STATES OF JERSEY

REG'S SKIPS LIMITED – PLANNING APPLICATIONS (R.118/2010): COMPENSATION AND FURTHER ACTION

Lodged au Greffe on 28th September 2010
by Senator B.E. Shenton

STATES GREFFE

2010 Price code: C P.130

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

(a) to approve the making of an *ex gratia* payment of £157,000.00 to Mr and Mrs R. Pinel, (the proprietors of RSL), as compensation for costs incurred as set out in R.118/2010;

(b) to approve the making of an *ex gratia* payment of £3,347.00 to Mr C. Taylor (owner of Heatherbrae Farm, St. John), as compensation for costs incurred as set out in R.118/2010;

(c) to request the Chief Minister, in consultation with the Minister for Treasury and Resources, to identify funds to meet the cost of the payments in (a) and (b) above;

(d) to request the Minister for Planning and Environment to make provision in the new Island Plan to enable and encourage the sorting and recycling of inert waste on private land, in respect of both existing businesses and new entrants to the market;

(e) to request the Chief Minister to request the States Employment Board to investigate the poor actions of employees in the Planning Department as highlighted in R.118/2010 and take the necessary action, as appropriate.

SENATOR B.E. SHENTON

REPORT

This long and sorry saga is, hopefully, drawing to a close. You cannot put a price on the emotional damage and mental stress caused to the victims in this tragedy. The States are asked to pay Mr. and Mrs. Pinel the figure recommended by the Committee of Inquiry – a minimum amount that they are due in my opinion, as it will still leave them substantially financially out of pocket, without taking into account compensation for the emotional damage caused. It also seeks some compensation for Mr. Taylor. The Minister for Treasury and Resources is charged with identifying these funds. Fortunately, a precedent was set a couple of years ago, whereby the Council of Ministers found compensation for investors that had lost their savings which had not been agreed in the Annual Business Plan – this was done without even referring the matter to the States Assembly. Ideally the funds should come directly from the Planning Department's Budget as it was their mistake.

What we now need is some solutions. The Island Plan must start looking at the needs of the industrial sector. This will be difficult. The modern statutory nuisance law has been designed to take modern life into account, the law of *voisinage* has not, and this appears to be a very powerful weapon.

Also, the States Employment Board needs to independently investigate whether action should be taken against the employees in the Planning Department implicated in the report. The way that the States of Jersey dealt with the Connex Committee of Inquiry was a disgrace – no action was taken against some employees that acted unacceptably. I recommend that new States Members obtain a copy of the Connex Report (R.C.58/2005) and read it – they will be amazed at the lack of accountability or corrective action.

For Senator Cohen to comment, just a few short hours after the release of the Report, that no heads will roll as some of them "made a simple error" is a discourtesy, not only against the Members who undertook the Committee of Inquiry, but also against every taxpayer on the Island who will pick up the cost. Ministers should remember that they represent the people of Jersey, and not side automatically with their Department. In this case it is not up to the Minister to decide whether action should be taken, it is up to the States Employment Board; and one would expect that the matter will be treated in a professional manner and not swept under the carpet. Furthermore, this is not an isolated case – and good Government is one that admits its errors and strives for improvement rather than trying to cover up its actions.

Finally, I would ask the judiciary, and in particular all lawyers and Jurats involved in the case, to read the Report R.118/2010. The conclusion of the Committee of Inquiry was that they were far from certain that the Court of Appeal would have reached exactly the same conclusion had it been aware of all the information. I also request the Jersey Law Commission to take account of the relevant observations in R.118/2010 and apply them to its Consultation Paper No. 2/2010/CP in respect of *voisinage.*

Financial and manpower implications

There are no manpower obligations. The financial obligations are clearly set out in the Proposition.

Brief History

The first Proposition was lodged on 4th March 2009. This is available on the web and I won't reproduce it here. I've listed below the date of debate in case any Member wishes to read the Hansard of the debate.

EX GRATIA COMPENSATION PAYMENT: MR. AND MRS. R. PINEL (P.29/2009)

Lodged au Greffe on 4th March 2009
by Senator B.E. Shenton

Date of Debate 1st and 2nd April 2009

"It does not bring me any pleasure to bring this proposition but I feel that I have no choice. I was asked to assist a local family, running a local business, and this is the only actual solution that is available.

The problem lies in the fact that, in my opinion, both the Government and the Judiciary have failed them – indeed they are the cause of the problem. Neither has offered a solution and so I find myself lodging this proposition. There is no political agenda behind it – just one of fairness, accountability, and the quest for higher standards.

In researching this case the legal profession have, in my opinion, acted in a manner that would not be deemed acceptable behaviour in any other walk of life."

The conclusions and recommendations of the Committee of Inquiry are reproduced below –

18. CONCLUSIONS

18.1 We found in the Planning Department's dealings over several years with Mr and Mrs Pinel of RSL, and with Mr Taylor, the owner of Heatherbrae Farm and RSL's landlord for most of the relevant period, considerably more evidence than we would have liked to find, or expected to see, of –

(a) sloppy report writing and administrative practice,

(b) absence of due process (and seemingly a lack of recognition of its importance), and

(c) want of analysis in order to ensure well founded decisions.

18.2 As the case became more complicated and controversial, little sense emerges from the evidence we have seen and received that anyone in the Department, junior or senior, with one exception, really had a grip on it. We found no malpractice – it is important to emphasise that – but we certainly did find some episodes of misdoing – that is, the Department acting wrongly – and some specific elements of maladministration, by which we mean, as the dictionary defines it, the poor or bad management of public affairs. One example of this was the way that, in 2006, a letter from RSL's lawyer remonstrating on behalf of his clients against enforcement action was turned, without notice or his even being informed, into a 'request for reconsideration' of the very matter the lawyer asserted, rightly as it turned out, was already quite permissible.

Another was the extremely unsatisfactory report prepared for the 2006 site visit in which the Minister was invited, in effect, to revoke RSL's planning permission and destroy their business without a single argument adduced in support and without, it seems, knowledge that the Minister did not have the power to do that anyway. And we have pointed to several instances where in our judgement the Department showed imbalance in the way it treated the complainant in the case, for example through the provision of information compared with both RSL and Mr Taylor as the holder of the relevant planning permission, in a manner that, had it been known, would have warranted the perception that one side in the dispute was being shown or given undue attention.

18.3 In similar vein, we have also pointed to the view that was held in the Department, and which was confirmed to us in evidence, that RSL was a 'nuisance' to the Department, and viewed as troublesome. We also heard the word 'wrongdoer' used to describe the company. By any standards, this was not good. People always hold views but public officers need to rigorously put them aside in order to do right to citizens, and to be seen to do right.

18.4 We also found examples of the contrariwise. The helpfulness shown to Mr and Mrs Pinel by one planning officer in the wake of the refusal of their Homestead application in 2005 was one good example of this, as indeed was the way RSL's move to Heatherbrae Farm was initially facilitated. Another was the way the force of RSL's appeal against the enforcement notice was readily appreciated by a senior planning officer, and acted upon promptly. But we fear that these occasions seem to stand out as exceptional. The Department's overall handling of RSL's case was totally unsatisfactory.

18.5 As for the Minister's role, we find that it was broadly commendatory save for one misjudgement and, probably, a tendency to informality in decision making that would have not have been particularly problematic if only decisions always been meticulously recorded. He was robust in viewing RSL's business as something of importance to the Island, the

Department having taken no account at all of this, or of the relevant waste management policy context. He was wise to ignore the Department's erroneous recommendation in 2006 effectively to revoke RSL's planning permission. He was serious about seeking compromise on the noise problem and led from the front on that at the site visit. Although Mr Yates may, however, have had a point when he argued that he had occasionally extended his purview to non-material planning considerations, the Minister was assiduous in responding to pressure to stand aside from the decision-making because of his acquaintance, albeit quite distant, with Mr Taylor. His misjudgement was to promise in the telephone conversation with Senator Shenton what he could not deliver, precisely because he had stepped aside. This holds, we feel, whatever view was taken by him, or may be taken by others, of the nature or circumstances of that conversation.

18.6 We cannot fault the professional way in which officers of the Health Protection team in the Health and Social Services Department dealt with many requests for advice and assistance in the course of the case. But the fact that their views were not always satisfactorily reflected by the Department in planning reports does tend to lead one to the view that the relationship between these two was not as close or constructive as it might or should have been. Certain outcomes, for example, may have been different had the way the Department presented the views of Health Protection to its Ministers been more precise and had documents routinely been put to Health Protection in draft for clearance.

18.7 The criticisms and shortcomings noted above were clearly heightened by organisational weakness in the Department and what is hard not to describe as a lack of effectual managerial leadership of it during much of the period in question. Not only were Mr and Mrs Pinel, and Mr Taylor, let down badly as a result, but also the same could be said for the Minister and Assistant Minister, and before them the former Committee, for they could proceed with decision-making on such business on the basis only of good and sufficient advice. Too often that seemed to be wanting.

18.8 Examples contributing to this view include –

(a) poor record-keeping and recording of decisions;

(b) overly informal decision-making;

(c) unsatisfactory arrangements for the proper taking of decisions under delegated authority, including the signing-off of planning conditions and a lack of clarity about the rules or conventions pertaining to delegation;

(d) poor understanding, in 2006, of the important changes wrought by the new Planning Law;

(e) looseness in the application of Island Plan policies to the planning applications and procedures;

(f) insufficiently robust procedures for consultation with other States departments on planning applications;

(g) poor report writing coupled, in certain cases, with a marked lack of analytical rigour;

(h) insufficient evidence of genuine team-working, with planning and enforcement officers operating in an informal 'conversation-driven' setting with insufficient sharing of knowledge and oversight of policy and practice;

(i) uncertainty as to precisely what the aims and objectives of the 'enforcement' function were or should be; and an absence of established procedure for dealing with enforcement matters and complaints, including mechanisms – for example, complex case review procedures – to ensure balance between the rights and interests of applicants and the legitimate concerns of complainants; and

(j) lack of rigour in ensuring appropriate dealings with a complainant in relation to the interests and legitimate expectations of an applicant for, or holder of, a planning permission and in making sure that such dealings are not only balanced but immune from any criticism that they might not be balanced, or seen not to be.

18.9 These were all serious, and probably systemic, weaknesses that we perceived in the Department during the period in question and we judge that, variously, they had a significantly adverse bearing on RSL's case.

18.10 In summary, our conclusion is 'yes' in relation to the first of our terms of reference. The pertinent planning applications – and the process surrounding them including 'enforcement' – were not handled and determined to a sufficient standard and in a manner that should reasonably have been expected by any citizen.

18.11 We conclude similarly in relation to our second term of reference. Legal costs were incurred by RSL as a direct consequence of –

(a) the Department's aim of getting RSL moved from La Prairie and its consequent encouragement and facilitation of RSL's move to Heatherbrae Farm;

(b) in particular, the Department's failure to tell Health Protection that the 'commercial' proposal was a skip sorting operation;

(c) the loosely drafted condition in Mr Taylor's 2005 planning permission that enjoined RSL to operate at its new site *'in the same way as a skip storage and sorting yard only'* as at its old site, which was wholly unable to bear the restrictive

interpretation that the Department wanted to put on it once it received strong and persistent complaints about RSL from a neighbour;

(d) the misconceived but remarkably persistent effort by the Department to seek to 'enforce' that flawed condition. Only following a legal challenge by RSL did the Department itself take legal advice and appreciate that the condition was unenforceable for want of precision.

18.12 Mr Yates himself told us that his litigation was a last resort. Had the Department tackled the case properly from the start, it would not have arisen; either the permission would not have been granted or it would have been granted with appropriate conditions that would have mitigated the noise nuisance.

18.13 Mr and Mrs Pinel's decision to appeal against the judgement of the Royal Court in the *voisinage* case was, in the first instance, directly influenced by the assurance given by the Minister to Senator Shenton in January 2008 that Mr Taylor's 'roofing-over' planning application reconsideration would be successful. That led to considerable further legal costs. The assurance should not have been given, not only as a matter of intrinsicalness ahead of the due process of the determination of the application but also, and more significantly, because the Minister had stood aside from the case several months previously under pressure from complainant Mr M. Yates, on the grounds that he was conflicted owing to his being slightly acquainted with Mr Taylor. This action on the Minister's part, however well-intentioned, was unwise. Mr and Mrs Pinel cannot be faulted for placing reliance on information from such a source: Senators are at the apex of Jersey's polity. But the disconnectedness of the Minister's positive assurance from the process within the Department that led two months later to the rejection of the reconsideration request by Deputy A.E. Pryke, then Assistant Minister, was so utter that it made the eventual decision a blow of high proportions.

18.14 As for the legal costs faced by Mr and Mrs Pinel, the order of the Bailiff in the costs hearing after the *voisinage* case that the Planning Department should pay a quarter of the costs would, had it not been successfully appealed by the Minister, have reduced significantly the costs faced by Mr and Mrs Pinel. The Court of Appeal's decision might also, we conclude, have been more supportive of the Bailiff's judgement had the Court received a full account of the planning history.

18.15 We add that the shortcomings we have identified in the Planning Department were similarly adversative to Mr Taylor, who had gone to some lengths and expense to accommodate RSL on his land and to seek to mitigate subsequent alleged nuisance at the behest of the Minister, whose good intent was undermined by the Department's own actions.

19. RECOMMENDATIONS

19.1 Although our main terms of reference do not specifically invite us to make recommendations, it seems to us desirable that we do in order that the States, in considering our report, are in no doubt about our view on what should be done to bring this case to closure. What follows relates only to the first two of our terms of reference. Recommendations about the planning process itself in the light of this first report, which are invited by our third term of reference, will follow in our second report.

19.2 We make four recommendations which we invite the States to accept –

(i) the Department should apologise, publicly, to Mr and Mrs Pinel, Mr Taylor, and Mr and Mrs Yates for the various mistakes, misguided actions and inactions that we have set out in this report;

(ii) the States should compensate Mr and Mrs Pinel, as owners of RSL, in the sum of £157,000 pursuant to paragraph 17.5 above;

(iii) the Department should reimburse to Mr Taylor his fees for his two planning applications, in the sum of £2,022, and his costs for hiring professional acoustic advice in the sum of £1,325. This makes £3,347 in total;

(iv) pursuant to paragraph 15.46 above, the States should beyond doubt ensure that there are specific, robust policies in the new Island Plan to enable and encourage the sorting and recycling of inert waste on private land, in respect of both existing businesses and new entrants to the market, and that the Planning and Environment Department is held to account on delivering this.

When I was putting together this Proposition, I noted that in the debate there was a proposition to move to the next item, ironically by the politician who is now Assistant Minister for Planning and Environment.

If this had been successful, there is a possibility that justice would have never been served and no compensation offered to the victims of the saga. I only include this in order to ask the Privileges and Procedures Committee to look at this Standing Order and review whether it should be removed.

I highlight the exchange below – excerpt from Hansard –

Deputy R.C. Duhamel:

Right. Okay. Notwithstanding that, I think the decision to allow the proposition to be debated on the floor of the House was a wrong one. We do not do ourselves any justice or service by continuing this debate and I would like to test the mood of the House by invoking Standing Order 85 and propose that we move to the next item.

Senator B.E. Shenton:

We need to come to a conclusion on this.

Deputy R.C. Duhamel:

I am entitled, under Standing Order 85, to propose it…

Senator B.E. Shenton:

Well it should be abolished then. It is an abuse of democracy.

Deputy R.C. Duhamel:

…and there should not be any discussion of the issue.

Senator S. Syvret:

This is an abuse of the rights of a minority and it is also a gross insult to the people concerned. If Members do not like the proposition, have the courage to vote against it.

Senator B.E. Shenton:

I suggest that Deputy Duhamel simply votes against it rather than bankrupting the Pinels because he does not want to hear a debate.

The Greffier of the States (in the Chair):

Senators! Please sit down, Senator Shenton. Standing Order 85 does provide that any Member may propose that the Assembly move to the consideration of the next item on the order paper. The presiding officer is not permitted to allow that proposal if it appears to him that it is an abuse of a procedure or an infringement of the rights of a minority. It is always, clearly, a very difficult call for the Chair because Members have in their Standing Orders that provision, Members are entitled to vote on it and the Chair can, effectively, permit or disallow that democratic right to vote for that. The general rule followed by the Chair is that a reasonable number of Members should have been able to express their views before allowing it. I note that some 12 Members have now expressed their view during this debate. I therefore think it is a matter for the Assembly, not for me, and I will allow the proposition to be put. Clearly debate is not permitted on the proposition but I would state that it is a matter for Members to hear the views that have been incorrectly expressed by the Senators who have been on their feet but they will take that decision as to whether they …

Senator B.E. Shenton:

Sir, I believe I have a right to sum up this debate and answer the questions that have been raised.

The Greffier of the States (in the Chair):

No, you do not, Senator. It is not an issue that …

Senator B.E. Shenton:

I also believe that this Standing Order should be removed if it is going to be abused in such a manner.

Fortunately the proposal to move to the next item was heavily defeated. However, I feel strongly that this device stifles debate and is an abuse of the rights of the minority.

Voisinage

At the same time, I lodged a Proposition seeking a review of Voisinage and the expansion of its use as a result of the Reg's Skips case. There is a Consultation Paper issued by the Jersey Law Commission (No. 2/2010/CP) currently in circulation which makes interesting reading. In defending the actions of the Court, the legal profession appear to have created a means by which neighbours can prevent development that would cause a nuisance to their properties – be it light, noise, smell or subsidence. Certainly it should become more widely used as its use is expanded by neighbours to protect their properties, and in this regard only I am beginning to share the Law Commission's view that it does have a place in modern society. Certainly I would be comforted if my property was threatened by actions that would affect my property – especially in cases of light deprivation, bad odours, unacceptable noise levels, or severe visual and/or physical detriment to my amenities.

As the consultation paper states –

> Voisinage may simply be defined as a mutual duty that the customary law of Jersey imposes on neighbours not to use their properties in such a way to cause damage to each other.
>
> In modern French, the word "voisinage" can mean "neighbourhood", a district or area and "neighbourly feeling or conduct". In the latter sense, it is akin to "neighbourliness", i.e. the characteristic of being a good neighbour.
>
> It is clear that this is a very powerful tool that can be utilised if a neighbour seeks to take actions which will cause nuisance. This would logically include, for example, light deprivation from high trees or a new construction – or even plans for a new construction. Whilst this would need to be tested the principle of voisinage in its purest sense may even introduce the right to a view into the Jersey legal system. It stands to reason that the loss of a view could be an extreme nuisance in certain circumstances – causing both mental and financial harm. If its extension protects the reasonable expectations of the individual it has merit.
>
> Furthermore the extreme judgement in the Reg's Skips case is of interest. Under the Statutory Nuisance Law there would probably have been an effort to reach a compromise between the neighbours – perhaps by an altering of working practises. However there was no such leeway in respect of the Reg's Skips case. They were ordered to cease business – full stop.
>
> This implies that a person who protects his property through voisinage can rely on the Courts to provide his full protection against the actions or intentions of the neighbour. It also overrides other laws – as the voisinage judgement took precedence over more modern laws in the Reg's Skips case. It gives property owners a very strong weapon against property developers who may wish develop a property to their detriment.

In their conclusion the Jersey Law Commissions state –

> "The key point is that the law affords a remedy to someone whose property or life is blighted by the use made of neighbouring or nearby land".

Original Proposition P.29/2009

I reproduce the voting in respect of the original proposition P.29/2009 for Members' information. I would also like to thank the Committee of Inquiry for their hard work and dedication to the task in hand. It is much appreciated. It is our job as politicians to ensure that their hard work was not in vain.

POUR: 17	**CONTRE: 24**	**ABSTAIN: 5**
Senator S. Syvret	Senator T.A. Le Sueur	Senator F.E. Cohen
Senator P.F. Routier	Senator P.F.C. Ozouf	Connétable of Grouville
Senator B.E. Shenton	Senator T.J. Le Main	Connétable of St. Mary
Connétable of St. Peter	Senator S.C. Ferguson	Deputy of Grouville
Deputy R.C. Duhamel (S)	Senator A.J.D. Maclean	Deputy A.T. Dupré (C)
Deputy of St. Martin	Senator B.I. Le Marquand	
Deputy J.A. Martin (H)	Connétable of St. Ouen	
Deputy G.P. Southern (H)	Connétable of St. Helier	
Deputy of St. Ouen	Connétable of Trinity	
Deputy of St. Peter	Connétable of St. Brelade	
Deputy P.V.F. Le Claire (H)	Connétable of St. Saviour	
Deputy S. Pitman (H)	Connétable of St. Clement	
Deputy of St. John	Connétable of St. Lawrence	
Deputy of St. Mary	Deputy R.G. Le Hérissier (S)	
Deputy T.M. Pitman (H)	Deputy J.B. Fox (H)	
Deputy M.R. Higgins (H)	Deputy J.A. Hilton (H)	
Deputy J.M. Maçon (S)	Deputy of Trinity	
	Deputy S.S.P.A. Power (B)	
	Deputy K.C. Lewis (S)	
	Deputy I.J. Gorst (C)	
	Deputy A.E. Jeune (B)	
	Deputy E.J. Noel (L)	
	Deputy T.A. Vallois (S)	
	Deputy A.K.F. Green (H)	

APPENDIX 1

EXTRACT FROM OFFICIAL REPORT – 13th May 2009

STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

The Greffier of the States (in the Chair):

Very well. Well, we come now to the statement – if I can have Members' attention – that the Minister for Economic Development will make.

7. Statement by Senator A.J.H. Maclean, The Minister for Economic Development regarding the payment of compensation to a group of local residents who were victims of misleading advice from Alternate Insurance Services Limited:

I, as you know, have been trying to make this statement for some time. **[Laughter]** At the last sitting, the Deputy of St. John raised some questions concerning a recent decision to compensate a group of local residents, who were victims of mis-selling. While the decision has been made, I appreciate the concern that it may have caused some Members. This statement is intended to offer clarification as to the circumstances behind the decision. In arriving at my decision, I consulted the Council of Ministers to seek their support before requesting a source of funding from the Treasury. The Minister for Treasury and Resources agreed to the request in accordance with Article 15 of the Public Finances (Jersey) Law 2005 to allocate funds from the 2008 underspend. The total carry forward request was for £597,000, although compensation could in fact be less and will be made available to allow one-off payments to be made to the 28 local investors. These individuals suffered losses as a result of recklessly misleading advice given by a local company called Alternate Insurance Services Limited. Payments to the investors will be made on the same basis as the U.K. Financial Services Compensation Scheme, with each investor limited to a maximum payout of £48,000. Following a full external audit, the payments will be distributed to the investors by my department, as Economic Development has the responsibility for financial services. My decision follows a Royal Court judgment in the case of *The Jersey Financial Services Commission (The Commission)* v *Alternate Insurance Services Limited.* In light of the unique circumstances of the case, which are unlikely to be repeated, there were clear and compelling arguments to support compensating these individuals. I gave particular regard to the following exceptional facts when arriving at my decision: without exception, those affected could fairly be characterised under the commonly used phrase "widows and orphans." The affected investors in this case were all local residents who were not sophisticated investors. The Royal Court found that they were given recklessly misleading advice, which led them to invest in high-risk products, believing they were in fact low risk, resulting in significant losses, sometimes in excess of their initial investment. The court's view was that all such investors should be compensated. In 2001, when this case occurred, the sector was not fully regulated. Normal professional indemnity cover became invalid. Due to the insolvency of Alternate, only a small proportion of the losses could be recovered. All other possible avenues for recovery through the courts were exhausted by the Jersey Financial

Services Commission. Given the uniqueness of this case, the Council of Ministers supported my view that there were sufficient grounds to make one-off payments to the affected investors. I hope that these payments will go some way in helping to relieve the consequences, including genuine hardship, that many of these people have suffered, as set out in the judgment of the Royal Court. As a result of this case, I have asked my department to commence a review of investor protection. In the past it was decided, in common with other jurisdictions, not to have a standing scheme, due to the costs of running it. It was always intended to deal with exceptional cases as and when they arose on a case by case basis, as in this instance. We will now look again at the cost benefit analysis of establishing a standing investor compensation scheme and will report our findings and proposals to Members.

7.1 The Deputy of St. Mary:

I can see the list of circumstances that the Minister has put before us, but I am curious to know, what is the responsibility in this which led the Minister and the Council of Ministers to believe that compensation was the correct response? When you compensate, there is a responsibility that you are compensating for. I want to know what the responsibility was. I accept these very circumstances, that is not the issue.

Senator A.J.H. Maclean:

The responsibility quite simply was that these investors had been let down by the fact that the system did not suitably protect them. They were given advice by members of this particular company which was recklessly misleading. Because the investors were let down in this way, we felt – and the court indeed felt – that it was bordering on dishonesty, and on that basis, we felt that it was reasonable to make the compensation payments.

7.2 Connétable D.J. Murphy of Grouville:

I know a little about these instruments that we use, the T.E.P.s (Traded Endowment Policies) and because I have some experience of them, I find it very, very difficult to understand how they manage to do this without committing a fraudulent act. In that case, why were individuals not prosecuted instead of the companies?

Senator A.J.H. Maclean:

The Constable is absolutely right, and I know that it was a very close call as to whether indeed the individuals were going to be prosecuted, and it became a fraudulent act. However, indeed, the products of which the Constable is referring to – Traded Endowment Policies – in themselves are medium-risk investment products. What was the problem here or the additional issue here was the fact that this was packaged products which involved a degree of leverage; in other words, the investors were asked to borrow money to leverage the investment into a package and the risk was not explained to them, but the Constable, in principle, is absolutely right. The individuals came very close to being prosecuted.

7.3 Deputy G.P. Southern:

The Minister has talked in very neutral terms about defects in the system; a system devised by whom? Was it J.F.S.C. (Jersey Financial Services Commission); was it E.D. (Economic Development); who was responsible for these defects that occurred at the time? E.D. or J.F.S.C.?

Senator A.J.H. Maclean:

As the Deputy will be well aware, it is in fact the J.F.S.C. who are responsible for regulating financial services. I believe that they carried out their statutory obligations in this regard. I have to say that there are 2 factors: 1, at that particular point – and bearing in mind we are talking about the period from 2000 to the end of 2002, at which point it was a transitional period – that particular sector of I.F.A.s (Independent Financial Advisers) was not fully regulated. But if he is looking for accountability for regulation, that is in fact the J.F.S.C., but it was not fully regulated at that stage.

Deputy G.P. Southern:

If I may, a supplementary: so then the blame clearly lies with the equivalent of the Economic Development Industries Committee of the day, that regulation had not been extended to this apparently dangerous area?

Senator A.J.H. Maclean:

I think regulation is being improved all the time. There has been a tremendous increase in regulatory control in all sorts of areas. This, as I was mentioning a moment ago, we are going back to 2000/2002, the level of regulation has moved on a long way since then. I would certainly like to think that the chances of a similar case to this occurring is highly unlikely.

The Greffier of the States (in the Chair):

Briefly, Deputy. There are others waiting to speak.

Deputy G.P. Southern:

In answer to my question, who was responsible, nobody knows. There is no responsibility, no one responsible. Who was responsible?

Senator A.J.H. Maclean:

If the Deputy is asking who is responsible for the loss to the investors, then it would be the company themselves, because clearly they were the one that imparted the advice. If he is asking about regulatory oversight, the J.F.S.C. had regulatory oversight, but the level of regulatory oversight at that particular point is not at the stage that it is now. So I am satisfied that the J.F.S.C. did all that was reasonable and could be reasonably expected of them at that time.

7.4 Senator A. Breckon:

Could the Minister confirm that the court judgment was critical of the States of Jersey, among others, of not having a suitable compensation scheme and also could he advise when one will be in place?

Senator A.J.H. Maclean:

Yes, I can confirm that in the judgment – and in fact, if Members would like to read the judgment, just as an aside, there was a lot of very interesting information, it is over 100 pages long. I have it here and it would give some very useful background – it does refer to the fact that we do not have an investor compensation scheme. That is one of the reasons that I have asked for it to be reviewed again, for the reasons that I stated in my statement, why we have not had one to date. Fortunately, these incidents are relatively rare, certainly in Jersey – other jurisdictions are not quite as lucky, necessarily – once the review is complete, then I will make a statement to the House as to the position, and indeed timing of any scheme should indeed it be decided that a scheme will come forward.

7.5 The Deputy of St. John:

Given the public airings we have had of both Woolworths and Pound World, *et cetera*, will the Minister bring this to the Chamber to be debated by the Chamber, if necessary in camera? If he is not prepared to do so, a private Member is very likely to do it.

Senator A.J.H. Maclean:

Could I ask the Deputy to clarify what he is asking me to bring to the Assembly to debate in camera?

The Deputy of St. John:

The facts of the case have been explained to you. The Members, I am sure they were all given the facts with the Woolworths and the Pound World debate. They can give us the facts in their entirety, laid out by your department or the Treasury Department, Council of Ministers, so that we can decide for ourselves if that £600,000 has been correctly spent, or going to be spent.

Senator A.J.H. Maclean:

As I mentioned a moment ago, the judgment of the Royal Court, extending to over 100 pages, is here. All the facts are contained within this document. I am more than happy to let the Deputy have a copy of the judgment with all the facts in it, and indeed, any other Member in the Assembly if they would so wish.

7.6 Deputy D.J. De Sousa:

Most of my question has been asked already. Can the Minister really justify making this decision himself, knowing what we were put through as a House when debating the Woolworths and the Pound World at the time when it came? How can he now justify making this decision without coming to the House?

Senator A.J.H. Maclean:

Well, first of all, there is no direct relationship between the 2 cases, but I have to say that the decision that this House took with regard to Woolworths was something that I had in the back of my mind when considering this particular fact. It is clear the level of compassion that this House has for cases like Woolworths, and I have no doubt that having read the details of this particular Royal Court judgment, that Members would support my view. It is absolutely clear cut, in my view, and indeed, in the view of the court, and if I can indulge Members for one second, I will just quote what the judge said. He said: "To this court, it seems inconceivable that investors should be left uncompensated for their serious losses. This recommendation is made because it is not acceptable that unsophisticated small investors in Jersey can be so badly advised in relation to their small resources." These are not wealthy people, these are not sophisticated investors. The advice given was dishonest, it was misleading, and in my view, this was the right decision, and I hope Members accept it.

7.7 The Deputy of St. Martin:

Yes, it is very close to what the question has been going around the House. It is just a direct question of the Minister, because he knows how he upset me when he made his remarks about Pound World. With hindsight, would the Minister not have thought it would have been better to have brought this to the House so the Members could have a part in the decision, and maybe if a future occasion came, that he would bring it to the House and not make it an in-house decision? So would he bring a proposition in the future to the House if he had a similar occasion?

Senator A.J.H. Maclean:

I take the Deputy's point. I think you have to assess every individual case on its merits. I think the judgment that I took and I took to the Council of Ministers, which they supported, in this instance I believe was correct. However, I do say or am prepared to say to the Deputy in future, depending on the circumstances - and I certainly hope we do not have another case similar to this - but should we do so, I will assess it on merits, and it may well be one that would come for consideration to this House, depending on the circumstances.

APPENDIX 2

States of Jersey

Mrs Emma Martins
The Office of the Data Protection Commissioner
Morier House
Halkett Place
St Helier
JE1 1DD

27th September 2010

Dear Emma,

R.118 – Committee of Inquiry
Reg's Skips Limited – First Report

I shall be grateful if you will investigate whether any of the data protection breaches by the Planning and Environment Department, as set out in the above referenced report, warrant further investigation and possible sanction.

Yours sincerely,

Senator Ben Shenton