

# **STATES OF JERSEY**



## **BUS SERVICE TENDERING PROCESS: COMMITTEE OF INQUIRY – TERMS OF REFERENCE AND MEMBERSHIP**

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**Lodged au Greffe on 25th May 2004  
by the Policy and Resources Committee**

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**STATES GREFFE**

## **PROPOSITION**

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

to refer to their Act dated 9th March 2004 in which they agreed to approve the appointment of a Committee of Inquiry to investigate fully the relevant circumstances surrounding the tender process and the award of the contract for the provision of a bus service in Jersey and –

- (a) to appoint the following persons as members of the Committee of Inquiry –
  - (i) Mr. David Lyons (President)
  - (ii) Mr. Brian Ahier
  - (iii) Mr. Gregory John Branch.
- (b) to agree, in accordance with Article 36B(2) of the States of Jersey Law 1966, as amended–
  - (i) that Mr. Brian Ahier shall, if required, preside in the absence of the President; and
  - (ii) that the quorum of the Committee shall be two.
- (c) to agree that the Committee of Inquiry shall have the terms of reference as set out in the Appendix to the report of the Policy and Resources Committee dated 20th May 2004.

### **POLICY AND RESOURCES COMMITTEE**

Notes: The Finance and Economics Committee's comments are to follow.

## **REPORT**

On 9th March 2004 the States approved a proposition of the Policy and Resources Committee entitled 'Bus Service Tendering Process: Committee of Inquiry' (P.31/2004). In accordance with the terms of part (b) of the proposition, the Policy and Resources Committee is now reporting back to the Assembly with recommendations for the constitution and terms of reference of the Committee of Inquiry.

The Committee believes it is important that the inquiry should be expedited for the following reasons –

- to answer those questions that have been raised in connection with the tender process and award of the contract; and
- to enable all relevant considerations to be taken into account by the Environment and Public Services Committee in respect of future decisions relating to bus services.

It would be reasonable to assume that the Committee of Inquiry will need to examine a wide range of documents, as well as interviewing the relevant parties. The Policy and Resources Committee expresses the hope that the Committee of Inquiry will be in a position to report back within a period of 3 months, and suggests that the Committee of Inquiry could be asked at an early date to give an indication of how long its work is expected to take.

### **Constitution**

The Committee would like to nominate the following persons to serve as the President and members of the Committee of Inquiry –

- Mr. David Lyons (President)
- Mr. Brian Ahier
- Mr. Gregory John Branch

Mr. David Lyons will already be known to many as the Chairman of the Jersey Law Commission, and was appointed by the States to this office for a period of 5 years with effect from 19th November 2003. Mr. Lyons has resided in Jersey since the early 1970s, and he worked for many years as a solicitor in the firm Lyons and Caplan, which he founded in 1973. Mr. Lyons has now retired from private practice and bank directorships, but he maintains his involvement in professional life through a number of commercial interests and consultancies with several trust companies.

Mr. Brian Ahier has lived in Jersey all his life and is now retired, having followed a career in the finance industry as a company director. Mr. Ahier will be known to many Islanders as a past President of the Jersey Football Association and as the Chairman of the Advisory Council for Education, Sport and Culture. He has also been a member of the Parish Rate Appeal Board since December 2000.

Mr. Greg Branch qualified as an accountant in 1983 and has lived in Jersey since 1992. Mr. Branch is the partner in charge of the audit practice of Deloitte & Touche, Jersey, and has many years experience with financial and commercial clients. In addition, Mr. Branch has considerable valuation and forensic experience, including providing expert witness statements to the courts of Jersey.

### **Terms of Reference**

The proposed terms of reference for the Committee are set out in the Appendix. These terms of reference have been designed in a manner which should provide the Committee of Inquiry with the scope that it needs to fully investigate all the relevant circumstances surrounding the tender process and the award of the contract for the provision of a bus service in Jersey.

### **Financial and manpower implications**

In the Jersey context there are a number of factors that need to be taken into account when considering the potential cost of a Committee of Inquiry.

There are, for example, ancillary expenses that need to be taken into account. It is possible that the Committee of Inquiry will want to have transcripts of at least some of the evidence given during the inquiry. The Committee will need administrative support and, to the extent that legal support cannot be given by the Law Officers Department, may also wish to call upon the services of a local advocate to advise on procedural matters.

In addition, relevant parties may wish to seek legal representation if they are called before the Committee. In the U.K. the position in relation to legal representation has been established by the Royal Commission on Tribunals of Inquiry, and any person called before an inquiry is entitled to receive legal advice, with his legal expenses normally being met from public funds. In Jersey the practice of Committees of Inquiry has been to decide upon their own procedure for dealing with a particular case, and to issue a procedural note at the beginning of the inquiry. There have been occasions on which a Committee of Inquiry has accepted that the cost of legal advice should be met from public funds, and it seems very possible that a claim for this type of facility would be made in the case under consideration. The States should therefore expect that the sums involved are likely to total at least a five-figure sum, and may run to a six-figure sum. This sum will include remuneration for the President and members of the Committee of Inquiry, at levels to be determined by the Finance and Economics Committee. The Policy and Resources Committee has suggested that the remuneration payable to the President of the Committee of Inquiry should be equivalent to that which is paid to Royal Court Commissioners (i.e. £686/day), and that the members of the Committee of Inquiry should also be remunerated for their services at a rate to be agreed.

The Committee believes that any decision to establish a Committee of Inquiry should be taken in full knowledge of the potential costs and time involved.

There may potentially be additional manpower requirements for the States. The Committee of Inquiry will need to be properly supported in terms of executive and administrative support and it may be necessary to consider the internal secondment of an officer or officers to meet these needs efficiently. As noted in the report accompanying P.31/2004, this will be a matter for consideration by the States Greffe and Human Resources Department, in consultation with the States Treasury.

20th May 2004

**TERMS OF REFERENCE**

**The Committee of Inquiry will have the following terms of reference –**

1. To review the agreement made between the States of Jersey and the Transport and General Workers Union on 5th August 2001 to ensure that in the event of a new operator being appointed, all staff transferring employment would be given the same terms and conditions of employment as they enjoyed with the previous operator. The Committee of Inquiry will identify –
  - (a) any variance from that agreement;
  - (b) the reason and justification for the variance;
  - (c) the audit trail for and changes to the agreement to identify the communication process between Jersey Bus, the Transport and General Workers Union, the Public Services Committee and the new operator.
2. To establish the state of knowledge of the parties involved during the tender process for the public bus service, during the period leading up to the award of the contract on 1st May 2002, in relation to the wage claim submitted by the Transport and General Workers Union which included the drivers' shift allowance, and to report on the actions of the parties involved in that process.
3. To consider any changes made to the final contract signed between the States of Jersey and Connex Transport Jersey Limited and report on whether there are any material differences between the final contract and the draft contract supplied to all tenderers during the tender process that might have affected the tender submissions.
4. To review and report on the drivers' shift allowance and the relief service claims submitted by Connex Transport Jersey Limited in 2002 and determine whether given the state of knowledge of all parties during the negotiations, the payment for the shift allowance was appropriate and in line with the conditions of contract that exist between the States of Jersey and Connex Transport Jersey Limited.
5. To review the accuracy of the reports submitted by officers to the Public Services Committee regarding the contract with Connex Transport Jersey Limited, together with the relevant minutes of Committee meetings, during the period leading up to the award of the contract, and in relation to the post-contract award of the shift allowance, as well as to review the answers to questions about the contract that were given to the States.
6. To report back to the States with its findings and recommendations.