

STATES OF JERSEY
Public Accounts Committee
Compromise Agreements

TUESDAY, 8th MAY 2012

Panel:

Senator S.C. Ferguson (Vice-Chairman)
Deputy R.J. Rondel of St. Helier
Mr. C. Swinson (Comptroller and Auditor General)
Mr. C. Evans (Independent Member)
Mr. A. Fearn (Independent Member)

Witness:

Mr. T.A. Le Sueur (Former Chief Minister)

Also Present:

Mr. M. Robbins (Scrutiny Officer)

[12:35]

Senator S.C. Ferguson (Vice-Chairman):

We will start with the health warnings, I think. You should have a copy of the health warning ...

Mr. T.A. Le Sueur:

I have a copy and I have read it.

Senator S.C. Ferguson:

... which you may well have read before and we also have the protocol on photography, that if there are any photographs they are taken before we start the hearing. Have you any objection to having your picture taken, Sir?

Mr. T.A. Le Sueur:

I have no objection to my picture being taken before the hearing starts.

Senator S.C. Ferguson:

So if we do the housekeeping and the admin stuff. So if you would like to say who you are what your position is for the benefit of the transcribing ladies.

Mr. T.A. Le Sueur:

Certainly, I am Mr. Terry Le Sueur, formerly Chief Minister and previously Minister for Treasury and Resources and Member of the States.

Mr. A. Fearn (Independent Member):

My name is Alex Fearn, I am an independent member of the Public Accounts Committee.

Deputy R.J. Rondel of St. Helier:

I am Richard Rondel, Deputy of St. Helier 3 and 4.

Mr. C. Evans (Independent Member):

I am Chris Evans, an independent member.

Senator S.C. Ferguson:

Sarah Ferguson, Vice Chairman of the Public Accounts Committee.

Mr. C. Swinson (Comptroller and Auditor General):

Chris Swinson, Comptroller and Auditor General.

Mr. M. Robbins (Scrutiny Officer):

Mick Robbins, Scrutiny Officer.

Senator S.C. Ferguson:

Okay, gentlemen, have you finished? And lady? I think you need to ask the audience if they want to be filmed. I think this is the point at which we start saying: "Rhubarb, rhubarb, rhubarb" and it sounds as if we are talking.

Male Speaker:

Thanks very much.

Senator S.C. Ferguson:

Thank you. Thank you for that. When and how did you first become aware that the former Chief Executive had concerns about the political position in the Island?

Mr. T.A. Le Sueur:

That is a very broad question and I suppose the answer is probably 2005.

Senator S.C. Ferguson:

How did you become aware?

Mr. T.A. Le Sueur:

At that time there was the transition in progress between the committee system and the ministerial system and the Policy and Resources Committee had put forward various proposals for a system which they believed was the best one to work going forward. That was subject to some considerable discussion and amendment, some which were successful, as a result of which we ended up with a system which was more fragmented than perhaps it should have been and caused doubts in the mind of the then Chief Executive as to whether this was a system which could operate efficiently going forward.

Senator S.C. Ferguson:

How did he raise it? Did he raise it ...

Mr. T.A. Le Sueur:

He raised it with the then President of P. and R. (Policy and Resources), Senator Walker.

Senator S.C. Ferguson:

When did you hear about it?

Mr. T.A. Le Sueur:

As Vice-President of Policy and Resources and a member of the Human Resources Sub-Committee of the Policy and Resources Committee.

Senator S.C. Ferguson:

Were you Chairman of the H.R. (Human Resources) Sub-Committee?

Mr. T.A. Le Sueur:

I do not believe I was, no; I was a member.

Senator S.C. Ferguson:

How did you react to the former Chief Executive's concerns?

Mr. T.A. Le Sueur:

I felt they were justified. He had been recruited on the basis of certain expectations and as a result of States decisions his position was different from what it might otherwise be.

Senator S.C. Ferguson:

So how did ... so you did not think that he had over-reacted or anything like that?

Mr. T.A. Le Sueur:

That is a matter of judgment. One of the issues for your committee is that of risk assessment and whether that was a serious risk or not. In my view there was a serious risk that his concerns would be translated into action.

Senator S.C. Ferguson:

So it was ... who was dealing with the risk then?

Mr. T.A. Le Sueur:

I think each member of the Human Resources Sub-Committee made their own evaluation so you would have to ask them individually. I made my personal evaluation that the risk of losing the then Chief Executive was sufficiently large to make it worthwhile varying the terms of his contract, and the benefits that we would obtain by him remaining in office would outweigh the potential, maybe unlikely, cost of doing that. That was very much a subjective judgment and a personal judgment and other committee members presumably felt the same way since we came to a decision to vary the contract.

Senator S.C. Ferguson:

Yes, what sort of ... sorry.

Deputy R.J. Rondel:

Could I just ask, you said that was the view you felt of most of the committee. Was that a minuted committee decision?

Mr. T.A. Le Sueur:

The decision to vary the contract was a minuted decision, the views of individual members were not sought or recorded.

Deputy R.J. Rondel:

Was it unanimous, did you feel, within the committee?

Mr. T.A. Le Sueur:

It is hard to remember back to 2005 now but I think it probably was.

Deputy R.J. Rondel:

Okay, thank you.

Senator S.C. Ferguson:

Yes, did you think you had sufficient advice on how to handle issues of the type raised by the former Chief Executive?

Mr. T.A. Le Sueur:

One can never have too much advice. It is difficult in a situation like that where one normally would be advised by the Chief Executive but obviously he cannot advise in situations relating to his own particular circumstances. So we had to rely on our own experience and judgment and, to the extent there was guidance from the Human Resources Department from the States at that time no doubt should we felt we needed it we would have sought it.

Senator S.C. Ferguson:

So how did you deal with the risks? Did you make notes, did you minute them, how did you evaluate the risks?

Mr. T.A. Le Sueur:

There was nothing formal that I am aware of, it was very much a gut feeling. That is the sort of thing which I think one normally would do in the light of experience, both in the States and commercially, you do not always minute the detail of every decision that you make.

[12:45]

Senator S.C. Ferguson:

Looking at the 2 and half times salary which was asked for, was it your opinion that ... how did you know that that was a reasonable level to look at?

Mr. T.A. Le Sueur:

I do not think we were in a negotiating or mathematic position, we were just discussing a potential variation of the contract in the form ... it was not particularly subject to negotiation.

Senator S.C. Ferguson:

You felt the risk was so high?

Mr. T.A. Le Sueur:

I felt that the risk of losing the individual was considerable. The risk of having to ever implement that clause was perhaps relatively low.

Senator S.C. Ferguson:

Sorry, you said that the Chief Executive had considerable concerns. You thought that he was justified and yet you say that the risks were low. Why do you think the risks were low?

Mr. T.A. Le Sueur:

No, I said that in the event of concluding a compromise agreement the Chief Executive at the time would then have been reassured and clearly with nothing else changing since that time there would be no reason for him to then say: "Well, that is not what I wanted." If you enter into a compromise agreement or enter into a change in contract like that, you assume that both sides, once they have agreed to the change in contract accept that that is the way forward.

Deputy R.J. Rondel:

Did you not consider that the offer was in fact so large that it could have been the other way, quite attractive to the Chief Executive to leave?

Mr. T.A. Le Sueur:

Yes, but it could not be invoked just at the drop of a hat. There was no expectation in 2005 that having changed the contract he would then leave the following day or even the following month or year.

Senator S.C. Ferguson:

So you really felt that you had had sufficient advice on how to handle issues of the type raised by the former Chief Executive?

Mr. T.A. Le Sueur:

At the time the uppermost objective in our mind was to achieve a transition to the ministerial system of government for which it was imperative that we had good advice at the highest professional level.

Senator S.C. Ferguson:

Yes, but what about the advice to deal with the issues raised by the Chief Executive and the changing contract.

Mr. T.A. Le Sueur:

The advice there, I do not have any recollection of any particular firm detailed advice, it was a matter of discussion by the committee at the time.

Senator S.C. Ferguson:

Yes, so far as you were concerned the Chief Executive gave you 2 and half times his salary as one of the things he wanted and you just accepted it. Did you not query that? Did you not check anywhere to see whether that was reasonable?

Mr. T.A. Le Sueur:

I suppose the simple answer is probably not, because it is hard to remember 6 years ago now but I think my honest answer now would be probably not.

Senator S.C. Ferguson:

Why not?

Mr. T.A. Le Sueur:

I suppose because there was a general consensus view of the committee that this was a necessary thing to do.

Senator S.C. Ferguson:

You felt that the ...

Mr. T.A. Le Sueur:

I think the decision would not have changed whether it had been 2 and a half times, 2 times or 3 times.

Deputy R.J. Rondel:

So there was no measure taken for that figure from anywhere?

Mr. T.A. Le Sueur:

No. The risk of losing that person at that time was felt to be an unacceptable risk.

Deputy R.J. Rondel:

At any cost is what you are saying really.

Mr. T.A. Le Sueur:

At any reasonable cost. Our view was that that was a reasonable cost in relation to the whole operation.

Senator S.C. Ferguson:

But do you really think that that was protecting the States interests?

Mr. T.A. Le Sueur:

Absolutely. To go into a changing government of the magnitude suggested without anyone effective at the top would have been asking for trouble for the whole Island.

Senator S.C. Ferguson:

But the effect of the amendments have been such that the job which he was expected to do bore no relation to the one that had been advertised?

Mr. T.A. Le Sueur:

It had certainly changed in many ways. I would not say "bore no relation" but it had changed in various matters.

Senator S.C. Ferguson:

Did you not think that there might be future problems coming up with relation to that?

Mr. T.A. Le Sueur:

At the time there were enough issues dealing with the change from committee to ministerial system that we were not looking for potential problems in the future, we were dealing with the then and there.

Senator S.C. Ferguson:

So you could not see ... because at the time nobody quite knew who was going to be Chief Minister, did they?

Mr. T.A. Le Sueur:

No.

Senator S.C. Ferguson:

So could you not see any problems relating to that?

Mr. T.A. Le Sueur:

I think had there been a different Chief Minister appointed in 2005 there might well have been problems but that is a very hypothetical question and I think it was one of the risks which the former Chief Executive saw and wanted to protect himself against.

Senator S.C. Ferguson:

But you did not consider that to be a risk?

Mr. T.A. Le Sueur:

Yes, but that is why I say on the balance of risks we felt that change to the contract was a justifiable action.

Senator S.C. Ferguson:

Right, and what other risks have you identified?

Mr. T.A. Le Sueur:

As you say, there is a risk that you might not have achieved the political membership of a Council of Ministers that you would have felt ideal. It might have - to put it colloquially - gone pear-shaped because when you are making a transition at that stage one can never be certain of the outcome. But they were risks which were, I suppose, there in one's mind but certainly not in the sense of them being measurable.

Senator S.C. Ferguson:

But you say that you did not make a formal note of the risks that you had identified?

Mr. T.A. Le Sueur:

No.

Senator S.C. Ferguson:

You did not do anything about them?

Mr. T.A. Le Sueur:

I was talking about risks there of the more political nature in terms of the future operation of the States. That was not a risk which a Human Resources Sub-Committee would necessarily minute as part of their function. It might have been a

risk within the Policy and Resources Committee and that is why their objective was to implement a change in the system in the best possible way.

Senator S.C. Ferguson:

Sorry, I do not quite follow that because effectively you were having to deal a political problem both at the sub-committee stage and at that the ...

Mr. T.A. Le Sueur:

No, that was not a political problem, it was an employment problem. It may have been ... it was political to the extent that it involves the States as a body but it was a problem relating to the employment of an individual.

Senator S.C. Ferguson:

Yes, basically you have a risk that there could be ... there is a trigger clause in the contract. What actions did you put in place to make sure that that did not happen?

Mr. T.A. Le Sueur:

That you endeavoured to operate as the Council of Ministers in the best possible way in the circumstances.

Senator S.C. Ferguson:

Did the committee make other people aware of the trigger clause?

Mr. T.A. Le Sueur:

I cannot give you an honest answer to that one. I cannot remember whether that was minuted it or not. Certainly it would have been minuted in a sub-committee of the Policy and Resources Committee and would probably have been reported in some way to the members of that committee. Whether that was done formally or not I cannot recall.

Senator S.C. Ferguson:

According to the report which we have been given, I think it says there was no formal notification to the P. and R. Committee.

Mr. C. Swinson:

On the matter of the information, I am informed by the Greffier of the States that the minutes of the sub-committee were not formally reported.

Mr. T.A. Le Sueur:

That is correct.

Senator S.C. Ferguson:

All right, so would P. and R. know about it?

Mr. T.A. Le Sueur:

Because the President of Policy and Resources may well have approached members on an individual basis.

Senator S.C. Ferguson:

Did you tell anybody else about it?

Mr. T.A. Le Sueur:

No.

Senator S.C. Ferguson:

Why not?

Mr. T.A. Le Sueur:

Because it is not my place to. I was a member of the committee, if information was going to be provided to members of Policy and Resources Committee it should be provided by the president of that committee.

Senator S.C. Ferguson:

Yes, but when you became Chief Minister did you not notify people?

Mr. T.A. Le Sueur:

That was more than 3 years after the event when things appeared to have settled down and certainly there was no particular reason for me to think about mentioning it because to my mind it had passed into the distance as not likely to be implemented.

Senator S.C. Ferguson:

Right, so the Chief Executive, though, has from time to time come to you with concerns about the nature of ... if we come forward to 2005 when you were Chief Minister ... sorry, not 2005, 2008. I apologise. From time to time the former Chief Executive has been concerned about the nature of his relationship with the Minister for Treasury and Resources and you have just said that you were not ... you did not think the trigger clause was going to be activated. Were you not aware of the concerns of the Chief Executive?

Mr. T.A. Le Sueur:

I was aware there were sometimes differences of opinion between the Chief Executive and different Ministers at different occasions. That would normally be part of the normal activities of government and within normal limits it is perfectly reasonable and normal behaviour. You have disagreements which you resolve generally amicably.

Senator S.C. Ferguson:

So you were not aware of the differences of opinion?

Mr. T.A. Le Sueur:

I was aware of differences of opinion but that does not mean that every difference of opinion generates a claim for the implementation of what is a fairly extreme clause.

Senator S.C. Ferguson:

What were the Chief Executive's concerns then, as expressed to you?

Mr. T.A. Le Sueur:

The Chief Executive did not specifically express concerns other than in the sense that it can irritating to be challenged unnecessarily.

Senator S.C. Ferguson:

I am sorry, can you expand on that?

Mr. T.A. Le Sueur:

It is very difficult without going into the individual circumstances which, in view of the implementation of the compromise agreement, I am reluctant to do.

Senator S.C. Ferguson:

Well, if you knew of the concerns ...

Mr. T.A. Le Sueur:

I knew of the concerns ...

Senator S.C. Ferguson:

... what did you do?

Mr. T.A. Le Sueur:

Spoke to the Ministers concerned.

[13:00]

Senator S.C. Ferguson:

The Minister for Treasury and Resources was quite happy with the results of that, was he?

Mr. T.A. Le Sueur:

On previous incidences, yes. In January 2011 clearly there was a situation which did not get resolved in the way that I would have hoped.

Deputy R.J. Rondel:

Sorry, we could we just go back a little and ask specifically what the Chief Executive's concerns were to you? Could you elaborate a little bit more on what was said?

Mr. T.A. Le Sueur:

No, I think it was just that the Chief Executive has a role to fulfil as a chief executive, the Minister has a role to fulfil as a Minister and I think sometimes one tried to do the other's job.

Deputy R.J. Rondel:

But did the Chief Executive come to you and give his concerns to you? What specific concerns did he raise with you?

Mr. T.A. Le Sueur:

The only specific concerns were that one Minister in particular tended to be a bit volatile.

Senator S.C. Ferguson:

Did you feel that he was justified in his concerns?

Mr. T.A. Le Sueur:

I think we are all different and we express our views in different ways so while there are ways in which I might express certain views, other people express them differently and some people may take exception to a particular way in which people speak. That does not make the views incorrect and it may be people's reactions ...

Senator S.C. Ferguson:

Did you think he was justified?

Mr. T.A. Le Sueur:

The simple answer is yes and no, because while there may have been concerns there, I think there were justifiable concerns in both directions.

Senator S.C. Ferguson:

So you raised this with the Minister concerned, is that all you did? The Chief Executive has concerns, what exactly did you do about it?

Mr. T.A. Le Sueur:

Other than talking to the Minister concerned and talking to the Chief Executive, there is very little that one can do.

Senator S.C. Ferguson:

Do you think your actions were effective, or not as effective as you would have liked or what?

Mr. T.A. Le Sueur:

Not as effective as I would have liked because I think the present system could be improved upon and the Comptroller and Auditor General alludes to that in his recommendations.

Mr. A. Fearn:

Can I just clarify, were the concerns raised as part of the annual review process that you had with the former Chief Executive?

Mr. T.A. Le Sueur:

No, they tended to be just as an aside when you ... well, you know, if you are working alongside one another you do not wait 12 months to mention these things but you mention in passing. But it was in the sense of: "So and so was a bit stropky this morning."

Mr. A. Fearn:

Because one would expect that the formal appraisal process to be the mechanism to capture any ...

Mr. T.A. Le Sueur:

Yes, that is right, and indeed there was a formal appraisal process, although I understand it may not have been recorded as thoroughly as perhaps I would have liked.

Senator S.C. Ferguson:

Yes, because you presumably, going on to the formal appraisal process, saw the annual self-assessment. What did you do with them?

Mr. T.A. Le Sueur:

Discussed them with the Chief Executive at the time and the facilitator who was there to help me and help produce a more formal performance assessment than had previously been undertaken. So at that time in 2010, I think it was, there was a full performance review involving a 360 degree feedback with senior officers and Ministers.

Mr. C. Evans:

How was that facilitation provided?

Mr. T.A. Le Sueur:

With an external person from the U.K. (United Kingdom).

Mr. C. Evans:

From an organisation or ...?

Mr. T.A. Le Sueur:

Yes.

Mr. C. Evans:

What, a specialist consultant?

Mr. T.A. Le Sueur:

Yes, I could not tell you off hand the credentials of the organisation but he is a recognised facilitator in that respect and author of various books on the subject.

Senator S.C. Ferguson:

Why did you leave it until 2010? Why did you not do that starting in 2009?

Mr. T.A. Le Sueur:

Effectively I had been in the post ... those reviews were done in January of each year and in 2009 I had been in post for roughly one month. I was getting my feet under the table and a 2009 review would have been effectively a couple of weeks' work review. It may well be that January is not the best time to do such a review but effectively the first review was done after 12 months.

Senator S.C. Ferguson:

Yes, are you surprised that there is no record of the review on the personnel file?

Mr. T.A. Le Sueur:

Yes.

Senator S.C. Ferguson:

Did you make a record to go on file?

Mr. T.A. Le Sueur:

I made a record which I ... I assisted in the making of a record which I expected to be on the file.

Senator S.C. Ferguson:

The only thing on file is the annual self-assessment.

Mr. T.A. Le Sueur:

Then I cannot comment other than to express my surprise.

Deputy R.J. Rondel:

Who would have been responsible for ensuring that should be on file?

Mr. T.A. Le Sueur:

That should have been the Human Resources Department of the Chief Minister's Office.

Senator S.C. Ferguson:

Your first assessment, performance appraisal, with the Chief Executive, that was just you and the Chief Executive, was it?

Mr. T.A. Le Sueur:

The first formal assessment was in 2010 and that was the one which involved a variety of individuals, including myself.

Senator S.C. Ferguson:

So there was no assessment in 2009?

Mr. T.A. Le Sueur:

No, as I say, I had been in post at that stage for roughly one month.

Mr. A. Fearn:

Was there any handover comments from the previous Chief Minister?

Mr. T.A. Le Sueur:

Not really formal, not in any formal way because I had worked with the previous Chief Minister over the previous 3 years and so I had a working relationship already.

Senator S.C. Ferguson:

So in 2009 then you had no discussion of performance with the former Chief Executive.

Mr. T.A. Le Sueur:

I believe in 2009 we set some performance targets for the year 2009 which would have been reviewed in 2010.

Senator S.C. Ferguson:

Those were recorded?

Mr. T.A. Le Sueur:

To the best of my knowledge. Frankly, having agreed the targets I presume that they went on the file.

Senator S.C. Ferguson:

Did the former Chief Executive sign off to say that he had received the comments and agreed them?

Mr. T.A. Le Sueur:

I believe so but certainly we ... the working relationship that I had with the former Chief Executive was a very easy going one and certainly to the best of my knowledge we had agreed the terms and they were on the file. Without seeing the file to refresh my memory, in 2010 when I did the first review, I would have presumably looked back over those targets for 2009 to assess the extent to which they had or had not been fulfilled.

Deputy R.J. Rondel:

What would the process have been that they would have been put on the file physically? Who would have ...?

Mr. T.A. Le Sueur:

I am not aware of the process.

Deputy R.J. Rondel:

Which person or position would have been ultimately responsible for making sure? I know it is the H.R. Department but who within that department?

Mr. T.A. Le Sueur:

Well, presumably the Head of the H.R. Department takes responsibility for ensuring that files of individual members of staff are kept up to date and complete. It may well ... one of the things, if I could interject at that stage, is that perhaps while I did a performance review of the Chief Executive it is for the Chief Executive then to do the performance reviews of his managers to ensure that they are doing what they are supposed to be doing. I do not get directly involved in that level of review.

Senator S.C. Ferguson:

So, anyway, you had the reviews, you do not know ... unfortunately you cannot give us any answers as to what has happened to all the paperwork that should have been in the files and you have obviously had concerns expressed to you by the former Chief Executive about some of the Ministers, did you not think of any actions that might have been useful for Ministers dealing with their chief officers?

Mr. T.A. Le Sueur:

Certainly there is scope for clarifying and improving the relationship ... the formal arrangements between Ministers and officers and indeed between Ministers themselves. One of the problems, I think, that we have in the States organisation at present is that the organisation is a slightly weird structure in that you have a Council of Ministers with no collective responsibility, the Head of the Civil Service is the Chief Executive but the employer is the States Employment Board which is now not even a sub-committee or composed of Ministers but appointed by the States. So you have a very imperfect organisational structure within which to work.

Senator S.C. Ferguson:

Yes, but did you not get together with the H.R. Director to look at ways in which you should advise Ministers how to deal with chief officers and so on?

Mr. T.A. Le Sueur:

We have had 3 chief officers in Human Resources in the 3 years that I was there and they had a multitude of things to do and, with all due respect, dealing with a relationship with Ministers would come fairly low down by list of priorities of things they had to do. There were massive changes that needed to be done in terms of a spending review of which you are no doubt well aware, and the staffing implications which that required for the organisation as a whole. So any head of the Human Resources Department would have been more than fully occupied in planning that sort of thing which to my mind was far more relevant to their task.

Senator S.C. Ferguson:

Yes, but surely if you were going to get something going properly you needed to be sure that the relationship between your Ministers in general and their chief officers was working. Some of them had not been Minister before and perhaps needed advice.

Mr. T.A. Le Sueur:

Ministers coming into office, just as States Members coming into office, they would certainly need an induction and there is always room for development and improvement in that sort of process. I do not see that that is necessarily particularly relevant to the compromise agreement here.

Senator S.C. Ferguson:

Surely it is the basis of this particular compromise agreement because there appeared to be concerns expressed by the Chief Executive which you are aware of in regards to his relationship with a Minister and it might have been perhaps a good idea to have some sort of guidance note for Ministers as to how they ought to deal with their Chief Officers.

Mr. T.A. Le Sueur:

Yes, I have thought of that in the weeks and months since. Equally of course there were concerns expressed by Ministers about Chief Executives. It was not a one-way process. It was 2-way process.

[13:15]

Ideally what you need to have is some sort of process of conciliation and mediation but within the structure that we have that becomes quite tricky. Who is the employer, who is the employee? How do you mediate that as such in that sort of situation where you have a chief executive who on the one hand is head of the civil service, employed by the States of Jersey and the employer is the States Employment Board.

Senator S.C. Ferguson:

So given the advantage of 20/20 hindsight, what would you have done differently?

Mr. T.A. Le Sueur:

I might have shared my concerns with the head of the Jersey Advisory and Conciliation Service to see if he had any bright ideas.

Senator S.C. Ferguson:

You would not have shared it more with the Council of Ministers perhaps?

Mr. T.A. Le Sueur:

No, I do not think so. You cannot really discuss in the Council of Ministers where your Chief Executive is the Operating Officer ... you cannot resolve that very easily in a situation where you have no particular organisational structure and every Minister is a Minister unto himself.

Senator S.C. Ferguson:

How would you have handled the relationship better, do you think, looking back on it now? If you were advising somebody today?

Mr. T.A. Le Sueur:

Ensure that there is some means of mediation, independent mediation. I did not feel that I could be independent and I did not, at the time, see any particular solution.

Deputy R.J. Rondel:

Do you feel you acted as the mediator at the time?

Mr. T.A. Le Sueur:

To the extent what one can, yes, but I was aware it was a very imperfect situation in which to mediate.

Deputy R.J. Rondel:

Because of the fact you were too close to ...

Mr. T.A. Le Sueur:

Yes, I was too close to both sides of it.

Deputy R.J. Rondel:

What were the concerns from the Minister's side about the Chief Executive?

Mr. T.A. Le Sueur:

I do not think I want to go into those concerns in a public hearing because they are not relevant to the terms of reference of this discussion. But they were concerns and that is a normal situation. Staff will be concerned about some of the actions of their superiors and superiors will be concerned about some of the actions of their staff and that is a healthy situation to be in.

Senator S.C. Ferguson:

Were there any other difficult relationships between Ministers and officers where you found it necessary to intervene?

Mr. T.A. Le Sueur:

Generally, no, because ... let us put it into context, the relationship between a Minister and his chief officer is normally very good 90 per cent of the time. You will get the odd disagreement which is natural.

Senator S.C. Ferguson:

How many disagreements have come to you, apart from the one we are talking about or that underpins this?

Mr. T.A. Le Sueur:

Certainly none at a formal level.

Senator S.C. Ferguson:

Informal?

Mr. T.A. Le Sueur:

Not that I can recall. They would only come to me had they not been resolved previously. I am just trying to think ... again, it is difficult, even if I could think of any, to be able to relate them in a public hearing.

Senator S.C. Ferguson:

I am not asking who, I am saying how many.

Mr. T.A. Le Sueur:

Few, if any.

Senator S.C. Ferguson:

How many is few?

Deputy R.J. Rondel:

You cannot think of one at the moment?

Mr. T.A. Le Sueur:

No. I would hate to say none but there might have been one or 2. But you could have certainly ...

Deputy R.J. Rondel:

But you cannot think of any particular one?

Mr. T.A. Le Sueur:

... counted on the fingers of one hand.

Senator S.C. Ferguson:

As you gather, we have had a public hearing with the Minister for Treasury and Resources and one of his comment was that there had been no complaint about his bullying nor any investigation of such a complaint. Mr. Le Sueur, are you aware of any complaints that might have been investigated?

Mr. T.A. Le Sueur:

Of the bullying by whom?

Senator S.C. Ferguson:

Well, the Minister for Treasury and Resources said there has been no complaint about his bullying.

Mr. T.A. Le Sueur:

No, and I do not think there have been. I am not aware of any complaints about bullying. Expressing oneself strongly can be interpreted by some people as bullying, other people it can be forthright comments. I am not a human resources expert to be able to judge when a forthright comment becomes bullying. I would expect that both an experienced Minister for Treasury and Resources and an experienced Chief Executive accept the fact that sometimes comments and criticisms can be expressed quite firmly.

Senator S.C. Ferguson:

Yes, I have heard the current Chief Minister say that his job is very much part of co-ordinating and so on, would you see that this sort of conciliatory role is part of the job of the Chief Minister? To keep the team organised and working properly.

Mr. T.A. Le Sueur:

Yes, keeping the team organised and working properly is certainly part of the Chief Minister's role. Conciliation should not be a major part of his role because ideally one should not need to be in a situation of having to conciliate on many occasions.

Senator S.C. Ferguson:

You do not feel that you might have benefited from the use of something equivalent to Mrs Thatcher's handbag?

Mr. T.A. Le Sueur:

Mrs Thatcher has a metaphorical brick in her handbag, I have a feather in mine.

Senator S.C. Ferguson:

One thing that does intrigue me, Mr. Le Sueur, when Mr. Walker was Chief Minister, I do not think he had a Deputy Chief Minister, did he?

Mr. T.A. Le Sueur:

I hope he did because I was that person.

Senator S.C. Ferguson:

Oh right, sorry. [Laughter] It is a long time ago, sorry. What did you see your role as?

Mr. T.A. Le Sueur:

Deputising for the Chief Minister in his absence, be that at the States in question time or on formal occasions.

Senator S.C. Ferguson:

You did not see it as part of your role to interfere with the running of the Chief Minister's Department?

Mr. T.A. Le Sueur:

No.

Senator S.C. Ferguson:

Or make suggestions directly to the Chief Executive?

Mr. T.A. Le Sueur:

No, certainly not. Recommendations to the Chief Executive need to be made by the Chief Ministers. If you have 10 Ministers all making recommendations to the Chief Executive, that is a recipe for chaos.

Senator S.C. Ferguson:

Right, when the Chief Executive warned of difficulties with the Minister for Treasury and Resources, was that a surprise?

Mr. T.A. Le Sueur:

I think you may be putting in the former Chief Executive's mouth there. The Chief Executive expressed concern at some time about the way in which the Minister concerned conducted himself.

Senator S.C. Ferguson:

That was? Remind me, that was when?

Mr. T.A. Le Sueur:

That would have been throughout the term of office of the Minister because different personalities act in different ways.

Senator S.C. Ferguson:

So starting in 2009?

Mr. T.A. Le Sueur:

Yes. But not to the extent of any major difficulty, he would just say: "So and so was a bit stropky this morning" and that was that. It equally works both ways.

Senator S.C. Ferguson:

So you were not surprised when the Chief Executive was concerned about the difficulties?

Mr. T.A. Le Sueur:

I was surprised that ... to receive the comments of the Chief Executive in January 2011, yes.

Deputy R.J. Rondel:

Did you not feel then that it would be disruptive or cause problems within the department to have friction between the 2?

Mr. T.A. Le Sueur:

Tension can be healthy and can lead to positive outcomes provided it is within certain limits.

Deputy R.J. Rondel:

Did you not feel that this was a problem on the horizon that should have been dealt with at that time?

Mr. T.A. Le Sueur:

No, I do not think so. Problems on the horizon, effectively if you analyse things you can see hundreds of problems on the horizon, it is only when they get closer into view that they become major problems.

Deputy R.J. Rondel:

When he was speaking to you about the Minister for Treasury and Resources, you felt that at no time it was enough of an issue to warrant any positive action on your side?

Mr. T.A. Le Sueur:

No, other than to the extent that I discussed the views of the Chief Executive with the Minister for Treasury and Resources who felt that he made a justified comment and that it had been taken more strongly.

Deputy R.J. Rondel:

That comment made by the Minister for Treasury and Resources ... did you go back to the Chief Executive and explain?

Mr. T.A. Le Sueur:

No, I think the difficulty ... if you start doing that you start saying: "The Minister for Treasury and Resources tells me this and so and so tells me that" and ...

Deputy R.J. Rondel:

So how was the problem dealt with?

Mr. T.A. Le Sueur:

The only effective solution is to get the 2 of them to agree between themselves, facilitate it as far as possible by a third party.

Deputy R.J. Rondel:

Did you do that?

Mr. T.A. Le Sueur:

I did not do that to the extent that maybe I should have done but I felt it was a situation that needed an independent person rather than myself to be able to do that. I did not, at the time, see the availability of such a person.

Senator S.C. Ferguson:

But if you had been aware ... remind me, when did you first become aware that ... when did the Chief Executive first say there were problems?

Mr. T.A. Le Sueur:

The first time that there were problems that the Chief Executive felt sufficiently strongly about was in January 2011.

Senator S.C. Ferguson:

Yes, but you said ...

[13:30]

Mr. T.A. Le Sueur:

There had been differences of opinion in 2009 or 2010m but they were differences of opinion that had been resolved between the 2 of them presumably to their mutual satisfaction. There was no reason at the time to think that the 2011 situation would not necessarily have been resolved in the same way.

Deputy R.J. Rondel:

You did not think: "Oh, here we go again, another situation arose, it is becoming frequent" and it could become far more serious than you first thought.

Mr. T.A. Le Sueur:

It was a situation which, yes, was starting to cause concern. Where I could see, as I say, the arguments from both sides and I did not feel that there was any action to be taken other than for the parties to resolve it between themselves.

Deputy R.J. Rondel:

So what happened then?

Mr. T.A. Le Sueur:

Then the matter escalated with the Chief Executive invoking the compromise agreement.

Senator S.C. Ferguson:

So in retrospect you perhaps feel that you should have paid more attention to the growing problem?

Mr. T.A. Le Sueur:

I think I paid attention to the problem, I just did not see a solution to it.

Deputy R.J. Rondel:

But you did not seek to look for a solution really because you did not seek advice.

Mr. T.A. Le Sueur:

Because at the time events had overtaken me and I was faced with a situation where the contracted clause had been invoked, by which stage one tends to beyond the point of no return.

Deputy R.J. Rondel:

Did that come as a big shock to you when that happened, because you seemed to play down the fact that the 2 had had an argument or disagreements with each other, and then suddenly this contract was invoked and ...

Mr. T.A. Le Sueur:

It was ... yes. It was a disappointment and shock is a strong word to use ...

Deputy R.J. Rondel:

Well, it was a £2.5 million shock.

Mr. T.A. Le Sueur:

Sorry, what?

Deputy R.J. Rondel:

Well, I mean it had financial consequences ...

Mr. T.A. Le Sueur:

Yes, it had financial consequences, yes. But that was inevitable.

Senator S.C. Ferguson:

So why, when you were dealing with that and you were speaking to the Chief Executive in 2009 to 2011, and you were speaking to the Minister for Treasury and Resources, why is there no file note or record on the personnel file about the problems?

Mr. T.A. Le Sueur:

Because to me they did not warrant recording on a personnel file.

Senator S.C. Ferguson:

You have had 2 descriptions of the problem culminating in the letter that is on file, how much work have you done to try and establish what the correct story is? What the story from the other side of the fence is?

Mr. T.A. Le Sueur:

I often regard this as a bit like a chessboard, some people will say there is 32 black squares on a white background another person will say there is 32 white squares on a black background. You get 2 different points of view from 2 different people, both of which have some merit in them, and I did not feel competent to make an independent assessment of right or wrong. I was not really interested at that stage in right or wrong, I was interested in ensuring that if the issue could have been resolved it was resolved. Unfortunately in this case it could not be resolved.

Senator S.C. Ferguson:

Why not?

Mr. T.A. Le Sueur:

Because the contract clause by then had been invoked.

Senator S.C. Ferguson:

How many people knew about contract, apart from you and the former Chief Executive?

Mr. T.A. Le Sueur:

I have no idea. I have heard various States Members say that they knew about the clause but I have no idea how many or how they knew or anything. The minutes of the Human Resources Sub-Committee were open to inspection.

Senator S.C. Ferguson:

But we have just heard that it was not formally notified.

Mr. T.A. Le Sueur:

No, but that does not stop any person who is interested going to the Greffe and inquiring what meetings were held. So I have no idea how many people may or may not know.

Senator S.C. Ferguson:

Or specifically, I suppose, the Council of Minister. So you did not do anything to establish who had done what to whom from both points of view?

Mr. T.A. Le Sueur:

If you were suggesting that I should judge A more right than B or B more right than A ...

Senator S.C. Ferguson:

No, that is not what I am suggesting, I am suggesting did you look into the matter a little more than just ...

Mr. T.A. Le Sueur:

Yes, but I felt that the concerns that the Minister for Treasury and Resources raised were justifiable concerns. It may have been that the way he expressed them was not a justifiable way of expressing them.

Senator S.C. Ferguson:

But from your description of the work of the Deputy Chief Minister, should he not have to you?

Mr. T.A. Le Sueur:

Yes.

Senator S.C. Ferguson:

What did you do about that?

Mr. T.A. Le Sueur:

I was more concerned of the wellbeing of the Chief Executive than worrying about details. With hindsight I can certainly say: "Yes, it would have been the more appropriate point of view for the Minister for Treasury and Resources to express his concerns either to me or to the States Employment Board. At the time there was a comment which he made in good faith to the Chief Executive which the Chief Executive took exception to.

Senator S.C. Ferguson:

You are saying you did not do any investigation to see whether there was vestige of truth in either?

Mr. T.A. Le Sueur:

Well, there was. As I have just said, the views of the Minister for Treasury and Resources were justifiable views that perhaps were expressed in an improper way.

Senator S.C. Ferguson:

What about the views of the Chief Executive?

Mr. T.A. Le Sueur:

They were justified as well. That is why I say you can have a situation which is correct from both points of view, or conversely wrong from both points of view.

Deputy R.J. Rondel:

If you felt they were put in the wrong sort of way from the Minister for Treasury and Resources, what did you do about it? Is there any code of conduct for Ministers?

Mr. T.A. Le Sueur:

There is a code of conduct for Ministers. It is inadequate in that respect. It is very much ...

Deputy R.J. Rondel:

Is there anything within that code of conduct that the Minister acted outside of?

Mr. T.A. Le Sueur:

No.

Deputy R.J. Rondel:

Even though you felt ...

Mr. T.A. Le Sueur:

Ministers should act at all times with propriety and politely and so on. It would be very difficult to prove that was a specific breach of ministerial code and if it was, what would you do about it?

Deputy R.J. Rondel:

Okay.

Senator S.C. Ferguson:

I think for the benefit of ... I am sure you will not mind, Deputy Rondel, you said a few moments ago that we were talking o £2.5 million.

Deputy R.J. Rondel:

Two and half times salary, that is what I meant, apologies. Thank you.

Senator S.C. Ferguson:

I have no more questions.

Mr. A. Fearn:

With regards to the shift from a discussion to a letter issued as a concern in January 2011 to invoking the clause, it seems, certainly in my mind, as quite an extreme shift from your letter being issued once to an invocation of a clause, particularly when there is this contractual ability with regards to grievance procedures. What is your view on why that extreme jump happened?

Mr. T.A. Le Sueur:

I think the grievance procedures were issued by the Executive and not laid down very clearly. Grievance procedures tend to be fine for lower levels of staff but we have no particular formal grievance procedure in respect of a chief executive.

Mr. A. Fearn:

So the issuance of a letter invoking the clause, did that surprise you in any way? Did it sort of seem an extreme shift? Bearing in mind there might not be perfectly documented grievance procedures.

Mr. T.A. Le Sueur:

Yes, it was an extreme shift.

Mr. A. Fearn:

Do you have any view on why that shift took place? Was it perhaps uncertainty about the future of the political environment?

Mr. T.A. Le Sueur:

No, I think ... I can conjecture but I think you would have to ask the former Chief Executive himself what was in his mind. All I can say is that he had, over the previous couple of years, had various forms of stress in matters such as the historic abuse inquiry and comments made by a former Chief Officer of Police, which I think had undermined some of his confidence. But I am not an analyst and I am not going to try to assess what was in his mind when he decided to invoke that clause.

Mr. A. Fearn:

Thank you.

Senator S.C. Ferguson:

I think that is about it.

Mr. T.A. Le Sueur:

Okay, thank you.

Senator S.C. Ferguson:

Thank you very much indeed for your time.

[13:43]