NOTE: THE SAME ANSWER HAS BEEN PROVIDED BY THE MINISTER TO THIS AND QUESTION 7152 (SHOWN AS NUMBER 10 ON THE ORDER PAPER)

1240/5(7151)

WRITTEN QUESTION TO THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES BY DEPUTY G.P. SOUTHERN OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 23rd OCTOBER 2012

Question

Does the Minister now accept that significant changes to the terms and conditions of bus drivers have been made in the contracts offered by CTPlus, in respect of the removal of basic overtime rate, changes from a 6-day rota to 5/7 days, making Sunday working compulsory; and introducing a 54 hour maximum working week?

What justification, if any, does the Minister have for his statement to the Assembly that "the terms and conditions are substantively the same"?

Will the Minister inform members of the exact wording on the tender documents which referred to the transfer of staff and their terms and conditions?

What evidence does the Minister have to support the following statements he has made in relation to this issue –

- "a workforce controlled by fear and favour";
- "despite the hindrance of the previous staff transfer. We must not allow the same political involvement to stifle a contractor again"; and,
- "In general CTPlus's sickness provision is higher than Connex";

Answer

For reasons set out in this response, after providing this response I do not intend to enter into further public debate or speculation about these matters.

I have set out below information about the old contract, the tender and the successful bid in some detail in order to clarify the background to and the context of the present position.

The 2002 Connex Contract

1. Connex Transport Jersey Ltd ("Connex") is the existing Jersey bus service provider under the terms of a contract between Connex and the Public Services Committee (hereafter called "Transport and Technical Services or TTS") dated 13th November 2002 (the "Connex Contract").

2. Clause 18.3 of the Connex Contract states:

   "On expiry of the Contract or early termination for whatever reason, the Committee shall or shall procure that any other body issuing tender documentation shall require in any tender documentation that the incoming service provider submit proposals that ensure that all of the

Contractor's staff, with the exception of the general manager and any director of the Contractor, as at the date of the issue of any tender documentation are taken on by the incoming service provider on the same terms and conditions as apply at the date of the issue of any tender documentation and use its reasonable endeavours to facilitate the transfer of the staff from the Contractor to the incoming service provider provided always that the Contractor shall fully co-operate with both the Committee and the incoming service provider by providing them both with such employee information as is reasonably necessary for the Committee to compile any tender documentation and for bidders properly to price their bids and for the incoming service provider to take on the Contractor's staff."

3. There were two key elements to Clause 18.3, namely that:

   (a) TTS should require in any tender documentation that the incoming service provider submitted proposals that ensured that all of the Contractor's staff, with the exception of the general manager and any director of the Contractor, as at the date of the issue of any tender documentation were taken on by the incoming service provider on the same terms and conditions as applied at the date of the issue of any tender documentation (June 2011); and

   (b) TTS should use its reasonable endeavours to facilitate the transfer of the staff from the Contractor (Connex) to the incoming service provider.

4. The latter obligation was subject to the requirement that Connex fully co-operated with both TTS and the incoming service provider by providing them both with such employee information as was reasonably necessary for TTS to compile any tender documentation, for bidders properly to price their bids and for the incoming service provider to take on Connex staff.

The 1st Stage Tender Instructions ("1st Stage Tender")

5. The 1st Stage Tender included the following:

   "…the Tenderer is required to provide a proposal (part of the Migration Statement see item 3.15) for the transfer of all the existing operator's staff based on the terms and conditions at the time of this tender except for any Director or the General Manager The Employer has agreed to use its reasonable endeavours to facilitate the transfer of staff and provided such employee information for the Tenderer to price the Tender."

   "The Tenderer shall submit an outline Method Statement setting out a programme and proposals for setting up the 2013 Contract which shall adequately reflect how they will transfer existing staff (excluding any Director or the General Manger of the existing operator) and or obtain suitable staff, vehicles and all necessary equipment to commence the operation on the 1st January 2013"

   " …The Tenderers attention is drawn to the fact that there is no requirement under the 2013 Contract for any Director or the General Manager of the existing operator to be included in any proposal for the transfer of existing staff. The information noted above and the terms and conditions to be found in Appendix G have been provided by the existing operator to the Employer and provided to the Tenderer in good faith…."

The successful tenderer's submission

6. HCT Group is the parent company of CT Plus Jersey Limited ("CT Plus"). HCT Group's response to the second stage of the tender process was submitted under covering letter dated 14 June 2012. This response was submitted on the basis of a "seamless transfer of staff". HCT Group stated:

   "…we will not change any of the staff terms and conditions we have been made aware of in the first stage tender documents, for the first nine months of the contract."

7. I took the decision to award the 2013 Bus Operator Contract (the "2013 Contract") to HCT Group, as detailed in the decision summary dated 04 July 2012. The 2013 Contract is due to commence on 1 January 2013 (the "Commencement Date") and will be operated by CT Plus. HCT Group and TTS have entered into a letter of intent, dated 18th July 2012, in relation to the 2013 Contract. The 2013 Contract is expected to be signed shortly.

8. Accordingly, in July 2012 the requirements of the first obligation on TTS under Clause 18.3 had been fully met by TTS.

Facilitating a transfer: mediation meeting

9. TTS has worked around the clock with the unions, staff representatives, Connex and CT Plus to try and facilitate a transfer of staff. On 9th October 2012 TTS asked staff representatives, Connex and CT Plus to attend an urgent JACS facilitated mediation meeting the next day, 10 October 2012, in order to see how best matters could be addressed and progressed. TTS was anxious to ensure that the best possible arrangements were put in place for staff. Concerns had been raised about new proposals put forward by CT Plus for modernised terms and conditions and a "clean break" arrangement for employment under the new contract, rather than a transfer with continuity of employment.

10. The meeting took place on 10th October 2012 and was extremely constructive. At the meeting it was agreed that eligible staff would transfer with preserved continuity of employment, for future statutory redundancy, unfair dismissal and notice purposes. The transfer would be on the basis of new terms and conditions in order to ensure that the present needs of Islanders were met, in accordance with the provisions of the 2010 Sustainable Transport Policy. A number of changes were agreed to enhance the terms and conditions on offer.

11. JACS issued the following statement about the meeting:

    "Following a very useful meeting of all parties involved in the provision of a bus service for Jersey it was agreed that all parties present would immediately encourage and facilitate meetings between existing Connex employees and representatives of CT Plus on a one to one basis within the next 10 days.

    The purpose of these one to one meetings is to allow CT Plus representatives to meet with their potential employees, explain the way in which CT Plus intended to work in the Island and to invite all staff to accept contracts of employment with CT Plus under the terms agreed at the mediation meeting held on 10 October 2012.

All parties present agreed that while arrangements as above are finalized no further public statements will be issued as it is now a matter of arranging for the Connex employees to determine whether they wish to join CT Plus from January 2013."

Current position

12. Since the meeting on 10th October 2012 Connex, CT Plus and TTS have continued to work together in relation to arrangements for the transfer of staff from Connex to CT Plus. A number of positive staff meetings have taken place and CT Plus has confirmed that it is looking forward to taking on eligible Connex staff.

13. On 19th October 2012, TTS reiterated to CT Plus that it was essential that all key terms and conditions (such as rates of basic pay) of transferring staff were either mirrored or improved upon. CT Plus agreed further to enhance the terms and conditions that were being offered to transferring staff.

14. TTS is pleased that, following extensive discussions with Connex, CT Plus and the union, CT plus is now offering eligible driving staff employment on terms which include the following:

- CT Plus basic hourly rate of pay for Monday to Friday working hours is a slight increase over the existing rate at tender (the contractual benchmark).
- CT Plus overtime rate Monday to Friday is the same as their basic hourly rate, which is less than tender (see point 15 below)
- CT Plus basic rates for Saturdays are higher than at tender.
- CT Plus basic rates for Sunday are equal to the overtime rates at the time of tender
- CT Plus basic rates for Public and Bank Holidays are higher than the overtime rates paid at the time of tender.
- The CT Plus rostered working week of 5 days in 7 is an improvement on the present 6 days in 7, typically giving 47 more rest days per year to a driver.
- The basic working week of 39 hours remains the same
- CT Plus's annual salary for the contracted basic 39 hours will be slightly higher than at tender.
- CT Plus's sickness provision for the first 4 years of service is higher than at tender.
- Healthcare and pension payments remain the same.
- 5 weeks paid holiday: remains the same.
- Paid meal breaks will continue.
- No probation period will apply to transferring staff
- Staff transfer with preserved continuity of service for future statutory redundancy, unfair dismissal and notice purposes.

15. Access to overtime is at management's discretion, is voluntary, and is not a contractual right. CT Plus had anticipated removal of overtime from rosters as it is very expensive. However as CT Plus talked to staff it became clear that some staff, although not a majority, did want to work more than approximately 39 hours per week. If CT Plus had a higher overtime rate for Monday to Friday then the need to reduce or eliminate overtime would not have been addressed. Having a flat rate enables CT Plus to address this issue while also enabling drivers to work more hours, up to the maximum of 54 and earn accordingly (circa £40,000).

16. For information, the 54 hour working week maximum being applied to this new contract has been introduced for health and safety reasons to protect both the public and drivers, in accordance with advice we have received from the Health & Safety Inspectorate. It is in accordance with recognised UK best practice and consistent with the Unite Union's current 'A Safer Way' campaign.

17. Staff at TTS continues to work tirelessly to facilitate the transfer of staff from Connex to CT Plus on 1st January 2013.

Additional questions raised

18. I have been asked a number of additional questions by Deputy Southern. My responses are set out below in the interests of providing one comprehensive answer.

19. I can confirm that the contractual terms offered to the bus drivers on 4th October 2012 were provided to us on the 24th September 2012. The Department has continued to work closely with both CT Plus and Connex since receiving this information, in order to facilitate the transfer of staff to CT Plus. A number of meetings have taken place between the Department, Connex and CT Plus, including the JACS mediation meeting that the Department requested on 10 October 2012. Please see paragraphs 9-14 above. The process has been protracted for a number of reasons including the fact that the staff in question are not employed by either the Department or CT Plus and so much of the communication has to be via Connex, as current employer.

20. The deadline for confirmation that eligible drivers wished to transfer was set down because CT Plus need to complete checks, including CRB checks, on existing drivers and on any new drivers that it may be necessary to recruit and train. These checks need to be completed well in advance of the commencement of the new bus service in January 2013. This is not a question of an "ultimatum". It is about the need of the incoming contractor to ensure that it has carried out appropriate checks, not least to protect the safety of the public of the Island. A deadline had to be set down if matters were to be concluded within the relevant timescales.

21. The Employment Relations Code of Practice on Trade Union Recognition relates to employees and their employer. CT Plus is not yet the employer of staff who are eligible to transfer. If staff who join CT Plus wish their employer to recognise their representatives or their union, then of course they have the absolute right to seek such recognition under the relevant Code of Practice of the Employment Relations Law. The question of union recognition by an employer is not a matter for the Minister. It is a matter for the employer. CT Plus has already met with staff representatives, at the mediation meeting, and it is keen to engage fully with the union at an appropriate time, once staff have transferred. For information, CT Plus have just signed a recognition agreement with Unite in Guernsey, the first within the bus service there, and they have instigated union recognition in other of their depots. CT Plus have publicly stated that they believe that where a union works well it can be a source of good in the workplace.

22. Under Clause 18.3 of the Connex Contract I am obliged to use my reasonable endeavours to facilitate the transfer of staff. That is exactly what my officers have been doing and continue to do with the assistance of the outgoing and incoming operators, JACS and staff representatives. While the situation remains dynamic I am confident of a good outcome.

23. Historic issues arising in relation to the previous change in contractor have been considered and addressed during the full course of this tender process, from 2011 onwards. It is important to note that on a service contract such as this, where the States are not the employer or owner of the existing contractor's assets, there will always be risks that it may not be possible to remove completely. To address these risks, the full co-operation of all the parties is required and my officers have been and continue to address the remaining issues.

Ongoing work: need to allow the parties to move forward

24. Given the agreement reached at the mediation meeting on 10 October 2012, it would not be appropriate for me to go into further detail about matters which the relevant parties are now addressing together.