STATES OF JERSEY

OFFICIAL REPORT

THURSDAY, 2nd APRIL 2009

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

PUBLIC BUSINESS – resumption

1. *Ex gratia* compensation payment: Mr. and Mrs. R. Pinel (P.29/2009) - continued

The Greffier of the States (in the Chair):

Just before we resume the debate I did overlook at the end of yesterday's sitting to point out to Members that Deputy Le Claire had lodged a proposition, P.47 Planning and Environment: division into 2 ministerial offices, and that was lodged yesterday. Very well, the debate resumes on the proposition of Senator Shenton relating to the *ex gratia* payment. Does any Member wish to speak? Deputy Tadier?

Deputy M. Tadier of St. Brelade:

Before we continue I missed the opportunity yesterday, but I do have to declare an interest in this particular matter and so I will not be speaking and I will be abstaining.

The Greffier of the States (in the Chair):

Very well, that is noted. Deputy of St. John?

1.1 Deputy P.J. Rondel of St. John:

I am sorry that this has got as far as the Chamber. I was hoping it could have been resolved outside. I have known the family, Rita and Reg Pinel all my life. A more solid Jersey family you could not wish to find. Not for the first time in their married life have Reg and Rita Pinel been dealt a hammer blow by life. The first time was when they lost a child. On this occasion I hope that we will do what is right and see that in this Chamber justice will be done. As Members will see from covering correspondence that the persons who wrote a letter, i.e. Appleby ... I have been dealing with lawyers in one way or another, either as Centenier or in my business life, all my life and to receive an 8 page document, 9 page document, like we did several days ago, signed just by the name of the company, to me seems rather strange, to say the very least, rather strange. Every time I have ever dealt with a lawyer it has always been signed by a partner or senior management within a company, but never ever, and I went through a number of my records just to see I was correct in what I was saying, right the way back to the 1960s, and I have never ever come across a document that is signed by the company name. There are things within this document that we have all received including comments about Senator Shenton once again all signed by Appleby, not by any specific partner within the company or senior partner. Now, to me, if something with contents of this nature is going to be distributed to 53 States Members and Crown Officers, et cetera, I would really expect that somebody would put their name to it. **[Approbation]** Because to me to be making these comments hiding behind the *nom de plume*, for want of a better word, is not acceptable, totally not acceptable. Therefore, I would ask Members not to put any weight on this document given that it is not signed by any specific person. So, please do not put any weight to this document. I will move on from there. In fact, I would suggest that you put this aside and do not even refer to it. Can I move on to the documents supplied to us by Planning? I have got to find it now, the original reports. In the Planning comments ... but just prior to doing that, can I also tell Members that prior to this particular application and in the early stages of this application, I was the Deputy who represented Mr. and Mrs. Pinel at the time going back to 2004 and beyond. I have correspondence and I will start back that far. On 19th May 2005 from a planning officer, I do not believe I am permitted to use the planning officer's name, which reads: "I write in reply to your fax dated 18th May concerning the above site" dah de dah de dah: "with regard to the application at Heatherbrae Farm for Reg's Skips. The application passed yesterday to the Assistant Director with a recommendation to approve the application. The Assistant Director must now decide whether the matter must return to the sub-committee for their consent or can be determined as a delegated item. The previous meeting at which this matter was considered by the committee was at a pre-application advice stage, before the formal application was submitted. I therefore hope to be able

to contact the applicant, Mr. Taylor, with a decision on the application in the next couple of days. Mr. and Mrs. Pinel are not the name on the application form and as such all correspondence must go through the applicant/owner, in this case, Mr. Taylor." So this is drawing it to our attention that in fact it was not in Mr. and Mrs. Pinel's name. Then I go on to comments made within the comment sheet number 3 from Planning, where in the second column it says: "From 2000 to 2004 the company operated from Home Farm and Les Prairies, St. Peter. Planning permission was not in place to operate from those properties", and the company was under investigation by Planning and Building Services' enforcement team. Well, as Les Prairies in St. Peter was in operation prior to 1964 then I am given to understand that no planning permission was required. So why would Mr. and Mrs. Pinel, operating legally, require that particular permit? To me, it seems rather strange that if a business has been running from a particular set of premises for, shall we say time immemorial, and we put a law in place in 1964, retrospective applications should not be required. To me, to operate a business legally and then be told that you should move and be encouraged to move by Planners, because if I can move on to a letter received: "Following discussions under item 4, the Planning Service in the form of the Planning and Environment Committee, the company applied to move to a vacant shed, a disused silage plant at Heatherbrae Farm, St. John, owned by Mr. Taylor. Permission was duly granted subject to several conditions, one of which was the use of this site shall operate in the same way as the current site at Les Prairies." Given that the current site at Les Prairies was in existence prior to 1964, I would expect that, therefore, they had a *carte blanche* to basically operate as they wished. I may be totally wrong but that is the way I would read it. We have seen businesses operating across the Island prior to 1964, those sites are still legal today with no stipulations on them because they are historic, so why are we saying that there are, in fact, on Heatherbrae ... we are being told that the same conditions as applied in the areas at St. Peter, so therefore I would have thought it was not necessary to go any further than that. So I will read a letter Senator Shenton has received from Mr. Christopher Taylor, the owner of Heatherbrae Farm: "I wish to clarify as the landlord of Reg's Skips Limited, the truth about how Reg's Skips Limited came to occupy my premises here at Heatherbrae Farm. I am sure you know that all planning matters are dealt with by the landlord or land owner or with the specific consent of the land owners. I am, therefore, also able to comment with first hand knowledge. In February 2005 or thereabouts I was approached with a visit from a Planning Officer to ask if I would be prepared to accept Reg's Skips as a tenant. I showed her the vacant area, which she described as ideal. Ms. Baxter explained the background to Reg's Skips and made it very clear to me that I would be helping the Planning Department and, I repeat, helping the Planning Department if I were to accept Reg's Skips as a tenant. I subsequently made the required application for Reg's Skips to come here. Consent was then forthcoming in May 2005 and Reg's Skips took up occupation in June." Members have got this letter within their packet on their desk, I believe, so I will skip now to the appendices on the following page. Under paragraph 8: "Reg's Skips did not apply to roof over the former ..." I will start from paragraph 4: "Reg's Skips did not apply to go to Heatherbrae Farm, St. Olaves Investment Company Limited applied for Reg's Skips to come to Heatherbrae Farm at the specific request of the Planning Department." Paragraph 8: "Reg's Skips did not apply to roof over the former silage plant following a site meeting with the Minister for Planning in September 2006." At the specific request of the Minister the landlord agreed to submit a request to roof over the area occupied by Reg's Skips. A full acoustic report was submitted based on a model showing that the roof over would more than satisfy the noise reduction required. The response from the Environment Health Department was: "We do not have the sophisticated computer software or the information to be able to model the exact reduction the structure would achieve. This department would not oppose the application if it will improve the existing unsatisfactory situation." This letter was dated on 2nd February 2007 and the Minister's response is therefore untrue. He is claiming that in paragraph 8 of the ...

Senator F.E. Cohen:

I refute that anything I said was untrue and I explained yesterday the letter that is relevant is ... there are 2 letters, the first is the 2nd February 2007 and the second is 23rd January 2008.

The Deputy of St. John:

I am not disputing one way or the other, I am just reading the letter, Senator, as per 8 on your comment sheet and the response from within the appendix to the ...

Senator F.E. Cohen:

But it claims what I said is untrue and what I said is factually accurate.

The Deputy of St. John:

I am only the messenger, please do not shoot the messenger. On paragraph 12(a), the original planning report for the request for change of use states that Reg's Skips was trading legally from St. Peter. The only reason Reg's Skips was being moved was due to the visual impact of his business alongside a main road. Once again, as I said earlier, I personally believe that if that site was in operation prior to 1964, it was a legal operation. Therefore if the same criteria is being used, as we are told it is, therefore I do not believe that the Planning Department had any right in putting any additional stipulations. But then we move on to the comments given to us this morning by the Minister for Planning and Environment on Reg's Skips over the debate as far as it had come yesterday. In fact I mentioned here that having represented Reg's Skips on an application in St. John at Homestead, which is absolutely right, I did, and can I tell the Members that at the time of that application there was a site visit which I attended on behalf of the former Constable, Connétable Dupré who had been the Member who dealt with the original application for Homestead Farm. At that time Senator Ozouf was the President of the Committee. There was a site visit and I attended. The Connétable thought he was conflicted because he had represented Reg's Skips and therefore he did not attend the meeting, he thought it was wrong. But can I say that another States Member who attended as a member of the Committee was conflicted but did not declare he was conflicted at the time; it was not until he was challenged by me in this Chamber several weeks later that he stood away from that particular application. That was the Deputy of St. Clement at the time, because he was conflicted having his own family involved in skip hire. But the decision had been made and it was a balanced decision. If he had not been on that particular committee and the Connétable of St. John had attended, we would not be having this debate here today because it would have gone the other way. But there we are, as they say, we are where we are. But going further on from there, if I could come to the penultimate paragraph of the Minister's comments from yesterday: "The condition is not sufficiently precise because it does not emphatically state which operations are permitted and which are not." This is to do with the permit that was granted and I will repeat that: "The condition is not sufficiently precise because it does not emphatically state which operations are permitted and which are not." It leaves open to interpretation and debate the level of use which would be acceptable when in January 2007 the Minister for Planning and Environment served an enforcement notice on the company requiring compliance with that condition. The notice was appealed by Reg's Skips in the Royal Court. The Minister withdrew as it was considered that lack of precision in the conditions made it unenforceable. To me this is a real concern. It was after this matter deteriorated on site, until the neighbours finally took private legal action culminating in a court decision in December 2008 to force the company to leave the site. Well, on the Minister's own admission there is a very, very grey area; a very grey area here in these last 2 paragraphs because we are being told on the one hand that Reg's Skips were basically operating illegally because of the size of the operation, the noise they were making and yet he is admitting, in black and white here, and this is the way I am reading it, but I am not a law person who would look at it probably slightly differently, but it looks to me as if we are being told that there has been an error on the part of the Planners by not ticking all of the boxes in the first instance. I might be totally wrong, but I do not think I am because if they have not ticked all the boxes, how are Reg's Skips or Mr. Taylor who was the applicant

supposed to know? I think if there is blame to be placed on anybody it is at our Planning Department who have not done their job. I do not say this lightly because I have a lot of respect for the officers, but, that said, if we have made a mistake let us put our hands up and say: "We have made a mistake." It seems to me what the Department are saying, we have made a mistake because they have left these grey areas and really ... I do not know, I am at a loss to think that we are putting this family through all this turmoil when there has been a mistake made by a department. Let us put our hands up and say: "Enough is enough, let us do what is right by these people." Really I am not going to say much more because I am aware that other Members have had meetings with Mr. and Mrs. Pinel also and have got information that they would like to give to this House and I am aware that the noise on the board is up there, the graph, if I could just pass one or 2 comments on there, to be picked up by Members afterwards. If you look at the noise graph there that has been done by an independent company you will see that none of the noise on that graph, and you have got copies in front of you, emits from Reg's Skips. It comes from aircraft noise and, in fact, there are other vehicles or other machinery, but nothing from Reg's Skips. I am given to understand from my research that in fact the Royal Court only had these copies, these A4 copies, they did not have the full blown-up copy that we are fortunate to have on the wall there and comments. Therefore, that is another reason that I think Members should take into account that anything that has happened, we appear to be looking at the wrong people, because if you look at this it is aircraft noise, aircraft noise, aircraft noise, aircraft noise on all of the spikes ...

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

Could I add a point of possible clarification which might help the speaker? It is just that when you said that none of the noise from here comes from the skips, I think that might be misinterpretation. The spikes do not come from the skips and it should be known to Members that that bar across the middle where most of the noise is includes all background noise; cars, whatever, planes and also of course the skips.

The Deputy of St. John:

Yes, I thank the Deputy of St. Mary for the interjection on that and therefore, as I said earlier, I know other Members will pick up on this so I therefore will not say more than that. But when the time comes to vote, I sincerely hope Members look at this and see, you know, are the States of Jersey liable or are we not because of an action or actions of possibly our officers by not ticking all the boxes? At the end of the day, why should a good Jersey family be put to the wall, and possibly even made bankrupt, lose their house and everything else because we are not man enough to turn around and say: "Sorry, we made a mistake, we should have ticked all the boxes, let us do what is right by these people." As far as I am concerned I want to do what is right. I will take some real convincing by Planning and others to change my mind because unless you can prove to me that all the boxes were ticked, I am supporting Mr. and Mrs. Pinel.

1.2 Senator B.I. Le Marquand:

This is a very bad proposition. I shall try my best to follow the advice of the youngsters that sent me these golden rules and to be kind and gentle, and particularly to those who are messengers on this occasion, but it remains a very bad proposition. There is an important issue of principle where people have fought and lost court proceedings that they should not be allowed to side-swipe the decisions of the courts by bringing propositions to this House other than in entirely exceptional circumstances. It is only too easy for people to come with a sad story and I accept the story of the Pinels' is a sad story, but I am afraid a self-inflicted one in my opinion. It is only too easy for people to come with sad stories and to engage the sympathy of the House. Let us engage our brains on this occasion as well as our sympathy. There is very clear distinction between this kind of matter which involves individual people who have taken individual courses of action on the one hand which have had bad consequences, and the sort of matters we have dealt with in recent times in relation to Woolworths' employees, Pound World where there was a point of wider principle,

general principle in relation to lack of redundancy law or something of this nature, lack of notice given to them. This is a completely different categorisation case. The fact is that the courts are good at doing some things and politicians are good at doing other things. The courts are good at hearing evidence and deciding on disputed evidence what happened or did not happen. Courts are good at determining points of law. Politicians are not generally good at these things and if we are not careful, we are going to be drawn into some sort of kangaroo court type of approach, seeking to hack our way through disputed facts without having heard any evidence, without having read transcripts, et cetera, et cetera. This is a very dangerous and very wrong approach. We need to recognise our strengths and also our weaknesses. Now some people have mentioned the possibility of calling for an inquiry. But there already has been a most detailed inquiry into this matter in terms of the court case, which determined fact. There was then subsequently an appeal against that matter which went to the Court of Appeal ...

Senator B.E. Shenton:

The court case did not deal with Planning, the court case was between Mr. and Mrs. Yates and Reg's Skips. It was not a court case against Planning.

Senator B.I. Le Marquand:

No, well I will come to the issue of Planning in a moment, thank you very much. I will come to the issue of Planning in a moment. But there has been a detailed further inquiry in relation to the underlying facts. There has been an appeal. There has been a determination. So, in relation to this matter, there were not just a few red herrings being run there was a veritable shoal of red herrings. Planning red herrings, legal red herrings, judicial red herrings. Let us start with the planning point. This is very often misunderstood by people. I am going to take a very simple example to demonstrate the point that I am trying to make. It is very often misunderstood by people that if Planning grant you permission for something that does not necessarily mean that you have the legal right to do it. The classic example is somebody who applies to build an extension on their property. They put in a plan for the extension of their property. Planning pass the plan, they build the extension and then the neighbour says: "You have encroached on my property. You had no right to build it there." This is not Planning's fault. It is no part of Planning's duty or responsibility in such a case to check boundaries, or conveyancing matters or things of that nature. Planning simply gives a person permission to do something under the Planning Law. That does not mean that they have been given permission to do it as against the Conveyancing Law, or in this case the law of noise nuisance and that is a very important principle to understand. I think there is a complete confusion over this issue of conditions which applies. What has appeared to have occurred here is that the Planning Department, when it granted consent for change of use, intended to do so upon the basis of there being no mechanical sorting. In fact they did not apply the condition as carefully as they should have done and the word "mechanical" did not appear anywhere in the documents. Members have in fact the consent and the conditions in front of them. This mistake was made but that is a mistake in favour of the company, not a mistake against them. It is a mistake in favour of them. How can there be logically arising any cause of action against the Planning Department when they have done something which is more favourable to an individual. That in my submission is nonsensical. There is therefore absolutely no causation, no link, between anything which Planning has done and the ultimate situation which has arisen here. The facts of the court case, and we are talking about the cost here of the court case, the facts of the court case was that there was excessive noise being caused by what was being done by Reg's Skips Limited, which had the effect of massively deteriorating the quality of life of neighbouring occupants, who happen to be Mr. and Mrs. Yates. Now, in such cases what normally happens is a complaint will be made. The neighbours will seek to sort it out between them. There will be an attempt to see whether some change in working practices cannot simplify the matter, cannot reduce the amount of noise down to a tolerable level. I have no doubt that that will have happened, because nobody leaps directly into legal proceedings without going through those sort of steps. Ultimately in this particular case that

obviously failed and a decision was made by the Yates family to seek judicial review of a decision. Now, that is the first point I want to clarify. I was Judicial Greffier from 1990 until 1997 and in fact was the drafter of the Royal Court rules on judicial review, so I do know one or 2 things about the concept of judicial review. The fundamental part of judicial review, it cannot give leave to judicial review a decision unless there is no other remedy available to give, and so when the single judge who was considering the application to leave, in this case happened to be the Bailiff made his decision, he decided there was another remedy available and that is why he will have written down on his notes giving reasons, that he is bound to do in accordance with the rules, written down on his notes that there was another remedy and that is why he is refusing judicial review. That is not advising people on how they should proceed, that is simply indicating in his view another possible cause of action. Now, we come to the next stage which was the actual trial. Again, I have experience here. One of the cases which is mentioned in the papers is the case of *Magyar* v *Jersey Strawberry Nurseries Limited*. I happened to be counsel for the unsuccessful defendant in that particular case. I know one or 2 things about noise nuisance cases. The principle of noise nuisance was well established in Jersey well before any of us understood the concept of *voisinage*. *Voisinage* is a French concept but we all knew, and there was plenty of case law in Jersey, about noise nuisance. It is very simple. If someone is producing too much noise to a level which is causing major problems to their neighbours, then they have the right to go to the court and to ask the court for an order to stop them doing what they are doing. Now, in considering this the court will normally see whether there is some intermediate step. Again, a stage in which it is looked at as to where the operations can be changed, and my understanding here is the core of the problem here was mechanical sorting of skips, which caused a great deal of noise. The Deputy of St. John was one of my friends, and I do not want to be too unkind to him this morning, the Deputy of St. John is suggesting that because this graph does not show anything about the noise levels of Reg's Skips that therefore the Royal Court must have gone, if I can put it in the vernacular, barking mad and made a nonsensical decision for that evidence. I am sorry that is not in the least credible. This matter has just been carefully and properly considered. Come now on to the question of recusation and I want to explain to Members the concept of recusation which is familiar to all judges. It is a French word. It just means disqualifying yourself. If you are called upon to be a judge of a case you have to decide whether or not you can properly hear the matter. The test that you apply is an objective test as to whether a reasonable person who knew that the facts would feel that there was a risk of your being biased for or against. That is the test you apply. The Bailiff on this particular occasion will have applied that test, so would the jurats have applied that test, but let us say that he got it wrong, hypothetically. That would be a matter for appeal. Has that matter been raised and determined before the Court of Appeal? That is a matter you would take to the Appeal Court. There is a remedy in relation to a situation where a judge should have stood down and did not. I am not saying that applies here but even if it did, there is a remedy and that is appeal to get the matter looked at. However, you must recall that in relation to civil cases in the Royal Court it is the jurats who in the first instance determine matters of fact. The Bailiff is solely a judge of law, not a judge of facts unless a situation arises in which the jurats are locked one each on a particular factual matter, in which case the Bailiff has a casting vote. Now, there is no suggestion here that that situation arose. The Bailiff is a judge of law only, not of facts. But no one is saying that there was some reason why the jurats would have recused themselves for making factual decisions which they have made, but we go beyond that because there was then an appeal and the appeal procedure is dealt with by 3 judges, normally but not always, who are 3 senior lawyers from another jurisdiction. I can tell you that these are people of extraordinary intelligence and weight and ability having appeared before them on a number of occasions. They looked again at the law and they also would have considered whether decisions in relation to the facts were unreasonable, and they have come to their final decision. Now, there is a side issue which I have to deal with in passing, and that is a side issue in relation to the costs order, because clearly the Royal Court in making this decision had some sympathy with Reg's Skips Limited, because they made a partial costs order against the Minister. Now, whether or not the Minister was heard, I do not know on that. So there

was some sympathy being shown there but that decision was appealed by the Minister to the Court of Appeal which overturned it. Effectively, what we are being asked to do in a whole number of ways today is to act as if we were a super Court of Appeal over and above the Court of Appeal and to seek to overturn its decisions. That is absolutely and completely and utterly and totally wrong. That is not the function of a legislature. That is why we have courts. Now, I come in closing to one or 2 technical points. There is a technical point, just as an aside, that the claimant is the wrong person in law. Even if there were a valid argument, which there is not in my view for a whole number of reasons including those which I have mentioned, the fact is that the costs orders were made against Reg's Skips Limited and not against Mr. and Mrs. Pinel, so this is absolutely wrong. The principle of law that you separate a corporate body from an individual is being violated in a very strange way, and that is simply not right and justifiable. There we are, for all those reasons, I hope I have not been too boring and too technical and I hope I have not been too rude to anybody this morning, for all those reasons I very, very strongly oppose this.

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

I have had some of the wind taken out of my sails, and I am sure Senator Le Marquand will no doubt be classified as a scion of the Jersey judicial establishment, and I will undoubtedly be classified as his acolytes. I have had considerable difficulty with this because I do not believe we are a court of law. I do not believe we are a 53 person judiciary and quite frankly to apply debating techniques to the methodical examination of 2 sides of a highly complex story does defy credibility quite frankly, even though I am sure the complainants feel that this is the last desperate fling, so to speak, of the dice in an attempt to get justice to what they have seen as a very unjust situation. I would also say, because undoubtedly this argument will be run, to those who would say that the judiciary is compromised, there are too many overlapping relationships, there are too many people unable to be independent and that therefore it has become dysfunctional, to put it politely, even that is not an argument for this Assembly taking on the case. It does not make us better. It just means we have to look more closely at those arguments, but it does not mean we are a better forum. Quite the opposite I would say. It is just sort of pondering the written material that we have received which has made me incredibly doubtful about what is going on and may well lead me to ask Senator Shenton to withdraw this for a rethink, although no doubt, as he said in his opening speech, this is to him the last fling. To take some examples, we have been told by Senator Le Marquand that Planning's role is not directly related to the court cases that did proceed as a result of this, but nevertheless we need to know, and whether in the strange way we are going to adduce evidence by people taking heavily emotional and rational and then emotional positions on this, whether we will ever adduce that evidence in any sensible way remains to be seen, but how does the fact that Planning gave this, it has now admitted, imprecise advice? How does it feed in to the later court actions and why was that not picked up as an absolute central feature for a court case if not the court case that was to be the definitive case. Another point, we have been given these enormous costs and they are absolutely dreadful. I have not worked out, and I thought Senator Le Marquand might have helped me, what the difference is between Mr. and Mrs. P. and Reg's Skips and whether by the possible bankrupting of Reg's Skips this will lead inevitably to the deep indebtedness of Mr. and Mrs. P. I presume this is what is going to happen. But by making that distinction - and perhaps the Solicitor General may wish to sort of dwell on that point when I have finished because some of these points will lead to questions to him obviously - but I cannot ... again that distinction has been made but I cannot work out what the importance and what the relevance of that distinction is. The other thing is I cannot work out from the evidence presented, given this is ultimately about this terrible cost imposition upon the 2 complainants, I think we need to know, if we were a logical body to look at this, which I do not think we are. I think this is terrible, a 53 person jury using a debating club format to sort this out. How did the costs escalate? What sort of interim steps were there to prevent this escalation or to at least lead to moments of reflection. How was all that handled? As the Solicitor General mentioned yesterday, was the issue perhaps with the manner in which our legal friends handled it and if so, is the redress either the taxing inquiry which

he mentioned yesterday, or is indeed the redress which admittedly just adds, it could be argued, injury upon injury, is the redress to sue the lawyers, but we do not know. I mean because again, if we rush to judgment and if we rush and say, you know, once again the judicial system has failed us, et cetera, et cetera, we will not have the answers to those questions and we will have committed £300,000 at least of public money, without knowing all the nuances. All the nuances of the situation, all the internal fights that have presumably occurred, or arguments that have occurred as this matter has progressed. We have just been presented with a certain version of the facts and certainly the material we have received, other than the fact that the sums are obviously humongous and frighteningly high, we have not been presented with any evidence as to how they escalated to that level and what steps were taken. The minor point I would say, the Deputy of St. John kept saying this is a good Jersey family and of course it is, but that is not an issue. I was very sorry he used that language. We are here to get justice for everybody irrespective of whatever family they come from and I know we do not do it well at times and I know we fail people, but that remains the point and I do get very disturbed there. So, to come back to my point, we are not the right forum for this. It is absolutely dreadful that we are doing it just as it is dreadful that Mr. and Mrs. P. find themselves in this situation. But I would like to come back to my points and ask the Solicitor General a couple of questions. What steps could have been taken during the progress of this case to challenge the escalating costs and from his knowledge - and, okay, he was not necessarily the Crown lawyer obviously handling this - from his knowledge were steps taken and what were the outcome of these various steps and, very importantly because it is the elephant in the room and there is a great dispute even though we have had an admission of imprecision from the Planning Minister, did the planning issue - as Senator Le Marquand has mentioned - did it become totally detached from the case and why did it become detached from the case, and given that we appear to be here in some ... we appear to be invited to sort of engage in some chest beating and say: "Our department has been deficient and therefore it lead to this terrible situation." I wonder if the Solicitor General could say why the Planning role in this was detached and how could it have been reattached, and it would have been nice to know legally if it could have been reattached and Planning could have played a role and its alleged, and I use that word very carefully, it has alleged deficiencies could have been examined in a court of law.

The Deputy of St. John:

On a point of clarification before the Solicitor General stands up. The expression I used about Mr. and Mrs. Pinel was done to show that they were genuine in their case and I believe Members know the way I speak and understand that I have to make sure that these are genuine honest people that I am representing and speaking about.

The Greffier of the States (in the Chair):

Mr. Solicitor, are you in a position at this stage to advise the Assembly? I think the Deputy has also asked a further question about the relationship between the company and the individuals concerned. Perhaps you might want to add on to your advice.

Mr. T.J. Le Cocq Q.C., H.M. Solicitor General:

I can talk to, I believe, all through the questions raised by the Deputy but I can talk in terms of general principle only I am afraid because I do not know the precise interrelationship and precisely what happened in the conduct of this case. But in terms of the relationship between Reg's Skips Limited and Mr. and Mrs. Pinel, the position seems to me apparent from the paperwork that it was Reg's Skips Limited that was the lessee. It was Reg's Skips Limited that carried out the commercial activity and it is Reg's Skips Limited that was the unsuccessful party in all of the court cases and it is Reg's Skips Limited that is charged with the payment of legal fees. Mr. and Mrs. Pinel, as I understand it, are the beneficial owners of Reg's Skips Limited. It is impossible to say on the facts as I know them whether the adverse costs order of Reg's Skips Limited will transfer directly through to damage to Mr. and Mrs. Pinel. That would depend, I suppose, upon

circumstances as to whether or not they are indebted to the company, for example, whether their personal property may be supporting the loans of the company. There are circumstances in which injury to the company can translate directly as injury to Mr. and Mrs. Pinel, but those are circumstances that I know nothing about and they are theoretical statements only. Normally the principle of limited liability is that a debt of a company is not owed by its shareholders and the debt stops with the company. If the company is unable to discharge that debt then the person who is entitled to make the claim can declare the company bankrupt and it would therefore have to cease trading and it would become a bankrupted company, but that of itself would not automatically without a lot more consideration and information, transfer into a direct debt of Mr. and Mrs. Pinel.

Senator B.E. Shenton:

Can I just confirm that Mr. and Mrs. Pinel have had to give personal guarantees over their assets to Reg's Skips.

The Solicitor General:

On the assumption that that is right, then to the limit of those personal guarantees, those are callable in the event of a bankruptcy of Reg's Skips Limited. But as I say the normal principle is of limited liability, the buck stops or the duty to pay the buck stops for the company. The next question was whether there are steps that can be taken during the course of litigation to mitigate the incidence of legal costs. In terms of this particular case that is a very difficult matter to be definitive about. In the course of litigation generally though there are ways that costs can be mitigated. I make no observation about the wisdom of it but it seems to me that the costs will have inevitably increased by a change of legal adviser, for example, during the course of the litigation Reg's Skips Limited were represented by one firm during the Royal Court and another firm in the Court of Appeal. It seems inevitable that the firm representing them in the Court of Appeal will have to have learnt and read into the case for the appeal case which would not have been necessary if the same firm had remained. Whether there was a reason for that, what that reason was I would not begin to speculate about, but that is obviously one thing that will inevitably have had an incident on the payment of costs. During the course of litigation to protect a company or a litigant as to costs, particularly a defendant, it is open to a defendant to offer either some form of payment into court, which I do not think would probably have been appropriate in this because what was an issue was a noise, not the payment of money, or to offer some kind of compromise on a without prejudice and subject to costs basis. That basis means that you can offer a compromise in a letter which is not known to the judge, but in the event that the compromise is what the court orders, then you are able to say: "Look I offered the compromise 6 months ago and I should not have to pay the costs of the following 6 months." The costs remain within the discretion of the court, but that is a mechanism which is frequently used in litigation to crystallize the obligation for costs. It is more often than not used when the claim is a cash claim, a money claim, but there is no reason it seems to me in principle why a litigant cannot say: "Well, look I will agree to do A, B and C and that is what I will suggest the court should order" and if the other side accepts the case goes away. If they do not accept then the non accepting party moves as to a greater risk as to the payment of costs themselves in not recovering their costs. But I say that as a matter of theory and I cannot possibly suggest to the Assembly that any of those courses were particularly appropriate in the present case. I would require more or less the state of knowledge of the legal adviser to Reg's Skips Limited at any material time to be able to do that, which obviously I do not have. The last question was the attachment or detachment of the role of Planning. I would respectfully agree with what Senator Le Marquand has told the Assembly. There is no natural linkage between Planning and this particular case because this particular case was a private action between individuals relating to the noise created on one individual's property that they were in control of insofar as it affected another. The planning issue seems to me part of the story but unless there is a suggestion that ... unless a case could be made that in some way Planning was the cause of the problem, then I think there would be no prospect of joining Planning to any particular proceedings. The Planning Law, in my view, is

clear. There is no ability ... the Minister for Planning and Environment cannot be liable for financial detriment outside the confines of the Planning Law for the granting of a consent. It is quite clear he is expressly removed from any kind of liability in accordance with the statute because if he were not then he would effectively be at risk every time he gave a planning consent of being sued by all the neighbours for all the things that they did not like that were going to go on, so in order that he can do his job there is a provision in the law which means he is not liable for losses in those kind of circumstances. So, without looking at the detail of it, it seems to me that there is an issue of principle which makes it difficult for Planning to have been joined in to the action which was essentially a private action as it became between Mr. and Mrs. A. and Reg's Skips Limited.

Senator B.E. Shenton:

I mean Planning did ask Reg's Skips to move Heatherbrae. It was slightly different. Planning contacted Reg's Skips and asked them to move.

The Solicitor General:

I would need to understand, and I confess I do not have my head around all of the detail of the planning matters, I would need to understand that better to know whether there was any basis for commencing proceedings or joining Planning to the action. My instinct though is that there was not. There is a further point to make I think about this, that when the Royal Court made an order that caused the Minister for Planning and Environment to contribute to the costs of Reg's Skips Limited that order was appealed to the Court of Appeal. The Court of Appeal heard extensive argument about the nature of the interrelationship between Planning and the subject matter of the litigation. As I recall the judgment of the Court of Appeal, and I will certainly look at it after I sit down and correct it if I am going to in any way not give an accurate representation, but as I recall the judgment of the Court of Appeal it considered the interrelationship between Planning's activities and took the view that Planning had not effectively been the cause of the litigation and consequently that was one of the reasons that it overturned, one among a number of reasons, that it overturned the costs order made by the Royal Court. I do not think I can help further at this point.

Deputy R.G. Le Hérissier:

Just to build on the point Senator Shenton made; that finding then that the Court of Appeal made that Planning was not, so to speak, contributory to the fact that the company had arrived at Heatherbrae Farm, that decision, that could have been appealed but obviously the financial consequences would have been such as to aggravate an already bad situation. Is that correct?

The Solicitor General:

I think it is a much more difficult question as to whether or not there can ever be an appeal from the Court of Appeal to the judicial committee on a matter of costs. Costs are generally within the discretion of the court, the payment of the cost was challenged between the Royal Court and the Court of Appeal on a matter of legal principle. I suppose to the extent that there was an important matter of principle, it could in theory have been appealed to the judicial committee of the Privy Council but that would have been a very expensive exercise in itself and leave would first have had to have been obtained from the Privy Council, in my opinion, and it is far from certain that leave would have been granted. Without looking at it much more carefully I do not think I can help any further than that.

1.4 Deputy T.M. Pitman of St. Helier:

Like a lot of other speakers I not only find this case very, very sad, I have to say I find much of the background that we have heard deeply disturbing. Why sad, because here we do have what appear to be ordinary, hard working people who have been hugely let down. I am tempted to say betrayed and that does seem a strong word by elements both of the States and the Island's judiciary. As I think Senator Shenton has alluded to, really the questions we need to focus on are how and why. I have to confess that I have got real reservations about this case being before the Assembly, very

great reservations. Mr. and Mrs. Pinel really should have been able to expect that this would have been appropriately resolved by the courts. Nevertheless, as we have heard, clearly and contrary to what some might think, I believe any hope for this is non existent. I have to depart from my radical friend, Deputy Le Hérissier, in saying that **[Laughter]** - do not heckle me, come on - far from ideal as this Assembly may be to deal with this, I think we must shoulder this burden because I think, quite frankly due to the failings of the judicial system, as Senator Shenton has outlined, it leaves them nowhere else to go. Also as Deputy Green, I think, said yesterday, a stronger case for an ombudsman you could not make. If we do not take this on and try and put matters right I really wonder who will and I do not think anyone else will do that. The clear issue of the States failure by Planning I can, I hope, put down to error, maybe even gross incompetence. I like the Planning Minister immensely, I respect him, but I think he has to concede that some of the actions of his department do him no favours at all in this. I will say no more on that at the moment. I would also like to put the failings of the judiciary and the person of the Bailiff down in the same way. Unfortunately I do not believe that I can and I have to defer from our Senator Le Marquand, as much as I respect him also. Of course, and I hear the rumblings, that for a number of Members, and indeed people outside the House, any criticism of the Bailiff or, indeed it seems, any Crown officer is deeply taboo. They are, it seems … I suggest they might even possibly believe that they are above questioning. Fortunately there are at least a few of us within the Assembly who do not buy into that myth. Every one of us here makes mistakes. I have certainly made enough and I hope we would all acknowledge that we do, and the Bailiff is clearly no different. The one glaring difference, it seems to me, is that the Bailiff and the Crown officers, I think, appear accountable to no one for their actions, absolutely no one. Some might feel I am being too harsh here but I had lunch last year with a Liberal Democrat Lord who asked the very same questions, having such reservations he said: "Can you tell me who monitors these appointees?" If that is coming from England, I think it raises rather a lot of issues. Whatever Senator Le Marquand might suggest - and I know he would do it in good faith - I think the Bailiff was deeply, deeply conflicted in this case. In fact, I find his involvement in it quite embarrassing on the behalf of Jersey Government. This is the point really, because to believe that he could be so conflicted unknowingly is frankly absurd. Can such an experienced Crown officer really have made such errors of judgment? I would suggest not, but then I recall that same individual did also permit a convicted paedophile to join the Honorary Police, and it is relevant, it may be uncomfortable but it is relevant.

Senator S.C. Ferguson:

For a point of clarification, I think the Deputy should withdraw those comments until he has the full facts of the case.

Deputy T.M. Pitman:

With due respect, I think we all have to form our opinions on those and those are mine.

Senator S.C. Ferguson:

With respect, there is a difference between opinion and facts and evidence.

Senator S. Syvret:

Can I say that I agree with the Deputy's comments and I have read thoroughly and fully absorbed the report from the Committee of Inquiry.

The Greffier of the States (in the Chair):

I think the Deputy is expressing opinion. I would have stopped him if I thought he had gone too far. I did not stop him so I think he may continue.

Deputy T.M. Pitman:

Thank you, Sir. I do respect the Senator Ferguson's opinion as well. Leaving my observations on this particular issue there - perhaps I should have left them a moment earlier - I would move to the

matter of the alleged nuisance at the root of this case. I hope Senator Shenton might talk more about this later but I would ask for some clarification when he sums up, because studies of some of the obvious anomalies within the evidence, as the Deputy of St. John has highlighted, I think should make Members even more concerned. It is the whole basis of the situation which led to the Pinels' unfortunate situation. I quite accept we are a government, we really should not be doing this case but, as I say, I think we have no choice. This whole case smacks of being highly suspect for whatever reasons, whether you say it is gross error, gross misjudgment, incompetence or something more sinister. Indeed, while acknowledging that I am certainly not a lawyer - I know we have some here - I would go to say that it brings our judicial system into disrepute. Yesterday, in my speech on G.S.T. (Goods and Services Tax), I made an observation suggesting that the biggest economic decision some supporters of G.S.T. had ever had to make was choosing between ordering different types of champagne and, on reflection, I think that was a bit harsh. Possibly I should have alluded to choosing the Châteauneuf-du-pape or the Côtes du Rhône in a supermarket but, nevertheless, the point I was trying to make, however badly, was that too many Members of the Assembly are perceived as being out of touch with ordinary working people, and that is what I would ask Members to focus on here. Because, regardless of whether we really are the right people to be examining this case - I do not want to use the same terms as the Deputy of St. John but I know where he was coming from - these are ordinary working people whose lives are about to be ruined, absolutely. They really have nowhere else to go. Government has a part in the situation that the Pinels find themselves. I have only met them once so I cannot judge them on that very deeply. I was touched by what I considered to be the very genuine nature of their case and their situation. They seem to be ordinary people just trying to make their way in Jersey, the very basis of what Jersey is founded on and I think, as some have said, these legal costs are obscene. They almost merit a case on themselves, absolutely disgusting, appalling and I would say - and again I am not a lawyer, thank God - but how can they be justifiable. But to get back to that point, the Pinels, if we do not help them, they are finished. Is that what we really want, and I think that outweighs the fact that we are not really the right body to be looking at this. I think it falls to us, it really does. Where can they go in a judicial system which, for error or something worse, has led them to this situation? They have nowhere to go and I would really implore every Member to support this. I know it might not be a popular decision with some members of the public but let us all ask ourselves, how would we feel in this situation? People who have given to the Island, done their best. I am sure that the Pinels are not perfect people, none of us are, but from what I have seen they certainly do not deserve to be in this situation. Their lives will be effectively ruined by this, and I also must end by saying I find it very, very strange, indeed sinister, why the other side of this case should be objecting to this being brought any further. It seems deeply, deeply worrying. Government can only come out of this one way if we want it to be positive, and that is to grasp the nettle and support this proposition, and I have great respect for Senator Shenton for bringing it.

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

This proposition has been personalised and I believe it is our duty to stand back and look at it factually. Senator Le Marquand quite rightly, in my opinion, suggested we engage our brain. Deputy Green believed we were being asked to judge. As identified by Deputy Noel, we are being asked to pay not someone's but a business' legal costs. I really wonder where we are coming from on this proposition or, for that matter, where we are going. I do not believe we are an appeals court and neither should we be. We are a legislator and if the laws are wrong, then we should address that issue. I believe we would all feel for any individual who finds themselves in difficult circumstances, but we cannot be responsible for everything. I will not be supporting the proposition.

1.6 Deputy R.C. Duhamel of St. Saviour:

I think a decision taken by this House today in either respect, supporting Reg's Skips or the Pinels, or not supporting them, as the case may be, will be a decision made incorrectly in both instances. I

think the comments that are being made more frequently by Members in this debate, that this House should not see itself in the position of being a higher court is absolutely right and I think that - although I have queries as to whether or not the proposition should have been allowed to have been brought bearing in mind that those objections or those suggestions have been made - we are not the people, effectively, to be making a quality decision. I do not know who made the decision, whether it went through the Bailiff's officer or whether it was you, Sir, through the Greffier's office, but it does seem, to me …

The Greffier of the States (in the Chair):

It was processed, as required by Standing Orders, through the Bailiff's office and, as you would expect, the Bailiff himself did not take the decision; he asked the Deputy Bailiff to consider it.

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.

The Greffier of the States (in the Chair):

Well, that is a matter you must bring to the Assembly.

Senator S. Syvret:

I ask for the appel.

Senator P.F.C. Ozouf:

Sir, could you confirm that if we do vote in favour of moving on then the matter could be brought back to the Assembly by the Members?

The Greffier of the States (in the Chair):

Yes. It can be brought back. It does not prevent the matter being brought back at a later date.

The Deputy of St. John:

On a point of clarification, could I ask the proposer of this - he has had a minute or so to reflect - to withdraw this please, because I think this is the type of debate that needs a conclusion. **[Approbation]**

The Greffier of the States (in the Chair):

You are being asked, once again before we put this matter to the vote, are you willing to withdraw it, Deputy Duhamel?

Deputy R.C. Duhamel:

Sir, I have proposed. The House will decide.

The Greffier of the States (in the Chair):

Yes. You are being asked if you are willing to withdraw. The answer is no, you wish to proceed.

Connétable J. Gallichan of St. Mary:

Sir, sorry I was waiting for an opportunity. I had a word with the Deputy Greffier before the debate resumed this morning. There are some elements of the principal debate that I am uneasy with. I do not have a financial conflict at the moment, Sir, but situations could evolve in a certain way and I had already made my mind up to abstain from that and to declare that. I will, therefore, just like to note that now and say that I will be abstaining from this as well for the same reason.

The Greffier of the States (in the Chair):

Very well. I would stress this is entirely a matter for Members to decide. I have allowed it to be put to you as the Assembly, as the democratically elected Members, to decide whether you wish to proceed or not and that is your decision.

POUR: 8		**CONTRE: 34**		**ABSTAIN: 2**
Deputy R.C. Duhamel (S)		Senator S. Syvret		Senator B.I. Le Marquand
Deputy J.B. Fox (H)		Senator T.A. Le Sueur		Connétable of St. Mary

Deputy J.A. Hilton (H)		Senator P.F. Routier		
Deputy of Trinity		Senator P.F.C. Ozouf		
Deputy E.J. Noel (L)		Senator T.J. Le Main		
Deputy T.A. Vallois (S)		Senator B.E. Shenton		
Deputy A.K.F. Green (H)		Senator F.E. Cohen		
Deputy J.M. Maçon (S)		Senator S.C. Ferguson		
		Senator A.J.D. Maclean		
		Connétable of St. Ouen		
		Connétable of Trinity		
		Connétable of Grouville		
		Connétable of St. Brelade		
		Connétable of St. Saviour		
		Connétable of St. Clement		
		Connétable of St. Peter		
		Connétable of St. Lawrence		
		Deputy of St. Martin		
		Deputy R.G. Le Hérissier (S)		
		Deputy J.A. Martin (H)		
		Deputy G.P. Southern (H)		
		Deputy of St. Ouen		
		Deputy of Grouville		
		Deputy of St. Peter		
		Deputy P.V.F. Le Claire (H)		
		Deputy S.S.P.A. Power (B)		
		Deputy S. Pitman (H)		
		Deputy I.J. Gorst (C)		
		Deputy of St. John		
		Deputy A.E. Jeune (B)		
		Deputy of St. Mary		
		Deputy T.M. Pitman (H)		
		Deputy A.T. Dupré (C)		
		Deputy M.R. Higgins (H)		

The Greffier of the States (in the Chair):

Very well. The debate will continue. Deputy Duhamel, had you concluded your remarks or do you wish to say anything further?

Deputy R.C. Duhamel:

No, I think I have said enough, Sir.

1.7 Deputy J.G. Reed of St. Ouen:

I have been one of a number of States Members who have tried to help Mr. and Mrs. Pinel in resolving some of their planning issues that they have been faced with over a number of years and I will tend to focus, as Senator Le Marquand has suggested, and speak on the wider principles. But before I do so, I just point out that I can well understand, as much as I find difficulty with this particular proposition, the reasoning why Senator Shenton has brought this to the attention of this Assembly. This particular family has basically no other avenue to pursue, apart from other legal activity which Members can clearly see is extremely expensive. Ultimately it is the mechanical sorting of skips, if we want to get down to the basics, that was the major problem and, indeed, this was known when - or at least the Planning permission allowed for the sorting of skips. In fact to suggest that mechanical sorting of skips was not part of the application is ludicrous because, clearly, all waste carriers are required to sort waste as part of the Solid Waste Strategy which, to my knowledge, was approved in 2005 and the idea of being able to dispose of mixed loads, as was the practice in the past, is no longer acceptable. Equally, if we are to encourage recycling in any shape or form, it requires companies to carry out an activity, and this was the whole purpose and the ongoing development of the Reg's Skips business, collecting waste, sorting it, disposing of it. So what about the wider principles? Let us look at the change of use and here we get to the first problem. We have a dairy farm, 7 days a week, 5.00 a.m. until 10.00 p.m. with livestock, 365 days per year, operating adjacent to or within 50 to 100 metres of a private residence. For various reasons the dairy farmer stops his business and seeks to re-use his premises. He apparently applies for change of use and gets permission and skip sorting is allowed on the premises. Quite properly, conditions are attached to any change of use permit, as would be expected and we go from a 365 days a year dairy farm operation, with all the associated noise - and bearing in mind cows do make noise at night as well as during the day, apart from tractors and other machinery - we go to an operation which is limited to 5 and half days per week, Monday to Friday, 8.00 a.m. to 5.00 p.m. and Saturday mornings, basically. One would tend to believe that that was an improvement for neighbours who lived in proximity to that property however, as I say, this is the first issue. We have 2 statutory bodies that start to then get involved. One is Planning, which obviously needs to consider the use, proposed use and the continued use of a facility and then there is Environmental Health. Environmental Health do not presently take into account historic background noises so, all of a sudden, we go from a point of a particular noise level to one that is set at a much lower level because between the time of halting the dairy farm business and achieving the change of use, clearly the farm was not being used. Clearly the buildings and the facilities remained idle. One also must not forget that the property, Heatherbrae Farm, and the neighbouring property are adjacent to a main road and I will come back to that later. Members have a graph in front of them, that has been provided and I am not sure by whom - I presume it is Senator Shenton - regarding noise levels and there is a scale 0-80 on one side and you will notice that the majority of the noise levels measured are between 30 and 60. I have a simple hand guide as to what these noise levels are linked to, because 30 and 60 is a number and nothing more. 30 decibels is the noise that you would find in your bedroom at night **[Laughter];** 40 decibels is the noise that you would find in a library. 50 decibels is the noise that you would get with rainfall. 60 decibels - and it probably does not count for me because I do tend to shout - is the level of talking. Traffic 75 to 80 decibels. If you take, and Environmental Health pick, a level of 30 decibels as the background level, you are completely and utterly lost from the word go because, as I have said before, 40 decibels is the sort of level that you would find in a library. Now any operation would never and would struggle to meet that, bearing in mind that they say that you start up your car it is about 70 decibels.

Senator A.J.H. Maclean:

Could I ask for clarification from the Deputy, if he would be very kind? I was just interested in his chart he has there. I would be interested in having a copy of it because my understanding is 40 decibels requires quite a considerable amount of sound block between floors and I think you referred to it as being the noise of a library.

The Deputy of St. Ouen:

Yes. This comes from the Health and Social Services Department and it is issued **[Laughter]** by one of their officers and was provided to me during the time that I was looking at this issue.

Senator A.J.H. Maclean:

Very helpful. Thank you. Perhaps the Planning and Environment Department could have a copy of it. It might be useful. **[Laughter]**

The Deputy of St. Ouen:

I did provide Planning with a copy of something similar. So that is the first problem. We have 2 statutory bodies that, although there is some link, there is no real link when it comes to the change of use and subsequent issues that did develop. The other difficulty that arose in this particular instance is the issue of how does a landlord or a tenant try and address the concerns raised by a neighbour. Obviously there should be and every individual should be allowed to properly address those issues prior to any action being taken. Efforts were made, because I have viewed them for myself. Individual consultants were employed and trials were done to reduce levels down to what one might term acceptable. Indeed, on advice from experts, a planning application was suggested which meant, basically, enclosing the facility, minimising the noise, using insulation and sound insulation material to contain the noise within the business, therefore removing the disruption caused to the neighbour and, again, this is where another failing, I believe, or difficulty arose and I am not, I hasten to add, pointing a finger at Planning or anybody else, I am just trying to outline the issues that helped to develop and drove the final conclusion, which is why we are here today. Quite rightly, Planning are required by law to consider planning applications and it is not their duty to look at effects on neighbours regarding noise, although I would like to point out that, with regards to Goose Green Developments, interestingly Planning did actively get involved to enable a housing development to be created next to an existing industrial site; actively helped. Sadly, in this case, for various reasons Planning chose to deny both the landlord and the tenant to address the issue of noise by the creation of a covered area, thereby limiting them in the ability to address the problem, bearing in mind this company is wanting to operate legitimately, a genuine desire to fulfil their function, yes and earn money within the confines of the rules and regulations in place and I think if anything the lesson, above all else, to be learnt from this whole issue is that far more co-ordination and co-operation and linkage between the statutory noise levels - bearing in mind we now have nuisance laws in place - and planning applications and considerations needs to be further developed. So where do we come to? We come to the here and now and clearly, I accept, it is extremely difficult. Do Members believe that the principles that I have outlined are sufficient to support the Pinels? It is for Members to decide. All I would ask is to acknowledge that there are certain rules and regulations that we currently have in place that have clearly helped to create the problem that the Pinels find themselves in now.

1.8 Senator S. Syvret:

I would like to start just by dealing with a couple of points that were made by Senator Le Marquand and were followed, rather surprisingly, by Deputy Le Hérissier. I would have expected of both of those individuals perhaps a little more of a grasp and an understanding of the fundamentals of parliamentary privilege. The argument that the States should not "side swipe", as the Senator put it, the decisions of the court, that we should not have these kind of debates about matters that flow from the decision of the courts is, I am afraid, simply wrong. Were we to admit and accept the notion that this Assembly could not debate the consequences and the issues that flow from decisions of the court, we would be saying that the realm of the courts impinges into this place into the realm of the legislature and has that restriction upon our free speech and upon what we may debate, or that we may choose to debate and how we may choose to debate it and the decisions we may make and, while I am sure the Senator is extremely learned in many matters in judicial review and so on, I too have had cause to study a little bit of law myself and I do know a great, great deal

unfortunately about the principles and matters of parliamentary privilege and the sanctity of a legislature to debate and decide and speak about whatever it wants to speak about is rock solidly established on centuries of custom and practice. So, first of all, let us be quite clear about that. If this Chamber wants to debate consequences of a court action or something of that nature, especially when frankly it is one of our agencies which has caused the disaster, then we have every right to. Let us be quite clear about that. The Senator went on to suggest that by, for example, trying to sue the Planning and Environment Department, or perhaps attach blame to the Planning and Environment Department was wrong and not realistic that we should use the analogy of the Planning Authority giving planning permission to a person to build an extension, the person building the extension encroaches on to their neighbour's land and that is, rightly, the fault of the person making the encroachment. The Senator said that that would not be the fault of the Planning and Environment Department and, probably in most cases, he would be correct in that view. But is that analogy the same as that which we are dealing with here? I contend on the facts that it is not. We are dealing, manifestly, with a range of serious errors by the Planning and Environment Department. Reg's Skips were not breaking their permissions. The Planning and Environment Department were in error giving those permissions and, indeed, identifying that site and asking them to move there without realising beforehand and checking, well, it might be a bit of an issue having an industrial site there. I will not go into the issues concerning the performance, as it were, of our judiciary in this particular case, as I think they have been touched on enough already, but I can assure Members that the issue of the quality and the law and the standards to which our judiciary works is, in fact, a matter for the legislature and I can assure Members it is a matter we are going to have to start taking a very, very close look at in the coming months, in the next couple of years; so many failings. It was fascinating to hear the Senator refer to the Bailiff and the potential conflict of interest that could arise as, in fact, he knew one of the parties. The Senator makes this argument that, that being the case, a remedy is available. The aggrieved party, as it were, can appeal or can bring a recusable motion before the court. Well, there are a couple of serious problems with that argument. Firstly, the aggrieved parties in this case were not aware of the conflict of interests at the outset. That only became known to them much, much later. That conflict of interest was hidden from them and it is that, I am afraid, that does raise profoundly serious questions about the competency of our judiciary. Secondly, even if there is a remedy available, what would that cost in Jersey, of all places, where there is no fee policy, there is no paid legal aid, we have lawyers that are among the very, very most expensive on the face of the planet and we live in an environment that has a cost of living at least equivalent to central London and indeed that too, in principle, is another issue that this Assembly is going to have to get to grips with, whether it chooses or not because, frankly, the cost of accessing justice in Jersey are such an obstacle as to amount to an unambiguous breach [**Approbation]**, I would say, of our obligations under the European Convention on Human Rights. There may be, in theory, a remedy and, in theory, a court which you can turn to but if, in all practicality, it is massively simply inaccessible to the average person then justice has failed. I think the Bailiff really should have recused himself from this matter as, indeed, should any other member of the judiciary and, again, I have done, it so happens, a little recent research on this matter and, certainly, when one looks at the current United Kingdom Judicial Code of Practice, the actions of the Bailiff in not recusing himself in this would have been in plain breach of that code, did it apply in Jersey, unambiguously. At the very least he should have declared the potential conflict at the inquest to see if any of the parties had any objection to it. The fact that he failed to declare the conflict is utterly unacceptable. There is another question too about the role of the courts in these things. The argument put forward by Senator Le Marquand was that the courts decide things on a rational basis, on the basis of facts, evidence, and interpretation of the law and then come to a reasoned and measured decision whereas we, in this Chamber, engage in some kind of chaotic maelstrom which, indeed, may well be the case **[Laughter]** quite often. But let us face it, the law can be a very strange and inflexible creature and it is entirely feasible and, indeed, it is entirely the case that sometimes the legislature can come to common sense decisions that a court of law could not or would not arrive at. So courts get it

wrong and in this particular case there is this appearance of bias and it is not just something that is being asserted by Senator Shenton or asserted by me; the basic rock solidly established principles of both British jurisprudence and E.C.H.R. (European Court of Human Rights) case law about the need for the appearance of objectivity are simply unarguable and, indeed, Senator Shenton mentioned this in his opening speech and I will quote, again, just a brief passage from it which he read: "The test to be applied in deciding if there was apparent bias is (1) the objective test of reasonable suspicion, namely would a reasonable objective and informed person on the correct facts, reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case. That is a mind open to persuasion by the evidence and the submissions of counsel, and (2) an impartial judge is the fundamental prerequisite to a fair trial and he should not hesitate - should not hesitate, I repeat - from recusing himself if there are reasonable grounds, on the part of the litigant, for apprehending that the judge was not, or will not, be impartial." Now, just to round out that final point a little more, and again I do not have it with me but I could refer Members to examples of case law and precedent in this matter, it is not sufficient for a judicial process to be objective, it has to meet the test of appearing to be objective and the commonly heard expression in old established jurisprudence, just like the twentieth century jurisprudence, is that the question you have to ask yourself is would the ordinary man on the Clapham omnibus looking objectively at this case perceive a potential conflict of interest. That is the test and in this case, plainly, the test would indicate that there was the appearance, at least, of a conflict of interest. So, let us be quite clear about this and the functioning of the court. Let us assume that the Bailiff was acting entirely correctly and was right in his decisions, as far as the judgments were concerned, and that there was no actual bias in his actions, let us accept all that. That is all irrelevant because there is still the appearance of bias and courts simply cannot have that. We all know, probably under the most famous example of recent years, was the case of Lord Hoffmann in the House of Lords when the law lords decided that the fascist dictator, Pinochet, could be tried for crimes against humanity but a matter of days of weeks later it emerged that Lord Hoffmann, one of the judges who made that decision, was involved with a charity that supported Amnesty International, the human rights campaign group. There was no suggestion that there was a conflict of interest but Pinochet's lawyers pointed out to the House of Lords there was the appearance of a conflict of interest and the House of Lords accepted that without, frankly, argument and the judgment against Pinochet had to be set aside, unfortunately. The courts get it wrong. Courts sometimes make incompetent decisions. The notions that courts are infallible, I am afraid, is very strange indeed. I know, certainly from looking at many of my constituents over the years, particularly the legal aid constituents, the standard of representation on the part of the Island lawyers they have often had in court has often been utterly atrocious. I have been in court and seen cases being heard. I am a carpenter. I left school at the age of 15 with no academic qualifications whatsoever. I could have stood up in the court, on the particular occasion I have in my mind, and, completely cold, made a better argument on the facts on the law than the advocate that was supposedly representing the poverty stricken, wretched, client. I am sorry but Jersey's entire legal sphere and legal realm is going to be in for a rude awakening. So we have to recognise that we have the right to debate and discuss such matters. If it were to be argued that we do not, then that would be to cast aside centuries of the established principles of parliamentary privilege and we also have to recognise that this Assembly, and other assemblies like it, can come to rational commonsense decisions that sometimes courts of law, even when fully, properly competent to hear a case, will not come to the rational commonsense decision and it is right that this Assembly should fulfil that role, after all we are the last resort in terms of the expression of the will of the voting public. Turning to the actual errors by the Planning and Environment Department, because that is what is at the heart of this issue, I was reminded very, very much of reading the material that has been adduced and looking at various documents -- this episode reminds me very much of the Trinity infill scandal. Some Members will not have been in the Chamber then but that was, again, a grossly incompetent decision by the Planning Department. They had not taken and indeed were proactively refusing to take any guidance and advice from the Environmental Health Department and they ended up

granting permission. The Sub-Committee ended up granting permission for this, what was supposed to be merely an agricultural improvement scheme, just a bit of filling in with top soil and levelling out of the field. What in fact it was they had given permission for was an industrial waste land filling operation that would have involved thousands and thousands of lorry movements and would have involved chucking contaminated builders' rubble with timber preservatives and heavens knows what in it, right at the top of the head of the water catchment area that feeds into Grands Vaux Reservoir. Now, I do not seem to recollect any of the parties in that particular case, not the owner of the land who sold it, not the company who bought it, not the people who are concerned, I do not recollect any great hardship or detriment occurring to them. In that particular case the States bit the bullet. The permission was withdrawn, rescinded, it was admitted by the States that it was a mistake, should never have been done and any aggrieved parties were appropriately compensated accordingly.

The Deputy of St. Mary:

On a point of information, I just wanted to confirm whether that decision came to the House? I was not aware of that from my ... Could you be precise about what came to the House and what did not, because it was an important issue?

Senator S. Syvret:

Yes, it was an important issue. It was a major planning controversy, as people will recollect, and I forget how it happened but I think a Member brought the proposition asking the Planning Department to rescind, to withdraw the permission.

Connétable J.L.S. Gallichan of Trinity:

Nothing ever happened at Trinity. It was such a concern that it came to the House for debate and the House decided it would terminate the permission.

The Greffier of the States (in the Chair):

There are various recollections. My recollection is also vague. There was certainly a debate in the Assembly but in law it was a matter for the Committee to rescind.

Senator S. Syvret:

Yes. The permission was withdrawn but the point is the person who bought the land to undertake the industrial waste filling operation ... and it was due compensation due to the rescindment of the decision. Now, on that particular occasion the landowner - I will not rehearse all the details now - was a friend of a senior figure in this Assembly and also the applicant and the people who would have been running the operation also had a number of friends in this Assembly. Somehow none of them have ended up with this huge monumental legal nightmare on their heads because of that particular planning disaster, which was frankly a worse planning disaster than this by some very significant margin. One of the things I want to say to Members who may be inclined to vote against the Senator's proposition, I say this to the Assembly; whether one is minded to vote for this proposition or against this proposition, if we are remotely serious about making public administration competent, accountable and cost effective, the civil servants responsible for this must be sacked. I am looking at the Chief Minister who has ultimate responsibility for these matters with his chief executive and the Minister for the department. If we are going to persist year in, year out, decade after decade after decade, tolerating an unending river of very, very expensive cock-ups by overpaid, underworked civil servants then the public are never going to get value for money and I, for one, say it is time to start holding these people to account. I would just like to quote a few remarks just to finish here, just to show the utter absurdity of the situation. The information handed around by the Minister for Planning and Environment, I assume, this morning says, and I quote, on the rear: "The use of this site shall operate in the same way as the current site, as a skip sorting yard only, and for no other purpose. The purpose of the condition was to seek to limit the extent of operations of the company to below the extent of the use which has been

observed at Les Prairies," and it has got in brackets: "storage of skips and hand sorting." But when one looks at the actual planning permit it says: "The use of the site shall operate in the same way as the current site, as a skip sorting yard only, and for no other purpose." Again, on the final page it says: "This change of use has been approved for storage and sorting of skips only." Now, unless Members have got a very strange apprehension of how practical manual work is done, let me pose a question to Members of this Assembly and to anyone listening. Ask yourself, when did you last ever see lorry skips being moved around and sorted, put on and off of lorries, by hand? When did you ever see a couple of men ... well, it would not have to be a couple of men, it would probably have to be about 12, lifting a skip off the back of a truck and putting it down into the yard and moving others around the yard? When? Never. I doubt that it would be easily physically possible. It would be grossly impractical and it would be illegal, certainly a breach of Health and Safety at Work regulations. The notion that we have had put before us that this storage and sorting of skips somehow did not cover the noise of the lorries lifting their booms over and back and forth and picking skips up and putting them on the lorries and taking them off is just an insult to our intelligence. This permission was for a skip storage and sorting yard. The notion that Planning depend on, that somehow the sorting and movement of skips did not mean any mechanical involvement, it was just going to be done by hand, is so ridiculous and contemptible as to be an insult to our intelligence and I really hope Members will at least recognise that. In the final analysis we are left with 2 people, hard-working individuals who have committed no fault at all, are entirely innocent parties in this, who are victims of the incompetence, utter incompetence, and the complete absence of accountability by expensive, underworked, overpaid civil servants. What penalty is going to fall upon those civil servants? Nil. What penalty is going to fall upon these 2 ordinary members of the public who are victims of this gross incompetence, for which we ultimately are responsible for? They are going to be bankrupted. The point that some have made about whether it is Reg's Skips Limited or the 2 people concerned is immaterial. The 2 people concerned have given personal financial guarantees and if the company gets bankrupted they are bankrupted too. What we have here is a grotesque failure by frankly every aspect of public administration. The judiciary, the civil service; all have failed. We are going to, unless we support this today, put the consequences of all of that failure, life-wrecking consequences, upon the shoulders of 2 entirely innocent parties. Yes, it is a lot of money and I suggest, frankly, it could come out of the Planning and Environment Department's budget; maybe by sacking 5 members of staff up there because we all know that civil service is too great anyway, so let us have some cost-effectiveness. We could fund this matter without frankly incurring any additional cost to the taxpayer. Let us, for once, do the right thing. The individuals concerned are innocent parties and all of the consequences of that catalogue of errors is going to fall on their shoulders unless we do the decent thing and enact a commonsense and decent decision and support the proposition.

Connétable D.J. Murphy of Grouville:

On a matter of clarification, I wonder if the Minister for Planning and Environment could explain to me -- I am obviously reading and listening to what Senator Syvret just said about the sorting of skips. Now, this can be read 2 ways. To me it is either you sort the skips out by putting one here and one there or you sort out the contents of the skips at the same time. Is it a case that the contents are being sorted as well or are they not being sorted? I would just like some help on that, clarification.

Senator F.E. Cohen:

The issue is the mechanical sorting of skips using a grab and the important issue here is that the closing of the business did not result from the planning consent. The closing of the business resulted from a private action that was a consequence of making too much noise. Whatever the consent said was irrelevant to the purposes of that action. Thank you.

Deputy R.G. Le Hérissier:

On another point of information, I wonder if the Minister could say whether compensation was indeed paid to the person at the Trinity infill from whom permission was withdrawn and, if so, how much?

The Greffier of the States (in the Chair):

It is not question time but ...

Senator F.E. Cohen:

I am sorry, I did not hear the question.

The Greffier of the States (in the Chair):

The Deputy asked if compensation had been paid in relation to the Trinity infill matter.

Senator F.E. Cohen:

Not yet, sir.

1.9 Senator P.F.C. Ozouf:

Firstly, I would like to say that I was the Planning President of the Committee that adjudicated on the site and indeed it was my Committee, but I think it was my Sub-Committee that dealt with the adjudication of the original Heatherbrae Farm application. What I would say to the Deputy of St. John is that, while he would very much like to reinvent history, this Assembly has proven itself to be a bad planning committee when it sits as a 53-member committee. All I will say is that I will stand by the original decision in respect of the former site and point out to him that in fact the proximity to residential property, which is at the heart of this issue, in the former site was even closer than that of Heatherbrae Farm. I will give way if the Member wishes ...

The Deputy of St. John:

That was never in dispute and I did not challenge the former President in the manner in which he was running his Committee. I only stated the facts as I knew them.

Senator P.F.C. Ozouf:

I am grateful for the Deputy's comments. There has been a great deal of accusations and suggestions of error, incompetence made by both the Planning and Environment Department and the judiciary, which is clearly demonstrated. I am frankly astonished at Senator Syvret, that he can seek to explain the Assembly matters in such a myopic and such a narrow-minded way. Senator Syvret must understand, he has been in this place apparently as the senior Member much longer than I -- he apparently must know, as Senator Le Marquand explained, that just because you get a planning consent it does not mean that you can necessarily, in all cases, carry on with the work in which you have been granted to. In fact it does not absolve you from other statutes and other obligations in terms of, for example, noise and those other issues. Just because the Planning Department issues a consent for skip sorting, it does not give you absolution in respect of other obligations and that is at the heart of this issue. I should say that I do have considerable sympathy with Mr. and Mrs. Pinel. I also have to say that I have sympathy, because it is getting to that stage, I have sympathy for the people that are being accused and are being suggested are in error. I cannot help but notice that there is a growing, increased and persistent criticism of our Crown officers and our judicial system and I want to say that, having examined the issue of the sitting of the Bailiff in respect to this case, and certainly having read the comments that have been submitted and hearing the, I think, very thoughtful remarks made by Senator Le Marquand, I do not think the accusation of a problem in respect of the Bailiff sticks. I am watching with interest the continued attempts to besmirch and to suggest that somehow there is some problem with our judiciary and Crown officers. I have full confidence in our court process. Not only the individuals but I have full confidence in the knowledge that our court system and decisions of our courts are subject to appeal, subject to appeal in the Court of Appeal and upwards. We are not a court. This Assembly is not

above our courts and we should remember that. This proposition is seeking to ask the public to pay 100 per cent of the legal costs for 2 lawyers. From a Minister for Treasury and Resources perspective I should say that there are 3 possible avenues if the Assembly wishes to pass this. First of all, I could bring an Article 11(8) request, in other words one of the provisions that the Minister for Treasury and Resources has to bring extra expenditure outside the business planning process; the method that is being used to pay for the Williamson proposals. That is the first option. The second would be for the Minister for Treasury and Resources to reallocate existing budgets in the year. The third would be to allocate unspent balances from last year. I can advise the Assembly that I am in the process of finalising, upon advice of the Council of Ministers, the carry-forward requests from last year. That is the route that is being found to pay for the Woolworths compensation and a further very difficult compensations case which we will be putting the information in the public domain on Monday. The reality is that there is no money from the carry-forwards left for 2008 and if this proposition would be passed, then there is only the option of reallocating money within the existing year. I mean, 15 years in this Assembly and we hear the senior Member suggesting that there should be 5 less planning officers in order to deal with Planning. I frankly find such suggestions ridiculous from Senator Syvret. I have to say to the Assembly simply that there is not the existing resources within existing budgets to pay for that and I think that we all know that. The decision before us is to pay approximately £300,000 of lawyers' fees. We have not got an option of a compromise. We have not got an option of a halfway house. It is a proposition to accept or reject, effectively, the whole amount and I ask Members whether or not Senator Shenton and his supporters have made the case that justifies the public picking up 100 per cent of the lawyers' bills in this regard. This matter is, as all issues ... and I completely agree with the comments made by Deputy Le Hérissier and, again, Senator La Marquand and others that we cannot do in this Assembly a court process of a detailed examination in a debating sense of findings out all the facts. But, faced with this decision, we do have to come to some sort of conclusion. From what I can see, and referring to the remark that simply a planning consent does not absolve the holder of the planning permit from all other responsibilities, are we persuaded that there is no error on the side of the proprietors of the skip company? Is there no error at all, with the benefit of hindsight, on the part of the legal advisers for the skip company? Was there no opportunity at some point during the process of dealing with the court process for the proprietors of the skip company to find a solution to reduce the noise or to move to another site? Mindful of the fact that this was a court process, that there was a serious risk that they would lose this case, was there no opportunity for them to stop short and find a solution which dealt with the noise issue or move to another site or whatever? Have the legal advisers displayed good judgment in allowing these individuals, who we are told cannot, and I understand it and am very sympathetic, afford £300,000 worth of legal bills -- where is the responsibility of the lawyers acting for the skip company to run up a bill of £120,000 or £130,000? Where is the responsibility of the lawyers to advise those people, those skip companies, to go to court, as I understand it, 4 times and arguing every single point which has got us to where we are? We are not dealing with £300,000 worth of compensation to solve this problem. We are asked to pay for £300,000 worth of legal fees. I think that there are questions to be asked about the manner in which these individuals find themselves today. I do not think that the case has been made that it is a failure, a 100 per cent failure, of the Planning Department. Maybe there are questions but they are certainly in the minority issue. At the end of the day, the skip company and the legal advisers knew what the position would be and they knew that there was a risk of losing. Are we being asked now to stand in the position of the skip owners and to effectively, and I am afraid it is difficult to say this, to pay for the gamble that they chose to take in terms of fighting this and running up huge legal fees? I do not think that the case has been made. I do not think that we, as an Assembly, can justify the use of taxpayers' money to pay for lawyers in this regard, moreover without the underlying solution having been paid. It remains the case that the granting and the holding of a planning permit does not absolve you from other responsibilities; in this case, noise. For that basis I very much hope, with sympathy ... but no real solution I have to say, I have to be absolutely honest about that. Knowing that there

is sympathy with the owners of the skip company, I am afraid that the case has not been made for 100 per cent of third-party lawyers' bills to be paid by the taxpayers and I urge Members to reject the proposition.

Deputy T.M. Pitman:

Could I just make an observation? I think we all appreciate what the Senator said about not there being lots of money to throw around but if the Minister for Treasury and Resources' predecessor had not wasted £10 million-plus ...

The Greffier of the States (in the Chair):

It is a not a point. It is another speech. Deputy of St. Mary?

The Deputy of St. Mary:

Is it just some questions, so it is not a speech, because I read these comments by the S.G. (Solicitor General) just recently and they raised certain questions in my mind and I would be grateful if the S.G. could answer them. The first question is in relation to page 6 and it follows on partly from a point that was raised in what Senator Syvret said but the question came to my mind on reading this. It is about the ability of the Bailiff or the judge in a case to recuse himself and at paragraph (iii): "The burden is on the applicant to establish bias." I suppose the question is sort of, how can the applicant know that there might be a bias? How would, in this case in fact, the Yates have known; but it could equally be Reg's Skips know that there was a bias? So the question is, is it down to only the litigant or is it down also to the other party? Because, in this case, Reg's Skips, in the final case they were not the litigant. They were the one accused or whatever the word is. Someone help me? **[Aside]** Defendant. So it does not say that the defendant can question on a matter of bias. So I would like clarification on that. Secondly, is there a duty on the judge in Jersey to disclose any possible bias to the parties in a case so that they can know and, therefore, make their own judgment and then go into some sort of process about the recusation. The second question is relevant to page 4 concerning judicial review as being a last resort. Now, in my mind, here we are faced with deciding over a £300,000 bill and judicial review would have obviated us sitting here now. So I just wanted clarification from the S.G. as to this term of last resort and what exactly is involved in judicial review and why that route would not have been taken. I know it says that if there is an adequate alternative remedy then the judge will invariably refuse leave. That seems fairly draconian and fairly definite. I would just like his confirmation of that and a little exploration of this option of judicial review. The third question is page 9 in connection with costs, which clearly is quite relevant to what we are talking about. Now, with reference to paragraph 29, there was a costs determination and the judge ruled that there should be a directions hearing; then there was a costs determination and that ruled that the 2 parties should share the costs but the 25 per cent ... no, no, sorry, that Reg's Skips should pay the costs of Mr. and Mrs. A. but that they should make a claim on the Minister for Planning and Environment for 25 per cent of those costs. Now, I would compare that to what we read on page 5 where, at 11(a) and (b), we have the same judge deciding that there would be no order for costs and that, therefore, the standard situation would prevail, which is that each party bears their own costs. I just wanted to ask the S.G. why there could be a difference in the way that costs were apportioned and whether there are no limits on the discretion of the judge in Jersey to apportion costs because that concerns me rather greatly in this case. My fourth question is not a question for the S.G. Thank you.

The Solicitor General:

I think I can assist on some of those at least. Perhaps I will take them in reverse order. The position with regard to costs for Jersey courts is precisely the same as it is with regard to costs for the English courts. There is no difference in the position between the Jersey courts and the English courts. The courts have a discretion, a full discretion, to determine by whom costs are payable and in which proportion and it has that discretion so that it is not compelled to order costs in a particular

direction if it feels that there are significant factors, or factors at all, which justify a different kind of order. Both of the orders made by the court in this case, the order of the Bailiff on the judicial review application and the order of the Court of Appeal setting aside, are perfectly lawful orders for the courts to make. It is difficult to hypothesise as to why the orders in each case might be different. A number of factors could operate in the court's mind. It could be a question of how the case has been conducted; whether there is some opprobrium that is to be attached to the behaviour of the successful party or not; whether there are particular factors of sympathy. Those might be operant in the court's mind, I suppose. It might also be operant in the court's mind as to how long the hearing has taken; what the costs incidence might be; how much is likely to be incurred; are the costs likely to be fairly minimal. My understanding, for example, of the application for leave for judicial review was that it was a very short hearing. I could be mistaken about that but the judgment certainly does not decide otherwise or determine otherwise. It could have been an extremely short hearing and the court could have come back, having reflected ... I am purely speculating, I am sure the Deputy will understand that, but could have come back and said: "Well, I have made the decision I have made on a technical matter that requires me to determine a judicial review leave application in this way but it was a short application and I shall make no order as to costs." That is a possible view the court might take. Counsel argue before the court on costs all the time and they come up with lots of different reasons, some ingenuous and some otherwise, as to why costs orders should or should not be made in particular cases and I do not think I can assist other than the terms of the general principle on the question of costs any further. In terms of judicial review being a last resort, it is a last resort in the sense that any other available remedy must be pursued first. Generally speaking, where statutory matters are concerned, there are avenues of appeal. There are express appeal provisions provided by the statutes and it is only if for some reason there is no appeal provision, or that appeal provision cannot for some reason be invoked, that the court will then look at whether a judicial review is possible in the circumstances. The courts have looked at lots of different things as being suitable alternative avenues to pursue. In employment applications for judicial review often the courts in the United Kingdom have declined to grant leave for judicial review because, for example, there is the availability of recourse to the Employment Tribunal. Any other system set up or natural method of recourse for the issue in question to be dealt with is always to be exhausted before the court will grant leave for a judicial review. The reason that it is a last resort is because, generally, the other avenues make it easier for the courts or the other bodies to do justice and to deal with the matters. They are the ones designed to do so. The test that is applied by the court after it grants leave for a judicial review is what is termed the Wednesbury unreasonable test. In other words, the applicant for a judicial review, after leave has been granted, would have to establish that the decision made was so wholly unreasonable that no reasonable person, properly advised, could have made it. In other words, to get by on a judicial review, it is quite a high hurdle to overcome and generally other hurdles will be significantly lower. I am not sure if that has helped the Deputy and I am not sure if I have tailored the answer to the question but if there is anything that I can do to elaborate on that I will, of course, come on to do so.

The Deputy of St. Mary:

If you would say a few more words on the judicial review. I was not quite clear on the circumstances where you use it and why it would not have been used in this case.

The Solicitor General:

Well, the reason that it would not have been used in this case is the reason that the court gave. It is because there is an adequate alternative remedy. It is the nature of a judicial review that it is a remedy of last resort available to a litigant if there is no other available to them and the courts - and this would be precisely the same in the United Kingdom as they are here - would be astute to looking at what other possible remedy there might be. It is difficult to explain further than that because the level that we are at is the bedrock of the principle. The principle is that it is the last

avenue, the avenue of last resort, in cases and it is only where there is nothing alternative. In this case there was clearly something alternative and the Bailiff explained what that was. The last question, I think, related to potential conflicts and I think the first question was how would the litigant necessarily know, given that it is the responsibility of the litigant, to raise any questions relating to conflict. I believe that was the question. The section in the comments by way of legal advice that I have offered the Assembly set out a list of principles relating to the circumstances in which a recusation by a judge or of a judge would be appropriate. I listed all of those principles by way of general information, whether or not they would specifically have been applicable to the circumstances of the case of the judicial review leave application. Quite clearly, if the applicant is unaware of any particular conflict the applicant cannot raise it and the applicant cannot ask the court to adjudicate upon it. So the answer is, it is only if the applicant is aware of it and makes the application that the obligation is on them to satisfy, to the appropriate level, the judge that he should recuse himself. As to whether there is an obligation on the judge to lay possible bias before the parties the way, in my experience, it would normally work is that if a judge felt that there was anything in his mind that would cause him the slightest concern about sitting, he would normally raise that at the beginning with the parties or he would indeed disqualify himself before he sat. He would not even ... If he felt it was of a material concern and whether or not there is an obligation to do so I cannot say but my experience is that judges certainly have raised in advance with counsel for their clients whether or not there is a difficulty with a judge sitting but that would only be in circumstances, of course, where the judge believed that there was anything that could conceivably, in his mind, operate in that way. I simply cannot tie those principles to the facts of this case because I don't know what was in the judge's mind.

The Deputy of St. Mary:

Can I ask, just for clarification, you said that the judge would disclose to the parties if they felt that they might be conflicted. Does that mean that, although the judge is not obliged to do so, he would normally do so or does it mean that he has discretion whether he does so or not?

The Solicitor General:

That is a difficult question to answer with a simple yes or no. All I can do is speak to my experience; that I have been in courts where judges have said, while I was functioning as counsel: "These are the facts of the circumstance. Do any of the parties have any particular objection or points they want to raise about whether or not I should sit?" I have certainly had that experience in courts on more than one occasion. But for the judge to raise it he would, of course, have to accept in himself that there is a question to be raised and if, in himself, he can conceive of no reason why he would function in a biased way then it would be unlikely that he would raise it. I am sorry, I do not think I can be of much greater clarity than that.

The Deputy of St. Mary:

A point on your previous paragraph about the applicant has the burden to establish bias. What about the defendant?

The Solicitor General:

The applicant in this case does not refer to the applicant for judicial review. It refers to whoever is applying to recuse the judge. So if the defendant wants to apply to recuse the judge he would be the applicant. If the plaintiff wanted to apply to recuse the judge he would be the applicant. It is the applicant in the case of a recusal application that my opinion is directed to.

The Deputy of St. Mary:

That is now clear, yes.

The Greffier of the States (in the Chair):

Have you concluded your remarks, Deputy? Is there anything else you wish to add in relation to ...

The Deputy of St. Mary:

They are not my remarks. They are questions, sir.

The Greffier of the States (in the Chair):

Well, I did take it as your speech, Deputy. You do not plan to speak later?

The Deputy of St. Mary:

I might plan to speak later, sir.

The Greffier of the States (in the Chair):

Well, I do not think you can, Deputy. It is not the tradition of the Assembly to be able to ask questions and then to ...

The Deputy of St. Mary:

Well, I need time to ... sorry. Yes, the point is, as I said when prefacing the questions, that you read all this material and then you ask questions and you have the answers and then it would be helpful, certainly to myself, to the Assembly if I have a few minutes to digest that before making remarks. That seems ... it is not that the questions are just kind of random questions in the air.

1.10 Connétable K.P. Vibert of St. Ouen:

I am sure that I voice the feeling of all Members of this House that we do have enormous sympathy with the plight which Mr. and Mrs. Pinel find themselves in. But I have been in business for some 40-odd years with my own private business, in other words my own private money funding that business, and I have always been advised that I should have adequate insurance cover against the possibility of facing a similar situation. I have always been advised that I needed to have adequate cover against having to defend myself, my business, in court against a third party. I would ask the proposer when he sums up if this particular scenario has been looked at because of the fact that there is no mention in the report of insurance and obviously if the business had been so insured this matter would never have come up.

1.11 Deputy A.E. Pryke of Trinity:

I am sure Members must now be aware that this has such a long history, very drawn out and indeed at times very confusing, especially when we have all received conflicting information. I too have every sympathy with the Pinels and especially in their financial difficulties and, as has been said, I know that many Members here, past Members as well, have tried to help them over very many years. The Planning and Environment Department has had to get involved following unauthorised activity and complaints with a view of securing a regulation of the planning status at the sites that this company has operated. But let me also be clear. This sort of waste management operation is a useful service to the Islanders and indeed there are companies that provide this service in an authorised manner. As a department we have a duty to ensure that such waste operation firstly has planning permission and then having to comply with waste management law. A lot has been said about did they or did they not have permission at St. Peter's to store skips as well as sorting skips. The move to Heatherbrae Farm and permission was granted in May 2005 with that one important condition which we have set out in the paper by the Minister, that the use of the site shall operate in the same manner as the current site at Les Prairies. But there is one important point there. We found out that this was not precise enough and that is why the Minister allowed it go through and especially in favour of Mr. and Mrs. Pinel. But the operation became intensified and now the problem really begins. The permit did not give the company to right to operate in an un-neighbourly fashion and it is fair to say that if Reg's Skips had modified the operation we may not be in a situation that we are today. The Planning and Building (Jersey) Law 2002 allows for enforcement action to be taken when planning controls have been breached. A site is required by law to have a work waste licence under that waste management law. The aim is not to harm small

businesses and take disproportionate action against local firms providing local service. To ensure that the land is used falls within the duty of care that we have to all Islanders and under the Planning Law. The department receives many complaints and the department are bound to investigate. Most of the time it can be sorted out by negotiations but at times it just does not happen and further action is needed. Unfortunately that action may result in financial implications but this is not a reason not to act. Members are now aware the department were not able to resolve issues and it resulted in further action and it is for this private action by Yates, based on the nuisance law, that we are asked to decide on this proposition today. Actions taken by Planning and Environment were wholly appropriate under the law. Therefore, to recompense a company for not meeting such actions under the law has led to third party action, which was contrary to what environment regulation is about. As it says in the proposition, we are asked for the third party action to recompense the amounts and I feel that we should not support this proposition.

1.12 Deputy S. Pitman of St. Helier:

I will not go into great detail about some issues that have been raised but one point I think should be emphasised is accountability on behalf of the Planning and Environment Department and also the judiciary. I would like to refer Members to page 4 of the proposition where it states that the owner of the land was instructed by Planning to make a personal application, not indicating that the change was for the benefit of Reg's Skips; an unusual request but one that Mr. Taylor complied with. The second paragraph: "In June 2006 Heatherbrae Farm was visited by an Environmental Health officer who explained that the Planning Department was obliged to seek the consent of the Environmental Health Department prior to granting permission for change of use to commercial use as this could involve noise, dust and other nuisances." We have heard from Senator Ozouf; yes, there were probably mistakes on behalf of the department and, yes, there are questions that need to asked. So I ask, if the States do not decide to take the department to account who will? If we do not agree with this proposition and vote for it, are we really going to question and hold our Planning and Environment Department to account? Because I have heard so much of this House saying that certain departments need questioning when they have made mistakes and nothing has come of it. Also, on the part of the Bailiff and the judiciary, the Bailiff being a friend, a personal friend, of the plaintiffs, giving them legal advice and the presiding over the case ...

The Greffier of the States (in the Chair):

I am not strictly sure from the papers that is clear, Deputy. I think the Senator himself makes clear in his proposition he has been asked to make out the Bailiff is not personally known to him. I think Senator Shenton himself has made that clear in his proposition. That is my reading of the comments at the top of page 15.

Senator B.E. Shenton:

Sir, I made it clear that there were family connections. Whether personally known or not, I do not know.

Deputy S. Pitman:

I will accept that but I find that highly suspicious that they cannot be friends, to be honest, with what is said in the proposition. I would like to know, bearing that in mind, when is this Government ever going to hold its law officers to account? It does seem that they are a law unto themselves at times. I would like to just talk about a constituent of mine again. I know I did it yesterday but I think it is relevant to this case. A gentleman who was working for a company on no wages was severely injured to a point where he cannot work any longer and the injury was caused by a lift that the company were well aware was dangerous and had several warnings that it was dangerous. But the gentleman sought compensation through a legal aid lawyer and he waited and waited and once, having seen the lawyer, he waited and waited and phoned and wrote letters to the lawyer to take action but the action never happened. It is my experience that many legal aid

lawyers leave legal aid cases on the bottom of the pile. This constituent complained to the Batonnier and the Batonnier turned around and said if he does not want help from this lawyer then he can forget it. So where does he go? Where does he go now for justice, for compensation, for his injuries that were not caused by him? He cannot. He has not got the money to take on a case without legal aid. I have heard much sympathy from States Members for Mr. and Mrs. Pinel. They need accountability and they need justice from this Government.

The Deputy of St. John:

I have a point of clarification. Could I ask the Solicitor General a question?

The Greffier of the States (in the Chair):

If it is a brief question, Deputy, yes.

The Deputy of St. John:

Yes, sir, it is very brief. We have heard a lot about jurats and the Royal Court this morning. Can the Solicitor General confirm or otherwise that the verdicts of jurats of the Royal Court can be appealed against? If not, would that be human rights compliant?

The Solicitor General:

The court is comprised of a presiding judge and jurats in the case of a civil case of the way we are talking about. The jurats under the Royal Court (Jersey) Law 1948 are the sole judges of fact and it is their determination which leads to the facts. The presiding judge is the sole judge of law. There are slight complexities in certain circumstances but essentially that is the case. The jurats will decide the facts of the case and the presiding judge will decide the law of the case and a single judgment will be delivered by the presiding judge which will include his decisions on the law and the Jurats' decisions on the facts. That judgment is susceptible to the right of appeal to the Court of Appeal. So it follows that findings on the facts are, in theory, susceptible to an appeal to the Court of Appeal. It is also fair to say, for the sake of completeness, that a Court of Appeal will be slow to overturn a finding of fact when they do not have the benefit of the witnesses before them; but that is not to say, in certain circumstances, Court of Appeals do not overturn findings of fact.

Deputy M.R. Higgins of St. Helier:

Just another piece of clarification from the Solicitor General. In the U.K., in a Magistrates Court where there is not a stipendiary magistrate, the clerk of the court helps the magistrates with the letter of law in terms of what the legal position is and the magistrates determine on the basis of fact. However, in the U.K. the clerk of the court is not allowed to retire with the magistrates when they reach their decision. I am just curious to know in the Royal Court does the Bailiff retire with the Jurats and do they collectively reach the decision?

The Solicitor General:

The Bailiff does retire with the jurats and, as I mentioned, the jurats make the determination of fact and the Bailiff makes the determination of law. The Bailiff would, in cases of deadlock, have the casting vote but I have certainly seen, in my experience in judgments of the court, the court explain that there is a deadlock and that a casting vote, effectively, has been used. But, yes, the Bailiff does retire with the Jurats.

1.13 The Deputy of St. Mary:

I did notice from the last comment that the Bailiff retires in order to consider his verdict but just a few points. The first is I hope the proposal will deal with the question of insurance because I think that is quite an important point and I noted it as soon as it was made. The second point, just to recap, is the importance of why we are here and this strange idea that decisions of Planning and the whole operation of Planning in this case was not material in bringing the case to court. I just find that very hard to agree with and it is the quotation from which we have helpfully provided with ... I

will just find it. This is a quotation from the judgment, from the Bailiff's judgment: "We reach this conclusion not without considerable sympathy for Mr. and Mrs. Pinel. They were permitted, if not encouraged, by the Planning and Environment Department to establish their business at Heatherbrae Farm." Clearly that is what has led to the whole of the rest of this sorry saga. The third point I want to make is to pick up on what the Assistant Minister for Planning and Environment said, and maybe the Minister for Planning and Environment could clarify this matter or his Assistant Minister. She referred to the Waste Management Law in the context of un-neighbourly behaviour and the problems that arose from the operation of this business. Would it be the case that if the Waste Management Law had been applied and the licence asked for and dealt with, whether that would have resolved the question of un-neighbourly behaviour? I mean, is that part of what the Waste Management Law is designed to do? So that is a question which I think would be helpful if we had an answer to before the summing up. The next point to pick up on, just to reinforce what Senator Syvret said but to add a little twist to it, we live in a law-based society. This is law after regulation after permit and that is the way it is now. It is a pity really but the fact that we live in a complex society drives us in that direction. That means that constantly people are having to use the law. They are having to go to law. So I think the point about legal costs and accessibility to the law for everyone is well made and I think this House has to take it on board and do something serious about it. We heard from Deputy Pitman the problems when you go to legal aid and I am not sure why legal aid did not apply in this case but apparently it did not. So there is a serious issue there about equality before the law and what that means; whether it really is equality before the law or equality for those who can afford the law to be equal before the law. Finally, I just want to comment on the reply of the Solicitor General about the recusation. The family link was not disclosed. Whether it should have been disclosed or not, personally I think it should have been. I think there should probably be a bias in favour of disclosing what might be ... there should be an understanding that these possible conflicts are declared, as we do frequently here in the Assembly, and that it is up to the lawyers, the counsels and the participants in the legal case to decide whether they do want to take that up further as part of the process. So I leave my comments there, thank you.

The Greffier of the States (in the Chair):

Does any other Member wish to speak? If not, I will call on Senator Shenton to reply.

1.14 Senator B.E. Shenton:

I think I made it quite clear at the start of the debate that this is not a proposition that I particularly wanted to bring to the House. I have been working on this case for a considerable amount of time and, believe me, I have searched for every other avenue for a solution here. In fact I even wrote to a number of the lawyers within the case and within one letter asked if they had any ideas of how we could solve this but sadly I did not even get a reply. This is very much the Last Chance Saloon for Mr. and Mrs. Pinel and it is also, I think, important to make sure that we, as a government, take responsibility for our actions. As chairman of P.A.C. (Public Accounts Committee), we should be looking at the hedging on the incinerator and finding out what happened there. This is a sum considerably in excess of the money that we are talking about today. People do make mistakes. I am not saying that anyone set out here deliberately to do any ills or do any wrongs but we are all humans and humans do make mistakes. Even the Planning and Environment Department makes mistakes. If I could just point to their Reg's Skips note that they passed around, the court's decision was in December 2007 not December 2008 as stated in their leaflet handed out today.

Senator F.E. Cohen:

I have already sent round a note to States Members advising them of the revised date.

Senator B.E. Shenton:

So, as we can see, Government does make mistakes. A number of people have mentioned about legal fees and the size of the legal fees and how absolutely disgraceful it is that private individuals could rack up legal fees defending themselves of £300,000, approximately. Yet, when I brought a proposition to this House only about a month ago asking the House to look into fees and the high cost of legal fees, it was soundly defeated. Many of the people that spoke today criticising the size of the legal fees because the States may have to pay them voted against looking at legal fees when I bought it as a proposition because the public had to pay them. So there seems to be a little bit of double standards there. It is all right for the public to pay high legal fees but when it comes to the States it is unacceptable. Senator Cohen, in his speech, made great play of the planning permit not being precise enough. The planning permit is perfectly precise. It allows Reg's Skips to sort skips and store skips. These days you sort skips sometimes using a mechanical digger. You cannot or it is exceedingly difficult not to breach health and safety laws by putting 2 men in the back of a skip and asking them to sort it out. You do not know what is in the skip. You have to be very, very careful. So we make laws in other areas and then, when people comply with those laws, we criticise them. Let us make it perfectly clear here, that Reg and Rita Pinel have not broken any of the terms of the permit that was supplied by Planning. The Deputy of St. Lawrence asked about personal liability and, yes, this court case has been going on for a long time and the banks have got wind of it and they have asked for personal guarantees on the loans to the company. So there is a personal liability and it does not end with a P.L.C. (public listed company). To be honest with you, I am not a great fan of the businessmen that tie their assets up in a P.L.C. and leave debts all around the Island for the debtors to pick up. I do not think that is the right way to do business and I think we saw a little bit of that in the last debate when we were talking about certain organisations. Deputy Green is new to the Chamber and was formerly a civil servant. He would like to see a report or some sort of consultant's report on why we should do this. Well, sadly for Deputy Green, he is now a politician and politicians have to make decisions and they have to make decisions in a timely manner. It is not always possible to have that buffer of a consultancy report that you can lay blame on if things do not go quite right. We do not have an ombudsman. We need an ombudsman but we do not have one. We should bring one in but it does not help this case. Deputy Ferguson made some points about the expansion of the business. Planning, in the court case, made certain accusations that the business had expanded 400 per cent since moving. The skip business operates with the same number of lorries. The annual turnover has only increased by approximately the rate of inflation. It is very, very difficult to work out how they come to this conclusion. The reason they had different lawyers for the appeal was because they were not happy with their original lawyers and the Attorney General in his comments ... sorry, the Council of Ministers comments with regard to the *voisinage* proposition made it quite clear that litigation is very important and it is very important that you have the right lawyers in place. She asked whether we could do an independent review but what would that achieve? We can then spend a considerable amount of money going through all of this with an independent review but it does not pay the bills. It does not help Mr. and Mrs. Pinel in their current situation. Deputy Le Claire spoke about the permit because he picked up on what Senator Cohen had said about the permit not being precise enough. That is why I placed on your desk this morning, a copy of the permit so you could see how precise the permit was. As Deputy Rondel pointed out, Reg's Skips were legally operating from the site. They did not apply to Planning to go to Heatherbrae Farm. Planning applied to them. Out of good spirit of trying to be helpful, they moved their premises from a site they were legally operating and, ironically, they cannot go back there because there is a skip business operating from the site they left! They moved to Heatherbrae Farm at the request of Planning and if Planning had checked properly with Environmental Health, they would have perhaps found that the site was not as suitable as they first thought. This would have saved a great deal of heartache for Mr. and Mrs. A who had to bring a personal legal action again them. I have great sympathy for Mr. and Mrs. A. I think they have been dragged into this and I feel sorry for them. Like I say, this is not a proposition I wanted to bring. In fact, rather unusual for me because I am not normally media shy, you will have noted that I have not given any interviews regarding this proposition to the media. The

Evening Post printed a small piece which they took from the proposition itself but I have not given any interviews with regard to the proposition today. As I mentioned before, the level of business did not intensify as laid out. Senator Le Marquand, unfortunately, is not in the Chamber because normally when I have a go at people I like to do it face-to-face, so this is a very bad proposition. I think Senator Le Marquand has to realise that he is no longer a judge, he is a politician and politicians are there to represent the people, not sit there and give their own interpretation of the law. He says that this is a bad decision because it may set precedents. Well, I do not think this will ever happen again. I do not think we will get the conflicting factors of perhaps the Bailiff being conflicted or the Planning Department making errors. Perhaps Senator Le Marquand should have more faith in the Bailiff. The reason I am here today is because I feel that we as a government have left Mr. and Mrs. Pinel down. Senator Le Marquand mentioned about how the court is set up to examine the facts. The noise graph you see there on the wall shows that the spikes were largely aircraft or other items not related to Reg's Skips. It is quite an important document. When it was submitted at the appeal, it was judged to be inadmissible evidence because it was not put forward in the correct manner and was not in the first original hearing. It is all right to look at the facts, Senator Le Marquand, but you need to have the facts in front of you especially the important facts. Again, I believe that this House was wrong a few weeks ago when we did not say: "Let us have a look at the cost of legal fees" because all of a sudden now it is going to come out of our pocket potentially we are a little bit more concerned. Moving forward to the legal fees, when it came to the case whereby the judge had awarded another trial for costs so that perhaps Planning would have to contribute some of the costs, Mrs. Pinel had to represent herself because she could not afford a lawyer. They had to draw a line at the amount of money they had spent on legal fees because they could not spend any more. Deputy Le Hérissier, another one who has fence sitting moments that he is becoming famous for, is worried this may set a precedent but, as I stated in the proposition, this is based on precedents that have already been set. This type of proposition has come to the House before and I have no doubt it will come to the House in the future, but it is very rare that you get the circumstances that warrant a proposition like this and it may well be a very, very long time before we see another one but it has to be an avenue open to people if they feel they have been let down by the judiciary and let down by the Government itself. As I mentioned before, personal guarantees are being given by Mr. and Mrs. Pinel on the business of Reg's Skips so this does have severe implications for them. It is a pity that when Deputy Le Hérissier does get off his fence, it would be nice occasionally if he came up with solutions. If he had a solution to this case that did not warrant this proposition I would be delighted to hear but I am afraid there is no solution.

Deputy R.G. Le Hérissier:

The solution, which I have put in writing to the Senator this morning was to go for a Committee of Inquiry, win it, get the moral high ground and put in a compensation case if, indeed, Planning itself is found to have been deficient. **[Approbation]**

Senator B.E. Shenton:

A Committee of Inquiry would take a considerable amount of time and a considerable amount of expense. Then I would have to have the findings of the Committee of Inquiry and come back to this House and persuade the House that the findings of the Committee of Inquiry were justified. It is like going around in a circle. I think I mentioned in my original speech about the complaints procedures in Jersey. I mean a lot of the complaints procedures, and I think I said they are like cul-de-sacs, where you take your complaints and then they are quietly strangled. There is no real complaints procedure in Jersey and this is another way around it: let us have a Committee of Inquiry. We had a Committee of Inquiry on Connex. They found numerous failings by Government, numerous failings by numerous civil servants but nothing was done. The actual document was just buried. In fact, one of the main civil servants that failed was promoted on the back of it. There is, unfortunately, no other solution. I do not want to bring this proposition today but there is no other avenue I can go down. Deputy Jeune said stand back and look at the facts. I

have been looking at the facts for 12 months. If the laws are wrong, she says we should change them. This is not about the laws being wrong. This is about a Planning and Environment Department that made a mistake. I cannot change that. All departments will carry on making mistakes because we are human but at some point we have to put our hands up and say: "Look, we have made a mistake." At the moment, Government does not make mistakes. The judiciary does not make mistakes. We have got 6,000 perfect people circulating this Island and if anything goes wrong, it is the public that pays the price. Well, it is about time that changed to be honest with you. **[Approbation]** Deputy Duhamel attempted to cut short the debate. I wish Mr. and Mrs. Pinel could move on to the next item but, unfortunately, that is not possible. The last time that Standing Order was invoked I think it was on a Deputy Southern proposition, a private proposition where we did in fact move on to the next item. I think this Standing Order should be removed because it only ever seems to be used against private propositions **[Approbation]** and if we remove the right of private propositions we are in big trouble as an Assembly. The Deputy of St. Ouen was involved with the case and I did speak to the Deputy of St. Ouen last night because he phoned me to say: "Is there another way we can go?" but there is not; there is no other way we can go and that is the sadness of the whole case. We brought in a Solid Waste Strategy in 2005. We are trying to encourage recycling, we are trying to encourage the sorting of skips and the sorting of waste and this is what we do. As the Deputy pointed out, most of the noises that spiked were aircraft. If a tractor had been operating on the farm as in the old days, the noise would have been much louder. But moving forward to the Bailiff's decision, I was Minister of Health and Social Services at the time and we were trying to work towards an acceptable solution under the Statutory Nuisance Law. The Statutory Nuisance Law is a modern law which takes into account that industrial facilities do make noise and it is a law that took a long time for the Health Department to bring in because we had to make sure it was right, so there was another way forward and it was under the Statutory Nuisance Law. I believe this would have been a much fairer law because this would have been done at little or no cost to either party, but the Bailiff directed that an ancient law of *voisinage* was a better course of action. It makes you wonder why we ever brought in the Statutory Nuisance Law. We must, as an Assembly, look at court costs. We must look at the way that our judiciary and our courts very rarely claim costs when a case is brought. We must look at the way we account for court costs, the way it is below the line and the way we keep budgets of what is happening. Senator Syvret mentioned that it is very important that this House maintains independence. It is very important for this House to act as a political head and to be willing to criticise the judiciary if necessary. We have spoken before about asking the Bailiff to recuse himself but it is up to the Bailiff to recuse himself because it is very, very difficult for a lawyer to make that accusation especially if you are a lawyer that is working with someone. It is the same in any walk of life, that if you are beholden to someone's decisions on a long term basis it is very difficult for you to criticise them or make accusations against them. But I am not saying it was deliberate. I think maybe it was an oversight. I am not making any dispersions on the Bailiff's character and I wish him a very good retirement. **[Laughter]** But courts must not show any bias and they must not have the appearance of bias, and I think if you went out on the street and explained the facts of this case to 100 people in the street, the vast majority of them would see a bias there. Now maybe they do not understand the legalities of the law, maybe they do not have Senator Le Marquand's understanding of the nuances and how we should interpret the law, but then we are just the people of Jersey and perhaps how we interpret the law is more important and more relevant than how the lawyers interpret the law. **[Approbation]** Senator Ozouf, surprisingly, is against one of my propositions but I would say to Senator Ozouf that it was Planning that approached Reg's Skips. It was not Reg's Skips approaching Planning and Planning should have made sure with Environmental Health that the site was 100 per cent suitable for their use. Under the proposition, I have asked for the costs if they are successful to come out of next year's Business Plan with the Minister for Treasury and Resources working with the Chief Minister to find out a way of looking at it. Perhaps he could look at court costs and other costs and as a possible way forward. This means that the money will not be available to Reg and Rita Pinel until January 2010 but, having

said that, it gives plenty of time not only to negotiate the bill down but with the lawyers knowing there is certainty of payment they will not take personal proceedings against Reg and Rita Pinel.

Senator P.F.C. Ozouf:

Just on a point of clarification, there is no certainty of payment if the proposition is carried because it would have to come back to the Business Plan.

Senator B.E. Shenton:

I believe there is a reasonable assumption if it is carried today that the House will pass it in the Business Plan and one would hope that Members today would accept, as we heard yesterday during the G.S.T. debate, how we should as Members accept a democratic decision of this House and not try to overturn it at a later date. Again, Senator Ozouf talked about the high costs of the legal bills and how shocked he was at the size of the legal bills. Now I have not checked but I would guess that Senator Ozouf voted against my proposition to look into legal bills when it came to the House a few weeks ago. The Deputy of St. Mary asked about judicial review and I think one thing is very important here. The original case was Mr. and Mrs. A versus the Planning and Environment Department. The decision of the Bailiff was that there was an alternative solution available to them in as much as they could sue Reg's Skips. They were suing the Planning and Environment Department. There was an alternative remedy available to them; a much cheaper remedy to them against the Planning and Environment Department through the Statutory Nuisance Law. The Attorney General in his comments last week or last month said litigation is exceedingly expensive in Jersey. The Bailiff is the head of the Island judiciary. He has responsibility for all Islanders and I think he would agree with that. He has responsibility for Reg and Rita Pinel. If he is giving a judgment that action should be taken against them, he would have known the cost of that litigation and he would have known the impact on Mr. and Mrs. Pinel. That is why I believe that the Statutory Nuisance Law would have been a much better remedy. The Constable of St. Ouen says that he has sympathy which is very nice to know, but sympathy does not pay the bills. I do not live in St. Ouen but perhaps if I did and next time I get my rates I will write to him and say: "I have sympathy with you but I am afraid I am not paying my rates." **[Approbation]** No doubt he would write back and say: "That is okay. I understand." **[Laughter]** With regard to insurance, you have liability insurance when you do something wrong. If you have an accident, you have liability insurance and you take liability insurance out if a fraud is committed by you, but the ridiculous thing about this whole thing is Mr. and Mrs. Pinel have never done anything wrong. They have never broken their planning permit. They moved when Planning asked them to move. It is a quite ridiculous situation that we have found ourselves in. Again, the Deputy in her speech said that the work had intensified. It had not intensified and I have a real issue with this because it was stated under oath in court that the work had intensified 400 per cent. They are operating with the same number of lorries and if you look at their turnover, there is not much increase in turnover either of 400 per cent. Unless they put all their fees down by an enormous amount, it just does not make sense. The work did not intensify by the amount that Planning said under oath in court. As I mentioned, it went to court and then it went to -- we have a rather quaint Court of Appeal system over here which I was only aware of with this issue. The Court of Appeal can only look at the facts and how the original trial was run and look at the facts presented at that trial. It cannot take any new evidence that may be relevant. I had not realised this and as a result of that, fairly substantial new evidence could not have been provided. As Deputy Higgins pointed out, the Bailiff does retire with the jurat. The jurat do not say anything during the trial and then the Bailiff retires with the jurat. In the judgment, the Bailiff stated that one of the people was not a person given to complaining; one of the people that there was a family connection with. The Solicitor General argued that this was the view of the jurats. I do not know how, within a short period of a court case, anyone could come to that conclusion. When I wrote the proposition I spoke about bullying and the way the legal profession handle themselves over here. When I took up this case, I wrote a letter to a number of law firms asking for clarification of certain facts, partly to do with whether the

Bailiff was conflicted or not. The letters I got back basically were warning me that by writing to them, I may be outside my parliamentary privilege and that action may be taken against me personally. When I stood as a politician, I did not stand to receive letters of that type and I found that some of the letters were quite intimidating. Fortunately, I can just ignore them but I can imagine a lot of people receiving those letters would be deeply, deeply disturbed by them. Indeed, one letter from Appleby that was sent to the Yates resulted in Mr. Pinel having a stroke and ending up in hospital. I think the legal profession need to have a very good look at themselves. **[Approbation]** Those types of letters would not be acceptable in any sort of other walk of life and they may consider it very clever to be able to write a very threatening letter and stay within the law, but personally I do not and I did ask in my proposition for the Law Society to look at this and I hope they will take this up. It is unacceptable and it is against the interests of the public of the Island. So I close by saying that this is a very simple proposition. It is not one that I wanted to bring. The Planning Department have made a mistake. Should Mr. and Mrs. Pinel be bankrupted because of that mistake? If you think we should do the right thing, please support the proposition. If you wish to bankrupt the Pinel's please vote contre. I ask for the appel.

The Greffier of the States (in the Chair):

Very well, the appel is called for. Members are in their designated seats. The vote is for or against the proposition brought by Senator Shenton.

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)		

Senator S. Syvret:

We are very nearly at the time when we would normally adjourn for lunch but before proposing the adjournment, I would ask whether it is the intention of the proposer of the next proposition to proceed to have it debated today.

Deputy F.J. Hill of St. Martin:

I would very much like to go this afternoon but I also understand a number of people would like to adjourn now until the next time and I am quite happy with that if it is the wish of the House. **[Approbation]** The only thing I would say is that if indeed this will go to the next sitting, I will have 3 that day; there will be 3 of my propositions. What I would ask is if this would not be the first on the new sitting and then allow me time to prepare for the second and the third but I am quite happy if it is the wish of the House for this to be put over to the first item on the 20th.

Connétable J. Gallichan of St. Mary:

I would just like to say we have set aside 3 days for debate this week so I do not think it sends out a very good message to the public if we continue trying to put business off to a later perhaps more convenient sitting. We have set aside 3 days. I do note what the Deputy has said about if this is rescheduled so I note his comments there, but really I feel we should proceed as we have agreed.

Senator S. Syvret:

I would like to make a counter argument to that. This matter that is being brought forward by the Deputy is complex and it is very, very important and it is contentious. Probably a significant majority of Members of this Assembly would want to take part in this debate. If we commence with this at 2.15 p.m. it is wholly unrealistic to imagine we would finish it this afternoon, so we will then be back again tomorrow and it is quite unacceptable to split debate between one sitting and the next, you know, starting it now and finishing it in 3 weeks' time. I really think that the mover of the proposition has been perfectly reasonable. We have had 2 and a half days of intensive and difficult debate. Honestly, we are not going to do justice to this matter if we press ahead with it now and I would propose the adjournment and that we come back at the next sitting in 3 weeks.

The Greffier of the States (in the Chair):

The issues are quite clear. Those Members in favour of deferring this matter to the next sitting, kindly show … the appel is asked for. So the proposition is the one of Senator Syvret. That proposition is seconded, I take it? **[Seconded]** The vote is for or against the proposition that the Assembly do, after arranging public business, adjourn and defer this matter to the next sitting.

POUR: 29	**CONTRE: 18**	**ABSTAIN: 0**
Senator S. Syvret	Senator P.F. Routier	
Senator T.A. Le Sueur	Senator P.F.C. Ozouf	
Senator T.J. Le Main	Senator S.C. Ferguson	
Senator B.E. Shenton	Senator B.I. Le Marquand	
Senator F.E. Cohen	Connétable of St. Brelade	
Senator A.J.D. Maclean	Connétable of St. Saviour	
Connétable of St. Ouen	Connétable of St. Mary	
Connétable of Trinity	Deputy J.B. Fox (H)	
Connétable of Grouville	Deputy J.A. Martin (H)	
Connétable of St. Martin	Deputy of St. Peter	
Connétable of St. Clement	Deputy J.A. Hilton (H)	
Connétable of St. Peter	Deputy K.C. Lewis (S)	
Connétable of St. Lawrence	Deputy I.J. Gorst (C)	
Deputy R.C. Duhamel (S)	Deputy of St. John	
Deputy of St. Martin	Deputy A.E. Jeune (B)	

Deputy R.G. Le Hérissier (S)
Deputy G.P. Southern (H)
Deputy of St. Ouen
Deputy of Grouville
Deputy P.V.F. Le Claire (H)
Deputy of Trinity
Deputy S.S.P.A. Power (B)
Deputy S. Pitman (H)
Deputy M. Tadier (B)
Deputy of St. Mary
Deputy T.M. Pitman (H)
Deputy A.T. Dupré (C)
Deputy M.R. Higgins (H)
Deputy A.K.F. Green (H)
Deputy E.J. Noel (L)
Deputy T.A. Vallois (S)
Deputy J.M. Maçon (S)

ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

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

Sorry, I was not quite prepared for that. The business for the next sittings will be as stated in the pink Order Paper with the addition of the carry forward of the Deputy of St. Martin's proposition, Police Complaints and Discipline: extension to Honorary Officers conducting Parish Hall Inquiries P.30 until 28th April, and also added on to that sitting P.47, Planning and Environment: Division into 2 ministerial offices lodged yesterday by Deputy Le Claire.

The Greffier of the States (in the Chair):

Are there any observations on the proposed order of business?

2.1 Deputy M. Tadier:

With regard to P.40 which has been submitted by Deputy Hill, I would inform the House at this stage that I will be submitting a proposition which is, maybe to put it best, an alternative to the Deputy's. He has agreed with me in principle to allow that proposition to go forward. It will be lodged in the next few days, therefore it will meet the 2 weeks' notice period and so I will be asking the House next time we meet to take this proposition first which will be effectively to get rid of the question time limit in its entirety rather than to extend it to 2 hours.

The Greffier of the States (in the Chair):

The final decision is for the Assembly but it is very good of you to give notice.

2.2 Deputy I.J. Gorst of St. Clement (The Minister for Social Security):

I have a proposition P.37 down for the 28th. I just wanted to give Members notice that I would like it to fall back to 12th May please.

The Greffier of the States (in the Chair):

Very well, P.37 is deferred to 12th May, the Health and Safety at Work (Amendment) Law. Are there any other observations?

2.3 The Connétable of St. Ouen:

Before you close the business, may I thank the Deputy of St. Martin for having agreed to defer this proposition but could I respectfully ask him to make contact with and discuss the proposition with the Island Centeniers who are those who are most affected by it.

The Greffier of the States (in the Chair):

The meeting is now closed and the Assembly will reconvene on 28th April.

ADJOURNMENT