chief Executive, Economic Development:

I think in fact I can answer that in outline because the Deputy Chief Executive Officer can expand. We believe that the most effective and efficient way of supporting businesses in the Island is to a single enterprise and business development support operation and as we published this in our C.S.R. proposals at the end of last year that we should combine, and that is not take over, that is combine Jersey Business Venture and Jersey Enterprise into a single enterprise and business development

function; that is what Jersey Enterprise and Jersey Business Venture seek to deliver, which is the full range of business support and enterprise support for non-financial services businesses. We have been talking to Jersey Business Venture for probably the best part of 2 years now and have made a number of proposals and I hope, although it appears we are further away than we would have hoped, that within relatively short order we will be able to come to an agreement whereby we combine both of those entities into a single enterprise support for businesses.

Deputy M.R. Higgins:

Just on this here, are they doing complimentary things or are they doing the same thing? In other words, is there a difference between them?

Chief Executive, Economic Development:

We believe that there is potential duplication that exists as being the services that Jersey Business Venture offer; that is not a commentary on the quality but simply is very good and the services that Jersey Enterprise offer, although Jersey Enterprise offers a much broader range of services. But logically from a customer perspective, from a business perspective, what businesses look for is a single point, a first stop-shop where they can access advice, financial assistance, products, services and business support for product services, and that is the rationale behind combining the best of Jersey Enterprise and the best of Jersey Business Venture into a single entity.

The Deputy of Grouville:

Do you give Jersey Business Venture a grant each year then?

Chief Executive, Economic Development:

Which covers 90-odd per cent of their running costs, yes.

The Deputy of Grouville:

I notice that their grant this year has been cut, yes?

Chief Executive, Economic Development:

That is not strictly true; their grant last year was £130,000 ...

The Deputy of Grouville:

Yes and this year it is £98,000.

Chief Executive, Economic Development:

We have not agreed what the grant for the whole year with them is yet, so ...

The Deputy of Grouville:

A whole year?

Chief Executive, Economic Development:

Yes.

The Deputy of Grouville:

When do you get to agree for the whole year, bearing in mind we are in March?

Chief Executive, Economic Development:

The basis of the discussion that we are having with Jersey Business Venture has been that, during the course of 2011, as we published in the documents published at the end of last year, we would seek to merge Jersey Enterprise and Jersey Business Venture during the course of this year.

The Deputy of Grouville:

You said not merged before.

Chief Executive, Economic Development:

No, I did not. I have said merge, I did not say take over. I said merge not take over, so we would seek to merge the 2 entities, which would remove the requirement to pay the grant for the balance of the year in which both entities did not exist independently.

The Minister for Economic Development:

Just to be clear about this, there have been discussions for about 2 years, as the Chief Officer was saying, between Jersey Enterprise or Economic Development and Jersey Business Venture. The intention has been, and certainly it would be my desire to see a resolution as to how we are going to move forward with a degree of support for the business community in a combined unit, and the word is very much merge, it is not take over and, indeed, I think that it should be noted that, in my view, Jersey Business Venture have done an excellent job to date, but there is more than likely duplications between the functions of Jersey Enterprise and Jersey Business Venture. I think we need to take the strengths of both organisations and combine them into one, and that is where the basis of the discussions have been. I am disappointed we have not reached resolution on that.

The Deputy of Grouville:

At this point in time, Jersey Business Venture do not know what their budget is for this year, is that right?

Chief Executive, Economic Development:

For the full year that is right and that is because we had an active discussion with them in the balance of last year about combining the 2 organisations and therefore we have advanced them a grant, which we do on a quarterly basis, to cover their fixed costs and some of their variable costs for other parts of the year. It was made very clear to them, and it says in the documents that we distributed, if we cannot reach agreement on merging the 2 organisations then of course we would revisit the issue.

The Deputy of Grouville:

Presumably you have been giving them a grant, because historically you have been giving them a grant for many years, because you think that they do a good job, and has anyone seen their surveys back?

Deputy Chief Executive, Economic Development:

No, they share very little information with us. They hold their database as being closed access toward Jersey Enterprise. We have not seen their surveys. We have got no idea what they say. We

see the publicity that comes out around their surveys but we have no in-depth information.

Deputy J.M. Maçon:

Then just to check, have you requested the surveys?

Deputy Chief Executive, Economic Development:

We have on occasions, yes.

The Deputy of Grouville:

Have the clients, have the punters, people looking to set up businesses and use these services, expressed a desire to have separate entities or to come and use Jersey Enterprise instead of Jersey Business Venture or vice versa.

Deputy Chief Executive, Economic Development:

We would not know that without knowing what their surveys say.

The Deputy of St. Mary:

It really puzzles me, this whole question that you have been considering a merger for 2 years, and what I am looking for from you is evidence of the satisfaction and of the success, however you define that, but particularly the satisfaction though of the punters, as Carolyn said, with both the organisations because only that can give you a steer as to how best to proceed. Can you tell us, what research you have done into what the customers think about these 2 organisations as part of these merger discussions? What is the evidence? What evidence do you have? You have got your own evidence, yes, 12 per cent surveys and so on.

Chief Executive, Economic Development:

Yes, as the Deputy Chief Executive Officer said, we do not have evidence of the customer feedback that was received by Jersey Business Venture but what we do have is a very clear view that we have 2 ... If a business was just a start-up or if a business needs support at the moment they have 2 options, and it is very unclear to the businesses, which is feedback that we have received, as to which

avenue they follow; that means that there is a duplication and potential confusion in the marketplace. Our driver is simply, we have stressed this time and time again to Jersey Business Venture, our intention is to provide the best service for the customer by combining them and making sure that this is properly marketed and advertised; that if you want any form of business support and advice in the Island there is one place to go and it is the combination of those 2 organisations. This is not a competitive situation between Jersey Enterprise and Jersey Business Venture; this is about providing a single efficient effective service to the business community in the Island.

The Deputy of Grouville:

Do you believe Jersey Business Venture were offering that service?

Chief Executive, Economic Development:

I think that they have done a good job. We fully fund them, they have done a good job in the past but that does not mean that we cannot do a better job as a combined entity, because I believe we can. I believe it will reduce confusion in the marketplace, it will allow us to operate with a single database, it will allow us to operate in a more effective and efficient way to co-ordinate our customer interactions, to co-ordinate the products and services. For instance, if somebody comes into Jersey Business Venture and wants any form of general financial support then, at the moment, they have to be signed-posted to Jersey Enterprise, because Jersey Enterprise quite rightly hold the government grants which fund things like the Enterprise Grants or the Export Grants, and things like that. If that was combined into a single place then a customer would not have to be sent from one place to another. They could simply be dealt with in a first-stop shop, and that is a more efficient solution for the customer and it is also a low cost solution because you are using one property, one set of I.T., one set of H.R. (Human Resources), one set of finance, not 2.

[11:00]

The Deputy of St. Mary:

I can see the advantages, and they are quite clear, because you said that the problem is not possibly part of the reason why it has been dragging for 2 years, which is a long time for, on the face of it, a

simple merger. The problem might be that there is not a clear base of information about what the customers are thinking about the different offers. You have said that you have had feedback about the confusion, but we have not heard anything about the comparable feedback between them and it is not sort of Brownie points or something, it is just getting the right answer, is it not, and you need to go to the business community to find out how best to structure this new in-one-place organisation.

The Minister for Economic Development:

I think to be fair it is taking some time but the position had been reached where the board of Jersey Business Venture are certainly in agreement with the principle, broadly in agreement if concluding a merger; it was just a matter of detail. I think it has progressed a significant way since the idea was first mooted, to remove the duplication and to deliver a more rounded and combined, as the Chief Officer has pointed out, delivery mechanism. I think we need to focus on the fact that the board itself of Jersey Business Venture, in principle, agreed with the concept of one single delivery model for enterprise business development in the Island and a model similar, I might add, to the one existing with Jersey Business Venture.

The Deputy of Grouville:

Just to conclude, Jersey Business Venture, at this point in time you said ... I think I said their budget was £98,000, that is what I ...

Chief Executive, Economic Development:

I think the Deputy Chief Executive can confirm this, we have not agreed a full-year budget with them, so ...

Deputy Chief Executive, Economic Development:

No, we have not, no. We have agreed funding until the end of June.

The Deputy of Grouville:

How many staff do they ...?

Deputy Chief Executive, Economic Development:

From the information they supplied to me they employ 2.5 full time equivalent staff but they are at different levels; one of those is a full time member of staff who is fairly junior. They have a number of different people who they call in to give business advice on different areas of activity but, again, due to illness and other factors, there again appears no consistency about who is actually in the office giving the advice.

The Deputy of Grouville:

Are any of those qualified accountants?

Deputy Chief Executive, Economic Development:

Just one.

The Deputy of Grouville:

One, at least one?

Deputy Chief Executive, Economic Development:

Yes.

Deputy J.M. Maçon:

Minister, could you please elaborate on what have been the sticking points in this merger? You said it has not managed to come together but I want to know why.

The Minister for Economic Development:

As I have said, the board have reached a position now where they are broadly in agreement with a merger of the 2 organisations. There are some sticking points with regard to the name of the new entity and the location of the new entity. At the moment, as you will be aware I am sure, there are 2 separate, to a degree, offices and both parties feel that theirs is perhaps the most effective one. Relatively, at face value, minor issues, one would have assumed but nevertheless they are yet to be resolved.

Deputy J.M. Maçon:

Thank you. Then the officer talks about getting advice from the Jersey Business Venture being called in on an ad-hoc basis; perhaps you are not the people to ask, but is that done on simply a network and past experience and contacts being pulled in and therefore that gives them the expertise that they need?

Deputy Chief Executive, Economic Development:

I have a number of supporters whose advice I can use, yes, but they have their own staff as well who are working on fixed-hours contracts, often it depends on the availability of those members of staff.

Deputy J.M. Maçon:

Is there a concern from the department that happens to look at Jersey Venture that patronage would go away?

The Minister for Economic Development:

No, I do not think that is the case at all. I think the delivery model itself needs to be carefully considered and, in principle, the model of Jersey Business Venture, sitting outside a government with an independent board, is a good model and that is why we were at pains to point out that at the beginning, that this is not a takeover by Jersey Enterprise of Jersey Business Venture. The concept is a merger to create a body which is going to be able to best serve the business community in all respects, but very much taking all that is best from both organisations.

The Deputy of Grouville:

With the merger, what will happen to that board? Are you going to lose that expertise?

The Minister for Economic Development:

I think the concept is that the new organisation would ultimately sit outside of Government and that it would have a board in a similar way to Jersey Business Venture. Clearly, as a new entity, it would be appropriate to go through the right recruitment process, and indeed, any members of that board

could reapply for such a role, should they wish to in the future.

Deputy M.R. Higgins:

So are you contemplating, what, the whole of Jersey Enterprise being hived off, having a separate board in the same way as the P.P.P. (Public-Private Partnership) for tourism you were talking about?

The Minister for Economic Development:

Indeed, that certainly is a concept that has been part of the considerations of the discussions that we have had with Jersey Business Venture. We recognise the value of the model that they have got, an organisation sitting outside of Government, and I have talked or mentioned several times the delivery model, and by that, I talk about the entire way in which such a service would be delivered to the public.

Deputy M.R. Higgins:

The budget for Jersey Enterprise at the present time, out of your department's budget, how much is it worth?

The Minister for Economic Development:

It is close to £2 million, £1.977 million.

The Deputy of St. Mary:

What per cent of the total budget is that?

The Minister for Economic Development:

The total budget is £16 million, so it is about an 8th.

The Deputy of St. Mary:

12.5 per cent.

The Minister for Economic Development:

12.5 per cent, right.

Deputy M.R. Higgins:

If you are looking at ... is it a P.P.P. or is it privatisation or what, and what timescale?

The Minister for Economic Development:

I think as your colleague on the panel has already alluded to, the discussions have been ongoing for some 2 years. It was certainly my intention to have included this within this political period. It is becoming more challenging now as we move closer to an election, but I would hope that we could very soon reach agreement to the principle with Jersey Business Venture and then move on with that model. I mean, clearly there are discussions that need to be had and a number of issues that would need to be resolved, but as soon as it would be feasible to conclude, the sooner we can with all parties.

The Deputy of St. Mary:

Yes, I want to go from this very nitty-gritty approach to a high-level approach, if you like, and then come back to Jersey Enterprise and the advice it gives. On a broader approach and thinking about your Green Paper, would you, Minister, subscribe to the need for sustainability, as defined in the usual definition, sustainable development being development that meets the needs of people living now without compromising the lives of future generations? Would you subscribe to that as an overall concept?

The Minister for Economic Development:

I think probably in the way in which you are comprehending sustainability, as I understand, it is a factor that will be included, as indeed all factors will be in an economic growth strategy, which is going to cover a period from over the next 5 years. I think it is right those considerations are included, and certainly they will be, and that is why I am very keen that it goes through a full consultation process, Green Paper and so on, so that views such as those that you are presenting are given the opportunity be fully aired and discussed and reflected appropriately.

The Deputy of St. Mary:

Yes. That sort of rather leaves the question a little bit vague if you are saying that people who are consulted can bring out these considerations of future generations who are voters, but I am asking you whether you do not agree that it is a given that the livelihoods of future generations is not negotiable; you do not develop now in a way that compromises the lives of our children and their children. Is that a given?

The Minister for Economic Development:

I think it depends what you mean by “compromise future generations”.

The Deputy of St. Mary:

So we will move on then, be more specific. The energy policy is in now draft White Paper form, it has been through the Council of Ministers. Is that agreed by the Council of Ministers, the White Paper?

The Minister for Economic Development:

Not formally, but the principle, yes, I think will progress.

The Deputy of St. Mary:

The principle, and with it the overall target of 80 per cent carbon reductions by 2050? Is that ...

The Minister for Economic Development:

Again, yet to be formally announced, but yes, the Council will be making such an announcement in due course.

The Deputy of St. Mary:

Do you subscribe to that personally, that target of 80 per cent, which is the U.K. target?

The Minister for Economic Development:

The principle behind it, absolutely.

The Deputy of St. Mary:

I just want to pass this around, because I was at a conference in London; if you could take them and pass them around. It was a bit like your Jersey Enterprise here, there is paper at the last minute. This was given to us in a seminar by the Director of the Climate Change Committee, and their job is to monitor on an ongoing basis the impacts of climate change and to recommend further legislative changes to the Government beyond what they already have, which is an 80 per cent cut 2050 enshrined in law. He explained this chart. He said the top 3 bars in the current emissions for 2008 on the left - the red one is aviation - he said they do not have a proposal to drive that down or commitments, but they do not have proposals to increase it either. Agriculture is pretty well non-negotiable, you have got to grow food, and the third one, I forget what it was. But those 3 are almost the same size as the 2050 target on the right, so what he said was the bottom 3, which is residential and commercial heat, domestic transport and power generation will have to go to zero carbon in 40 years, and by showing us this chart, it was like, you know: "Gasp, that is a big hefty cut" and in the context of climate change, in the U.K. context, it is non-negotiable. So that is what is going to happen and that is what we are signed up to if the White Paper goes through. So in the context of that, the question is for our Jersey Enterprise, is there an advice line on energy specific, like when someone is sitting in front of you with either a new business or a business that exists, and they have problems with it or they want to grow or they want advice, do you at the moment have a specific advice line on energy? Is that something you always take into account with each person who is sitting in front of you?

Deputy Chief Executive, Economic Development:

Yes, we undertake a fairly fundamental review of the business, where the business is going, what its needs are as a business, but we do not offer specific advice on energy saving, no. Within the Rural Initiative Scheme, however, there are grants available for people who may want to put forward ideas about energy saving.

The Deputy of St. Mary:

I mean, the reason I asked was that I am not trying to score points or anything, and I do not think we

are, I am just trying to establish a baseline, and if there is not a specific requirement in your procedures: “Oh, when we look at energy, we look at how you save the cost” and so on, and also in the light of this need to drive it down, and volatility - which that is volatility of energy, which we know about - would you consider building that in as something that all businesses that sit in front of you get some promotion, get some advice, get some flags raised about energy?

The Minister for Economic Development:

Do you want to add something?

Chief Executive, Economic Development:

Could I just say that is that not a service ... well, it is a service that is provided by both the J.E.C. (Jersey Electric Company) and Jersey Gas. I mean, are you saying that Government should duplicate and get that ...

The Deputy of St. Mary:

I am not saying that Government should duplicate. You used the phrase one-stop shop, although you called it first-stop shop when you meant last-stop shop. I would suggest that if you have got your 625 businesses or whatever, and I think they are they start-ups, are they not, so it is 1,000 businesses or something coming to you, you are the one-stop shop. You are trying to help them to be profitable, to survive even, and you are faced with this demand on: “Gosh, energy is going to go up.”

Chief Executive, Economic Development:

But we operate with, hopefully, a joined-up Government, so when a business comes to us and asks us about growth - or indeed, start-ups - we would refer them, I think, 3 places. One is the Eco-Active Business Programme, which is run by Planning and Environment, or through Planning and Environment. The other is the J.E.C., who are part of that programme, I understand, and the other is should they have Jersey Gas, because as a combination of those things, which is partly Government provided as it is, we believe there is a fairly good provision in terms of demand management, which is what this is at the heart of, it is demand management.

The Deputy of St. Mary:

Yes, I agree that you do not provide necessarily the detail in the general advice, you know, you are experts in everything, it is one of the things you outsource. What I am saying is should it not be built into the process, tick list, if you like: “We will make sure you are fine. We will make sure you have covered your margins and make sure you have got proper business planning”?

Chief Executive, Economic Development:

I think it is built into the process. It is built into the process because particularly when you mentioned the issue of price volatility just now, one of the biggest risks to the businesses is price volatility in their energy departments and we seek to damp that, for want of a better word, by reducing the demand that they have to undertake their activity, so that is where we would direct them towards making sure that they speak to the J.E.C. and Jersey Gas and they become members of Eco-Active Business, for instance, because that enshrines the type of sustainability that I think you are referring to.

The Deputy of St. Mary:

So that covers one area. Does anyone else have questions on the actual time and cost?

The Deputy of Grouville:

Yes. An energy policy: should Government not have an energy policy?

Chief Executive, Economic Development:

It does have one. It is a draft White Paper, which is an energy policy, which is driven both from a supply and a demand side to decarbonise the energy supply in the Island and make sure that the proposition of energy that is supplied to the Island from renewable sources is increased in line with agreed targets. That is what the energy policy is.

Deputy M.R. Higgins:

Who is leading the energy policy?

Chief Executive, Economic Development:

The energy policy is currently being led by Planning and Environment and by the environment team within Planning and Environment.

Deputy M.R. Higgins:

How many joined-up meetings have you had with them on this particular issue?

[11:15]

Chief Executive, Economic Development:

Numerous, numerous discussions with them. In fact, we were discussing this only last week I think was the last time we were discussing it, because we were reviewing a particular policy in there, which has been slightly modified prior to being published, but we have talked about both the supply side and the demand side at length with Planning and Environment, and the policy is something that I think from both departments' perspective - and I cannot speak for the Ministers - I think we would be more than happy to put our name to now, because I think it achieves the right balance. This is a very difficult thing to do, between environmental sustainability and the supply side of the energy policy and the demand management side of energy policy. I have to say that Louise Magris and the team at Environment have done a very, very good job in the ...

Deputy M.R. Higgins:

When is the White Paper due to be published? You say it is in draft form at the moment.

Chief Executive, Economic Development:

I think it is going to the Council of Ministers. I do not know the exact date, but I think it goes to the Council of Ministers very shortly and is published thereafter, but as I said, I think it is a very good document, because it seeks to diversify the Island's energy supply and decarbonise the energy supply, and it has got quite well-defined demand management elements associated with it as well, which is what you want an energy policy to have.

The Deputy of Grouville:

So when you say ... you answered my question by saying the Island Government does have an energy policy, but it does not, does it?

Chief Executive, Economic Development:

I mean, as of today, no. There is an energy policy that is being developed and it is just about to go out to White Paper. It has been out to the Green Paper.

The Deputy of Grouville:

So the likes of us have never seen it, so for you to say the Government does have an energy policy, that is not ...

Chief Executive, Economic Development:

No, I said I had an energy policy which is in White Paper form.

The Deputy of Grouville:

Yes, so at this point in time, we do not have ... you are developing it and it has got to be approved and all the rest of it.

Chief Executive, Economic Development:

Yes.

The Deputy of Grouville:

So to take on from what Daniel was saying, so as far as economic advice goes, this is not built into any advices yet, is it?

Chief Executive, Economic Development:

No, because it is not approved policy, but as I said, that does not mean that we do not advise companies to go to the places where advice on energy demand is.

The Deputy of Grouville:

Yes, so at the moment, you advise them to go to the J.E.C. or Jersey Gas or whatever, or Eco-Active.

Chief Executive, Economic Development:

Or Eco-Active Business, which has a very well-developed programme.

The Deputy of Grouville:

Then when the Island has an energy policy, what will happen then, taking on board your one-stop shop?

Chief Executive, Economic Development:

I mean, what the energy policy does is the energy policy enshrines the targets that Deputy Wimberley has referred to here in a policy for Jersey. That will not cause us to do anything differently from what which we do now, which is to make sure that companies minimise their energy demand (a) because it is an environmentally sustainable thing to do; and (b) because it reduces the exposure to cost and cost volatility.

The Deputy of Grouville:

So will this be something, will this be part of Jersey Enterprise eventually, when you go for your business advice, when existing companies get business advice, can they ...

Chief Executive, Economic Development:

I mean, business advice, Jersey Enterprise or whoever it is, the primary role is not to be experts in everything, but to know where to signpost people. So for energy advice for a business, we would primarily signpost them to, as I have said, Eco-Active Business, J.E.C. and others who are actively involved in energy demand management from a sustainability perspective.

The Deputy of St. Mary:

Can I ask a bit of detail about that? You say: "Go to Eco-Active, J.E.C. and Jersey Gas." I mean, for instance, Eco-Active, do they have the capacity and the capability to do energy audits on a

commercial premises of any size? Do they have that capacity, because I am not sure they do?

Chief Executive, Economic Development:

I am not sure that Eco-Active Business has that capacity, but I am sure that the J.E.C. does and ...

Assistant Director, Performance and Operations, Economic Development:

They do.

Chief Executive, Economic Development:

... they do it for companies, and they do it for us, so ...

The Deputy of St. Mary:

I was going to say, do they do it for free in terms of offering that service, because it is so important to the survival of business?

Chief Executive, Economic Development:

I think they do, and I cannot speak for Chris Ambler and the board of J.E.C., but I think given their commitments to things like the energy grants, where they have put in the insulation grants, they have put a significant sum into that initiative, I think they are very committed to sustainability. I do not know whether they do it for free, but I anticipate that they would.

The Deputy of St. Mary:

That is my concern, that you are saying you are signposting people to Eco-Active and J.E.C. but you are not absolutely sure that they can deliver energy audit with savings attached: "This is our recommendations" and so on, that are not biased.

Chief Executive, Economic Development:

Well, I am very sure that they can undertake the function of an energy audit, and with the aim of saving company money. What I am not sure about, Deputy Wimberley, is whether or not they offer that service pro bono, but I would anticipate that they do, because that would be consistent with their

approach to sustainability, which is very good.

Deputy M.R. Higgins:

Okay, Dan, can we just leave it at that?

The Deputy of St. Mary:

No, just one more.

Deputy M.R. Higgins:

One last one.

The Deputy of St. Mary:

Another tack on not our businesses saving energy, but businesses having ideas that are compatible with this future, do you question and challenge businesses on that basis? Do you say: “Well, in 5 years’ time or 10 years’ time, this might not be a goer, because the world is changing” et cetera, et cetera? Do you look at the product side or the service side of whatever the business is offering and measure it against the world’s future energy situation, and indeed resource situation?

Deputy Chief Executive, Economic Development:

With all due respect, I do not think Jersey Enterprise has a crystal ball that can look 5, 10 years ahead. They can only react to conditions as they see them now and have some degree of confidence of where things are likely to go.

The Deputy of St. Mary:

Where they are likely to go. Yes, well, that is what I am saying.

Deputy Chief Executive, Economic Development:

Then we can advise companies as appropriate.

The Deputy of St. Mary:

I am not saying you know the price of oil in 5 years' time, but you know which way it is going.

Deputy Chief Executive, Economic Development:

Most people know which way it is going, but it is then bringing that back into the business planning context and the cost base.

Deputy M.R. Higgins:

I want to move on now, and perhaps I should not say move on, I want to move back to the economic growth for a moment. Looking at existing industry in the Island, what is your take on how they are performing at the present time in the different sectors? Can you give us a ... you are obviously having lots of contact with the different sectors within the Island. Can you just give us an overview on how they are performing and how you think they are going to develop over the next 12 months?

The Minister for Economic Development:

I do not think it is any surprise that if you look at all the statistics that have been produced to date, unemployment levels rising, for example, it is fairly indicative of the fact that all sectors of the economy have found the current economic climate challenging. That is not really much of a surprise. We have seen an increase in the number of start-up businesses, as was alluded to earlier on. Again, in some respects, that is not a surprise. You do tend to see that in the early stages of recession, as people move out of employment, possibly with packages, they have the finance and they need to get back into work, the job market is challenged and so starting a business is clearly an option that is being taken up, and not surprisingly so, and the key effort is to ...

Deputy M.R. Higgins:

But again, we do not know how many of them will carry on, because obviously there is a high failure rate.

The Minister for Economic Development:

No, absolutely right, there always has been in start-up businesses, and that is where Jersey Business Venture and Jersey Enterprise have a key role in terms of sustaining businesses that start up and

ensuring that they do survive past the 3-year point, which tends to be one of the most indicative pressure points for start-up businesses. So yes, there are challenges in the economy at the moment and it goes into all sectors. The latest Business Tendency Survey did show some encouraging signs, particularly in the finance industry, the finance sector, indicating that there was a greater degree of optimism in terms of future employment and future profitability. But again, we have to counter that with the wider economy which is finding it quite difficult.

Deputy M.R. Higgins:

But even within finance, there are different sectors within that. Which sectors are indicating to you that they think things will improve and which are saying it is not improving at the present time?

The Minister for Economic Development:

Well, I think we need to look at where traditionally the finance sector gets its business from, and I think one of the most relevant points, as far as I am concerned, is the way in which through Jersey Finance Limited there has been a greater focus on new markets, Asia, Asia Pacific, the Middle East, those sort of markets. We have seen a reduction of around about 20 per cent in financial services business from the traditional markets, U.K., Europe and so on, and it has been almost replaced in its entirety, that 20 per cent of business, by new markets and hence the drive for new markets.

Deputy M.R. Higgins:

But when you say “business”, for example, if we look at the finance traditionally, we have been looking at banking and banking deposits and we know that with low interest rates being offered in the money markets at the present time and so on, plus there is still a degree of uncertainty out there as to who you still lend to, because there are lot of legacy problems with debt, back to the equity(?) sector, have you seen any recovery there? I would not think so if interest rates have not gone up, because surely that is what you wait for.

The Minister for Economic Development:

Yes, absolutely. I mean, if you are pointing to revenues and revenues for the banks in particular and by default revenues for Jersey from a tax perspective, the impact of low interest rates and sustained

low interest rates has continued to be a problem. The banking sectors, as you will be well aware, is the most profitable sector and certainly in terms of contribution to tax revenues for the Island, and we certainly would hope to see interest rates get back to a more normal level in the short to medium term.

Deputy M.R. Higgins:

What do you consider a more normal level?

The Minister for Economic Development:

I think the view from most economists are that a normal interest rate would be in the 3 per cent to 5 per cent range in the current environment, as opposed to the current 0.5 per cent that we are seeing at the moment. That clearly presents challenges, because consumers themselves are having to deal with other challenges from an income perspective, incomes generally, job security is challenged and incomes generally have been flat or falling. So clearly there is a similar level of consumer debt, so interest rising too quickly and too high would present other problems for the economy that clearly the policymakers - and you will appreciate that Jersey has no input into interest rates - in the U.K. and elsewhere have to consider these other factors.

Deputy M.R. Higgins:

So banking then is sort of still in the doldrums until we see some movement in interest rates, and in terms of the new business that you say is generated from India or China or wherever, non-traditional markets, what type of business is being generated?

The Minister for Economic Development:

Trust and fund business. That is why key legislation is so important. The introduction of foundations has been another product, which has been used for finance industries in those particular areas. Clearly the trust model is not well-recognised in those regions, hence the need to introduce a product, a foundations product which is recognised and allows for wealth management. It is a wealth management vehicle, as you will be familiar.

Deputy M.R. Higgins:

How many foundations have been formed since we passed the law?

The Minister for Economic Development:

I have not got the exact figure off the top of my head, but there have been quite a number. Certainly when the law was first passed, there was a rush at those type of models being introduced, but we can happily get you an up-to-date figure if you would be interested in that.

Deputy M.R. Higgins:

Please. In terms of trust business, how are you measuring the amount of new trust business? Do you have any statistics on that at all, or is it just anecdotal?

The Minister for Economic Development:

Well, there are statistics available. Again, I can provide figures if you would like. Quite a lot of statistical information was given at the recent Jersey Finance presentation, which I think you attended. I am not sure if you got the ...

Deputy M.R. Higgins:

I did attend. I did not think there was much in the way of detail. It was more like a public relations exercise.

The Minister for Economic Development:

There was quite a lot of detail available in some of the handouts, but happily forward those to you to give you a breakdown of the value in employment in new entities and so on.

Deputy M.R. Higgins:

Other than finance then, which sectors do we see developing?

The Deputy of St. Mary:

Can I ask a question on finance? Do you want to ask a question on finance as well?

The Deputy of Grouville:

No.

The Deputy of St. Mary:

On the finance, moving on. You painted a picture of an uncertain future, which I think is quite correct, and you pointed out that ... or you have told us that finance industry business in the old markets has gone down 20 per cent, which is quite a lot, and then is being replaced by new markets. Does that not suggest to you that the sustainability of this industry is ... well, maybe the first question is where did that 20 per cent business go? I mean, why was there a 20 per cent drop in finance sector business from the old markets, which is what ...

The Minister for Economic Development:

Largely as a result of the global financial crisis there was a slowdown in activity. There was a great deal more caution in terms of wealth and wealth management. The economies in Asia, Asia Pacific at least, have not been impacted in the same way. It demonstrates to me absolutely clearly that the need for the finance sector, the finance industry, to diversify, as well as other areas of the economy. I have been saying this for some time, diversification is not just new markets, new products, new sectors, it is also diversification of existing sectors and finance is included in that. I think the 20 per cent reduction in traditional markets replaced by new markets demonstrates very clearly the foresight and need for the finance sector to diversify and to continue to diversify, not just geographically, as that describes, but also in terms of products, hence the foundations example that I used.

Deputy M.R. Higgins:

I would just like to follow up on a few other things to do with Jersey Enterprise. One of your functions is attracting 1(1)(k)s for the Island. Can you tell me how many 1(1)(k)s you have attracted in the last 12 months?

Chief Executive, Economic Development:

Nine in 2010.

Deputy M.R. Higgins:

So 9 in 2010.

The Minister for Economic Development:

I think it was 8 the year before, but that is from my memory. I may need to check that.

Deputy M.R. Higgins:

Did you have a particular target in mind or are you just trying to see what you can get?

Chief Executive, Economic Development:

I think we do not set a numerical target, because it is very much related to the market itself.

[11:30]

But since we have put dedicated resource into managing the whole 1(1)(k) market, which is an interesting set up, because it is that resource is funded by E.D.D. (Economic Development Department) because you know 1(1)(k) is a housing allocation, and it obviously has to be signed up with the Treasury in terms of the tax calculation, but since we have put that resource in place, which is really about an account management, a relationship management resource, we have been running at between 6 and 10 new 1(1)(k)s per annum since - and sometimes a little bit higher than that - and we aim to try and keep it at that level or above, because they are material contributors. I mean, over the course of the last - and this is registered with the Royal Court - 4 or 5 weeks, there have been tens of millions of property transactions, all of which are attracting stamp duty as a result of 1(1)(k) purchases in addition to the tax contribution that they are making. So we believe that the Jersey offering is still a good offering in that marketplace. There have been some changes made to it recently by the Treasury and the Minister for Housing and we continue to promote. What we are seeing increasingly is that people coming to the Island as 1(1)(k)s are bringing businesses with them and are providing local employment and actual local tax yield over and above their contribution as 1(1)(k).

The Deputy of Grouville:

Local businesses or foreign-owned businesses?

Chief Executive, Economic Development:

Well, they are providing ... they may be foreign-owned businesses, they may not be Jersey-owned business, but they are providing employment for local people.

The Minister for Economic Development:

Interestingly enough - sorry to interrupt, Deputy - but I was mentioning I was at this Business Angels event last week, where there were 3 local businesses and 3 U.K. businesses pitching for funding from Business Angels and there were in the room 2 1(1)(k)s, local wealthy individuals looking to invest and invest in local businesses. So you can see some of the below the radar activities that they get involved in, which are not always identified when you look just purely at the headline figures. The other thing I will just quickly point out, we spend just over £100,000 in attracting 1(1)(k)s to the Island, our high-value residency area in Economic Development, which we believe is probably our greatest investment and level of productivity of any activity that we undertake at the moment when you consider what we get for that particular investment.

The Deputy of St. Mary:

Has any formal study been done into the downside of attracting 1(1)(k)s to the Island, because I ... well, I will not say why, I will just ask the question: has any study been done into any possible downsides, enumerating the downsides and fleshing them out a bit and just looking at the issue objectively like that?

The Minister for Economic Development:

There is no clear downsides to attracting 1(1)(k)s to Jersey. Currently, historically some might argue that some of the 1(1)(k)s in previous periods are not still contributing at the level that was originally agreed, and in that respect, are not as valuable to the Island, but certainly in the current regime as it is operated, we believe the attraction of 1(1)(k) is to the Jersey economy - and community, I might say,

because the other level of contribution which is significant is through community events and charities and so on - but overall, it is believed to be significantly advantageous for the Island to attract such individuals.

The Deputy of St. Mary:

With respect, Minister, you have listed the benefits of 1(1)(k)s, which is fine, and you have listed 3 or 4 now benefits of 1(1)(k)s. My question was has there been a formal evaluation of possible downsides and your reply was: "There are no clear downsides." How do you know that if there has not been any evaluation?

The Minister for Economic Development:

Well, there is no assessment that there has been any downsides to 1(1)(k). Has there been a study carried out? I am not aware of one, if that answers your question.

The Deputy of St. Mary:

Well, the follow up now, I quite clearly remember a debate in the States about a year ago when the question of 1(1)(k)s came up, and I think it was in the context of housing, and there was a promise, a pledge, given by the Assistant Minister for Treasury and Resources that there would be a cost benefit analysis carried out, because there were clear concerns among Members of 1(1)(k)s. I have not seen it and I am waiting for it, and I just wonder where it went.

Chief Executive, Economic Development:

I am sorry, I am not sure that that was the case, but there has been a review undertaken of the 1(1)(k) regime, and that has resulted in the changes to the regime that the Minister for Treasury announced in his budget speech, and I believe that ... I am not sure whether the review itself was published by Treasury and Resources, but it certainly has been undertaken and certainly informed the decision to change the threshold on the 1(1)(k) tax yield.

Deputy M.R. Higgins:

Let us just move on to ... can I ask about enterprise grants? What is the level of grants that you have

given out in the last 12 months?

Deputy Chief Executive, Economic Development:

When you say enterprise grants, there are a number of different grant schemes in the enterprise grant scheme itself.

Deputy M.R. Higgins:

Can you elaborate on them quickly? What are the different types of enterprise grants?

Deputy Chief Executive, Economic Development:

We have the J.E.D.I. (Jersey Export Developments Initiative) Scheme, which is the Export Developments Initiative, where companies can have support to go overseas markets, to visit trade shows, to meet potential customers. That one has a limit of £10,000 and they can apply on a diminishing basis, so that the first time they apply, they can have 50 per cent, the second time they get 40 per cent and 30 per cent the third time, with an overall limit of £10,000.

The Deputy of Grouville:

The J.E.D.I. costs £109,000?

Deputy Chief Executive, Economic Development:

That sounds about the right sort of ... yes, yes.

The Deputy of Grouville:

For £10,000 worth of grant?

Deputy Chief Executive, Economic Development:

But very few companies take the full £10,000. They take what they need. It is still on an individual application basis. Each application is assessed separately and they have to feed back information regarding the business they have done from previous grants from that particular scheme. The other scheme we have is the Innovation Initiative Scheme, where companies who are creating new

products and new services can again have financial support towards development of those products and services.

Deputy M.R. Higgins:

Do you have limits on that in terms of how much they get?

Deputy Chief Executive, Economic Development:

That one I think from memory has an upper limit of £5,000.

Deputy M.R. Higgins:

How much of a take-up have you had on that?

Deputy Chief Executive, Economic Development:

That one, I think the budget last year was £50,000, so probably ...

Deputy M.R. Higgins:

Did you utilise the full budget?

Deputy Chief Executive, Economic Development:

I think we were fairly close to the limit last year, yes. In fact, we have increased the limit this year to £150,000, because it is an area we want to encourage.

Deputy M.R. Higgins:

Can you give us an example of the type of new initiatives or new innovative products that have been generated?

Deputy Chief Executive, Economic Development:

Well, a company last year came to us with an idea to create a special oven to create curry products.

Deputy M.R. Higgins:

To create what, sorry?

Deputy Chief Executive, Economic Development:

Curry products, Indian foods, and that has been an engineering type product. There are a number of different grants given for different types of services, particularly in the areas of online retail, eCommerce activity.

Deputy M.R. Higgins:

So they are the only 2 types of different kinds of grant?

Deputy Chief Executive, Economic Development:

We then had the scheme that we mentioned earlier, where we have the business coaches and mentoring scheme, where we have subsidised the cost of going to professional advice, so that can be anything from H.R. through to tax, through to accountancy and other areas of professional expertise.

Deputy M.R. Higgins:

How about export grants?

Deputy Chief Executive, Economic Development:

We have already covered export grants, that is J.E.D.I.

Deputy M.R. Higgins:

Oh, that was J.E.D.I.? Sorry.

The Deputy of Grouville:

Can I ask something about ... it was to do with diversifying the economy. I think it was in 2004 when I was working on the cultural strategy, you said that what this Island needs is a creative industry strategy.

Chief Executive, Economic Development:

It must have been after 2005, Deputy Labey, because I was still in Wales in 2004, although I probably did say it in my interview, I think.

The Deputy of Grouville:

It was around about then, sorry, if it was 2005 or 2004.

Chief Executive, Economic Development:

Creative industries, yes.

The Deputy of Grouville:

I know it was quite a while ago. Creative industry strategy: has that ever got off the ground or is it going to?

Chief Executive, Economic Development:

I mean, perhaps Andrew can talk about Creative Jersey, but we can talk to you about some of the things that we are working on at the moment in a minute.

Deputy Chief Executive, Economic Development:

Certainly in 2008, 2009, Jersey Enterprise supported Creative Jersey, which was the umbrella body supposed to be set up by the creative industry to help promote Jersey and its creative industries, both on-Island and off-Island. So from memory, the grant funding was in the region of about £30,000.

Deputy M.R. Higgins:

What did they do?

Deputy Chief Executive, Economic Development:

They held a number of workshops and seminars on the Island. I believe they went overseas on one occasion to promote themselves and Jersey as a creative destination.

Deputy M.R. Higgins:

I assume it died after that, did it?

Deputy Chief Executive, Economic Development:

At the moment, certainly I think it is now inactive, yes.

The Deputy of Grouville:

Did you work with Education on that?

Deputy Chief Executive, Economic Development:

Certainly I have met with Rod McLoughlin and others in Education on a number of occasions, yes.

The Deputy of Grouville:

So as far as the creative industry strategy, that has not happened yet, and would now not be the ideal time to start promoting that sort of thing?

Chief Executive, Economic Development:

I am not sure what the rationale is behind now being the ideal time, but the point is that we are ... when a good business opportunity in the creative industries is presented to us - we are actively working on 2 at the moment, I think - you know, we spend a lot of time and effort evaluating them and looking at whether or not they merit investment, and some of them, the requirement for investment is very, very significant, I mean well into 6 figures, and that demands a lot of attention from us. These are getting a lot of attention from us at the moment, and I think it is for us the creative industry sector ... sorry, the way the creative industry sector will have a major impact on the economic wellbeing of the Island is probably through the type of fairly significant projects we are looking at that would have the benefit of being created in the Island, but also have the benefit of when they hit the market, very actively presenting the Island in a very positive way, and that is what we are working on at the moment, for instance. We have some film proposals that are being actively evaluated at the moment.

The Deputy of Grouville:

Yes. I am not just talking about helping businesses, because that would definitely come under enterprise, helping businesses that come to you. I am talking of sort of creating the right environment to give artists a break, sort of ... what examples can I give? Shop space, just space for creative industries, tax breaks, that sort of thing.

Deputy Chief Executive, Economic Development:

But in February this year, we advertised a post for a media and broadcast project manager, and when I came back from leave this morning, there were 5 applications on my desk. Part of that role is about working with the media sector, eCommerce sector and the eGaming sector, to put together a fundamental strategy going forward for those particular areas. So that will be a post that sits within the policy and regulatory team.

The Deputy of St. Mary:

What I am not picking up is an overall feel for developing ... you know, the creative industry is a big industry in the U.K., it is one of the major earners, and because the U.K. has a reputation and we are linked to the U.K., and you can see it, you can feel it in Jersey, that there is that potential. So I am just wondering, where is the scoping, where is the overall picture?

Chief Executive, Economic Development:

When you say it is a big industry in the UK, what elements comprise the “big” in your view, because I think what comprises ...

The Deputy of St. Mary:

Fashion, music, art, drama ...

The Deputy of Grouville:

Yes, it is worth billions and I think it doubled in the last decade.

The Deputy of St. Mary:

... the fact that people go to London to see the shows, it is just massive, absolutely massive, and I

have also read things that show that every element of it supports every other element. So the little person in their garret sort of throwing paint at the wall is part of the whole set-up, because they might become the next Tracey Emin. G.B. (Great Britain) is the big creative mecca and Berlin is kind of up there, but it is a big industry and I am just wondering, why is Jersey not looking at this to get part of the pie?

Chief Executive, Economic Development:

But are you assuming that there is no activity of that nature in Jersey as we speak?

The Deputy of St. Mary:

No, I am just looking at how do we make this shape or what role does ... I mean, maybe you looked at it very carefully and thought: "Well, the Government does not need to go there" but you are pushing I.P. (Intellectual Property), you are pushing gambling, which is all nice and fine - no, that sounds funny on the tape - but in a sense, I would rather Jersey went into this niche.

Chief Executive, Economic Development:

Yes, but the reason that we are pushing intellectual property, and particularly one of the first reasons that we ... one of the reasons we put unregistered rights, which is copyright, at the head of the intellectual property legislation was because that facilitates the protection of creative content in the Island and that is one of the reasons that we do it. Is there any barrier to anybody in the creative industries coming and seeking support for their business from Jersey Enterprise or the broader E.D.D. will know, there is not, and it is all ...

The Deputy of Grouville:

No, but that is not quite the same as a strategy whereby you have got sort of a vision of how we would like Jersey to look as far as the creative industries go. It is not quite the same as someone coming off the street and saying: "Can you help me with it" is it?

Chief Executive, Economic Development:

No.

The Deputy of Grouville:

I mean, the bottom line is have we got a creative industry strategy? No. Are there any plans for one? Because you told me in 2005, whenever it was, that is what Jersey needed.

Chief Executive, Economic Development:

Yes, I think it is ... and from a creative industry perspective as a whole, it probably is what Jersey needs. Is it on the list of things that we are going to do in the short term within E.D.D.? Certainly not, because we do not believe it is a dedicated E.D.D. role.

[11:45]

The Deputy of Grouville:

Well, it might not be dedicated E.D.D., but ...

Chief Executive, Economic Development:

But the lead, I would have thought, should come from the Department of Education, Sport and Culture.

The Deputy of Grouville:

Should it? There is debate to be had about that, is there not?

The Deputy of St. Mary:

Put it another way, will there be a paragraph on the possibilities around ... what is it called?

Assistant Director, Performance and Operations, Economic Development:

Economic cultural strategy.

The Deputy of St. Mary:

Yes, cultural strategy, yes.

The Minister for Economic Development:

Creative industry strategy.

The Deputy of St. Mary:

Creative industry strategy, thank you, in the Green Paper?

Chief Executive, Economic Development:

There is a very extensive section in the Green Paper about economic diversification that would certainly not rule out the development of creative industry.

The Deputy of St. Mary:

Does it have a paragraph highlighting the potential in this area and using comparative data from other jurisdictions?

Chief Executive, Economic Development:

No, not the current draft.

The Deputy of St. Mary:

But it might do in the future?

Chief Executive, Economic Development:

It may very well in the future.

The Deputy of Grouville:

I think the bottom line is no.

Deputy M.R. Higgins:

Just going back slightly, because I got ahead of myself, and we were talking about the current state of the economy and we talked about finance. Can you just take us through the other sectors of the

economy, for example, tourism or agriculture or what else? Where do you see the growth coming from? Now, you mentioned earlier, for example, that economic growth in agriculture, yes, but it is starting from a very small base, significant in absolute terms. Tourism again, you know, where are you going in terms of the tourism and the agriculture and the other sectors, non-finance sectors in the economy?

The Minister for Economic Development:

Well, the ability to sustain and grow the economy includes the traditional industries, which are clearly agriculture and tourism. As far as we are concerned, they are important industries. I think the piece of work that was carried out on the rural strategy, of which your sub-panel did an excellent piece of work, we have adopted 28 of the 29 recommendations that the panel came up with.

The Deputy of Grouville:

Oh, that is good. We will come on to that.

The Deputy of St. Mary:

We shall be asking you questions on these later ones.

The Minister for Economic Development:

Oh, right. Well, we will not delve any further.

The Deputy of St. Mary:

All 28, and see how you are getting on.

The Minister for Economic Development:

Nevertheless, that was a very positive point and the diversification of the rural economy is important, as it is in all sectors. Tourism, in terms of performance at the moment, it is well-documented that agriculture has performed very well. There was an increase of, I think it was, 5 per cent G.V.A. (Gross Value Added) in the last published figures.

Deputy M.R. Higgins:

But 5 per cent is a very low figure, so ...

The Minister for Economic Development:

Indeed, but nevertheless, it is indicative of growth where that is not evident elsewhere, so ...

Deputy M.R. Higgins:

No, I am not knocking the fact it is growing. I like that, but what I am saying ...

The Minister for Economic Development:

So it is encouraging.

Deputy M.R. Higgins:

... is in terms of the overall, with most of our economy concentrating on finance, we are looking at these other sectors, so let us carry on.

The Minister for Economic Development:

Yes, and that is why it is important to make the traditional sectors as productive as we possibly can and I think that is beginning to be evident within agriculture. As far as tourism is concerned, they are, as an industry ... from a statistical point of view, the figures were quite encouraging last year. I do not think we can lull ourselves into a false sense of security by the fact that the figures were relatively good in terms of staying leisure visitors in a difficult market. The fact is that yields have been under considerable pressure and that is a competitive matter. Europe and the UK in particular, with the recession that is unfolding at the moment, are - particularly hotels - cutting their margins significantly and the Jersey hoteliers have had to respond accordingly, and therefore margins have been cut and profitability. So although they are capturing the numbers of individuals that are coming to stay in the Island, the profitability, for example, for hotels has been curtailed. We continue to work with the industry. We have set up, as you well aware, the Tourism Marketing Panel to help advise. We have put additional into private sector expertise, helping to advise on ways in which we can bolster and attract visitors to the Island and we continue to work with the industry in order to

sustain the tourism sector, which clearly has value to the local economy and there is no doubt in these difficult times that the small businesses that make up the vast majority of our in-Island tourism sector are the ones that need as much support as they can possible get.

Deputy M.R. Higgins:

And the other sectors?

The Minister for Economic Development:

There are new areas that you are familiar with. I think the Deputy Wimberley said we were pushing I.P. and eGaming. It was not so much pushing; we are trying to remove barriers to allow the private sector to grow. We can see clearly that there is a lot of opportunity on the creative side that Deputy Labey was referring to; protection of creative works through unregistered rights is clearly very important and we will continue to move forwards in that area. Protection and development of an eCommerce strategy, which includes, clearly, what has been a very profitable fulfilment industry with about 1,000 jobs currently in that area. That is another area that we continue to work hard to assist with the challenges that we are facing at the moment.

The Deputy of Grouville:

I was going to say, are you concerned at all about the history?

The Minister for Economic Development:

Of course we are concerned. We have had, over the last few years, continual dialogue with H.M. Treasury about preserves with regard to the L.V.C.R. (Low Value Consignment Relief) ...

The Deputy of Grouville:

In recent events, with the U.K. looking at legislation?

The Minister for Economic Development:

The Low Value Consignment Relief? Yes, we have had ongoing discussions with Treasury in this area.

Chief Executive, Economic Development:

U.K. Treasury?

The Minister for Economic Development:

U.K. Treasury, yes. I think first of all it needs to be made clear that this Low Value Consignment Relief is an issue that Jersey has been exploiting outside of the law. This is driven by an E.U. (European Union) directive from the early 1980s. Clearly there is some pressure within the U.K. with the tax position at the moment, in particular Small Business Federation are particularly vocal about the matter. But they need to focus their considerations on the fact that the DVD and CD market of which it takes the vast bulk, if you like. In reality, the large U.K. supermarket groups are selling DVDs and CDs at a price lower than those that are being sold out of the Channel Islands. There are many complexities to this matter, but clearly it does concern us and we will continue to have dialogue with the U.K. Treasury and the U.K. Government.

Assistant Minister for Economic Development:

Even technology is changing for those as well. I mean, technology is going to be ... people can be downloading things and that sort of thing in the future, so. There is a concern out there and those people in those current environments, like the large multiple retailers, their model is going to change completely.

The Deputy of St. Mary:

Can I ask about the detail of that? You said that we were not really exploiting Jersey ... you said Jersey is not exploiting anything outside the law. Yet, my understanding was the original L.V.C.R. was linked to agricultural produce. It was like the concession to allow Jersey and Guernsey to export into the U.K. This whole business of CDs and DVDs has been built on to that concession, which was for another purpose.

Chief Executive, Economic Development:

The E.U. directive is designed to make sure there is not an overly onerous administrative burden on

the collection of V.A.T. (Value Added Tax), which is where the level is set at £18 currently, which is about 20 euros. So, any goods from any non-E.U. country can be imported into the U.K., for instance, and set its limit at about £18 without that being levied; simply because to collect that V.A.T. would be very, very onerous. Now, as the Minister has said, there has been quite a lot of significant lobbying on behalf of the independent retail sector in the U.K. I think it is worth noting that still in the U.K. market only 15 per cent of total sales are online, for CDs and DVDs for instance. The majority of sales are still in the physical market. But it is declining and it is declining very quickly. The Minister referred to HMV. HMV now have terminals in their stores whereby rather than pick up a physical off the shelf, you can go into the store, order it, pay for it and have it delivered to your house. That is fulfilled out of Guernsey, not out of Jersey. So that market is changing tremendously. As the Minister has said, we have been in dialogue now for probably 5 or 6 years and we announced the new fulfilment policy in February 2006, which very much constrained the activity of this sector in the Island, so that people were not abusing Low Value Consignment Relief, it was legitimate business. Is it likely that the Chancellor will make an announcement related to Low Value Consignment Relief in the budget on Wednesday? Yes, we believe it is. But what that announcement will be, whether it be a small change or a radical change, we literally will not know until he stands up. We got together on Friday with 21 of the fulfilment operators and postal operators and obviously the amount of impact it will have is dependent upon how radical the changes. I think that the consensus view is that it is a modest initial change. Then the industry will look at how it can cope with that and can continue to flourish. Because our position with the Treasury has been very clear since day one. These are legitimate businesses. They are run as Jersey-owned businesses. They own the customer and the stock. They are doing nothing which is outside the law. The same could happen from any other jurisdiction. It is happening from China, Switzerland and indeed from the U.S.A. (United States of America) into the U.K. right now.

The Minister for Economic Development:

Just to point out that I think it is 80 per cent of the CD/DVD market in the U.K. is captured by the big 4 U.K. supermarkets.

Deputy M.R. Higgins:

Moving on, I would like to look at, again this is support of the firms, we have a loan guarantee scheme. How much money are you guaranteeing the firms?

Deputy Chief Executive, Economic Development:

There is an upper limit of £250,000.

Deputy M.R. Higgins:

£250,000?

Deputy Chief Executive, Economic Development:

Yes.

Deputy M.R. Higgins:

What budget do you have for that?

Deputy Chief Executive, Economic Development:

Because it is a guarantee scheme we do not have a budget.

Deputy M.R. Higgins:

You do not have a budget. You are just saying you guarantee up to a certain sum? You must have a figure in the accounts that you have set aside, a potential guarantee sum?

Deputy Chief Executive, Economic Development:

What we do is we guarantee 75 per cent of the loan. So, I think we have only one very significant loan. In the past, pre-G.A.A.P. (Generally Accepted Accounting Principles, we made provision for that by effectively a charge on our budget every year. That number was ... that was effectively a war chest, it was accumulating. Post-G.A.A.P., we are not allowed to do that. So what we do have is a reserve at the moment ... is we charge a premium of 2 per cent on the loan interest and that is used ... that is accumulated to deal with any liabilities that would arise. To date, touch wood, none of the limited number of investments that we have supported have required us to pay back.

Deputy M.R. Higgins:

How many loans guarantees have you give over the last 12 months?

Deputy Chief Executive, Economic Development:

Last 12 months? Just one.

Deputy M.R. Higgins:

One. Is this the large one you were just talking about?

Deputy Chief Executive, Economic Development:

No, it is not; no.

Deputy M.R. Higgins:

Can you give us an idea of the large one, what sector that one is?

Deputy Chief Executive, Economic Development:

At the moment we have one large one in the health care sector. It is a nursing home. We have one which is in the electronics sector. We have one which is in the animal care sector. Those are 3 examples ...

The Deputy of St. Mary:

Presumably the liabilities figure in the Minister for Treasury and Resources' 6 monthly report on liabilities in the capital ... he does a report, sort of supplementary report, and these liabilities are written out. I would have thought they would, because they are States' liabilities.

Chief Executive, Economic Development:

Off the top of my head, I cannot remember exactly how they are featured, but as I said, the monies that are accumulated from the interest rate premium of what is nominally there to offset any failure in the graph.

The Deputy of St. Mary:

It would not cut the grid?

Chief Executive, Economic Development:

That assumes that all the graphs fail at ...

The Deputy of St. Mary:

No, no, even if one did ... even if the 25,000 did, it would require value of 2 per cent.

Chief Executive, Economic Development:

No, no. In that case we would have to supplement that from existing budget.

Deputy M.R. Higgins:

Okay. Moving on to Skills Executive and your role in that; I was looking at the figures you have here about the number of apprenticeships and so on. We have a large number of people who are employed at the present time. A number of them are at Highlands or Advance to Work, whatever. What else are you doing, because there is certainly maybe half the people who do not appear to have anything to assist them with? Can you tell us what you are doing to help these people who are unemployed and to make sure that they will have the skills to get future employment?

The Minister for Economic Development:

The Advance to Work scheme, first of all should be identified as one that has been very successful.

Deputy M.R. Higgins:

It has only helped a certain number though when we look at the figures.

The Minister for Economic Development:

Yes, it has. But it still has got to a very important area. I think as far as the extra funding that has gone into Advance to Work, it should be just noted that it is extremely important that we continue

the programme on. Clearly the pressure is that we are seeing the economy, particularly from the employment point of view, are going to be felt certainly through the remainder of 2011. The extension of this scheme is September 2012. It is important. There is a clear recognition that young people are a high percentage of those that are unemployed and therefore most of the initiatives, like Advance to Work and apprenticeship schemes and so on are targeted at trying to get these young people into work.

[12:00]

Looking forward, I think we need to continue to ensure that the emphasis is on, not just the young people, but also those who seek to find work or re-employment that have appropriate training opportunities and get past the 3 month period. Once you get past 3 months it is proving to be increasingly difficult to get individuals back into the workplace. We have something like 270 companies currently who take placements. We are trying to expand that. Bearing in mind that thousands of companies exist in the Island, we would hope that more employers would be encouraged to take placements.

The Deputy of Grouville:

Senator Routier would probably be best able to answer this one. What has happened to the 5 year rule?

Assistant Minister for Economic Development:

In what way?

The Deputy of Grouville:

With regard to employing people.

Assistant Minister for Economic Development:

That still exists. Companies that want to employ people are given a quota of how many people, non-locally qualified people, and that is the 5 year section. It depends on the type of business to the

number they would be allocated.

The Deputy of Grouville:

So if you were to walk into a bank now, you would not expect to find anyone employed in the bank that has not been here for 5 years?

Assistant Minister for Economic Development:

It is quite possible, yes.

Deputy J.M. Maçon:

Unless they are being ...?

Assistant the Minister for Economic Development:

No. All businesses, depending on the licence they have been allocated, have a 3 year licence. Some will be allocated some non-locally qualified people.

The Deputy of Grouville:

Just for the purposes of the tape, because I sit on the Migration Scrutiny; there is a quota for below the 5 year rule on these licences, is there?

Assistant Minister for Economic Development:

Every business is treated differently. I mean, they come to us with a business plan and their requirements for what their staffing levels are. There is a 3 year licence put in place. A judgment will be made about how many locally qualified and how many non-locally qualified people.

The Deputy of Grouville:

The non-locally qualified, they still have to be here over 5 years?

Assistant Minister for Economic Development:

No, under 5 years.

The Deputy of Grouville:

So they are allocated a quota, whereby they can literally employ somebody who has arrived yesterday, as long as it is within their quota?

Assistant Minister for Economic Development:

If it is within their quota, yes.

The Deputy of Grouville:

Right. In these economic times, what is being done to address that situation? So that local people, coming out of school, have opportunities in the banks and local companies.

Assistant Minister for Economic Development:

Quite a lot. In recent times when we have been looking at licence reviews, we have been pulling back on non-locally qualified opportunities within businesses. We know that there is a need to make sure that people who are already here in the community are finding jobs. So, every time that we look at a review of a licence we look at it very carefully and try and ensure that the number of non-locally qualified that they are asking for is not excessive.

Deputy M.R. Higgins:

Again, how often do you change those? Because if you just say: "Okay, you can have 10 per cent of your employees who have been here less than 5 years." They are not going to look necessarily at the local jobs market and the people who are there or the kids coming out of school and say: "Okay, we do not need to employ them. We will take this person instead, who has just come in." How are you getting who they are employing? Is it just a block thing saying: "Okay, for the next year you can have 10 per cent of your employees"?

Assistant Minister for Economic Development:

It is done on an individual basis. Every business, as I said earlier, will make a request for a certain number of locally qualified and non-locally qualified. It is a 3-year licence. That is what the current

situation is. The new legislation is going to be totally different. It will be able to be reviewed at any stage. But the current legislation has allocated 3-year licences. Every time one of those licences come up, we are looking at them very, very closely and swinging back to try and control the number of non-locally qualified ...

Deputy M.R. Higgins:

How do you determine right now? What sort of monitoring are you doing to make sure that they are ... I am not saying they have to employ every local employee, because they may not have the skills or whatever, but the point is how are you ensuring that they are looking at the local labour market?

Assistant Minister for Economic Development:

When the manpower returns are carried out, they have to be within their licence.

Deputy M.R. Higgins:

But within the quota. If you leave them a 10 per cent quota ...

Assistant Minister for Economic Development:

It is not a 10 per cent quota. It varies from business to business.

Chief Executive, Economic Development:

I think the best way to put this, for example a company with 100 employees up to 12 could be non-locally qualified. Up to. That does not mean that they will be non-locally qualified. They could very well employ 100 locally qualified. It is a lot easier to employ locally qualified people, because there is less cost associated with it than with non-locally qualified people. I think R.U.D. (Regulation of Undertakings and Development) does not operate with a quota system, but it does operate based on their business plan. Indeed, in order for the Migration Advisory Groups, which Senator Routier sits on, to give anybody a non-locally qualified licence they have to demonstrate that they have tested the locally qualified market and had not been able to fulfil the positions.

The Deputy of Grouville:

Okay. With X amount unemployed over here and these businesses still requiring or asking for a non-qualified quota, then there is obviously a disconnect somewhere, is there not?

Chief Executive, Economic Development:

There are hardly any businesses now asking for non-locally qualified. I will give you a very good example ...

The Deputy of Grouville:

So the licences are being renewed at zero?

Chief Executive, Economic Development:

No. Depending on the business. For instance, if it was an agricultural business for picking potatoes, they would no doubt get a certain number of non-locally qualified people. If it was for a retailer the number would be hardly any non-locally qualified now. They will get some, but depending on the size of the business. If it is a small business, they would get none. If it was perhaps a very large business they may have a certain amount of non-locally qualified.

The Deputy of St. Mary:

Why? Just explain? Go through the process. Why?

The Deputy of Grouville:

Yes. Why?

The Deputy of St. Mary:

Which end? I do not get it. Which end of the business?

Assistant Minister for Economic Development:

They will have had some schools that ... firstly, when any decision is made, we always speak to Social Security about the availability of the schools or the people who are currently unemployed.

When that feedback is given from the Social Security Department about the availability of certain skills, we then make a judgment about if we need to give a licence for non-locally qualified people.

The Deputy of St. Mary:

Is anyone monitoring those requests for skills?

Assistant Minister for Economic Development:

Yes.

The Deputy of St. Mary:

So, there is a little table and you, we are up to 3, 4, 5 now who need those skills. What about bearing down on Skills Executive, firing off a memo to the Advance to Work people, making sure you fill those ... you know, get those skills locally available. I know it is not quite as easy as that.

Chief Executive, Economic Development:

You talk about it as if you flick a switch.

The Deputy of St. Mary:

Exactly. I was saying, you do not.

Chief Executive, Economic Development:

That is exactly what the Skills Executive do not, because it has been very clear in its work to assess the likely demand on a sector by sector basis.

Deputy Chief Executive, Economic Development:

That is what the Advance to Work programme is. Advance is about sector based. So they have done 2 lots of retail now. They have done one lot of business administration.

The Deputy of St. Mary:

You are feeding in this information directly, requests for non-locally qualified people?

Deputy Chief Executive, Economic Development:

Yes.

The Deputy of St. Mary:

It is straight into this process, is it?

Assistant Minister for Economic Development:

Yes. We also have the assistance of the Minister for Social Security who sits with us when we are making these decisions.

Deputy M.R. Higgins:

Who makes the decision, the Minister for Social Security and who else?

Assistant Minister for Economic Development:

The Migration Advisory Group sits ... talking to me today here, as part of the Economic Development team, I do not have that position when I am on the Migration Advisory Group. I am representing the Assistant Chief Minister. There is the Minister for Housing, who has input into it and also Constable Norman, who is the Assistant Minister for Economic Development. So there are the 3 who take a view on that. But assisting us at the same time is the Assistant Minister for Social Security, who sits with us. I have to say she is very demanding in her requests that local people are given ...

Chief Executive, Economic Development:

I think it is fair to say, Minister, that the majority of applications that come in for non-locally qualified positions the recommendation is to refuse.

Assistant Minister for Economic Development:

Yes.

The Deputy of Grouville:

Good.

Chief Executive, Economic Development:

That if anything ... I think it is probably worth saying this, even more ...

Assistant Minister for Economic Development:

It has got a lot tighter over the last few years. We have to recognise we are coming from a position whereby the economy has changed and there are more local people unemployed now. Gradually we are tightening and tightening and tightening as we go along. But in the past it was accepted that we needed non-locally qualified people in our community.

The Minister for Economic Development:

But to be fair there are certain sectors that, even in the current climate with high levels of unemployment compared to our norm, who find it difficult to recruit locally. We have to recognise that as well. That is factored into all the decisions that are made. But it is more difficult for companies to recruit non-locally qualified people, as you would expect. But there are sectors that still struggle to find local people.

The Deputy of St. Mary:

Can you tell us which sectors those are, because clearly there is a mismatch there, which Deputy Labey referred to.

Assistant Director, Performance and Operations, Economic Development:

Tourism is probably top of that list. We had a meeting last week with representatives from Tourism, Highlands College, Jersey Hospitality Association and other. They are finding it extremely difficult. You will have seen the headline in the paper where Jersey Pottery are making a substantial effort to recruit local people into local business and are finding it extremely difficult.

Deputy J.M. Maçon:

Is that because of a skills gap or is that simply because of ...

Assistant Director, Performance and Operations, Economic Development:

I would probably suggest a wage pay. It is a little bit of a skills gap, but it is also ... Highlands College has gone from single digit figures in the catering area 4 years ago to having surpassed the 100 mark of late. People are definitely coming into the skills, aided in large part by some of the television programmes about, some of the media type chefs, and aided by the significant increase and success of our own local chefs in our own local businesses. But it is back to the hours. A lot of ... when we spoke of one of the very large operators who said as soon as people came for interviews, they wanted to work Mondays to Friday, 9.00 a.m. to 5.00 p.m. Now the hospitality industry, as you well know, does not work on a Monday to Friday, 9.00 a.m. to 5.00 p.m. basis. They tried to get receptionists and front of house staff. They could not find one single local person. Something that the Minister mentioned earlier, they want to employ local, because it works out. They do not have a housing problem to deal with. These people can go to their own homes afterwards and have the ...

The Deputy of Grouville:

This goes back to ...

The Deputy of St. Mary:

And they know the Island, which helps.

Assistant Director, Performance and Operations, Economic Development:

They know the Island and they speak the language.

The Deputy of Grouville:

This goes back to the disconnect. The disconnect can be as much the attitude of the people looking for the job as much as it is the skills shortage ...

Assistant Director, Performance and Operations, Economic Development:

As the Chief Executive said, it is not as easy as flicking a switch.

The Deputy of Grouville:

No.

Assistant Director, Performance and Operations, Economic Development:

I mean it would be lovely if we could go and take 100 people from the list and put them into the retail industry and take another 100 into hospitality. But there is an element of choice on both sides.

Chief Executive, Economic Development:

I think if you look at the Employer Survey, and I think we did the last one 3 years ago or something like that, it is not about underlying technical skills, it is about the soft skills. That is where the gap is. I guess the attitude ...

Deputy Chief Executive, Economic Development:

A lot is to do with motivation and work expectation.

The Deputy of Grouville:

So where is the education of these people?

Deputy Chief Executive, Economic Development:

What you are finding now is Social Security are taking a new approach towards helping these people, where they are having personal advisers who are dealing with between 15 and 20 individuals themselves. It is like having a client management system whereby they are working with them. They are trying to give them the softer skills, the motivational skills that they need to get them into employment. That is a brand new service that has just been brought in.

The Deputy of Grouville:

But there is not the same incentive.

The Minister for Economic Development:

There is an element here that is sensitive, but nevertheless is one that the skills executive is looking at. That is in relation to the high percentage of young people are out of work. Young people typically would be the ones that would go for the jobs that we have described, certainly within tourism. The benefit structure at the moment is a disincentive to young people taking these types of jobs, particularly when the hours are outside the norm and so on and so forth. There is an issue here with the benefit structure and young people ... this level of unemployment at the moment, compared to pre-the income support levels here, where far greater percentages of young people got back much quicker in work in the last recession than they appear to be doing in this recession. A bit of work needs to be done on that.

Deputy M.R. Higgins:

We have also identified the fact that under 25s do not getting any housing benefit. There are all sorts of issues. It is not a straightforward one by any means.

The Minister for Economic Development:

You are absolutely right. It is not. There are many elements.

Assistant Director, Performance and Operations, Economic Development:

I was just going to say, one of the reasons ... we have looked at the employers and we have looked at the employees, but in the 18 to 22 the person who carries most influence 80 per cent of the cases are the parents.

[12:15]

The parents of Jersey people in that category have great aspirations for their children and do not necessarily want them going into working in certain sectors. So, you are dealing quite often, not just educating the person in question for the opportunities available, but also working on the parents.

The Deputy of St. Mary:

There is a job on attitudes with the parent level, there is a job on attitudes with the young people

themselves and there is also sort of really getting away from what the Minister was saying about: “Well, it is easier to sit around on benefits.” Possibly those attitudes belong to employers as well.

Deputy M.R. Higgins:

Can I draw a line under that? We all accept that it is a complex issue. It is not a straightforward one. I am conscious we have 15 minutes to go. I want to make sure we cover all the other points that want mentioning. So, Carolyn, do you have a point you want to mention?

The Deputy of Grouville:

Yes, 2 points. I would just like to touch on the Rural Strategy, just to see how the recommendations of those are going. Also, to ask why it was decided not to take that strategy to the States.

The Minister for Economic Development:

On the point with regard to taking the strategy to the States; my Assistant Minister, Constable Norman, obviously led on that from an Economic Development point of view. My understanding was that in discussion with the panel it was felt that this was the most practical way forward in terms of moving on, as a broad agreement between the recommendations made by the panel and the department that the strategy would be adopted, and that later in the year there was going to be a conference which would become an annual event which would allow the industry to get fully involved in the further development of the strategy as it evolved over time.

The Deputy of Grouville:

I was going to ask about the conference. Are there plans afoot on that this year?

The Deputy of St. Mary:

How is that progressing?

The Minister for Economic Development:

Yes, indeed. There are plans progressing in order to have it in the latter part of the year. The question that I suppose is most problematic is the advent of the elections in October and finding a

suitable date that is not going to interfere with that particular process. Yes, discussions are continuing in order to find an appropriate date.

The Deputy of Grouville:

Any particular month in mind?

The Minister for Economic Development:

September was discussed, but again it is getting very close and the election is really the big issue. I think, in reality, if there had not been an election, it would have been in the latter part of October. That was the original intention.

The Deputy of St. Mary:

Have you approached the stake holders, you know, the growers, the dairy people, surely you would have pencilled in a date by now?

The Minister for Economic Development:

But it is not, as I was saying, just the industry. It is a question of there is an election in the way as well. Yes, the department is undertaking ongoing dialogue on this matter to try and find a suitable date. But the reality is I think it is going to be after the election, but before the new States forms.

The Deputy of Grouville:

The recommendations, how are they progressing?

The Minister for Economic Development:

I believe, as I mentioned earlier on, following the review that was undertaken by your panel, we adopted 28 and 29 recommendations. As far as I am aware, all those are being progressed.

The Deputy of Grouville:

I thought you agreed them all eventually.

The Deputy of St. Mary:

Never mind. Let us not quibble over ...**[Laughter]**

The Deputy of Grouville:

I have to quibble over the 29, because I wanted to ask a question on it and I thought you had accepted them all. It was the one about the E.U. I thought you had accepted them all after more thought.

Chief Executive, Economic Development:

We can get you a progress report, but I think one thing that is important to say is that the 2012 budget, the rural economy element of that. It is wholly consistent with delivering everything that is in the rural economy structure so there is nothing ...

The Deputy of Grouville:

Yes, but there was a job of work to be done on the E.U. and the only reason why I was going to ask that is I was going to ask how that particular point was going, because one of the people that came to speak to us had huge amounts of knowledge about this particular issue. He had done a thesis on it and it would be an awful shame not to tap into that knowledge about the issue. At that point, I had thought you did, and it was the one that you were speaking on but ...

The Deputy of St. Mary:

So maybe one or 2 specifics just to sort of open them out now and then a progress report, as you said. If you take into account the need to encourage food security, which I think you accept, how is support going for Genuine Jersey and have you given consideration to some way of manipulating G.S.T. (Goods and Services Tax) on imported food as against locally grown food, both of which are in our findings? Not necessarily our recommendations, I am not sure.

Chief Executive, Economic Development:

Well as far as Genuine Jersey is concerned, one of the biggest, I think, changes in this factor was the initial document had a tailing off in terms of States support for Genuine Jersey. That was amended

and I think that has now been maintained, if not grown. So that is Genuine Jersey. What was behind that, you know this probably as well as I do, was the fact that if there is any brand we have got, Genuine Jersey has probably got the greatest potential over and above where it is today. I think the issue was whether or not the members of Genuine Jersey should bear more of the load of funding. That was the view that was initially taken. There was a lot of discussion around it and it was amended. We have moved on and we have got a very good outcome. I think on the second item, well ...

The Minister for Economic Development:

I think I probably better answer that one.

Chief Executive, Economic Development:

Yes, you better.

The Minister for Economic Development:

I am not entirely sure what the Deputy means by “manipulating”. Clearly, there are no exemptions to food as far as G.S.T. is concerned. I accept the sensitivities about locally grown versus imported foods. There is quite a lot of work that is undertaken with local suppliers, supermarkets in particular, and I am very pleased and I hope you have picked and noticed already the percentage of locally grown produce that is being displayed and promoted by Waitrose as the new entrant to the market (I would recommend it). They have made some effort to highlight local produce and it is something that we feel very strongly about. We will continue to encourage local supermarkets to do that. The Co-op has been very good in the past and most local supermarkets do do that. I made a comment in the Jersey Enterprise Awards about Muller yoghurts that you might have picked up on, encouragement to use local yoghurt as opposed to Muller yoghurt. That was a point that I made.

The Deputy of St. Mary:

Can I say there is a big point here about incentivising the consumer to buy local and I have just thought of 3 agendas here.

The Minister for Economic Development:

You are absolutely right.

The Deputy of St. Mary:

It is the health agenda because it was a fresh carrot as opposed to a tinned carrot. There is a big difference. The second thing is it hits the food miles agenda in carbon and, thirdly, it hits the economic agenda in supporting what we are going to do. So please, can we have a serious look at the tax structure and how it could help local growers?

The Minister for Economic Development:

Think twice, buy local. That was

Deputy M.R. Higgins:

You got caught out on that because you did not in the political ...

Deputy J.M. Maçon

With the flags, yes.

The Minister for Economic Development:

I think you are just referring to a particular media column, which was not necessarily entirely accurate.

Chief Executive, Economic Development:

I think changing the fiscal system again is in the remit of the Minister for Treasury for Resources and that is aim of the department. However, the dairy industry is a very interesting example. We produce roughly 14 million litres of milk a year. We consume about 11 million litres of liquid milk. The rest of it goes into products, like cheese and things like that. The Island consumes 30 million litres' equivalent of dairy products so there is a huge local market which is imported. Now there are issues of economies of scale, but if we can work with the retailers and in that we are talking in here about continuing to work with the Co-op and Waitrose and Marks and Spencer and others, to have

more local product in there than the economies of scale for Jersey Dairy, for instance, start to play out in a very different way. And that is what the Minister emphasised in his speech and that is where a lot of our work in combination with “think twice, buy local” is encouraging people to make sure that the local produce is the first port of call. The more they buy, the lower the unit cost is going to become and then it is a self-fulfilling prophecy. It somehow does not seem to gather on to that but we continue to work on it very hard.

The Deputy of St. Mary:

Another issue is the law on land, which was a big issue in our review. Has there been progress on the review of the 1974 Land Law?

Chief Executive, Economic Development:

Off the top of my head, Sir, I cannot tell you but we will find out for you. I am not sure whether that has.

Deputy M.R. Higgins:

Okay, we need to move on. Jeremy, you?

Deputy J.M. Maçon:

Just as a matter of process, could you please inform us what your top priorities for the next quarter regarding your legislative programme are please?

Assistant Director, Performance and Operations, Economic Development:

You have got the programme there. That gives you the full 12 months.

Deputy M.R. Higgins:

And have we questions here about the licensing.

Assistant Director, Performance and Operations, Economic Development:

Sorry, could I just add on there that you have got their programme for the 12 months which of course

there could be some slippage but if there is any area of that that the panel do want to have more information on, briefings, paperwork, whatever.

The Deputy of St. Mary:

Sorry, which is that about?

Assistant Director, Performance and Operations, Economic Development:

You have the whole programme until the end of the year. If there are any areas that you would like more information or a briefing, please do let us know.

Deputy J.M. Maçon:

I would like to know about the licensing law, yes, liquor licensing. I know that is a different one. Just the licensing law in general because I believe that has slipped although it has been ... or does that rest in Home Affairs or is that with you?

Deputy M.R. Higgins:

The only thing we have got here is the Royal Wedding, that is the only reference.

Deputy J.M. Maçon:

No then the major licensing, law which I believe has been neglected for some years now, the review. Can you please tell us what that is?

The Minister for Economic Development:

Deputy, I would not describe it as neglected.

Deputy J.M. Maçon:

What word would you choose, then, Minister?

The Minister for Economic Development:

It certainly needs progressing and, indeed, I think one of the problems historically has been the

strong views of a number of different stakeholders, in particular different departments, Home Affairs and the Health Department. In the past, we have involved both those 2 departments in discussions about how we progress the legislation and it made it very difficult to move matters forward with the differing views. What we are now moving to is producing a ... we have in 2012 law drafting times that we are going to pitch for, so hopefully within 2012 we will be in a position to bring to the States a new licensing law which needs to be done.

Deputy J.M. Maçon:

Thank you.

Chief Executive, Economic Development:

That White Paper will include the draft law which has been shaped following the Green Paper consultation which we did at the end of 2009.

Deputy M.R. Higgins:

I saw a reference in the legislative E.C.S. amendments. On the question of the D.C.S. (Depositor Compensation Scheme), the Board has been established and went through the States. Can you tell us how many times they have met and what they are working on?

The Minister for Economic Development:

The Board is there should there be a requirement for the Board in the event of a disaster.

Deputy M.R. Higgins:

But they are not working on any preparatory work, or is the department working on the preparatory work?

The Minister for Economic Development:

The department has worked on the preparatory work.

Deputy M.R. Higgins:

Yes, can you tell us what you have done then in preparation in case there was a banking failure? So you are ready to just go as soon as it happens?

The Minister for Economic Development:

We certainly hope so. Clearly the agreement reached following issues raised by your panel about the need for report which was not the initial intention as you know, we have now gone through that process, put the Board in place. The Board is there ready to react and discussions are ongoing between the J.F.S.C. (Jersey Financial Services Commission) and the department to ensure that we are in a position to mobilise should indeed the unlikely event of a disaster arrive.

Deputy M.R. Higgins:

Now you say you mobilised but what steps have you taken to sort of have the proceeds ... obviously you have got a quick payout under the scheme. How can you possibly meet a 7-day or whatever - I cannot remember what the exact date was - payout of initial money and everything else unless you have got some procedures and some things in place?

Chief Executive, Economic Development:

Those have been written. All the agreements in terms of providing the liquidity between the Treasury and the scheme that have been put in place. Everything is ready in the event of a bank failure to be able to make that ... because the initial payment is done on a formulaic basis. So it is not an issue of interpretation. It is an issue of proving that the deposits exist which is information that the bank has to provide and there is a payment made up on that basis and ...

Deputy M.R. Higgins:

Okay. Rather than disturb now because we are coming to the end of the time, can I ask you to supply us with all the procedures and what the arrangements you have put in place at the present time are? Then if I can ask the officer to note that and yes if you can get that to us, please.

The Minister for Economic Development:

Yes, happy to do that.

Deputy M.R. Higgins:

Okay, does anybody else have any questions?

The Deputy of Grouville:

If you can answer this extremely briefly. What is the future for Jersey Post?

[12:30]

The Minister for Economic Development:

There are plenty of challenges one of which we discussed briefly earlier on which was the low value consignment relief. Clearly, Jersey Post gets a significant amount of its revenue from the fulfilment industry and if there was a material change that impacted on their revenues, then that would have a significant impact on postal services in the Island but discussions are ongoing. At the present moment in time, the responsibilities are from an Economic Development point of view from a regulatory perspective. With regard to Jersey Post, performance is very much the remit of the shareholder, which is the Minister for Treasury and Resources.

Deputy M.R. Higgins:

In fact, just going back to that comment about the fulfilment industry, if it goes though, it is going to have a major impact on the other new entrants into the fiscal market. It could well be; that is the most lucrative part of the business that we may be relying on Jersey Post later on.

The Minister for Economic Development:

I think if you look at the broad numbers and this is a quick answer, you have around about £5 million of revenue through the fulfilment side for Jersey Post. They lose on traditional post around £5 million. There is a heavy subsidy of the fulfilment revenues going into the traditional postal market. They get about three-quarters of their revenue from 2 operators in the fulfilment area so there is a heavy reliance for that sustainability.

Deputy M.R. Higgins:

But again, if those changes in the U.K. will impact on the other postal providers, these new entrants who are looking to ...

The Minister for Economic Development:

It will have an impact but the greatest impact would be on Jersey Post.

The Deputy of Grouville:

I know it is the Minister for Treasury and Resources, but obviously it is going to have a huge impact on the economy one way or the other. Are there meetings taking place and things going on behind the scenes to ensure that we still have a postal service in place?

The Minister for Economic Development:

Indeed there is ongoing dialogue and meetings with Jersey Post which occurs, as you would imagine, independently. Obviously the shareholder's interests and views on these matters are going to differ from the regulatory side which is where our responsibility lies and so clearly we do not meet at the same time but we do meet, both ourselves and the Minister for Treasury and Resources, independently with Jersey Post and the regulator.

Chief Executive, Economic Development:

I think the most important thing to say is that the Postal Services Law under which the Minister for Economic Development has oversight of the regulator, what is the main constituent of that is sustainability of universal service obligation which is the postal service in the Island and they have to regulate to make sure that that is preserved at the level prescribed by the Minister which at the moment is 5 days a week with all the services they deliver. So that is our role as a department, the Minister's role, to ensure that no action is taken to damage that sustainability.

Deputy M.R. Higgins:

Okay, just 2 other things on legislation. The intellectual property and additional provisions, et cetera. According to this, there is going to be a ministerial decision 4th May. Then it says a briefing

if the panel wants it or if we call it in and you are talking about lodging it on 6th June and debating it on 6th June. Do you think that is enough time for us to properly scrutinise things like that?

Chief Officer, Economic Development:

You have already scrutinised the law. These are supporting the legislation and regulations.

Deputy M.R. Higgins:

So it is not the rest of the ...

Chief Officer, Economic Development:

No. It is not registered rights or ...

Deputy J.M. Maçon:

Yes, so when will they be coming forward then because this was obviously a high priority of the department?

Chief Officer, Economic Development:

What you will see is that the next thing to come forward from a legislative perspective I think is the Paris Convention, which is one of the major intellectual property conventions, and then it will be 2012 before the amendments to the registered rights law come into force.

Deputy J.M. Maçon:

So that will be in the new House then?

Chief Officer, Economic Development:

It would be, yes.

Assistant Director, Performance and Operations, Economic Development:

It will be the new House but if this panel would like the work to start sooner and be more involved at an earlier date, then of course we will not be waiting for the new House.

Deputy M.R. Higgins:

Okay, my final one is the sample protection consultation. The matter was proposed on 31st January, summary responses reportedly being given to the Minister. When can we have sight of that?

The Minister for Economic Development:

Well, the Minister is looking forward to having sight of that. To be fair, we gave an extension to allow all those that wanted to respond to respond. There was one outstanding response and so we extended for a month. I spoke to the officer who is dealing with this matter and he is hoping within the next few weeks to be able to provide me with the responses. We will then forward them and publish them, and I would anticipate moving forward with this fairly rapidly.

The Deputy of St. Mary:

I have got a couple more. One is on the same track of responses to consultation on the D.C.S. We notice that you have done a consultation with the banking industry about the funding of D.C.S. and various other questions which happen in the middle of July. Could we have the consultation report that arises out of that?

Chief Officer, Economic Development:

In due course, yes.

The Deputy of St. Mary:

Well presumably if you are going to the States with the regulation which you are doing very soon.

Deputy M.R. Higgins:

If it was July 2010, surely you have got all that information already?

The Minister for Economic Development:

I think that is what is enshrined in the scheme itself now.

The Deputy of St. Mary:

Yes, as you are going to bring it forward?

The Minister for Economic Development:

Yes.

The Deputy of St. Mary:

So we can see that as part of what you were referring to. The other question is going back to business advice, does the question arise and do you have a line on giving advice about the structure of businesses? I am thinking particularly of now that we have Waitrose, people are thinking: "Oh, that is a new structure, you know, people owning the business they work in" and so on so there is a big source of people thinking differently about Co-operatives, Mutuels and also social enterprises, i.e., not-for-profit, are all those in the advisers' minds as people come forward and had you considered these options as part of the package?

The Minister for Economic Development:

I think the simple answer to the question is yes we will look at the broader range of options as is available.

Deputy M.R. Higgins:

All right, anyone, any more questions? No, in that case, can I thank you very much for coming and for the information you have given us.

[12:36]

STATES OF JERSEY

Education and Home Affairs Panel Draft Civil Partnership (Jersey) Law 201-

WEDNESDAY, 15th JUNE 2011

Panel:

Deputy R.G. Le Hérissier of St. Saviour (Chairman)

Deputy M. Tadier of St. Brelade

Deputy J.M. Maçon of St. Saviour

Witnesses:

The Very Reverend R.F. Key (The Dean of Jersey)

In attendance

Mr. M. Haden, Scrutiny Officer

[11:36]

Deputy R.G. Le Hérissier:

Okay, thank you and apologies from Deputy Pitman who unfortunately has been delayed by a family issue but he may be with us a little later. Thank you, Mr. Dean, for coming. As you know we did not quite observe this distinction, the in-principle has gone through the States, it did go some time ago so there have been developments in the European Court and places like that, but in regard to your good self we are obviously looking at the provisions or the non-provisions for the use of religious premises to solemnise partnerships. So, in order to kick it off and then my colleague Deputy Tadier who is leading on the content ... but could you tell us your position? I am sure you will distinguish between the position you reflect in your official role and how you reflect other ecclesiastical opinion on the Island.

The Dean of Jersey:

Goodness, I will have a go. Obviously I have spoken to the leaders of other denominations before coming here today and I think, with the exception of the Unitarian Church in the U.K. (United Kingdom), some liberal Jewish Synagogues and the Quaker Society of Friends, the position of the mainstream Christian denominations, and I think too the positions of other great world faiths, is that marriage is by definition between male and female. Most would say between one man and one woman though clearly some allow for more than one, and that therefore for us civil partnerships are exactly that. I can see there is a ... as a matter of social justice and I rather I think I said about this in the in-principle debate, it seems entirely right that people should be able to have privileges of particular relationships, should be able to leave things free of taxation and all of that, allow somebody to be their next of kin in many ways for perhaps medical decisions or what have you. I know you have not gone down this route in the legislation. I think what a number of folks hoped would happen, unlike the United Kingdom, is to differentiate and maintain the differentiation between civil partnerships and marriage. The prohibited degrees as they are called, the 2 sisters, 2 brothers, that kind of stuff would not be followed into civil partnerships. I think the general position would be we do not see any reason why you should not have a civil partnership between 2 sisters or what have you particularly ... I mean maybe the taxation is different here, but particularly in the U.K. I think our big thing would be to maintain the distinction between this as a civil and justice issue, and marriage as a central building block of society, and, as we would say, as a Christian

sacrament.

Deputy M. Tadier:

Can I ask about the ... you said something that I found slightly surprising, that you do not see a problem with civil partnerships between 2 sisters or 2 brothers. Can you go into more detail?

The Dean of Jersey:

Well, I think that so often the presuppositions - although often unspoken but certainly the presupposition in the English tabloids - is that civil partnership is about a relationship between gay people either male or female, and that has as part of that, its own sexual fulfilment. I think what a number of Christian denominations have said is that if this is about civil partnership, this is about nominating somebody as your next of kin, it is about being able to pass property without taxation, in other words, if it is definitely not gay marriage, which certainly was where the arguments started, at least in the U.K., then why should it not be? If it is not marriage what have the prohibited degrees got to do with it?

Deputy M. Tadier:

Yes, okay. But I would say that seems to trivialise for me what I would think most of those entering into civil partnerships would see civil partnerships as, because certainly if it was simply about passing on property to a next of kin that can be easily done with wills and with the engagement of lawyers but the reality of it is most civil partnership relationships will be presumably of a sexual nature, certainly of that kind of nature. I could ask the question for example, there is a presumption that marriage is also of a sexual nature in that is with 2 people who are amorously engaged, so why should 2 sisters and 2 brothers not be able to engage in marriage if they are, you know, in the church, a brother and a sister?

The Dean of Jersey:

Well, I think the difference is precisely... no, you have put your finger on it exactly, which is that as I hear you, Deputy, I cannot see the difference in what you are saying, between civil partnership and gay marriage, apart from different use of a couple of English words because in Christian tradition, Jewish tradition, Islamic tradition, Hindu tradition, marriage is used for lifelong commitment of a man and a woman, and therefore it says nothing about should whatever people's different positions on sexuality and its expression may be. This is saying, if you like, a civil partnership might be an apple and apples may or may not be thoroughly good things and we ought to legislate for them but they are not oranges. For the Christian church, marriage would be male and female and therefore if it is a marriage then the question has been asked: "So why are there prohibited degrees?" because the prohibited degrees legislation, which as you know goes back into church law to the Middle Ages, arose precisely out of the male female then. You are exactly right, the way in which our culture takes civil partnerships gives it exactly the meaning that you said, I would not disagree with you for a moment.

Deputy M. Tadier:

But if we stick with the fruit analogy, the way I look at it, certainly we have to look at things from the point of view of the States and as politicians, and I would argue the States would rather than saying an apple and an orange, would say we have got the Golden Delicious and a Cox's Pippin. They are both apples and in terms of the States we are looking at 2 apples. The problem is the church does not recognise one of these apples and says that we are going to recognise that apple but not the other apple.

The Dean of Jersey:

I think, yes, again you have put your finger on the fundamental divide, which would be that the traditional Christian churches and the other great world faiths, would say that unless it is a man and a woman whatever else it is - not making a comment about whatever the other is, is good, bad or indifferent - it is not marriage. That, I think is how we would across the board see it; that would not be a contentious thing within the churches.

Deputy M. Tadier:

We will move forward because I think that is established because I think we appreciate that is what the churches think, although it is not universal.

[11:45]

The next question is we are looking in particular at a couple of Articles here, which prevents the religious aspect taking part with the civil partnerships. So we are not saying civil partnerships are marriage. We recognise that the view of the church and religious community is diverse when it comes to civil partnerships, and that some denominations already recognise, or certainly want to endorse civil partnerships with a religious ceremony, whether that is a blessing.

The Dean of Jersey:

That would be different even within a denomination depending on which part of the world you are in.

Deputy M. Tadier:

Yes but can you give us any input on those views? Which denominations are there in Jersey which would currently be happy to perform a blessing of a civil partnership in church?

The Dean of Jersey:

The only ones that I am aware of, and I am very happy to realise my knowledge may not be correct, but the Society of Friends I understand would be happy for that to happen. If we had a Unitarian Church they might well be. That the Unitarians, just to be absolutely clear, is not same as United Reform. I know you know that but just for the benefit of any press coverage or anything. There might well be some individual ministers who in theory would be happy to do what you suggest but the denomination would prevent that. So, whatever the Church of England in Jersey might think, and I think the vast majority would take the traditional line, unless and until the general synod changed its mind then we could not anyway. Exactly the same in the Roman Catholic church, whatever Monsignor France might think or whatever, until the Pope and the College of Cardinals change their mind ... because that is part of the thing we are getting part of a larger worldwide community is that you do not necessarily make all your own decisions. I am not aware of any others who would be but I think I do want to say that, do Christian ministers minister pastorally to folks irrespective of sexual orientation and of relationships in which they are committed, and the answer is yes. If you are in hospital you are visited, if you are dying you get anointed and last rites or whatever is appropriate. So that it is not that, it is about ... Monsignor France put it to me like this, that it is about making sure that Christian marriage is preserved as the fundamental building block of society. That is pretty much verbatim.

Deputy R.G. Le Hérissier:

So the logic of that then is in a sense, which I know was causing difficulty to Monty earlier in the session, there has to be a distinction between a civil partnership and marriage in your opinion?

The Dean of Jersey:

Yes, it is. I think Jersey is a funny place with civil ... it is probably a bit off point in which case, Deputy, please shut me up but our law does not make sense on civil weddings and church weddings. The registrar told me the other day that if you are a hotel and the whatever it is room is licensed as an appropriate place, then you are not meant ever to have any prayers in that. Okay? Nobody has noticed that for centuries the Dean can issue a *Dispense Extraordinaire*, a special licence, which allows the priest to marry the couple at any time and in any place he judges to be convenient, whether that is the beach or a hotel room or sadly sometimes a hospice bed or anything else. So, we do not have ... even our laws on marriage, I think we just do not ask the question but, are they lined up exactly? No, they are not.

Deputy M. Tadier:

Well, let us go to the question in hand, really what I think we are trying to establish is that currently as the law is drafted with the inclusion of Article 3(5), which explicitly prohibits the use of any religious location or of any religious content. What we would argue is that this is binding the hands of the churches, saying that under no circumstances must any religious content or any religious association be performed. If it were to be taken out, it seems to us that there is still no obligation for any of the churches to perform any kind of religious ceremony with regard to civil partnerships but what it would do, it would permit those churches first of all, which would like to acknowledge civil partnerships insofar as carrying them out, it would allow them to do that. It would also allow for any subsequent changes in doctrine or in approach, which would come in the next few years, to be incorporated. So, our question is, would there be any objection from the churches to simply not have these clauses in there, to make it permissive rather than proscriptive.

Deputy J.M. Maçon:

Well, just to liberalise it, is it not, and then if there is any problem with it then it allows for the religious authority to say: "No."

The Dean of Jersey:

As I flew back from Southampton an hour or so ago I was trying to mull over my answer to this question, which was clearly coming in my mind. The honest practical answer, would there be objections if those clauses were removed, is that there would be and the strength of objection might vary depending on the priest or the denomination that you asked. My guess is that the strongest objections would be from my Roman Catholic colleagues. If I put all the priests on the Island, there would be a kind of sliding scale in the Church of England. There would not be absolutely one voice in that list because we disagree sometimes on things that ... that is just life.

Deputy M. Tadier:

On what would the objections be based? Let us take the Catholic one.

The Dean of Jersey:

The objection would be it is absolutely analogous, and I do not want to open this can of worms either, to the euthanasia debate. It is the slippery slope ethic. Should you make it possible? If you make it possible, at what stage does it become family pressure? At what stage down the line does it become the doctor's decision not the patients or whatever? Now, if you do not mind the parallel, and this is not an ethics seminar, there would be the thought that if you allow it then there will be pressure on churches and ministers to do it, therefore better to hold the line by not allowing it. So I am just relaying ...

Deputy M. Tadier:

Yes, but my question to the Roman Catholic in that sense would be, what business is it of theirs or what the concern is if there is what takes place let us say at the Circle of Friends?

The Dean of Jersey:

The Society of Friends.

Deputy M. Tadier:

The Society of Friends or at the Methodist church, why would they ... Let us use another example, let us say, for example, circumcision in Jersey probably only takes place within the Jewish community and if there is a Muslim community it would take place there. Now, let us say of course the Church of England, Catholics, do not practice circumcision so we would build into law that circumcision must not take place on any religious location because it is not something that is recognised by the Church of England. Now that would seem like a sledgehammer to crack a nut, it would seem like there was no nut to crack, if we excuse the clumsy analogy.

The Dean of Jersey:

No, Deputy, of course I accept the force of that argument. I think all I would say is that for most folks in and outside the churches there would be a huge difference between how the good covenant right of circumcision going back to Abraham, how that fits into society, and something as fundamental as marriage as a building block of society. So the argument would be entirely about protecting marriage. That would be ... we have had discussions, that is exactly where that is coming from. If you ask me personally as a general principle, I would probably line up with my Roman Catholic friends but it would not be the greatest hill to die on. Now, that is me as Bob the theologian as opposed to the Head of the Church of England or anything else, and that is nothing to do with my belief in marriage, which is absolutely this is a foundational thing, and if you were to ask me would I ever officiate at a civil partnership or whatever, the answer is no, for those reasons. It is that old thing about, you know, I might not agree with you but I defend your right to say it or think it or what have you. Now, what I would not want to be heard to be saying in any capacity, personal or professional, is that I see civil partnership as identical to marriage, equivalent to marriage or whatever because I do not and the churches do not, and the single biggest thing that we would all want you to hear is that whatever you put into legislation should not be seen in any way to diminish marriage.

Deputy M. Tadier:

Yes, okay, but could I put it lastly, simply I take that on board and I do not think this would diminish marriage because we are not dealing with marriage here but the bottom line is we have a clear choice here. We can either pass a law, which specifically prohibits those churches who would want to perform a civil partnership ceremony to do so without forcing those denominations who do not want to change their particular line on it. Or we can pass a law, which says to, let us say the liberal Jews, the Unitarians, possibly some Methodists but certainly the Quakers, you cannot perform civil partnerships, even if you want to, you cannot make an application to register such an event because there are certain individuals who may be in the minority within the religious community, which is in a minority in the Island possibly. That seems not logical. It seems that the former would be the correct step to take it politically.

The Dean of Jersey:

I think if you were to think about doing that my only response to that is I think you would be creating another illogicality unless you get the ecclesiastical and the civil law in one thing on civil marriages because what we are talking about is civil events and whether there can be any religious overtones. Now, I think were you to do as you suggest and remove the prohibition from religious parts of civil partnership, then to say that you cannot say prayers in the middle of a L'Horizon hotel civil wedding would look even more ridiculous, it seems to me.

Deputy M. Tadier:

We have touched on this earlier but it could well be that the State has to provide a carve out for same sex couple engaging in civil partnerships to allow religious content because the church will not allow their own religious content, they cannot have a church ceremony, and because marriage and civil partnerships are not the same it might appear on the surface discriminatory. It would be quite okay to allow religious content for civil partnerships where the State does not allow them for marriage because they do not have the option of going to a church for their official marriage.

The Dean of Jersey:

If you will allow me, I do not think that would quite work because the reasons that many couples decide to go for the hotel is nothing to do with declaring their agnosticism or anything else. It is about a very nice package in a very nice place with a lovely white ribbon round it and that is the deal. Perhaps in their desire to have the most fantastic day, which I thoroughly applaud and work very hard to make sure they have when I am ever involved in weddings. I agree it is absolutely true that there are couples who have that and then think: "Well, the registrar did their best but I could have done with a bit more and it was a shame we could not have had other things." Now, of course if they knew, and here I think the church has been very backward, if they knew that there is provision in the law of this land through the ecclesiastical court to allow marriages in certain

circumstances wheresoever the Dean decides is a fit and proper place, things might be a bit different. I am sorry, I do not want to give you another headache when you are just trying to sort this one out.

Deputy R.G. Le Hérissier:

We are going to wrap up.

The Dean of Jersey:

I am sorry I am putting ...

Deputy R.G. Le Hérissier:

No, not at all, Dean, sorry, that was not a criticism of you; it was a criticism of us I believe.

The Dean of Jersey:

It is entirely justified.

Deputy R.G. Le Hérissier:

Because we appreciate the fact that you have rushed here from the airport via David Place no doubt, so we thank you for that but it strikes me that you have moved the issue saying should there be an element of a religious ceremony within the context of a civil ceremony but of course another way of looking at it is that for those who wish to solemnise their union there should indeed be a separate religious ceremony, it is possible to do it that way. Is that something you would agree with?

The Dean of Jersey:

This is the sort of continental system, everybody goes to the Mairie first and then ...

[12:00]

Deputy R.G. Le Hérissier:

Yes.

The Dean of Jersey:

No, it would be a denial of our history where the church was conducting marriages long before the State thought about it and ministers, certainly Anglican ministers and I think others, when authorised are registrars in our right. So the registers I fill in are my registers. Sorry, it is not meant to be proprietorial I know it is very simply taking the history with it, no I do not, I think that is kind of doubling up. I have taken part in weddings like that in Holland, it just seems somewhat cumbersome, you were not really sure when the real marriage was. The State thought it was what happened in the town hall and everybody else including the couple thought it was what happened in the church.

Deputy R.G. Le Hérissier:

But do you think to save face and almost to get this ... we know the French operate this very logical distinction in their society that sometimes leads them into interesting dilemmas around the whole thing and so forth but do you think, in order to sort of preserve face for each of the institutions involved, in other words the secular state and the religious body, do you think that could be made workable?

The Dean of Jersey:

No, I think I would far sooner live with a little messy untidiness than the incredibly inflexible French model that you outline. I think the tradition of how we got our marriage laws and our marriage rights are just wonderfully tangled and that is how they are. I do not hear any great public clamour that: "Please can we go to a town hall first and then go to church afterwards?" I think you would be trying to do something that so far as I am aware nobody out there is asking for.

Deputy R.G. Le Hérissier:

Okay.

The Dean of Jersey:

In fact we could all drive on the right hand side of the road but why?

Deputy M. Tadier:

I think the conclusion is that certainly if civil partners wanted to have that religious connotation they would have to do exactly that. They would have to have their civil partnership conducted by the registrar then they would go to a willing church. So they have already got the inconvenience of having 2 services and 2 sets of expense.

The Dean of Jersey:

I think that is exactly where we have come full circle and it is probably a good place to end my input. For the faith communities, marriage is seen as different and that that is seen as ... well for the Roman Catholics for instance, it is seen as one of the 7 sacraments, and that whatever civil partnership is, it would not be thought of as that. Therefore, whatever you might do for a civil partnership is a matter for the State to decide, and as I say I think as a matter of social justice I do not have any problem with that at all. It is the protection of marriage as marriage. Would you forgive me, Deputy, I have to run to Government House?

Deputy R.G. Le Hérissier:

Okay, any further questions?

The Dean of Jersey:

You are very gracious.

Deputy R.G. Le Hérissier:

You do not wish to make any ... I am asking you at the right time, do you want to make any final point at all?

The Dean of Jersey:

You have allowed me to say everything I would have wanted to say and I am very grateful for that.

Deputy R.G. Le Hérissier:

Yes, thank you very much indeed it was very kind of you.

STATES OF JERSEY

Education and Home Affairs Panel Draft Civil Partnership (Jersey) Law 201-

WEDNESDAY, 15th JUNE 2011

Panel:

Deputy R.G. Le Hérissier of St. Saviour (Chairman)

Deputy M. Tadier of St. Brelade

Deputy J.M. Maçon of St. Saviour

Witnesses:

Nina Benest (Advocate)

In attendance

Mr. M. Haden, Scrutiny Officer

[12:30]

Deputy R.G. Le Hérissier:

Okay, thank you very much, Advocate Benest, hopefully you do not need to read it but there is the witness advice in terms of how evidence is given. Good, well I would like to thank you very much for coming. While you have obviously a broad interest as you have just demonstrated, we know that you have a particular issue you wish to raise about housing so I wonder if you would just like to tell the panel what it is.

Advocate:

Well, on my review of the draft law it struck me that no provisions had been made in the draft law, either to amend the existing Housing Regulations or else to incorporate the ethos behind this draft law into the new draft Work and Housing Control Law. So, there is a potential there for a lacuna and for there to be discrimination between spouses as opposed to civil partners when it comes to housing issues. At the moment, under the Housing Regulations, spouses, unqualified spouses can piggyback on the back of their spouses insofar as if you have a qualified spouse and an unqualified spouse under the Housing Law, the unqualified spouse is entitled under the 1(1)(n) to join in a purchase of land and become joint owners, and that will have a legal interest in the property. As things stand without an amendment either to those regulations or without an amendment to the Draft Control of Work and Housing Law, that right would not be afforded to civil partners. So, you would have a situation where potentially you have a civil partnership with one person qualified under the law to buy and sell property, the other person is not qualified and the unqualified person would not be able to join into that purchase by virtue of the fact that they were civil partners.

Deputy R.G. Le Hérissier:

Okay, and you have as I understand it ... have you made a representation?

Advocate:

No, I have not.

Deputy R.G. Le Hérissier:

Okay, but have you ...?

Advocate:

This is something that occurred to me, I have to confess, last week as I was reviewing matters.

Deputy R.G. Le Hérisier:

We have obviously asked the adviser to the Chief Minister, about this issue and apparently there are changes being looked at.

Advocate:

Right.

Deputy R.G. Le Hérisier:

From your point of view, do you think the changes could be implemented simply or would it involve a major change to the law?

Advocate:

I think, certainly as far as the Draft Control of Work and Housing Law is concerned, it can probably be affected very simply. Every time you have mention of “spouse” you would say “and/or civil partner” and there are only a few occasions where it arises. In terms of the Housing Regulations, if we still have in place the old Housing Law, again it is an amendment to Regulation 1(1)(n). So again, I would have thought it could have been done fairly quickly and simply but looking at the new Draft Housing Law, there is also an implication for the qualified affected to property as far as I noticed under the law, that a property will become a qualified property in the event of inheritance. Now, that could be achieved for civil partners under a will. If we have the amendments going through, which are envisaged to the Wills and Successions Law, it would also mean that there is an impact in case of intestacy. So, civil partners would be able to inherit or would have rights to property under intestacy as well. So, it would have an impact on the quality of that property and the designation of that property as a qualified property in those circumstances, and it would then seem silly not to afford civil partners other rights with the remainder of the law. So, they could get in under inheritance but not by virtue of their civil partnership.

Deputy R.G. Le Hérisier:

Yes. No, that seems to be illogical. Are there any questions?

Deputy M. Tadier:

No, but I think it is something we need to pursue.

Deputy R.G. Le Hérisier:

Yes, we were certainly ... but I have to say because the technical implications, and as you probably know there is a massive list of laws being drawn up plus subsidiary legislation, which is all apparently underway but obviously we have not been able to examine every aspect of this but it is certainly something we could follow up.

Deputy J.M. Maçon:

Maybe the only thing I would like to add, is that I happen to be a Member currently scrutinising the Draft Work and Housing legislation coming through so I thank you for your comments on what is likely to be there.

Deputy M. Tadier:

Good, just as an aside what I am concerned about, and this probably may not be a legitimate concern, is that I would worry that they may not be putting these, the regulations with regard to housing, through because they are waiting for the actual change, bringing in a new law. The trouble is we do not know how long that might take so I think in the meantime it is absolutely imperative we have parity, whether it is for a month or for 2 years, you know, until that principle is done.

Deputy J.M. Maçon:

Even if it is only a temporary provision until they can get the thing officially done.

Deputy M. Tadier:

Yes.

Advocate:

I have noticed from the agenda of the States, clearly the debate on the civil partnership is scheduled to happen after the Draft Housing and Work Law, and so from that point of view I thought maybe they are just sort of parking the need to amend the Housing Regulations as exists because they will play catch up. But of course depending on whether or not things do get passed and how long it then takes to hit the statute books and be enforceable, it could end up with a situation where you have that discrimination arising and it does not make sense. Certainly in the 2009 proposition it was envisaged that the Housing Law would be amended, it is there, it is listed and so it seems strange that that listing did not carry through into the draft legislation.

Deputy M. Tadier:

Yes, we are slightly slow, we did not ask why it had not, why it had been taken out.

Deputy R.G. Le Hérissier:

No, he said it was under way but no we did not, we failed to follow up the communication. No, that is a very good point. I suspect there are going to be other points like this because obviously it is so complex a law but they kept reassuring us they had looked at every affected law and changes are underway but anyway we will try and get specific assurance in that regard.

Advocate:

Well certainly I am not privy to the minutiae of the drafting procedure.

Deputy R.G. Le Hérissier:

No.

Advocate:

It may be that things are well in hand, it is just something that shrieked at me when I reviewed the law.

Deputy M. Tadier:

Yes, well we need people to flag these sort of things up, and even if we are erring to the side of caution I think it is better.

Deputy R.G. Le Hérissier:

Okay, well thank you very much, Advocate Benest.

Advocate:

Sure.

Deputy R.G. Le Hérissier:

I mean, I ask with trepidation in case my dear friend gets it wrong ... but are there any other issues, while we cannot get into a great debate about it at this stage, you feel from your broad reading of the law that we ought to take account of?

Advocate:

I do not think so.

Deputy R.G. Le Hérissier:

Okay.

Advocate:

It is just I think generally speaking the reviews of all the existing legislation have been very thorough, and a lot of thought has been put into it. It may be that just the housing issue slipped through the cracks.

Deputy R.G. Le Hérissier:

We have had a briefing on the whole issue of wills and inheritance obviously.

Advocate:

I have seen the briefing note in relation to all the other ...

Deputy R.G. Le Hérissier:

Good, but in the absence of reform of those laws of course they are basically having to go with total parity even if it is not a system you want in an overall sense to go with but that is another issue. Okay, well thank you very much indeed.

Advocate:

Pleasure.

Deputy J.M. Maçon:

Thank you.

[12:40]