



Economic Affairs Scrutiny Panel

MONDAY, 23rd MARCH 2015

Panel:

Connétable J.E. Le Maistre of Grouville (Chairman)
Deputy S.M. Brée of St. Clement
Deputy D. Johnson of St. Mary
Connétable M.J. Paddock of St. Ouen

Witnesses:

Mr. B. King (JCSA/Prospect)
Mr. N. Corbel (Unite the Union)

[14:00]

Connétable J.E. Le Maistre of Grouville (Chairman):

Well, good afternoon, gentlemen, and welcome. Before I start, if I could remind the public to turn their mobile devices down, either on silent or to turn them off. If you do leave during the process of the afternoon, could you please do so as quietly as possible? For the record, I will just go round the room to introduce ourselves. I am Constable John Le Maistre, chairman of the Economic Affairs Scrutiny Panel.

Mr. B. King:

Bob King, Prospect officer with responsibility for Jersey.

Mr. N. Corbel:

Nick Corbel, Unite regional officer.

The Connétable of Grouville:

Well, as I say, a very warm welcome to you, gentlemen, and thank you for coming to express your views to us. I thought it would probably be as well to give you the floor to start off with. I do not know which order you want to take it in. Perhaps, Mr. Corbel, if you would like to go first, tell us what your concerns are, and then hopefully we will be able to ask you some questions about what you put forward.

Mr. N. Corbel:

Right. Well, I shall do it as concisely as possible because you do have written submissions from Unite.

The Connétable of Grouville:

Yes.

Mr. N. Corbel:

I think as a trade union we are always aware of proposals to incorporate or privatise public sector bodies. From experience both in the Island and, of course, throughout the U.K. (United Kingdom) we have always found this, well, mostly to be to the detriment of workers, very often that is, especially in relation to the maintenance of terms and conditions. Again, often such proposals result in ... well, in the case of incorporation, in privatisation, in outsourcing, where the temptation is to look for cheaper options in terms of providing services. I think with the ports proposals you have a core service, you know, what it is expected to provide to the public, and that is the ability to enable passengers to leave and come to the Island. Its core service no doubt it will provide with ease. However, it is the other services, to some extent the engineering, the grounds maintenance, customer service, those operations that we feel may be at risk if incorporation takes place. There is, of course, the issue of handing over, you know, our crown jewels to a private body, something else we are concerned about. I note in the response to the consultation that ports are saying that the public have not shown much interest in the proposals. Well, I would suggest that once they are made aware of the reality of the situation in that prime assets that belong to the States, belong to the public, we feel they are at risk in that of being handed over to a third party with a potential for privatisation in the future. At the moment, those prime assets are being handed over at, I would say, nil cost, so there is that risk that our assets, assets which we, the people who live in

this community ... and I know I was born and brought up in Jersey and I hold dear a lot of those assets. You know, St. Catherine's Breakwater and La Folie Inn, for example, I have great memories of these places and I would not like to see and I am not sure the public would like to see our assets such as those being disposed of or handed over or being sold off, which is a worry for us. What else can I say? Incorporation does have its risks, as I said, for staff that are affected and I would say ... well, I reckon we can demonstrate, in fact, that it has not always been to the benefit of the workforce. The incorporation of postal has resulted in redundancies. It has resulted in changes to terms and conditions. The same applied to Jersey Telecom and Unite at this moment, as we speak, are involved in major issues relating to a subsidiary it set up, this agency which was set up to provide labour to the cable-laying service, G.F.F. (Gigabit Field Force), where many workers feel they are not being treated appropriately. Some workers have not been paid for months. Many of those workers are the subject of disciplinary investigations and disciplinary action. In fact, G.F.F. have made it known that they will no longer require at least ... I believe it is at least 17 of those workers. They will not be taking those people back on again. These workers joined Unite because they had genuine workplace issues and they have been treated abysmally. We have not been able to resolve those issues as yet. We have a number of cases which have been referred to the Employment Tribunal and this is a public sector set-up. Quasi privatised or semi privatised or incorporated body, it is still a public sector set-up, Jersey Telecom, and I am deeply ashamed really as a Jersey person to know that a public set-up such as telecoms could treat its workers in that way. Because the States of Jersey has always regarded themselves as a decent employer, a good employer, and to a large extent I would go along those lines, I would agree with that. But we are seeing increasing numbers or instances whereby public sector workers are not being treated as they were once in times past and that is very worrying. So in terms of incorporation, there are ... as far as the workforce themselves are concerned, despite the T.U.P.E. (Transfer of Undertakings (Protection of Employment)) like arrangements, the T.O.P.S.E. (Transfer of Public Sector Employees) transfer arrangements, we still feel there is a high risk that jobs will go as a consequence of incorporation, despite assurances being given by the chief executive and by the department and by the ports. We still feel that is a high risk. Of course, you have this major issue for the Island as to whether ... or the rights and wrongs of incorporation and handing over such a high-profile public asset to a third party. I know that is not in the best interests of the Island.

The Connétable of St. Ouen:

Do you mind if I ask a question, chairman?

The Connétable of Grouville:

Please do.

The Connétable of St. Ouen:

Could I ask you, Mr. Corbel, on what grounds do you feel that jobs and services are at risk? Is there anything to give you evidence that this is the case, such as the grounds men and others you have already commented on? Is there anything out there that makes you think that these jobs are definitely at risk?

Mr. N. Corbel:

It is from experience from making comparisons with colleagues in the U.K., from past experiences of incorporation in the Island. Jersey Telecom privatised or outsourced its cable-laying function to CH2M. You know, it probably felt it was not a core service, so it did, it moved the operation from the public to the private sector. And I fear that the ports will focus on its core activities providing the ability for passengers to move in and out of the Island. That is its core function and providing the staff required and the needs in order to deliver that function such as air traffic control, such as the technical side of the engineering services, the fire service, for example. However, there are parts which are at high risk, I would suggest, of being outsourced. I have not got any hard evidence of that. It is just a gut feeling that is from past experience.

The Connétable of St. Ouen:

Thank you.

The Connétable of Grouville:

Do you think the number of people employed at the airport could be reduced then? Do you think the airport could function with less employees?

Mr. N. Corbel:

I think the act of outsourcing will reduce the numbers of in-house staff, yes. I think that is a high probability. I mean, you are always going to have to have people to operate the services. You are always going to have to have workers in place to manage customer services, the grounds maintenance, grass cutting and this type of thing, so somebody will have to provide that service.

The Connétable of Grouville:

So the number of jobs will not necessarily reduce?

Mr. N. Corbel:

It could do. You know, the States of Jersey at the moment are tasked with identifying efficiency savings and they are taking a cut-throat attitude towards that strategy wherever they can. Wherever they can, they are not recruiting staff and service levels are being affected by that. Someone else will have to pick up those services at the expense of workers' terms and conditions.

The Connétable of Grouville:

Sometimes the term “privatisation” is used instead of “incorporation” or “corporatisation.” There is a difference inasmuch as the States will totally own the new incorporated company.

Mr. N. Corbel:

I accept there is a difference but, you know, what is the next step? Privatisation? You know, the Minister for Treasury and Resources, Senator Maclean, very recently put his thoughts forward in relation to privatising the incorporated bodies, telecoms and postal. He feels that is the way forward and he also stated ... I am paraphrasing here but I believe he stated that there would be less of a burden on States payroll. They would not be paying pensions, for example. There would not be a need to pay pensions for these people who are ... people who are privatised, so it is less of a burden on the state. If he is talking that way in relation to telecoms and postal and the other utilities, water and J.E.C. (Jersey Electricity Company), then is he viewing the ports in the same way?

The Connétable of Grouville:

In the proposed law there is a safeguard against any assets being sold off, so while you tell us that we could lose the assets, in actual fact that would be a States decision. So the assets are not effectively being given to a third party; they are given to a company owned by the States.

Mr. N. Corbel:

I would not say this will happen immediately. I mean, States laws are amended or changed at the requirement of the States of Jersey, the needs of the States of Jersey. So, you know, these laws are not set in stone. They can be altered.

The Connétable of Grouville:

Indeed. David?

The Deputy of St. Mary:

Just backing up the chairman’s point there, you referred to the States giving away the crown jewels as you call it. I mean, we have got concerns but we are here to make sure that does not happen and we are trying to introduce safeguards and we share your concern in that sense, but there are provisions which hopefully will satisfy us that that cannot happen. As the chairman said, it is not a privatisation. The States will still be very much involved in that.

Mr. N. Corbel:

I hear what you say. However, you know, as a citizen of this Island, personally I am concerned at what may lay ahead, not maybe next year, 5 years’ time, 10 years’ time. We have seen the crown

jewels, if you like, state assets sold off in the U.K. and there are huge assets here in the Island as far as the ports are concerned, treasures I would say, which belong to you and to me. The idea that at some point in the future these assets may be sold off is worrying, you know.

The Deputy of St. Mary:

I think we accept that but also we accept that the Assembly has some sort of if not veto, some provision to make sure that would never happen.

Deputy S.M. Brée:

Yes, just a quick question. You raised possible staff issues post incorporation and quoted the example of J.T. (Jersey Telecom) and G.F.F. and CH2M. Accepting if we can for the moment that incorporation will go ahead, what sort of safeguards would you like to see in place then for the existing staff, if that were possible?

Mr. N. Corbel:

Some years ago Unite managed to negotiate service level agreement or terms of transfer for staff in the public sector who were moving from the Harbour Department to T.T.S. (Transport and Technical Services) and, likewise, from the Housing Department to T.T.S.

[14:15]

We got an undertaking, which has been signed off by representatives of the Government and Unite, which protects those terms for 10 years. That was signed off about 6 years ago. Although the States of Jersey and T.T.S. are trying to worm their way out of that agreement, which I feel is a little underhand, it is still in place. We still have guarantees and undertakings that protect terms and conditions and to some extent staffing levels. Something on that line I think would be helpful.

Deputy S.M. Brée:

But that does not necessarily give an individual person any kind of job security, does it? It merely protects the terms and conditions.

Mr. N. Corbel:

Well, yes, it does. I mean, we are talking about souls here so, yes, it does give individuals peace of mind, or it has done for a good few years now within T.T.S. and Housing and Harbours. That is what the guys are looking for. That is what the staff are looking for, my membership are looking for, within the ports, peace of mind, knowledge that their jobs are safe, that their terms and conditions will be protected post incorporation. What they are saying to me at the moment is that they feel those terms are not being protected; their jobs are at risk. Despite the surveys, despite

what has been said by the department, these are genuine fears and they are expressed on a regular basis to me by the staff themselves.

The Connétable of Grouville:

Ten years is quite a long time. Workplace changes in technology, jobs do become obsolete. Is it right to tie whether it is a public body or a private body into maintaining staff contracts with terms and conditions when a job might not actually exist in 5 years' time?

Mr. N. Corbel:

Well, those members of staff and Unite have seen terms and conditions and rates of pay being eroded in the private sector for some time now. Rather than go up the terms have been dropping. The increasing use of zero hours contracts in what we would consider ... well, it is not unlawful as such but ... well, in some cases it is, but the misuse, I would say, of zero hours contracts is worrying. G.F.F. are known for employing staff on zero hours contracts when they ought to be providing permanent or fixed-term contracts.

The Connétable of Grouville:

The question I was asking really was that sometimes jobs change and so terms and conditions have to change, and to tie something in for 10 years as a set job actually might be taken over by technology.

Mr. N. Corbel:

Well, no, I am just saying that is what was achieved by Unite in regards to Housing and the Harbour Department. I would like to be able to negotiate whatever arrangements we can come to with the ports authority post incorporation if incorporation were to be supported by the States of Jersey. The workforce feel there is no protection whatsoever at the moment. That is a genuinely held belief. Those are the workers who provide cleaning, customer service, grounds maintenance, some of the engineering work. Other workers we feel are more secure in that they provide a core function to the ports, such as the airport fire service, but there are many jobs that could be hived off like that, you know, at a switch or a press of a button.

The Connétable of Grouville:

There are some safeguards, though, because on the day of incorporation all staff have to transfer on the terms and conditions that were applicable before midnight to after midnight. There are laws against unfair dismissal and so it simply is not that easy for the ports, should they wish to, to dismiss people and get rid of people in such a short time, certainly in the short term.

Mr. N. Corbel:

The ports could give notice ... this is an extreme outcome, you know, it would be extreme, I suppose, but the ports could give notice of a change of contract at any time, really, give you notice citing business need or business imperative. Workers would be compelled either to sign up to the new terms or to resign and claim constructive dismissal. There are no safeguards post incorporation. I have endeavoured to obtain some form of statement from the chief executive and it has not been forthcoming. He has been quite cagey, in fact, when it came to post incorporation, but he has given some form of commitment to saying: "I will not change your members' terms and conditions." But there is nothing in writing, if you like; there is no agreement post incorporation. You know, we have a verbal undertaking: "I will not do that. I need these staff. I cannot manage and operate an airport or harbours without those members of staff" so ...

The Connétable of Grouville:

Does that give you some comfort or not really?

Mr. N. Corbel:

I do not know if I am too much of a pessimist or not, but I have seen how workers have been badly treated in this Island and it is so easy to badly treat workers. You know, bad employers seem to get away with maltreating workers and I come across cases every week of the year. This Island should know better really and where I do highlight concerns of workers who have been mistreated, you do not hear anything from the establishment at all in support of those concerns. That is the fear, you know. It is relatively easy to transfer operations from an incorporated body to a third party, to outsource it. It is relatively easy.

The Connétable of Grouville:

As you mentioned earlier postal and the matter of redundancies that happened there, but that industry was changing quite dramatically inasmuch as there was competition and the amount of mail sent because of emails, et cetera, was reducing. So it was inevitable that staff would be lost, was it not?

Mr. N. Corbel:

Yes, I accept that the postal industry has changed but workers' terms and conditions were affected, you know, redundancies. Unite have negotiated, where required, redundancies in businesses. You know, regrettably sometimes we have to acknowledge that there is no alternative and we do what we can for those workers affected by such proposals. Generally speaking, we do reach agreements with employers on that. I do not represent postal workers, please do not get me wrong, but I do have contacts within the trade unions and there has been some grief. There have been problems. I would suggest that the postal service itself has been affected by these changes.

I mean, personally, from a personal level, the loss of the Saturday service has impacted on me. So, you know, do they provide the same level of service as they used to? You do not get the morning deliveries now in business, do you, as you used to? Whether there is such ...

The Connétable of Grouville:

The difference between ...

Mr. N. Corbel:

... whether there is such a need for it now I do not know but ...

The Connétable of Grouville:

The point I was trying to make, really, was that postal was a business which was declining in volumes, whereas the airport, everybody assumes it is going to remain at a similar level - a lot of us hope business will increase - but for that reason the amount of job losses ...

Mr. N. Corbel:

Post incorporation of telecoms, then, they moved quite a major function to the private sector, the cable-laying service. They moved it. It was moved lock, stock and barrel and it just disappeared. The workers, I believe, were not protected. I do not believe they were protected in the same way there is some protection to the ports workers, but there was no protection when they moved to a private set-up. Who is to say that will not happen with the ports? If, for example, the housekeeping staff within Harbours and Airports were advised that they will be looking for an alternative provider, what security would they have? I know there is this T.O.P.S.E. but how effective that would be under the circumstances and whether the ports would use it is another matter. That brings me on to the lack of T.U.P.E. legislation in the Island. Although we have this T.O.P.S.E. arrangement within the ports, we still have no T.U.P.E. legislation so workers who find themselves moving from one business to another are not protected. Despite campaigning on the part of Unite, the Chief Minister appears to have turned his back on such proposals. He said some time ago ... before Senator Gorst became Chief Minister he stated that he felt it was not appropriate, T.U.P.E. was not appropriate for the Island. For the life of me I cannot understand the rationale for saying that. He never really explained himself when he said that to us.

The Connétable of Grouville:

Am I right that T.O.P.S.E., the Jersey equivalent, is better than T.U.P.E.?

Mr. N. Corbel:

Well, it provides the transfer of pension rights. You know, it was specifically set up to accommodate the port proposals and short term it is effective. Workers' terms and conditions are

protected on the point of transfer. T.O.P.S.E. ... sorry, T.U.P.E., you know, it is not a solution to the problems such as that because those terms can be changed in the future with T.U.P.E. legislation.

The Connétable of Grouville:

I think perhaps if we let Mr. King ... he has been very quiet and very patient. I am sure some of the issues you will share with ...

Mr. B. King:

Sure, yes. Firstly, just to say I am not from Jersey. I am from Portsmouth.

The Connétable of Grouville:

We welcome all visitors.

Mr. B. King:

It is not that far away. But I do, however, differ because I did used to represent postal workers. I was a national official for the Communication Workers Union in the U.K. for 13 years, and you are right in one respect, is that it was very much a changing industry. But one thing I would agree with Nick on is it could have been dealt with considerably better by the employer. It was dealt with very poorly and we suffered very poor industrial relations for that period through the late 1990s into the early 2000s. But to move on to the matter at hand, I have been through several versions of incorporation under the U.K. Government ranging from ones that were real words such as "government owned," "company operate," to ones that were not real words like "contractorisation." If you try to look it up, it is not a real word, which was what we used in large sections of the nuclear industry. I represent members in all of those different sections, ones where the industry has been put out to contract and there is a consortium that bids to run that contract - so it is 100 per cent Government owned and then run by a consortium - and ones now where there is an element of worker control. So you will hopefully notice from our proposals we put in there about staff-elected director and non-executive director. Some of those, particularly large scientific organisations like the National Physical Laboratory - and I get always told off by our members for saying that is where the atomic clock is because they remind me that they do a million and one other things - have now been taken over by a board that is controlled by a couple of interested universities, including Strathclyde, so there is an academic input into it. It is run by the Government but by the people who understand the industry and organisation. So there are some good models, I think, and some bad models and some various different words for that. Our overall concern in terms of the legislation ... and I am relatively new to the Island so I apologise if my terminology is incorrect. I was asked by the JCSA to look at the draft legislation. I have been involved in one of the meetings with the chief executive in terms of the staff transfer working party, which is ongoing, but

my concern through reading through the legislation is the lack of protections. Not necessarily just in terms of terms and conditions, because I think the thing we forget when we talk about protections is the fact the States of Jersey as the employer could turn around tomorrow and propose a whole new set of terms and conditions, which we would then have to engage with you on to try and negotiate the best settlement. So I am more interested in ensuring that the appropriate machinery for those discussions is in place and that we carry forward the appropriate dialogue and the opportunity for proper input, collective input, from the trades unions. Because I think reading back through there has been a lot of productive input. I have quoted again in the submission Andium Homes, and I hate saying: "Which I am told is a success" because then everybody sniggers in the room. I am told it is a success. Our members are coming back and saying they are happy with the arrangement that has gone forward from that. But a lot of the submission is based on me being new so going round and talking to our members. So I held a number of meetings, open meetings, at the airport and a number of meetings down at the harbour and talked to our members there about what their concerns were.

[14:30]

One of the key concerns was the fact if there was a reduction in posts within the ports and airport - and you are right to say that could happen at any time, businesses change, processes change, so there could be a change or a reduction - was their loss of option at the moment they have. They could seek by redeployment to find another job somewhere else in the civil service, so it gives them a larger area to come back to. That route is cut off to them after incorporation, so if it is in order to make a proposition, Prospect's position is that if there are redundancies that come up, those people should be allowed to go back into the redeployment pool and seek employment within the civil service as an alternative to redundancy, as they could do prior to the transfer. So although we say ... and you asked Nick the question is T.O.P.S.E. better than T.U.P.E. I would say no because it has no statutory basis. If it had statutory basis, then it would be an improvement over the T.U.P.E., which is based in the European Acquired Rights Directive. It would be better, so again our proposition would be that you seek statutory basis for that. My understanding is, and I feel I am well advised on this, that actually the Chief Minister made a statement in the Assembly that he intended to follow the Cabinet Office protocol. So for those of you not familiar, in the U.K. there is a Cabinet Office protocol because T.U.P.E. does not apply to governmental transfers. They came up with their own protocol. Now, that protocol does include the protections for pensions. It is called Fair Deal and it also is considerably better worded than T.U.P.E., which is slightly arcane now. So, again, I would suggest maybe the panel look at that document. It is widely available. It is on the intranet, but I understand the Chief Minister was asked the question - I do not have the Hansard, I am afraid - in the Assembly as to whether he intended to use that and the answer was yes. I think that was in a debate around the ports and airport. That would be ...

you know, I would say that, would I not? We feel it is a well-written piece of documentation and could potentially go forward to have statutory basis, which would then relieve some of the anxieties obviously we have. In terms of the incorporation itself, our question, the bit where ... and no doubt Nick and I will disagree on this point, which is good. I have seen successful models of "govcos" or "gocos" or "contractorisations" or whatever you want to call it where the organisation has been able to exploit the assets that it has. When we have gone and talked to our members, I must admit I was quite surprised as well. So we went down to the harbour and we talked to some of the people down there and we asked them what their nervousness was about this incorporation. I invite you to go and talk to them. Theirs was they wished we would just get on with it. As per usual it was the trade union's fault for holding everything up, but we are used to global warming, everything else, Middle East, that is all us. You know, we are used to that, but the thing that I got was the guys that were sitting there were saying to me: "I can name you now 15 opportunities where we could use the port's assets to generate additional income." This is the people working there. Now, if whatever model we come up with, you know ... and do not get me wrong, from a trade union point of view I seek the same protections Nick does. We have put proposals at the end of our document about what those protections should look like. I would go a little bit further and say that I want protections for it to be referred back and further protections for the States Assembly to make decisions on issues as opposed to just the Minister for the reasons that I have put in there. But equally there is an opportunity to actually increase employment because if you are able to increase the use of assets ... I look after an organisation or I used to look after an organisation in the U.K. Serco is a company everybody is familiar with and they run a section called Serco Marine who operate the tugs, mainly for warships and nuclear submarines. These are very, very specialised assets, millions of pounds, these tugs, incredible pieces of technology. But when they were M.O.D. (Ministry of Defence) all they were allowed to use them for is to tow warships in and warships out. Now, living in Portsmouth, not that many warships - we are going to get some carriers eventually, when they make up their mind which aircraft they are going to buy - so there is not that much work. So what has happened there, we have increased employment, we have increased job security, because they are now allowed to use that asset to do private work. Not particularly glamorous: we now have fruit boats coming in and out of Portsmouth, which are towed by those assets, and that has increased the job security. I now have more people on shifts in those roles. I think that is what, when I talked to the people down the ports, they were talking about. Again, the same in the airport there is the opportunity to exploit those assets for private gain. Now, from our point of view and some of the questions I have put in our submission is what then happens to that? So the agreements we have with these organisations is we assist you to ensure you can make the gain from the private asset, but we look for a return. We look for some security in employment. We look for some betterment in terms of our members, in terms of the terms and conditions, in terms of pay, in terms of job security, pension and all the other things that are important to people. But it is simply a different way of doing it and if we can get down to the

brass tacks of it, it is all about money. If the States cannot provide the money to get that betterment, there are other models to do it and there are successful models and unsuccessful models. My overall concern, and I will close with this point, is from my previous experience of seeing good models and bad models, I do not believe there is enough detail in the legislation. I am not suggesting you should overly legislate, but the first case I arrived to on the Island and was greeted with - and I do not want this to take up too much of your time - was the tourism industry where I have a number of exceptionally unhappy members who were on the end result of possibly the worst form of sell-off I have seen. I have been through the post office. I have been through B.T. (British Telecom) in the late 1980s, early 1990s, which was atrocious. But essentially our members in tourism have effectively been abandoned and you are losing some really ... I talked to one guy who studied tourism at college and tourism at university and went to work in the tourism industry. That is all he has ever done and he is effectively now out of a job and he is coming back into the civil service. So if there was a lesson to learn on that I would say if you are looking for something to base a success story on, maybe look at Andium Homes. Do not look at tourism. But this model legislatively needs considerably more detail in terms of the transfer terms, in terms of what the protections are going to be post transfer, about how they are going to be disposed of in terms of who is making those decisions. So we talked about the land and the assets and how they would have to come back for a States decision. I would suggest to you that you may want to tie that up slightly tighter. I will close on the point there is a number of ... in the opening of the legislation, which was refreshing if not a little unusual to see, there are lots of statements by some of the consultants that were used to evaluate the project to begin with. There was a statement in there, and I cannot for the life of me remember the name of the consultant. It was a set of initials - but are they not all - that said one of the key aims is to increase productivity, yet in our discussions with the ports and harbours that has not been mentioned. In fact, I asked the question of the chief executive and the chief executive said that that is not one of the key aims to increase productivity. I raise that not because I think it should be but because it concerns me if there is that gap between what is in the actual ... and I would imagine once this is adopted it has a statutory basis so is enacted in law and all the powers that go with it. That statement comes with the law, yet it is not something that is actually part of the plan for the port incorporation. I will stop there. Thank you.

The Connétable of Grouville:

Thank you. That is very helpful. One of the things you put in your latest submission to us was that you asked the question what happens if it fails.

Mr. B. King:

Yes.

The Connétable of Grouville:

We do not have that answer but we shall ask somebody who hopefully will, but that was something quite new which we had not really thought of so that is something which we will follow up. By what you said, I assume you agree that consultation with staff has been pretty good, that the ports authority have had a good relationship with their staff and have kept them on board with what is being proposed all the way through? Would you ...?

Mr. B. King:

I would ... I cannot quote this because I am conscious of quoting things in Hansard and then being wrong, but apparently there is an employee opinion survey which has been finished but not published and I would suggest that the panel seek sight of that employee opinion survey and I will reserve my answer on the basis of you possibly getting hold of that. I am told it is completed but it has not yet been published.

The Connétable of Grouville:

We have been told that staff who do not really want to make the leap, should it happen, into incorporation, that they are being or have been offered a job within the public sector elsewhere. I do not think many have taken up that offer. I do not know whether ... why or ...

Mr. B. King:

No.

The Connétable of Grouville:

Have you any idea?

Mr. B. King:

I think the issue with that is there is an element of ... and the same with the tourism, some of the people have been forced to come back into the body of the civil service and did not want to. I think the thing with a lot of these, and I do not think it is any different from Nick's members, a lot of our people do those jobs because they want to. I know that sometimes comes as a shock nowadays and a lot of people just do jobs that they end up in, but a lot of people do those jobs because they want to and do not want to move back in. Now, what we are seeking in that is if there are then subsequent ... because at the moment if there was an issue where they were made redundant, their redundancy pool to look for other work for redeployment is the whole of the civil service. Post incorporation it will only be the ports and airports, and if that is shrinking or, as you said, changing because the roles are changing or becoming automated, prior to that they would have had the opportunity to go back. I think it will encourage more people to have some confidence in the future if we are saying to them now: "Well, look, if it does go wrong, your pool of redundancy will be the

entire civil service as opposed to just the ports and airports.” But I think the answer to your question is because people like working there. Whether they like the idea of incorporation, whether they like the idea or whether they like the current management structure or the proposed management structure, I would simply suggest that you get a copy of the employee opinion survey.

The Connétable of Grouville:

The move within the civil service may not be seen as quite a secure job as it was in the past and maybe that is one reason why people think they are just as well to stay where they are and hopefully see the vision that the C.E.O. (chief executive officer) has, which is he wants to drive his business forward and, as you say, there is the possibility of extra employment there. So that may be the reason they are not moving but that is pure conjecture.

Mr. B. King:

No, no, no, absolutely, but that is borne out by the conversations I have had is people are keen. I think the way I phrased it to somebody the other day is people are keen on the idea of incorporation; they are just not sure whether it is this incorporation that they are keen on. You know, the idea of being able to exploit the assets and increase job security, people ... there are - and this may sound strange from a trade unionist - good private sector companies. I struggle always to name them, but there are good private sector companies who will do that. I work with American software companies, not the natural proponent of fantastic staff terms and conditions, but the staff drive the profits and they are rewarded accordingly. So if you have the right structure in place, it can be ... you know, it could be a good place to work and dare I say in these hallowed rooms a better place to work potentially than the civil service. But again, you have to have the opportunity. People have to be inspired to do that and they are not going to be inspired if all they are worried about is whether their pay is going to go or whether their terms and conditions are going to be eroded. The best way to get everybody on board is to make sure that they have that security and protection. If there is confidence in the economic models, you know, there is no harm in giving those protections. There is a lot of talk in the legislation about the transfer of liability. I would argue on the current draft the transfer of liability goes straight to the staff. They are the people carrying the can post incorporation. So the States will have moved it to the organisation. If the organisation fails, as you have just said, the biggest liability I would imagine within that is going to be the staff's redundancy payments. Now, I have suggested in there - and I have a couple of private sector companies that do it - is within their deeds of incorporation there is a guarantee that they must maintain enough tangible or intangible assets that if they liquidise they can pay the gross amount for redundancy. It is not an unhealthy amount of assets to keep anyway, just in case of emergencies, but again it gives the staff the confidence that they can maintain their

employment without the risk of if the company goes badly wrong there is not going to be enough money in the pot in order to pay them redundancy.

The Connétable of Grouville:

You mentioned a staff-elected director. Is that common in other ...?

Mr. B. King:

I would not say it is common. I can give you an example where I think it has been very successful is the Transport Research Laboratory. It was one of the first organisations that - can I say the "T" word in here - Thatcher first privatised. I think it was the first organisation she sold off, and they have a staff elective. I think theirs is on a 3-year rotation, so effectively it is a non-exec director but the success in there has been when the board sit around and say: "Yes, we will do this" and all the rest of it, the non-executive director can say: "You may find when you put that out that staff are going to have concerns about this, staff are going to have concerns about that." It has traditionally been at the Transport Research Laboratory anyone. One year it was a cleaner. One year it was a senior manager of a research department. So it tends to vary and then you get that depth on the board. So I would not say it is common, but it is certainly something ... and we are now seeking that from both a scientific and staff point of view on the new board of the National Physical Laboratory as well, so that is in their proposals.

The Deputy of St. Mary:

Sorry, just to go back, if it is not a director, presumably there are other ways of doing it? I mean, consultation with ...?

[14:45]

Mr. B. King:

I think the difficulty with it is there is ... so if you have consultation with ... if you have consultation with the trade unions ...

The Deputy of St. Mary:

Nominated persons.

Mr. B. King:

... that drags us into collective bargaining, which is fine for pay, terms and conditions and all this stuff. So the advantage we have with the non-exec director is that is on a day to day basis. I have always said to employers who from a trade union point of view used to say: "No, we would like you to come in and do this and that" and I have said: "I am not very good at running companies. That

is why I am a trade union officer. I do not want to run the company.” But if you can get somebody who is on the board that is having oversight of the daily running of the business of the board with the same confidentiality as in the U.K., the Directors Act, the Companies Act applying in terms of directors’ fiduciary duties to the employer, so all of that stays in there, but it is just somebody there as a check and balance on the board. When, and I dare say it, boards sometimes get slightly carried away with enthusiasm, there is somebody there to say: “Hang on a minute, you need to consider this from the staff point of view.”

The Deputy of St. Mary:

I understand the point. It is just a question on the definition of title, really, that was all.

Mr. B. King:

Yes, I mean, in this case it has been ... they are traditionally called ... you know, they are called the staff-elected directors or staff-elected nominees. It is a non-exec, non-voting post on the board, but obviously they get a voice and the ability to maybe alert the board but have the same confidences as the board.

The Connétable of St. Ouen:

Can I chip in?

The Connétable of Grouville:

Yes, please, Mike.

The Connétable of St. Ouen:

Sorry, just to rewind a bit, you just said that companies are committed to keeping money in the pot for redundancies or whatever. How can they guarantee to keep that money there? What is in place to keep that pot of gold, if you like, if it actually goes wrong?

Mr. B. King:

To give you 2 examples, in one employer it is tangible assets, so buildings. So they maintain enough property ... it is why I have put in there that it is re-evaluated because obviously property prices fluctuate. So they maintain enough property that if the company were to go bankrupt they could sell that and meet their obligations. In one employer, which is the Commonwealth Agricultural Bureau, that I look after, it is actually both the pension scheme and the redundancy terms are secured against the intellectual property of their database, which is a worldwide database in terms of plants and agriculture that they sell and it is worth a considerable amount of money. So that is secured. The I.P. (intellectual property) against that is evaluated on a regular basis and the staff ... the pension and the redundancy terms are secured against those.

The Connétable of Grouville:

It would be slightly more difficult in this instance because the assets are owned by effectively the States so it would be difficult to put the asset, a pier, up as the security for the redundancy.

Mr. B. King:

Well, the alternative, and again we have had this with movements around pension schemes in the civil service in the U.K., is to give them effectively crown guarantee. So if you are saying: "Yes, you can sell the assets" if somebody somewhere ... it comes back to my point of liability. If we are transferring all of the liability to the incorporated body, then part of that liability is the staff's redundancy, which at the moment sits with the States. So I think the States have to make a decision, otherwise we are either transferring all the liabilities and the ability to secure that, or we are maintaining some of the liabilities, which would then give the incorporated body the ability to do what it needed in a quasi private sector way, albeit with the fact that obviously it has to come back to the States Assembly before they sell the family silver, as Nick put it.

Deputy S.M. Brée:

If I may, protection of terms and conditions; you mentioned it earlier on and in your submission you talk about it. Protection of terms and conditions does not equate to job security. There may be a reason why certain areas get outsourced or there is shrinkage in the need for the number of staff. I know that it is an area which both unions have raised is what happens to job security post incorporation should that happen. Do you think your members would feel more comfortable if they were offered, say, a minimum period guaranteed of employment, say, a year? Do you think that would have any benefit?

Mr. B. King:

I think the issue around the protection of terms is that there will not be a detriment for that period of time, so there may be a reduction in posts and I am seeking guarantees in a slightly different way that they will have access to the same redundancy pool that they had prior to transfer. But from the Prospect point of view the protection of terms is they will not have their pay reduced or their holidays reduced de facto within that period of time. So they know it is not going to be any worse. Now, I do not think what either of us are ruling out is it could be different. Under the original Acquired Rights Directive you were not allowed to make any changes to employment terms on transfer. So if you turn up to the new employer and they wanted to give you a £5,000 bonus, they were not allowed to give it to you. It was a nonsense and we went back to Europe and they reinterpreted the law to say what the protections gave you was no detriment. So our staff, our members, would be able to transfer across to the incorporated body, know that they will not be any worse off in that ... I mean, we have suggested a 3 to 5 period, 3 to 5 year. We are happier with longer, obviously, but they know they are not going to suffer a detriment. Again, it comes back to

the phrase in the T.U.P.E. legislation and the Acquired Rights Directive: "Because of the transfer." So if there are other issues, if there is automation, if roles change, we would be looking to the employer through the collective bargaining arrangements to say: "If you are moving that work to there, we want you to train our members to do that work." If it is changing, if there are new systems coming in, as you would with any employer, we expect those people to be trained up so that they are able to protect their own employment or the fallback position would be to seek redeployment through that redeployment pool.

Deputy S.M. Brée:

So your members are quite understanding of the fact that post incorporation, while their terms and conditions are protected, their jobs will not be?

Mr. B. King:

I would love to ...

Deputy S.M. Brée:

Do you see the point I am trying to make?

Mr. B. King:

No, no, no, I do, but I would love to find a country and I do not think one exists where people have a guaranteed employment for a period of time. I do not think there is one. I stand to be corrected. But at the end of the day, the States could turn round tomorrow - and I am sorry but it is a sore subject with us - as they did with tourism and say: "Sorry, there is not a job for you at the end of the month because we are putting you into the private sector." You could do that now, so there is not anything stopping the States. We would probably be quite cross about it, but there is not anything stopping you doing that. There is not anything stopping a new employer doing that and we will deal with that as trade unions deal with that, but what we are looking for is some security for those people so that they are buying into this because what is happening is the board is saying to them: "This business is going to be a success and on that basis we can guarantee you a certain set of minimum terms and conditions" which are the terms they have now. So if they change and they are better and we are able to drive some income from realising or exploiting some of those assets, fantastic, but I can assure you that me and Nick will be banging on the door and saying: "You know all that money you have made, we would like some of it for our members, please." But what we are looking for is a period of calm and a minimum guarantee that their terms and conditions are not going to be reduced for that period.

Deputy S.M. Brée:

No, the point I am trying to get to is that both the union and the members accept that there is no guaranteed job post corporation should situations change which force, say, a change in the number of staff. Like any business, situations change.

Mr. B. King:

No, no, no, absolutely. If that was a decision ... this is the difficulty where T.O.P.S.E. is worded better than T.U.P.E. but without the statutory basis it is a bit flimsy. Under T.U.P.E. if there is a job loss because of the transfer it is automatically unfair. So if there is a job loss because of a business need, we would expect that to come through the normal collective bargaining procedure and we would talk about it and we would do again what would be expected if we were going through redundancies and there was a reduction in jobs, the employer to put as its number one priority to mitigate those redundancies. So we would be looking for those people and hence - and I am sorry to keep repeating it - if you have that wider pool you take away a lot of the risk of people losing their jobs if there are other jobs to move them into. But in terms of the protection, this is about protecting the minimum terms and conditions, so the terms and conditions they transfer, for a period of time to give them calm around that. I do not know whether Nick's view on that is different to mine but ...

Mr. N. Corbel:

It is not.

Deputy S.M. Brée:

Okay.

The Connétable of Grouville:

If we had, say, 3 years then, does it not just delay the inevitable, the concerns you have on ...? If there is no protection at all after day one why does waiting 3 years help or 5 years?

Mr. B. King:

Well, because what it does is it gives some credence to ... it is not necessarily the 3-year period. It is the fact that the employer is confident enough in its economic model that it knows it is not going to have to do anything drastic outside of the normal day to day issues of business within that 3-year period. So it is giving some confidence. I mean, you know, from what I have read, and I have not had access to all of the detailed economic modelling, this is something that is a 25-year plan. So if there is not certainty about the first 3 years, how can we be certain about the next 22 after that? You know, if it is modelled correctly then it should be fairly easy for the employer to just say: "Yes, we can guarantee minimum terms of 3 years. It is really not going to affect us because

what we are going to be doing in the first 3 years is growing the business. We are going to be bringing more income in, not less, so meeting those terms and conditions is not going to be a problem.” It is a confidence thing more than anything else.

The Connétable of St. Ouen:

So can I go back to Mr. Corbel? You mentioned on a couple of occasions the airport fire service. My understanding is in the airport fire service there has to be a number of firemen in service at the airport. Is your concern that there will always be jobs for them but it is their terms and conditions? Is that what you are ...? There has to be firemen. There has to be a certain number, so is it the terms and conditions that you are more concerned about in the future?

Mr. N. Corbel:

I think, generally speaking, we are concerned about the terms and conditions for all workers within the ports and the prospect of those being eroded at some point in the future. The airport fire service provides a core function to the service and I would not expect those jobs to be at risk. Minimum numbers, yes, I mean, you are always going to require a certain number of fire fighters in order to ensure that it is able to operate; the airport is able to operate. It is other workers. It is workers who do not provide what could be seen as part of the core function of the service who may well be at risk. I think they are more at risk of their numbers going down, of their services being outsourced to a third party.

The Connétable of St. Ouen:

That is fine. I just wanted to clarify because you lumped the fire service in with those people. I know what you are saying about the other people but ...

Mr. N. Corbel:

No, no, no, like Prospect's air traffic control colleagues and the specialised engineering section, they do perform a core function in my view and are less at risk of being outsourced.

Mr. B. King:

Sorry, the difficulty ... and the same with the fire service and the A.T.C.O.s (air traffic control officers) is the difficulty usually with it is if there needs to be cost cutting or savings to be made and you cannot because there is a statutory provision or regulations that say you have to have a minimum, it is then the support to those that disappears. So, you know, you may have the right amount of firemen but the fire engines do not work because we have had to reduce the number of mechanics or we reduce the number of air traffic engineers. In fact, we have at the moment some serious concerns over air traffic engineering where it appears to be being merged with the communications department who look after the emergency services radios, and merged into one

department. I have air traffic engineers repairing car park barriers, so that may be a question to be asked. Our view is that the communications should come back into T.T.S. It should not be part of the incorporation. It should go back into T.T.S. and be a specialised function within there. Air traffic and engineering ... or, sorry, air traffic systems specialists, to give them the appropriate title, should be maintained within the airport. You know, these are safety critical roles, highly trained specialists. These guys are licensed and regulated and to blur those kinds of things is like, you know, having a fireman-slash-gardener. It just really should not be done.

The Connétable of Grouville:

Have you any other questions, David?

The Deputy of St. Mary:

Do not think I have, no.

The Connétable of Grouville:

Mike?

The Connétable of St. Ouen:

No, no, no.

The Connétable of Grouville:

I do not know, gentlemen, if you want to sort of sum up anything, if there is anything want to add to what has been said so far? It has been very useful. We have gained a lot of information from you both, so thank you very much for coming.

Mr. B. King:

Okay, thank you.

Deputy S.M. Brée:

Indeed, thank you very much for your time.

Mr. N. Corbel:

Thank you.

[14:58]