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TUESDAY, 22 MAY 2012**

THE PROPOSED ACQUISITION OF LIME GROVE HOUSE

CONCLUSIONS ON ISSUES CONSIDERED DURING THE ENQUIRY

MAY 2012

*The proposed acquisition of Lime Grove House
Conclusions on issues considered during the enquiry
May 2012*
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TABLE OF CONTENTS

SECTION ONE - INTRODUCTION	5
SECTION TWO - LIST OF ISSUES	6
SECTION THREE - CONCLUSIONS ON THE ISSUES REFERRED TO ME.....	7
ISSUE ONE - WAS THE WAY IN WHICH THIS TRANSACTION WAS CARRIED OUT IN THE BEST INTEREST OF THE STATES?	7
ISSUE TWO - WERE PROCEDURES FOR THE PURCHASE OF THE PROPERTY APPROPRIATE?.....	8
ISSUE THREE - WAS IT ACCEPTABLE FOR INDIVIDUALS WITH LIMITED EXPERIENCE OF PROPERTY MATTERS TO TAKE OVER THE PURCHASE OF LIME GROVE HOUSE?	11
ISSUE FOUR - IS IT ACCEPTABLE TO BASE DECISIONS ON ADVICE FROM SHADOW ADVISORS RATHER THAN PROPERTY PROFESSIONALS?	13
ISSUE FIVE - ARE THE ALLEGATIONS OF POOR PERFORMANCE BY PROPERTY HOLDINGS CAPABLE OF BEING SUBSTANTIATED?	16
ISSUE SIX - WERE THE CORRECT PROCEDURES FOLLOWED WHEN INVESTIGATING THE ALLEGED MISCONDUCT OF SENIOR STAFF?	20
ISSUE SEVEN - WERE THE PROCEDURES REGARDING THE RESIGNATION OF A SENIOR OFFICER FOLLOWED CORRECTLY?.....	23
ISSUE EIGHT - IS THE CURRENT POLICY REGARDING CONFIDENTIALITY VALID?	25
ISSUE NINE - SHOULD MINISTERS USE MODERN MEDIA TO JUSTIFY THEIR POSITION WHILST A REVIEW IS IN PROGRESS?	28
ISSUE TEN - WHY DID THE PROPOSED ACQUISITION OF LIME GROVE HOUSE FAIL?	29
APPENDIX - SUMMARY CHRONOLOGY	33

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SECTION ONE – INTRODUCTION

1. In a report published with this paper, I have set out the evidence that I have collected about the circumstances surrounding the failed proposal to acquire Lime Grove House (LGH) as one element of the replacement of the Police Headquarters. The circumstances in which this review has been undertaken, the work which I have done and the outcome are all explained in detail in that principal report.
2. A large part of that report consists of a chronology describing the events surrounding the proposed transaction and its eventual failure together with a commentary on a number of detailed matters that arose in the course of that review.
3. The purpose of this paper is:
 - (1) to indicate the issues which appear to me to arise from the work which I have done (including the issues referred to me by the Corporate Services Scrutiny Sub-Panel)¹; and
 - (2) to indicate the views that I have formed on the basis of that work.
4. In Section Two of this paper I will list the issues that were referred to me by the Corporate Services Scrutiny Sub-Panel in September 2011. As will be seen, I have considered an additional issue: why did the proposed purchase of LGH fail? My conclusions on this matter are set out after the issues posed by the Scrutiny Sub-Panel.
5. In Section Three of this paper I will indicate my views on each of these issues.
6. The final part of this paper consists of a summary of the Chronology of events relating to LGH and the proposed office strategy.

¹ Following a review of the LGH project, the Corporate Services Scrutiny Sub-Panel decided in September 2011 that they had not been able to reach conclusions on a number of issues which they recommended I should consider.

SECTION TWO – LIST OF ISSUES

7. I will reproduce below an extract from the report of the Corporate Services Scrutiny Sub-panel which sets out the issues which they called upon me to examine:

- “(1) Was the way in which this transaction was carried out in the best interest of the States?
- (2) Were procedures for the purchase of the property appropriate?
- (3) Was it acceptable for individuals with limited experience of property matters to take over the purchase of Lime Grove House?
- (4) Is it acceptable to base decisions on advice from shadow advisors rather than property professionals?
- (5) Are the allegations of poor performance by Property Holdings capable of being substantiated?
- (6) Were correct procedures followed when investigating the alleged misconduct of senior staff?
- (7) Were the procedures regarding the resignation of a senior officer followed correctly?
- (8) Is the current policy regarding confidentiality valid?
- (9) Should Ministers use modern media to justify their position whilst a review is in progress?”

SECTION THREE – CONCLUSIONS ON THE ISSUES REFERRED TO ME

ISSUE ONE - WAS THE WAY IN WHICH THIS TRANSACTION WAS CARRIED OUT IN THE BEST INTEREST OF THE STATES?

Introduction

8. In considering how to answer to this question, I analysed the Corporate Services Scrutiny Sub-Panel's question into a series of subsidiary questions:

- (1) Was replacement of the Police Headquarters in the best interest of the States?
- (2) Was replacement of the Police Headquarters using a private sector building in the best interest of the States?
- (3) Was purchase of LGH in the best interest of the States?
- (4) Was the final outcome of the project in the best interest of the States?
- (5) Was the way in which this transaction was carried out in the best interest of the States?

9. Consideration of what is or is not in the best interest of the States is a matter for political judgement and is not suitable for technical assessment. It is not my function to consider the merits of such political judgements and I have not done so on this occasion.

Alternative issue

10. Having decided not to consider the first issue mentioned by the Sub-Panel, I decided that I would consider the more technical issue of why the proposed acquisition of LGH failed. My views on that matter are set out at the end of this paper.

ISSUE TWO - WERE PROCEDURES FOR THE PURCHASE OF THE PROPERTY APPROPRIATE?

Introduction

11. I decided that the Sub-panel's question raises two separate issues:

- (1) Was the procedure adopted for the proposed purchase of LGH appropriate in the sense of being a procedure properly authorised and promulgated by the States? and
- (2) Was that procedure appropriate in the sense of offering a reasonable prospect of achieving the financial and management objectives of the States?

12. As far as the second element of this question is concerned, what is appropriate is, in the end, a matter for judgement by those responsible for the financial management of the States. There is no absolute rule by which one can judge whether a particular control is appropriate; it is a matter of whether a procedure or control offers a reasonable prospect of managing the risks to the States and that is a judgement which will change from time to time as managers' assessment of the States' risks varies.

Were the correct procedures applied?

13. I infer that this issue relates principally to the manner in which an offer was made to the vendor of LGH in March 2010.

14. As is clear from the chronology set out in the report, in his briefing paper dated 31 December 2010, the Deputy Chief Executive asserted that JPH made an offer for the acquisition of LGH which did not have the necessary approval.

15. As I also demonstrate in the principal report, I do not believe this to have been the case. In particular:

- (1) The making of an offer to establish the States' interest in the property was urged by the Chief Officer of Police.

- (2) The making of an offer was approved by the Assistant Minister, Treasury and Resources to whom responsibility for property matters had been delegated by the Treasury Minister.²
- (3) The offer was explicitly subject to ministerial and States approval (let alone other caveats).³
- (4) Although they may not have been aware of the proposal to make the offer before it was made, the Treasury Minister and the Deputy Chief Executive were informed at the latest by the beginning of May 2010.

16. I also note that:

- (1) When they were informed, the Treasury Minister and the Deputy Chief Executive did not immediately raise the complaint that the offer had been made without their necessary approval. This complaint was only made for the first time in October 2010, six months later. In my view, had the offer been made outside the accepted procedures of the States (in that the approval of the Treasury Minister and the Deputy Chief Executive had been required but had not been given) that fact would immediately have been evident and would immediately have been the subject of complaint. It was not. In consequence, the absence of complaint in May 2010 would have led the management of Jersey Property Holdings (JPH) to infer that their actions had been approved by the Treasury Minister and the Deputy Chief Executive.
- (2) On transfer of responsibility for JPH from the Deputy Chief Executive to the Treasurer late in 2011, the scheme of delegation was changed so that there is now an explicit requirement for senior management approval of such offers. This was a tacit acknowledgement that the procedural arrangements had been, at the least, unclear.

17. In short, I have found no evidence of a breach by JPH of the formal procedures of the States.

² Confirmed in an answer by the Treasury Minister in the States Assembly; Hansard; 20 April 2010; page 63.

³ For the purpose of this enquiry I have confirmed that the caveats included in the offer enabled the States to resile from the offer in the event that subsequent negotiations proved unsuccessful, the Minister decided not to approve the transaction, or the States decided not to approve the transaction.

18. However, as I have also indicated in the report, it is clear that in normal circumstances informal means of communication between all of the people involved in this transaction (including the Director, JPH, the Assistant Minister, Treasury and Resources, the Treasury Minister and the Deputy Chief Executive), would have ensured that all of the key people were in general terms aware of what was going on. All of the people concerned were aware that relationships were to some extent unsatisfactory and should perhaps have taken particular care to ensure that the States' business was properly managed. It is a matter of regret that the poor quality of the personal relationships between these people appears to have interfered with the proper management of business.

Were the States' formal procedures appropriate?

19. In my view, the formal procedures as I understand them to have existed at the beginning of 2010 were not inappropriate:

- (1) They required the professional staff of JPH to secure the approval of the Minister responsible for JPH and of the Chief Officer of the department for whom the property was being acquired.
- (2) They also required that no irrevocable commitment should be made on behalf of the States without the approval of the appropriate senior officer and, where appropriate, the relevant Minister.
- (3) They required that the amount of which any offer was made was reasonably defensible.

20. In my view this procedure offered a reasonable prospect that the principal risks to the States would be appropriately managed.

21. I note of course that the procedure has subsequently been changed to require that the approval of the Treasurer should be given or should be obtained before any significant offer is made. The fact that I do not believe that the previous procedure was inappropriate is not intended to be a criticism of the Treasurer's decision to change the procedure. In view of the difficulty which was caused over the LGH purchase, it is understandable that a more cautious and risk averse approach would currently be thought appropriate.

Conclusion

22. In my view, procedures for the purchase of the property were appropriate.

**ISSUE THREE - WAS IT ACCEPTABLE FOR INDIVIDUALS WITH LIMITED EXPERIENCE OF
PROPERTY MATTERS TO TAKE OVER THE PURCHASE OF LIME GROVE HOUSE?**

Background

23. I take this issue to be a reference to the instruction of the Treasury Minister on 19 November 2010 that the staff of JPH should be excluded from further direct involvement in the transaction coupled with the failure to make adequate alternative arrangements for specialist support to be available. The effect was that for a period of two months (at least) the management of this transaction rested in the hands of the Treasury Minister and the Deputy Chief Executive.

24. I have discussed this matter at length with the relevant parties.

25. It is indeed the case that:

- (1) JPH were instructed to withdraw from involvement in the negotiations to purchase LGH;
- (2) no arrangements were made for legal and property advice to be available to support the continuing negotiation until April 2011;
- (3) in practice JPH withdrew from active involvement in the practical work of developing the LGH project;
- (4) no arrangements were made for professional support to be available for any continuing work until the appointment of a project manager at the end of January 2011; and
- (5) in the meantime such work as was done (for example the re-assessment of the space requirement of the States of Jersey Police (SOJP)), was undertaken by the Deputy Chief Executive personally with the assistance of the former Managing Director of WEB.

26. These arrangements were inappropriate if after 19 November 2010 (the date on which JPH were instructed to withdraw) it were intended that the project should be pursued vigorously. They were inappropriate because, as a senior manager, the Deputy Chief Executive should not allow himself to be immersed in the detail of an individual project

and the States should not allow themselves to pursue a project without the support of necessary professional advice.

27. Having said that, the Treasury Minister has told me that it was not intended to pursue the project vigorously following the decision on 19 November 2010, and the Deputy Chief Executive has told me that in practice this was not done. In other words, they both suggest that it was accepted and intended that the result of the decision to exclude JPH from the transaction would be to delay the project. I consider that decision elsewhere in this paper.
28. On the basis that the Treasury Minister intended to delay the project (as he told me), then the failure to make proper arrangements for supporting professional advice did not create an additional risk of mismanagement.

**ISSUE FOUR - IS IT ACCEPTABLE TO BASE DECISIONS ON ADVICE FROM SHADOW ADVISORS
RATHER THAN PROPERTY PROFESSIONALS?**

The Issue

29. I infer that this issue relates to the position adopted by the Treasury Minister in November 2010 (and before) that the price at which it was proposed to acquire Lime Grove House was inappropriately high.
30. As I have established in my report, the Treasury Minister's position was based not on evidence that was presented to him by the staff of the States of the Jersey but on views expressed to him (and the Deputy Chief Executive) informally.
31. I also indicate in the principal report the sources for those informal views and my assessment of their merits.

Discussion: principle

32. The purpose of seeking ministerial approval for a decision is to ensure that decisions which have been analysed rigorously and which are thought appropriate by the States' officers are considered politically to be in the best interest of the Island. Such political consideration is likely to include the balancing of conflicting interests and risks.
33. In such consideration the Minister is invited to take a broad view of the matter put before him (or her) and it may well be appropriate for the Minister to take account of opinions expressed informally on the issue. Certainly, a Minister cannot ignore the existence of views both in support of and in opposition to the officers' recommendation.
34. However, there are dangers in this process because Ministers must guard against being swayed by opinions or arguments which seek to protect sectional or private interests at the expense of the public interest of the Island.
35. Thus, if Ministers are made aware of evidence or opinions that challenge the advice of the States' officers it is wise to ensure that:

- (1) new evidence is examined rigorously in the same way as evidence adduced by officers should be examined to ensure that it is as reliable as it seems; and then
- (2) the new evidence is used to challenge the officers' recommendations.

Discussion: LGH

36. It is evident from the principal report that, as far as concerns the value of LGH, the Treasury Minister listened to a number of privately expressed opinions as well as his own private view on the matter.
37. It is also evident that these privately expressed views (and the Treasury Minister's private view) were not subjected to the degree of analysis that was applied to the property valuations commissioned by the States or carried out by the States' staff.
38. As is also clear from the analysis which I present in that principal report, had they been rigorously assessed, all of those private expressions of opinion about the value or price of LGH should have been disregarded in considering what offer should be made for the acquisition of LGH.

Treasury Minister's view

39. I have paid particular attention to the Minister's view of these matters which, as I understand it, is that:
- (1) as Minister, he is advised by officials;
 - (2) he takes private soundings to challenge the advice he receives from officials; but
 - (3) those soundings are not substitutes for the advice he receives from officials which remains the basis for any decision he may make..
40. In the case of LGH, the Minister decided to ignore advice that LGH should be bought at a particular price and did so on the basis of privately expressed opinions that suggested that the price was over-stated. In my view, it would have been wise for the Minister to ensure that the foundations for those opinions were sound. The point of doing this would have been to ensure that all the views he was taking into account were free from conflict and properly based. Had he done this, he would have realised that one opinion came from a

source that was conflicted (which he has accepted he did not know). He would also have realised that the basis for the values that were expressed privately was weak in a number of cases. These points are all analysed in detail in the principal report.

**ISSUE FIVE - ARE THE ALLEGATIONS OF POOR PERFORMANCE BY PROPERTY HOLDINGS
CAPABLE OF BEING SUBSTANTIATED?⁴**

Introduction

41. In the time available, and in view of the need to understand the reasons for the failure of the LGH transaction, I have not been able to perform a comprehensive assessment of the performance of JPH. I have however been able to reach some preliminary conclusions on the basis of work undertaken within the Treasury and which I have performed over the past two years on the States' progress in achieving the 2004 Five Year Vision.
42. In doing this, I have used two benchmarks. Firstly, I have considered to what extent JPH can be said to have achieved the objectives which were set in the original proposition for its creation. Secondly, I have considered its performance against an assessment of the extent to which those original objectives were deliverable.

Original objectives

43. It can readily be seen that a number of the key objectives set out in the original proposition creating JPH have not been achieved:

	<i>Objective</i>	<i>Achievement</i>
1	Creation of a new department	Achieved
2	Develop a modern innovative approach to the management of property to: (a) maximise operational efficiency (b) improve delivery of public services (c) minimise underperforming property assets (d) optimise maintenance efficiency (e) minimise management costs (f) maximise opportunities for cost reduction and for extracting capital	 (a) Little progress (b) Little progress (c) Little progress (d) Little progress (e) Little progress (f) Little progress
3	Transfer of administration of all property assets (saving social housing)	Achieved
4	Transfer of existing staff with property	Achieved

⁴ In preparing my comments on this issue I have had the benefit of a draft paper prepared for the Treasurer by a member of the staff of the Treasury. I understand that the paper was prepared to assist the Treasurer in taking management responsibility for JPH and was based on limited research which included discussions with a very small number of Chief Officers.

	<i>Objective</i>	<i>Achievement</i>
	responsibility	
5	Development of States Property Plan as part of the Strategic Plan	Nominally achieved
6	Development of JPH Business Plan as part of the Annual States Business Plan	Achieved
7	Development of fully integrated landlord and tenant system of property provision and maintenance	Not achieved as originally envisaged. Maintenance responsibility transferred to TTS.
8	Introduction of charging mechanism for all property assets to reflect true cost of occupation	Not achieved

44. In effect, the constitutional and management objectives have largely been achieved (i.e. the department has been created). But the advantages to which creation of the department was intended to lead have largely not occurred.

Deliverable objectives

45. JPH was created as a central department of the States to take over the management of the States' property which had previously been the responsibility of individual departments. The mere fact of its creation did not achieve the transfer to JPH of the properties themselves, the budgets for their maintenance, and the staff working in maintenance. Nor did its creation of itself ensure that individual departments would co-operate in the development of a common policy to secure the more efficient use of office space throughout the States.

46. In practice, JPH's achievement of the original objectives depended upon a number of permissive conditions such as:

- (1) sufficient political and management leadership to secure the transfer of properties, adequate budgets and staff; and
- (2) sufficient political and management leadership to ensure co-operation with attempts to maximise the efficiency of the States' use of property.

47. JPH was not unique in requiring such conditions to be satisfied. A number of other central functions were critical to achievement of the Five Year Vision For The Public Sector published in 2004: for example, Human Resources, Information Services Department.

48. Achievement of these permissive conditions proved problematic in the case of JPH. The departments which had the largest holdings of property (ESC and HSS)⁵ took some time to transfer their property. When eventually transferred, it was discovered that the transferred budgets were smaller than predicted and inadequate (so that JPH was underfunded). Departments proved slow to transfer staff.
49. Not only were the eventual transfers unsatisfactory, the process of transfer bruised relationships between JPH and other departments. This must in part have been the result of the manner in which JPH argued for the transfers to take place but must also have been the result of weak political and management leadership which failed to require agreement to the necessary transfers.
50. This bruising of relationships was exacerbated by another matter. Standing Order 168 (SO168) gave JPH a role in the process by which property transactions are put forward to the States for approval. Although social housing was excluded from JPH's property management responsibilities, it was not clear that social housing was excluded from JPH's responsibilities under SO168. This slight inconsistency created the occasion for a number of difficult exchanges between JPH and the Housing Department.
51. The effect of these bruised relationships was to render more difficult any attempt to develop a common office strategy.
52. Whatever JPH's original objectives may have been, in reality they were not capable of early achievement and were certainly not capable of achievement by JPH alone.
53. This should not be regarded as a particular criticism of JPH for the other central departments have experienced extreme difficulty in achieving the transformations that were expected of them (for example Human Resources, Information Services and Treasury). In all of these examples, progress has been achieved but not quickly and not without considerable investment in resources (which has been provided in the case of Information Services and Treasury but has not so far been provided in the case of JPH and Human Resources).
54. It is likely that the style adopted by JPH in its relationships with other departments did not assist in its effectiveness. But it is also likely that without political and management

⁵ Education, Sport & Culture and Health & Social Services.

leadership within the States, and with the limited resources allocated, JPH had no prospect of early achievement of its original objectives.

**ISSUE SIX - WERE THE CORRECT PROCEDURES FOLLOWED WHEN INVESTIGATING THE
ALLEGED MISCONDUCT OF SENIOR STAFF?**

Background

55. In a briefing paper prepared by the Deputy Chief Executive and dated 31 December 2010, and a subsequent report dated 14 January 2011 prepared by the Interim Director of Finance, a number of serious criticisms were made of the way in which the proposed acquisition of LGH had been handled within JPH. These two papers raised a number of matters which, as I have explained in my report, should have justified the investigation of possible misconduct by senior members of JPH staff. These matters included:

- (1) making an offer for LGH without the necessary approval;
- (2) the acceptance of inappropriate hospitality from the vendor of LGH by a senior member of JPH staff;
- (3) an inappropriate relationship between JPH staff and the commercial valuers who were commissioned to carry out a valuation of LGH.

56. I infer that these are the matters to which the Corporate Services Scrutiny Sub-Panel's question refers.

What are the States' procedures in respect of alleged serious misconduct?

57. The procedure begins with the Chief Officer of a department making a complaint about a member of staff. An independent person (normally within the department) is then requested to examine the complaint and the related evidence with a view to preparing an independent report on the matter. If appropriate (i.e. if on examination there appears to be substance in the complaint) the report will be submitted to a formal hearing at which the complaint is submitted by a senior member of the department and the member of staff concerned has an opportunity to submit a defence against the complaint and the conclusions of the independent examination. In addition the member of staff may be represented at the hearing either by a union representative or a colleague. Choice of the people who present the case, and chair the hearing will be made in the light of the circumstances and the seriousness of the complaint. The member of staff has the right to

appeal to a finding of the hearing. The choice of the person who hears the appeal will also vary according to the circumstances and the seriousness of the complaint.

58. It is crucial to this process that the member of staff knows from the beginning what complaints have been made and that subsequent procedures are limited to a consideration of those complaints. Obviously, if new complaints come to attention, they cannot be ignored, but should be raised in an appropriate manner as new complaints.

Were all of the matters referred to in these two papers properly investigated?

59. As I have indicated, at least three matters set out in the two papers I have mentioned appeared to imply that there had been serious misconduct.

60. No complaint was raised against the member of staff concerned in respect of any of these three matters (contrary to the impression given to the Corporate Services Scrutiny Sub-Panel and others).

61. Charges were raised against an Assistant Director of JPH in respect of:

- (1) His alleged qualification as a valuer; and
- (2) The failure to deal appropriately with the manner in which the vendor accepted the States' offer on 31 March 2010.

Independent investigation: choice of investigator

62. As far as concerns the disciplinary complaints which were raised, the States' disciplinary process requires that an appropriately senior member of staff should be chosen to carry out an independent investigation of the complaints raised with a view to that independent report being submitted, if appropriate, to the disciplinary hearing.

63. In this case, the person to carry out that independent review was chosen by the Deputy Chief Executive together with the appropriate manager in the Human Resources Department. The person chosen was a member of staff of JPH who was junior to the Assistant Director who was named in the complaints.

64. This choice was made because it was believed that some specialist knowledge of the matters in hand was required and that the specialist knowledge that was necessary for this purpose resided only within JPH.

65. In my view the choice was questionable and probably inappropriate.
66. It placed the person chosen to carry out the investigation in an invidious and vulnerable position since:
- (1) the JPH team is relatively small;
 - (2) within that team he was junior to the member of staff whose conduct was to be investigated.
67. It would have been preferable to select somebody outside JPH and at least of equal seniority to the member of staff concerned.
68. By making these observations, I do not intend any particular criticism of the person who acted as independent investigator who was placed in an invidious position by the Deputy Chief Executive who was, by many grades, the senior of the investigator.

**ISSUE SEVEN - WERE THE PROCEDURES REGARDING THE RESIGNATION OF A SENIOR OFFICER
FOLLOWED CORRECTLY?**

The Issue

69. I understand that this issue relates to the resignation of the Director, JPH which was first approached by the States of Jersey as a potential redundancy: i.e. the States of Jersey proposed to declare redundant the position of Director, JPH as it had originally been specified.

Discussion

70. On 28 July 2011 the Chief Minister sent a letter to the Director, JPH responding to complaints which the Director had made that:

“the States procedures for compulsory redundancy as set out in Policy G2 - ‘Compulsory Redundancy’- have not been followed”.

71. The Chief Minister’s response to this complaint was as follows:

“The procedures set out in the policy are for all practical purposes intended for collective redundancies where formal trade union representation is recognised. However, we do try to follow the principles of the policy in cases of proposed redundancies involving a single post, but it is not always possible to follow the letter of the policy in such cases. For example, the issue of criteria for selection for redundancy does not readily arise when the proposed redundancy involves a one-off, specific post (and particularly a senior post such as yours). It is also not a simple task to consult over a proposed redundancy where the post in question is one-off and very senior and where organisational change is inevitable because of other developments, such as, for example, the decision by the States to create the States of Jersey Development Company.

“What I understand is that [the Deputy Chief Executive] and [the Manager, Human Resources] had met with you to explain in person the very good reasons why JPH would inevitably be restructured into a much smaller operation which would no longer require a director at your level. It is difficult to envisage how they might have otherwise handled such a difficult task.”

72. In other words, the prescribed policies do not appear to have been followed and, it was not reasonable to expect that they should have been followed.

73. In principle, it appears unsatisfactory that a member of the staff of the States of Jersey, however senior, should be provided with a statement of policy and procedures which are

to be followed in the eventuality that a person's position is to be declared redundant only to find that the States of Jersey consider it reasonable not to follow that policy and the related procedures.

ISSUE EIGHT - IS THE CURRENT POLICY REGARDING CONFIDENTIALITY VALID?

Issue

74. I understand this issue to refer to the practice by which senior officers who reach compromise agreements with the States to leave the employment of the States are invited to undertake not to reveal publicly information concerning the affairs of the States and, more particularly, not to reveal publicly the terms of the agreement. I understand that the form of these agreements has been the subject of legal advice. In consequence, the undertakings not to reveal information are limited where the ex-officer is required by a legal process (e.g. the issue of a summons) to disclose information.
75. This matter arises in the context of the LGH matter as the Director, JPH left the employment of the States under the terms of a compromise agreement which included a confidentiality clause.

Cognate jurisdictions

76. The use of such confidentiality agreements has parallels in various parts of the United Kingdom and has been controversial.
77. For example, in the 2003/2004 session, the Welsh Assembly Audit Committee (now the Wales Assembly Public Accounts Committee) reported on compromise payments to a number of staff working for 'Education and Learning Wales (which has now been subsumed into the Welsh Government's civil service). The Committee reported that it was:
- “. . . deeply concerned to learn that the National Council had included a confidentiality clause in a Compromise Agreement drawn up with over 100 staff made redundant as a consequence of restructuring when the National Council was established . . . such clauses are entirely inappropriate in the Welsh public sector . . .”*
78. In the 2001/2002 session, the Westminster Public Accounts Committee considered a National Audit Office report concerning 'Inappropriate adjustments to hospital waiting lists':

“As regards confidentiality clauses, the NHS had issued guidance making clear that they should not be used, following reports from the committee of Public Accounts. Nevertheless, confidentiality agreements had been concluded in 4 cases at the initiative of the trusts. In one case (Plymouth), the trust had misinterpreted the guidance. The Board had been aware that confidentiality agreements should not be

used to gag whistleblowers, but they thought it appropriate to have an agreement that prevented the departing employee from talking badly about the trust. The Department confirmed that they would be making it clear that confidentiality clauses have no place in the public sector. In doing so, they will check for consistency with other Government Departments and will share their experience with them.”⁶

79. In an earlier case, the National Audit Office reported on a payment to a senior official which was coupled with a confidentiality agreement and issued the following press statement:

“Sir John Bourn, head of the National Audit Office, today reported to Parliament that in October 1998 the National Museum of Wales made an irregular payment to Mr Tim Arnold, their departing Assistant Director (Resource Management). Sir John nevertheless issued an unqualified opinion on the Museum's 1998-99 Accounts, as he did not consider the payment to be material in the context of the overall accounts.

Mr Arnold's departure from the Museum after 14 years' service followed allegations of mismanagement, although these did not relate to any suggestion of impropriety or fraud. The Museum, acting on legal advice, sought to reach a negotiated departure settlement with Mr Arnold rather than conduct a potentially protracted investigation of the allegations. Under this settlement, the Museum agreed to:

- *pay Mr Arnold £30,000 as compensation for loss of office;*
- *pay his legal costs in respect of the settlement up to a maximum of £1,450 plus VAT; and*
- *provide an employer's reference for Mr Arnold using an agreed form of words which is silent on the reason for his departure.*

In return, Mr Arnold undertook to:

- *accept the payment as full and final settlement of any claims he might have for breach of contract, unfair dismissal, etc; and*
- *not to disclose the terms of the Agreement to any third party.*

National Audit Office staff established that written approval for these payments had not been obtained by the then Director of the Museum, as required under the terms of the Museum's Financial Memorandum.

The current Director of the Museum had not been made aware of the details of the payments on taking up her position in November 1998. When in July 1999 the National Audit Office brought the payments to her attention, she acted correctly in

⁶ House of Commons; Committee of Public Accounts; Session 2001-2002; Forty-Sixth report (HC517); paragraph 18.

applying to the National Assembly for Wales for retrospective approval. This was refused by the Principal Finance Officer of the National Assembly in October 1999 on several grounds, including that:

- *the Museum might have avoided this expenditure if they had tackled the problem under normal disciplinary arrangements;*
- *he could not have accepted any settlement which included a confidentiality clause; and*
- *the principle of making special payments in order to save further costs is not generally accepted in the public sector.”⁷*

The Island’s position

80. The rules for management of public money in the Island do not currently prohibit the making of payments in connection with such agreements. In this sense, the arrangements within the Island differ from those which apply within the United Kingdom.

81. In my view, given the scale of the Island and its population, there is a strong case for the States to be able to reach agreements which include provisions to preserve the confidentiality of these agreements. Inevitably these agreements are used in circumstances which are embarrassing. In the Island’s context, any embarrassment is likely to become public. It is likely that if the circumstances might readily become public, it would be more difficult to reach agreement because of the fear of exposure.

82. There should be (and are) arrangements to limit abuse of such agreements since each agreement includes a provision that recognises that the duty of confidentiality may be broken where that is required by ‘a process of law’. This permits investigations of such agreements to be undertaken, for example by the States’ Assembly, by the Royal Court, or by the Comptroller and Auditor General.

⁷ National Audit Office press statement; 19 November 1999. National Audit Office report; HC17; 1999-2000 Session.

**ISSUE NINE - SHOULD MINISTERS USE MODERN MEDIA TO JUSTIFY THEIR POSITION WHILST
A REVIEW IS IN PROGRESS?**

The Issue

83. I understand this issue to relate to the possibility that, whilst a Scrutiny Panel or other review is in progress, a Minister might use various forms of electronic media to seek to gain public support.

Discussion

84. I do not consider it my place to investigate matters concerning the conduct of Members of the Assembly qua members. I understand that, if an enquiry were thought to be necessary, it would normally be expected that the Privileges and Procedures Committee of the States Assembly would consider whether a review was necessary, to arrange for any necessary review to be undertaken and to propose any consequential action that may be appropriate.

85. In these circumstances, I have done no work in respect of this issue and express no opinion on it.

ISSUE TEN – WHY DID THE PROPOSED ACQUISITION OF LIME GROVE HOUSE FAIL?

Discussion

86. In short, the proposed acquisition failed because the States delayed their purchase from 2010 until 2011. The other party interested in acquiring LGH had been considering purchase of another property. That possible purchase fell through. At this point, the other party made an offer to lease LGH.

87. The vendor had tired of the States' prevarication and preferred to lease LGH rather than to sell. The vendor thus quickly reached agreement with the other offeror and the States' proposed purchase came to naught.

Reasons for the delay

88. The States delayed their purchase because the Treasury Minister took a series of decisions that created the delays:

(1) In mid July 2010, the Treasury Minister indicated that there was no prospect of increasing the existing capital budget for the Police Headquarters project so that the purchase depended on the sale of South Hill and the accomplishment of a series of departmental moves. At the time, the Treasury Minister was sceptical about the ability of JPH to plan for and then manage this arrangement with its inter-departmental complexities.

(2) in mid November 2010, when JPH had developed a draft Business Case for the purchase of LGH together with the associated moves, the Treasury Minister directed that JPH should be excluded from further work on the project. As in fact the Minister intended that no further work should be done for the time being this meant that a further delay was created (of two months until a project manager was appointed and of four months until a property agent was appointed).

89. There were a number of other factors that contributed to this delay:

(1) the poor relationship between the Treasury Minister and the Assistant Minister, Treasury and Resources led to communication difficulties. As a result,

the Treasury Minister only became aware of the offer to acquire LGH some time after it had been made and accepted.

- (2) the unsatisfactory atmosphere in which the meeting on 14 July 2010 was conducted led to a less than optimal result (i.e. JPH were left to develop a project which the Minister suspected they could not deliver) rather than a more satisfactory result (e.g. by revisiting the budget as was done in 2011, revisiting the project by reducing its ambition as was done in 2011, or by considering alternative sites).
- (3) after the agreement in mid July 2010 of the way in which the purchase should proceed, JPH did not develop the draft Business Case as quickly as might have been possible. This was in part because JPH did not have the resources to manage its workload.
- (4) in March 2010, when the vendor accepted the States' offer, the terms of the acceptance did not match precisely the terms of the States' offer in that the acceptance envisaged that the States would accept the building in its current condition, whilst the offer by the States expected that necessary remedial works would be undertaken by the vendor. This was not resolved immediately as JPH expected that negotiations would follow quickly. In fact, they did not and this difference of approach caused difficulty when the States reopened negotiations in April 2011 after a long delay.

Reasons for the Treasury Minister's delays

90. The Treasury Minister appears to have believed that the price offered for the acquisition of LGH was high. I have examined the evidence for this in the report and, as I there demonstrate, find it unpersuasive.

91. In response, the Treasury Minister has told me that as he considered the LGH proposal he was made aware of the progress of negotiations by which the competing offeror for LGH proposed to acquire an interest in another property in St Helier. This information came from a director of the company which had developed the other property in which the competing offeror was interested. As far as I have been able to establish, this information was not made known to other people involved in the States' management of the LGH transaction.

92. The Minister apparently believed that:

- (1) if the competing offeror succeeded in acquiring that other property, the offeror's interest in LGH would come to nothing.
- (2) in that event, there would be only one remaining option for the vendor of LGH: to reach an agreement with the States.
- (3) in those circumstances, the States would be able to complete a purchase of LGH at a price substantially below that agreed in March 2010.
- (4) the costs attendant on delay (e.g. the risk of incurring substantial maintenance costs at Rouge Bouillon) were outweighed by the potential reduction in the LGH purchase price.

93. The Minister must also have believed that the prospect of achieving a reduction in the price for LGH was so good that it outweighed the risk that the competing offeror's negotiations might break down with the result that the offeror would re-consider LGH and exceed the States' offer.

94. I know of no evidence to suggest that the vendor would have been prepared to compromise to reach an agreement with the States in 2011 as assumed by the Treasury Minister.

95. My enquiries have established that the principal reason for the failure to let or sell LGH before 2010 was that the vendor had not been willing to compromise on the price that it aimed to achieve in selling LGH. Indeed, the competing offeror had made an offer in 2009 which had been unsuccessful for this reason.

96. Nor have I found any reason to suppose that the vendor of LGH was financially embarrassed and thus might have been expected to be more amenable to selling LGH at a lower price. LGH was originally developed as a part of a mixed development. The residential accommodation was sold at the beginning so would have been expected to meet a large part if not all of the capital cost of the development.

97. These are strong grounds for scepticism about whether the Treasury Minister was justified in creating a delay to seek a reduction in the price for JPH and thus in taking the risk that the States would be unable to purchase LGH (as finally was the outcome). In that event, the considerable costs incurred by the States would be wasted, the process to find a

suitable headquarters for SOJP would have to be repeated and the re-housing of SOJP would be yet further delayed.

EMBARGO NOTICE

THIS APPENDIX, ITS CONTENTS & ALL INFORMATION PERTAINING TO ITS ISSUE ARE ALL UNDER THE STRICTEST EMBARGO UNTIL 0001 ON TUESDAY, 22 MAY 2012

LIME GROVE HOUSE ENQUIRY

APPENDIX - SUMMARY CHRONOLOGY

MAY 2012

UNDER STRICTEST EMBARGO UNTIL 0001 ON TUESDAY, 22 MAY 2012

INTRODUCTION

1. The purpose of this document is to provide a summary of the information that is set out in a report (the principal report) on the failure of a proposal that the States of Jersey should acquire a property known as Lime Grove House (LGH) to provide headquarters for the States of Jersey Police (SOJP). To a large extent the principal report consists of a chronology of the events surrounding the proposed acquisition and this document is set out in a similar manner and also describes events relating to a proposed Office Strategy. A further document sets out the conclusions which have been reached on the issues considered in the course of this enquiry.
2. Wherever appropriate, entries in this document are referred to the relevant paragraph or section of the principal report.
3. Nothing in this document is intended to supercede or override the way in which events or issues are described in the principal report.

SUMMARY CHRONOLOGY

Year	Date	Lime Grove House / SOJP HQ project	Office strategy
1999	August	A review of the SOJP estate concludes that the buildings should be replaced. (Principal report: Appendix Four)	
2000		LGH building constructed.	
2001	November	Review of 24 possible sites for SOJP HQ leads to the identification of a site on the Esplanade car park.	
2002		Some parts of the SOJP HQ move to the Summerland site as an interim measure.	
2003	September	Disquiet is expressed over the use of the Esplanade site for the SOJP HQ. Property Services asked to review options again. (Principal report: Appendix Four)	
2005	April	The options review and feasibility study are completed recommending use of the Summerland site for the SOJP HQ. (Principal report: Appendix Four)	
2005	May		Proposition lodged au Greffe for establishment of Jersey Property Holdings among whose objectives is to 'maximise and implement opportunities for cost reduction and for extracting capital from the portfolio'. (The reasons for the creation of JPH, for subsequent changes

Year	Date	Lime Grove House / SOJP HQ project	Office strategy
2006	November	Agreement is reached on the plan for a new HQ on the Summerland site and a Planning Application is submitted. (Principal report: Appendix Four)	in its position within the States and for changes in reporting arrangements are considered in Section Six of the principal report).
2007	July	SOJP declare that the plan for the Summerland is not fit for purpose. The plan is abandoned.	
2009	January	With the appointment of new senior management at SOJP, JPH decide to revisit the SOJP HQ project and to re-consider possible sites. (Principal report: Section Three: January 2009)	
2009	February		Treasury Minister meets Assistant Minister Treasury and Resources and Director, JPH tells them that progressing the office strategy should be an important objective to which he will give all necessary political support. (Principal report: Section Three: 3 February 2009)
2009	February		Director, JPH presents draft office strategy to Corporate Management Board (CMB). CMB approves principles but does not approve a particular suggestion that the JCG site should be used as base for States' offices. (Principal report: Section Three: 18 February 2009)

Year	Date	Lime Grove House / SOJP HQ project	Office strategy
2009	February	JPH and SOJP agree that SOJP will hire a consultant to develop a 'concept brief' for new Headquarters. (Principal report: Section Three: 24 February 2009)	
2009	March	The SOJP's consultant shared with JPH a status report on development of the concept brief. (Principal report: Section Three: 26 March 2009)	
2009	May	The Deputy Chief of Police reported that sites were actively being considered (including Green Street Car Park and LGH). (Principal report: Section Three: 26 May 2009)	
2009	August	SOJP actively considering how the HQ might fit into LGH. It is clear that the option of buying or leasing LGH was being actively considered as the vendor's agents sent JPH draft Heads of Terms for a lease of LGH. (Principal report: Section Three: 12 August 2009)	
2009	October	A workshop takes place to review the space requirements of the SOJP. Substantial reductions are agreed. On the basis of the reduced requirements, the SOJP could be accommodated at LGH. This work contributes to the options review. The two remaining options consist of a re-build on the Summerland site or the purchase of LGH as an HQ coupled with a new smaller operational station on the Summerland site. SOJP prefer the latter option because the two sites offer resilience.	

Year	Date	Lime Grove House / SOJP HQ project	Office strategy
2009	December	Both options exceed the capital budget available. (Principal report: Section Three: 28 October 2009)	JPH proposes that additional consultancy support is necessary to embark upon the next stage of work to develop an office strategy and, in particular, to review departmental analyses of space requirements and the infrastructural change necessary to make the most efficient use of space and to secure the best savings from changes in working practices that a change in working environment would make possible. (Principal report: Section Three: 7 December 2009)
2010	February	The agents for the vendor of LGH ask for JPH's 'best sporting bid' for the property and mentions that another party has expressed interest in LGH. (Principal report: Section Three: 2 February 2010)	
2010	February		JPH complete their options review. The two remaining options consist of a re-build on the Summerland site or the purchase of LGH as an HQ coupled with a new smaller operational station on the Summerland site. SOJP prefer the latter option because the two sites offer resilience. (Principal report: Section Three: 3 February 2010)
2010	February	SOJP, concerned that there appears to be a competing bidder for LGH request JPH to safeguard the States' interest in LGH.	

UNDER STRICTEST EMBARGO UNTIL 0001 ON TUESDAY, 22 MAY 2012

Year	Date	Lime Grove House / SOIP HQ project	Office strategy
2010	February	(Principal report: Section Three: 11 February 2010) The agents for the vendor of LGH indicate that an offer around £9 million might be acceptable. The Assistant Director, Estates prepares an appraisal of the market value of LGH which supports a figure of £8.75 million.	
2010	March	(Principal report: Section Three: 4 February 2010) Having obtained the agreement of the Assistant Minister, Treasury and Resources, JPH make a conditional offer to purchase LGH at a price of £8.75 million.	
2010	March	(Principal report: Section Three: 25 March 2010) Vendor of LGH accepts JPH offer but on the basis of different terms regarding the condition of the building. Exclusivity period of six weeks agreed (and subsequently extended) during which to settle the detailed terms of the purchase.	
2010	April	(Principal report: Section Three: 31 March 2010)	An undertaking is given to the States Assembly that a 'high-level' report on the office strategy will be presented by the summer recess. The undertaking is given by the Assistant Minister Treasury and Resources on behalf of the Treasury Minister.
2010	April-May	Treasury Minister informed of offer. No additional budget is to be	(Principal report: Section Four: 14 July 2010, footnote)

Office strategy

Year	Date	Lime Grove House / SOJP HQ project	Office strategy
2010	May	made available. From this point efforts are made to identify alternative ways of funding the LGH/SOJP HQ project. (Principal report: Section Four: 29 April and 5 May 2010)	
2010	July	A professional valuation of LGH commissioned by JPH is received in draft valuing LGH at £8.8 million. (Principal report: Section Four: 14 May 2010)	
		It is agreed that the LGH project should be funded by selling South Hill using the funds to meet the budget shortfall on LGH. This sale involves moving Planning to Maritime House and Harbours from Maritime House to Elizabeth Terminal. Proposal subject to approval by the departments involved and development of a detailed business case. From this point, work begins to secure the necessary departmental approvals and to develop the detailed business case for the LGH project. (Principal report: Section Four: 14 July 2010)	
2010	July		It is agreed by the Treasury Minister, the Deputy Chief Executive, the Assistant Minister Treasury and Resources and the Director, JPH that the paper to be presented to the States Assembly should show the LGH project as the first phase of the office strategy.

Year	Date	Lime Grove House / SOIP HQ project	Office strategy
2010	October	JPH presents draft business case to the Deputy Chief Executive. (Principal report: Section Four: 13 October 2010)	From this point the two projects are linked. The Treasury Minister, concerned about his perception that JPH has failed to deliver in a number of ways, including the development of an office strategy, warns that JPH is in 'the last chance saloon'. He is sceptical about the ability of JPH to deliver the project as now configured. (Principal report: Section Four: 14 July 2010)
2010	November	Whilst he thinks that the case for LGH on its own is sufficiently detailed (apart from some detailed concerns such as the absence of a detailed risk analysis), he also thinks that the case for the linked sale of South Hill and consequential moves is insufficiently developed. He therefore rejects the business case. (Principal report: Section Four: 22 October 2010)	
2010	November	JPH attempts to deal with the detailed concerns raised by the Deputy Chief Executive; for example arranging a detailed risk analysis workshop. In response to a request by the Home Affairs Minister, the former Chief Minister convenes a ministerial meeting to consider the state of the LGH project. The meeting concludes that there is political	

Year	Date	Lime Grove House / SOIP HQ project	Office strategy
		<p>support for the project to go ahead. The Treasury Minister reserves his right to satisfy himself as to the price for LGH.</p> <p>Following the meeting, the Treasury Minister directs that JPH is no longer to be involved in negotiations for the purchase of LGH.</p> <p>From this point, management of the project is in the hands of the Deputy Chief Executive under the direction of the Treasury Minister.</p> <p>In effect, detailed work on the project and negotiations do not proceed.</p> <p>This leads to a delay of two months in terms of detailed work during which no progress is made. It is to be more than four months before negotiations with the vendor begin again.</p> <p>(Principal report: Section Four: 19 November 2010)</p> <p>(The background to the Treasury Minister's concerns over the offer price is discussed in Section Seven of the principal report)</p>	
2010	December	<p>Deputy Chief Executive circulates Briefing Paper to the former Chief Minister, Treasury Minister and Home Affairs Minister criticising JPH's management of the LGH project.</p> <p>The Interim Director of Finance begins a review of the financial forecasts supporting the project.</p> <p>(Principal report: Section Four: 30 December 2010)</p> <p>(The Deputy Chief Executive's paper is considered in Section Eight of the principal report)</p>	

Year	Date	Lime Grove House / SOJP HQ project	Office strategy
2011	January	<p>The Interim Director of Finances circulates his report which proves to be inflammatory.</p> <p>(Principal report: Section Five: 14 January 2010)</p> <p>(The contents of that report and the justification for its allegations are considered in Section Nine of the principal report)</p>	
2011	January	<p>The Assistant Minister Treasury and Resources' appointment is terminated by the Treasury Minister who appoints a replacement.</p>	
2011	February	<p>The Assistant Chief Executive becomes Project Director for the LGH project so that detailed preparation work can begin again. This work is to be done by JPH staff under his direction.</p> <p>The Project Director undertakes a GAAP analysis of the detailed work necessary to complete a satisfactory business case.</p> <p>(Principal report: Section Five: 2 February 2010)</p>	
2011	February	<p>The possible options for funding LGH are discussed with the Treasury. It is agreed to recommend that:</p> <ol style="list-style-type: none"> 1. the purchase of LGH should go ahead; 2. the proposed police station on the Summerland site should be substituted by a refurbishment of existing facilities; and 3. the capital budget should be increased by an additional sum of £2 million. 	
		<p>On this basis, the project could go forward without the hypothecation of the proceeds of sale of South Hill.</p>	<p>In effect, from this point, the office strategy project and the SOJP HQ project were no longer linked. The SOJP HQ project</p>

Year	Date	Lime Grove House / SOIP HQ project	Office strategy
2011	March	<p>(Principal report: Section Five: Discussions with Treasury)</p> <p>This revised approach is approved politically by the former Chief Minister, Treasury Minister and the Home Affairs Minister.</p> <p>(Principal report: Section Five: Agreement of way forward)</p> <p>However, the Treasury Minister is still unconvinced by the revised approach. In the end, after almost a further month of internal discussion, the Treasury Minister approves the re-opening of negotiations for the purchase of LGH. The Ministerial Decision approves offers up to a limit of £8.75 million but it is understood that new negotiations would begin with a reduced offer of £8.25 million.</p>	<p>could proceed within its own funding.</p>
2011	April	<p>Negotiations are then re-opened, but the reaction from the vendor's agents is unenthusiastic. The agents complain about what they believe is a change in the States' attitude towards the condition of the building and the costs of rectification.</p> <p>(Principal report: Section Five: Agreement of way forward)</p> <p>(The background to the Treasury Minister's concerns over the offer price is discussed in Section Seven of the principal report)</p>	
2011	May	<p>At the end of May, and after much argument about the costs of rectification, a letter is received from the vendor's agents accepting the States' offer for LGH on condition that the States accept the building 'as is'.</p>	

Year	Date	Lime Grove House / SOIP HQ project	Office strategy
2011	June	(Principal report: Section Five: Subsequent events) After further argument, Heads of Terms are agreed at a price of £8.25 million but specify that 'material defects' would be rectified at the vendor's expense. From this point, the States attempt to reach agreement on what material defects require rectification. (Principal report: Section Five: Subsequent events)	
2011	July	The States become concerned at the vendor's unresponsiveness and the failure to agree a list of material defects.	
2011	August	The vendor asserts that there are no material defects.	
2011	August	The States are informed that the vendor has signed a lease of LGH to another party so that the States' attempt to purchase LGH has failed. (Principal report: Section Five: Subsequent events)	

END



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