

# STATES OF JERSEY

## OFFICIAL REPORT

### (In Camera Proceedings)

**WEDNESDAY, 21st JANUARY 2009**

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## **PUBLIC BUSINESS**

### **2. Chief Officer of the States of Jersey Police: review of procedure regarding suspension (P.182/2008)**

#### **The Deputy Bailiff:**

We then come to Projet 182 - the Chief Officer of the States of Jersey Police: review of procedure regarding suspension. I will ask the Greffier to read the proposition.

#### **The Greffier of the States:**

The States are asked to decide whether they are of opinion to request the Minister for Home Affairs to commission a compliance check on the procedures followed by his predecessor, the former Minister for Home Affairs, in suspending the Chief Officer of the States of Jersey Police on 12th November 2008 and to report to the States on the outcome of this compliance check no later than 1st March 2009.

#### **The Deputy Bailiff:**

Now, by law, discussion of this has to be in camera so I am sorry I must ask that the gallery be cleared again.

#### **2.1 Connétable A.S. Crowcroft of St. Helier:**

This debate is one I would prefer not to be having. I am sure some States Members share that view, especially being in camera, because that risks being seen by the public at its worst, gratuitous, at best, incomprehensible when the vote is taken. Such efforts as I have made to find a compromise have been disappointing. I did receive an email from the Minister the evening before the debate, that is, Monday evening, at 9.45 p.m. asking me to withdraw the proposition and assuring me he would deal with the matter fairly. I gave him a statement which I hoped he would agree, especially as I gave it to him in church yesterday morning and it went like this: "I am willing to give the Minister the opportunity to take action to bring this matter to a speedy conclusion, including to check, as a first step, that the human resources procedures followed by his predecessor will stand up to scrutiny", and I went on in a second paragraph. The Minister was prepared to accept the second paragraph but not the first. I must say that had I been Minister for Home Affairs I would have got the Constable of St. Helier into my office as soon as I took office, as soon as I was elected, and I would have said: "Look, you think the H.R. (human rights) procedures followed by my predecessor were defective. They were not and here is why." That did not happen and that is why I have brought the matter to the States. The Minister, as I said, had it within his gift and he still has it now, of course, to accept a human resources and H.R. compliance check be carried out. If he does not, the alternative is a protracted, expensive and potentially very damaging series of investigations and legal procedures. What the Minister has done since he has been in office is he has ignored some deeply troubling and deeply searching letters, questions from Mr. Power's professional association. He has gone and slapped another disciplinary on to Mr. Power - I will come back to that matter in a minute - but that does suggest to me the opposite approach to the one I would have adopted in his position. Now, the Minister, in his email on Monday night, advised me to withdraw the proposition because he said it would be embarrassing for me. Well, I agree, it is going to be embarrassing. It may be embarrassing for me but I think it is also embarrassing for Government. He also said it will not achieve what I want. Well, so it is absolutely clear, what I want is simply to be reassured that the H.R. aspects of this matter have been handled correctly. Why do I want that? Because, as Members will know, particularly if they are familiar with the operation of the new Employment Tribunal, you have to get it right in employment relations and in human resources. The work that I am asking for I have offered a month by the end of February. I have estimated half a day's work is all that is required. It does not stop the Minister working up the terms of reference for his own review and it is entirely proper that he carries that out. The key

point I am trying to make today is this. If an employer has a disciplinary procedure or a code, they must comply with the code in their dealings with the staff. If they do not, they are on a hiding to nothing. Further, if an employer does not have a code, or an up-to-date code, and tries to cobble one up in short order, then they really are in serious difficulty. So my question really to the Minister is what has he got to lose from agreeing to carry out this independent H.R. review of his predecessor's actions? Nothing, unless it is seen by the Council of Ministers, some of whom were, I imagine, involved in the original decision to suspend the Chief Officer of the States of Jersey Police, nothing to lose but face. What has he to gain? The satisfaction of doing things properly as a new Minister, sending out the message that the new Council of Ministers is not in thrall to the old one. Then there is a small matter of £250,000 of States expenditure, give or take, which the Minister said yesterday was the approximate cost of the work to be done by the Chief Constable of Wiltshire Police, £5,000 already expended, approximate cost, if I remember correctly, £235,000-£240,000. We are talking about £250,000 of States expenditure and that money would not need to be spent if the H.R. review I am asking for found that those human resources procedures were incorrectly applied. Presumably in that case, the Minister would then want to reinstate the Chief Officer and follow the correct procedures. Incidentally, £250,000 will buy you 5 police officers on the beat for a year. Now, no-one is saying, not least me, that the Chief Officer has done nothing wrong as an employee of the States and, indeed, he declared as much in a statement that he circulated to States Members around the time of the Minister's statement on 2nd December and I quote: "I have no difficulty whatsoever in being held to account for the proper discharge of my duties as the Chief Officer of the Island's Police. I do, however, have a legitimate expectation that any challenges will be addressed in a calm and professional way through the due process of law and agreed procedure." The Minister is not willing to have this review carried out. I gather as much: he will obviously be speaking and explaining why in due course but I have to ask Members whether they have confidence in the actions of the former Minister for Home Affairs in the suspension of the Chief Officer. Do they have confidence in the advice that was received from the head of Human Resources who, of course, has now resigned and the advice received from the Chief Executive to the States and from the Law Officers. Or having seen and, I hope, read the personal statement circulated in early December by the Chief Officer, do they have concerns that the procedure was, at the very least, rushed and disproportionate? Before going further, I want to address 2 matters. First of all, the matter of my involvement in the case at all. Members who are students of local history will know that until the Paid Police Force (Jersey) Law of 1951, all of the paid police came under the jurisdiction of the Constable of St. Helier. Then I believe it was Constable Grant. One of the achievements of that very important piece of legislation was the setting up of an all-Island paid police force which the Constable of St. Helier, happily, I suspect, for him, was no longer in direct charge of. Nonetheless, because I head up the Honorary Police of St. Helier and clearly a lot of the matters that States Police deal which are in my Parish, I have worked very closely with the Chief Officer of the States of Jersey Police since coming into office. I have gone to him on numerous occasions for assistance for my Honorary Officers from the paid police and I have always found that assistance has been supplied. We have had numerous meetings on all matters, including things like speeding matters and other problems, drunkenness, problems around the evening economy, licensing matters and so on. So I have got to know this officer very well over the last 7 years and that is certainly one reason why I was pretty surprised when the action that was taken in November was taken but it simply did not square with my understanding of the officer concerned. Indeed, I want to refer Members ... it has been a bit difficult putting a projet together because of the constraints of the Law. The Law requires that the matter must be dealt with in camera so my original projet was severely cut by the Bailiff before it was approved and I have to apologise if what is now before Members does not really seem to make sense because, as I say, the guts of the report were chopped away from, I think, the second paragraph - the financial consequences. I am just going to read ... I do not normally read my propositions, because I think one should address the States in a different manner but I am going to read a bit of this because Members will not have seen it and, indeed, Members cannot see it because in order to circulate it, I

might well be found guilty of contravening the requirement that the debate should be held in camera and that the materials must be kept within the House. I start off by talking a little bit about the background. Members, of course, will know this. The Chief Officer of the States of Jersey Police was suspended on full pay by the Minister for Home Affairs, the Deputy of St. John, on 12th November 2008. That, by my reckoning, is now more than 2 months ago. The Minister gave a press briefing on the same afternoon and issued a press release and on 2nd December, the Minister made a brief statement to the States before answering questions from States Members in camera. As matters stand, nothing further will happen until the completion of an investigation to be conducted by the Chief Constable of Wiltshire Police, a process which is likely to be both time-consuming and extremely costly. The Chief Officer has indicated he will be seeking a judicial review of his suspension, which will be similarly time-consuming and extremely costly. Both of these actions could be avoided were the suspension procedure itself be found to be faulty. Should the actions of the Minister be shown to have been compliant with the relevant disciplinary code, further steps to investigate the alleged failings of the Chief Officer will be unaffected. Following the suspension of the Chief Officer of Police by the Minister, I was granted a meeting with him, which took place on Monday, 17th November in his firm's offices in Bond Street. The Head of States Human Resources was also present. As far as I could tell, no minutes were taken of the meeting apart from my own notes, so the following day, I emailed the Minister for confirmation of the key points raised at the meeting. The first of these related to the disciplinary code and the Minister subsequently confirmed he had received legal advice that: "I could not be given a copy of the disciplinary code under which the suspension has taken place as the disciplinary process governing the Chief Officer of the States of Jersey Police requires confidentiality at all stages of the process." The Minister refused a similar request for the release of the code by Senator Syvret. With due respect to the Crown Officers who advised the Minister during this process, such a position is untenable. In the first place, the only statutory provision in relation to this matter appears to be in the Police Force (Jersey) Law 1974. The disciplinary code for the Chief Officer of Police has no basis in law, unlike the code covering the conduct of other ranks of both the States of Jersey Police and the Honorary Police, nor did the Minister suggest that the code was in any way exempt from the Code of Practice on public access to official information adopted by the Act of the States in 1999. I believe there is nothing within the relevant Code of Practice which justifies the stance adopted by the Minister in attempting to keep its contents secret from States Members. It appears to me that the Minister for Home Affairs, the Chief Minister, and their advisers, conflated the requirement for confidentiality in the investigation of the complaint into the performance or conduct of the Chief Officer of the States of Jersey Police, which I accept is a requirement of the Law, into a spurious requirement to cloak the entire process of the suspension in secrecy. It is my considered opinion it is only the circumstances of the allegations against the employee that are confidential. The code is simply a document to which States Members should have access at any time. I do not believe there are many who, on reading the code, would find that the Minister's attempts to block States Members from reading it was justified. The refusal of the Minister to supply States Members with a copy of the code, which the Minister had purportedly followed in suspending a senior employee of the States, is particularly surprising, given the following factors: (1) the relevant legislation specifically provides for the discussion by the States of any disciplinary action to be carried out in camera; (2) the Minister proceeded to make a statement to the States concerning the suspension of the Chief Officer of the States of Jersey Police in full knowledge that States Members had no way of knowing what the provisions were of the relevant disciplinary code; (3) the Chief Officer of the States of Jersey Police receives no protection under the provisions of the Employment Law (Jersey) 2003. Such an exclusion from the Law protecting the generality of States employees from unjust treatment by the employer makes it all the more important that this particular employee receives what protection the relevant disciplinary code can provide. I want to say a further thing about the disciplinary code, which I was not aware of when I drafted that section from the original projet. It now emerges that the disciplinary code in existence at the time of the suspension was the one which applied under the old Committee system. It had to be rewritten in

short order before it was presented to Mr. Power on 12th November. I think this is serious for a number of reasons. First of all, the complaints and discipline law which governs all other police officers, including Honorary Police, was subject to democratic scrutiny and was judged to provide protections which were compliant with human rights. But those in authority at the time did not include the Chief Officer in that code so the code under which he was judged was left in its pre-Ministerial form. Presumably, it was forgotten about and only pulled out of the drawer when someone said: "We have got to suspend the Chief Officer. Where is the code?" So the old disciplinary code was hastily rewritten and, in due course, it may be necessary to find out when that happened and who did it but certainly what we do know is it was never discussed with the employee to whom it related, nor was it discussed in any other forum, nor was it checked for human rights compliance. So the disciplinary code that was brought out of the drawer, I argue, was simply the wrong one to use and it was the wrong thing to do. Things got off on a very bad foot but, as I say, as a States Member, what is most concerning to me is that by his actions, the Minister prevented me and other States Members from engaging in a proper scrutiny of what had occurred and he sought to defeat the apparent intention of the law that although initially accountable to the Minister, the Chief Officer of the States of Jersey Police is ultimately accountable to the States as a whole. So we are responsible for this particular employee and yet we were denied, at the end of last year, access to the disciplinary code under which he was suspended. So do Members have confidence in what has taken place? They will know that I do not and as I have investigated the matter, my confidence levels have dropped to an all-time low. I want to say a little bit now about the organisation that I run because I am not an expert in H.R. or human resources but I have been running a fairly large organisation without the benefit of a Chief Officer for 6 years, and so inevitably I have been involved in a lot of the disciplinary matters and complaints because I have been the person called upon to manage them. I would say that I picked up some key do's and don'ts about H.R., human resources management, and I think there are probably 5 key criteria or tests that we should bear in mind in any disciplinary process if the employer wants to be above reproach, especially in relation to a senior member of staff. First of all, there must be openness and transparency, not secrecy. The key phrase I have learned over numerous examples is: "No surprises." The person who is going to be subject to a complaint must not find out things by surprise. That follows, of course, that there should be no unnecessary withholding of information. Secondly, one must offer the person receiving the complaint or the disciplinary action, support, a buddy, a friend, and, ideally, legal advice, especially if you, as employer, are in benefit of legal advice yourself and that is what I believe is called by some "equality of arms". Three, you must attempt an informal resolution. That, of course, is in the best interests of all parties. If you can resolve the complaint without recourse to expensive lawyers, that has to be a good thing. Indeed, a preliminary investigation is part of the code, albeit the flawed code, under which the Chief Officer was judged. Four, you must give timely responses. I have lost count of the number of times dealing with disciplinaries my H.R. Manager has come in to me and said: "Constable, you have to reply to that letter today." Timely responses are crucial. There must be no unreasonable delay but, by the same token, your responses must be considered, not knee-jerk reactions to terrible reports. Of course, a key point about that is you do not act in haste and repent at leisure, particularly if you hear one version of events. You hear one version of one side of the story, you do not march in and suspend the person about whom that story has been told. You go and talk to that person and say: "I have had a complaint. What is your side of the story? What is your version of events?" Five, there must be excellent document management, really good record-keeping. You document and you carefully record every meeting, phone call, email and I will return to this particular point later. Now, Members are not H.R. experts but they should ask themselves how will it look to the Island and the outside world, how will this treatment of staff enhance or damage our reputation as a good employer if the H.R. procedures are found, at the end of a long investigation, to be faulty? We are not H.R. professionals but neither are those members of the public who will judge us. I believe that good H.R. comes down to common sense, a sense of fair play, a belief in natural justice. So I want to ask Members, faced with the following scenario, what do they think the public will think when

they hear it and I am now going to turn to the record that has already been circulated to States Members by the Chief Officer, setting out the scenario, the sequence of events that were followed, and I ask Members to listen to this as lay people but with, as I say, those 5 tests in their minds about what constitutes good H.R. management in relation to disciplinary matters. The Chief Officer was on holiday on 11th November. He had come back to the U.K. and was intending to spend a few days before going back to work in the following week. That evening, on the Tuesday, he was phoned unexpectedly by the Minister who said he wanted to see him in the office of the Chief Executive at 11.00 a.m. the following morning. He said that the meeting was in consequence of a presentation at a meeting that had taken place a short time previously which he and fellow Ministers had attended. He said the meeting had seen details of reports and documents relating to the historic abuse inquiry. The Chief Officer had not been told of the briefing and had not seen any of the documents to which he referred. He attended on the Chief Executive's office the following morning and met the Minister and Chief Executive. At this stage, I want to emphasise this, he had no indication that this was going to be a disciplinary meeting. He had had no opportunity to bring a buddy with him or to take any advice. I must say, from my point of view, we have already failed at this point. Before he went into that office, the States H.R. procedure had failed. It had failed common standards of a good H.R. management and it had failed under the terms of a faulty disciplinary code. The Chief Officer was handed a letter entitled "Disciplinary Code" and the Minister said he was minded to invoke the disciplinary code but the officer would be allowed up to one hour to consider his position, and I quote: "Neither myself nor, I believe, anyone else in the room had the slightest doubt this was an invitation to resign. I stated firmly I had absolutely no intention of doing so and I denied any wrongdoing and I would contest any allegations made against me. I also protested strongly at the unfairness of the procedure and, in particular, the lack of any opportunity to make informed responses to the matters being alleged against me. Towards the end of the meeting, the Minister decided to suspend me" and he was handed a letter of suspension and invited to leave. Two days later, the officer received a copy of the letter and it was only then that the phrase "a preliminary investigation is going to be held" was used for the first time. So the test of informal resolution of preliminary investigation or even of sitting down with your employee and having a chat, which is what I do when there is a problem, I talk to all parties and I find out how I can handle this. All of those tests were failed. The officer goes on later in his document - obviously I am not going to read all of it, it is quite long - but he says later on, and I quote: "Had I been given an opportunity to submit a report in response to any concerns, the Minister might have been satisfied with what the report said and the matter could have been swiftly concluded. If he was not satisfied, he could have sought independent advice. If any serious concerns were not resolved, he could then have made reference to the disciplinary code and activated some of the early stages which provide for a number of possible outcomes. The Minister opted for immediate suspension without asking for a report, without a preliminary investigation, without a hearing, without offering me any representation. What could have been a calm and discreet internal process has been turned into continuing world news with all of the associated adverse consequences." Then, finally, to quote from this report at the end, the Chief Officer says this: "I am a police officer who is well past the normal retirement age who has been paid a substantial salary in exchange for no work. When I was first sworn in the Royal Court as a Jersey Police Officer, I promised to uphold the laws and usages of this Island. That commitment still stands. It places upon me not only a right but a duty to challenge what I consider to be a blatant abuse of political power and a breach of the legitimate rules and guidelines which govern us all. The integrity of the criminal justice system depends on the ability of the police, the prosecution and the courts being able to operate free of political interference and intimidation. Any action by a government to seek to remove the head of any of these agencies is a severe step which should only be taken with significant thought and fully in accordance with the required procedures. This should also be accompanied by a full recognition of the potential wider consequences for the Island's reputation and for public confidence in the independence of the criminal justice process. In this context, my position is that my suspension was neither proportionate nor necessary. In any event, it

was carried out without fairness or proper procedure. It was an action which was seemingly desired to publicly humiliate and demoralise me in the hope that I would lose the will to continue to remain in office.” Now, the Minister said in his statement, and it has been repeated in the Press recently in relation to another senior and protracted suspension, that suspension is a neutral act. I think this is simply an untenable position. It may be supposed to be an untenable act, in theory it is a neutral act, but how many Members would like to be suspended while a disciplinary matter is being pursued, which might take 6 months? I mean they would enjoy perhaps having their salary and they could watch more television but how would they really like that? How would the public consider “suspended” across their photograph? I must say that I have had a lot of meetings with the Chief Officer recently and one thing that struck me quite forcibly was that we have recently had 17 new officers - Deputy Fox referred to it recently - sworn-in by the Royal Court. An occasion which he should have been present at and he felt quite sorry that he could not be there and again, more tellingly, I think, the fact that recently a police officer has died while playing football and the Chief Officer has no ability formally to take any action to assist the relatives, to attend the funeral or whatever. For me, most tellingly, I asked the Chief Officer recently what he would like to happen as a result of this debate and he said: “I would like to set my alarm clock and get up tomorrow morning and go back to work.” Now, I want to address briefly the fact that far from trying to resolve the matter... It was after all done by a former Minister. It was done on the basis of actions committed allegedly under the Minister before that, under the former Senator Kinnard. So the new Minister was perfectly able to take this matter up and look into it but instead on 31st December he sent the Chief Officer a letter saying: “I have had an allegation there is a bullying culture in the organisation and I am going to follow that up in a disciplinary way.” Now I am not an expert of H.R. but if I am dealing with a matter in the Town Hall relating to ...

**The Deputy of St. John:**

On a point of order, if I may. The Constable said 31st December. Can he clarify that, please, which year?

**The Connétable of St. Helier:**

Sorry, it was last year, 2008.

**The Deputy of St. John:**

Therefore, he would not have been in office, the Chief Minister.

**The Connétable of St. Helier:**

I certainly have the letter and it has been signed by the Minister for Home Affairs, Senator Le Marquand so ... As I say, if this matter had happened in the organisation that I work for, unless it was really important this new complaint, I think I would have parked it. I think I would have dealt with the really serious matter on my plate first that I have the most senior member of my organisation suspended in the public gaze and along comes another complaint. I am not sure where it has come from but, I am sorry, unless it presented a clear and present threat to my organisation I would not send a letter saying: “By the way I have another one for you. I think there is a bullying culture in your organisation.” I am not going to go into the detail why I think that complaint is extraordinary. Anyone who knows anything about the recent reports into the performance of the States of Jersey Police will know just how much standards have gone up in the last few years. But all I am saying is it seems to me that this is not good H.R. practice and if we had the H.R. review I am asking for, I believe that that matter would be looked at. Legal advice, as I have said, has been consistently denied by the Chief Officer. It does seem to me fairly extraordinary that everybody in this matter - and I mean everybody, even the Chief Constable of Wiltshire Police - everybody is getting legal advice - the Minister is getting legal advice - except the officer who has been suspended. It does seem to me that this is entirely wrong and, again, one should offer and certainly under the disciplinary code that exists for serving officers and Honorary Police - I have dealt with a



number of cases myself - the first thing that happens when an Honorary Police Officer has to deal with a complaint is I make sure they have legal advice. It is normal. It is expected. But not apparently in this case. I turn now - and I will try and be brief - to the issue of timely responses. As I said when I outlined what I believe are the key tests of good H.R. practice, you get back to the person very quickly; as quickly as you can. Now the assistance that the Chief Officer is receiving is from the Chief Police Officer Staff Association - the C.P.O.S.A. The president of that association has been selected to represent the Chief Officer. I do not know if I am allowed to name him but the letters after his name are O.B.E. (Order of the British Empire), Q.P.M. (Queen's Police Medal), B.A. (Bachelor of Arts), Ph.D. (Doctor of Philosophy), F.R.S.A. (Fellow of the Royal Society of Arts) and C.C.M.I. (Companion of the Chartered Management Institute). I do not know what the last one refers to but I am sure police officers or ex police officers will know. We are talking about a fairly serious and experienced person who is looking into this case. He has written 3 letters that I am aware of; 14th November, in other words 2 days after the suspension, followed up on 19th December asking for the new Minister to look into the suspension and then again on 13th January this year. Acknowledgment I believe has been achieved in some cases but no substantive reply to any of the points made in the letters. The first letter - and I am only going to quote very briefly from these letters because they really re-state what I think I have been driving at so far today - and I quote: "I have to formally ..."

**The Deputy Bailiff:**

Can I just say it seems to me perfectly proper for you to refer to this person by name. He has not got a position as I understand it and in order for Members to understand it, it is perfectly reasonable for them to know who is writing the letter.

**The Connétable of St. Helier:**

The author of the letters is Chief Constable of Gloucestershire Constabulary, Timothy Brain. I will not read all the letters after his name again. He writes on the 14th December - just 2 days afterwards - on the subject: "I have to formally apprise you of my Association's concern with the suspension of the Chief Officer without the apparent completion of due process particularly in respect of the completion of the preliminary inquiry and/or his ability to make a preliminary statement. We would have expected that he be provided with an opportunity to make his statement and the preliminary inquiry concluded before any suspension was considered. He should, therefore, be reinstated with immediate effect and remain in position at least until these initial processes have been completed." The second and longer letter again restates the points and asks for reinstatement and asks for a personal review of the suspension and goes into the same kind of details that I have gone into myself.

**Senator J.L. Perchard:**

Could I ask a question of the speaker, Sir? Thank you. Could the Constable explain to the House who this letter was addressed to and how he got hold of a copy of it?

**The Connétable of St. Helier:**

Certainly. This letter is to Senator Le Marquand. I have been provided with copies of the correspondence in order to properly represent my constituent.

**Senator J.L. Perchard:**

From the Senator?

**The Connétable of St. Helier:**

No, this correspondence has been supplied to me by the Chief Officer. I will not go into the detail of the letter but, as I say, it outlines the concerns that I have raised in terms of natural justice and human rights, a non specific allegation instead of the transparency I spoke about, no alternative means of dealing with the matter, no indication that any issue of public confidence has arisen

concerning the officer's conduct in respect of the management of the force and so on. Then the third letter points out: "I have now received a response to the original letter, however, I have not received a reply from you that indicates you will be formally reviewing suspension." So we are now 2 months on and the person representing the officer has had no substantive response. That it seems to me ... I know we have to allow for Christmas and New Year celebrations but we are talking about a senior officer's life here and I think that is very poor practice. There should be a timely response made to the complainant. I am going to be winding-up shortly. Members can relax about that. I come now to what I consider one of the most worrying features of this case and one which seems to me more than any other to justify the H.R. review I have called for being carried out. By way of explanation, the meeting that the Chief Officer attended with the Chief Executive and the Minister was one that he had no prior knowledge about. It came, as one can imagine... it would come to us as a complete bolt from the blue and after the meeting as he started to gather his thoughts and prepare his defence, he thought: "Well, obviously I must get the minutes of this meeting and that is my starting place." So he asked for the minutes of the meeting. He was sent a typewritten note after some time which left out a lot of the things I have already referred to about how the meeting was run. He had seen the Chief Executive of the States writing busily and he has described this in some detail how he slowed down in what he was saying to allow the Chief Executive of the States time to catch up and to turn over more pages of his A4 pad. So he knew that the notes were there and he wanted a copy of them, as of course is his absolute right. So he did not like the typed script. He wrote back and said: "Come on, let us see the proper record." On 4th December he heard from the head of H.R. who said and I quote: "The handwritten notes made by the Chief Executive during the meeting were destroyed when the typed note of the meeting was produced." The notes were destroyed. Even the most humble committee clerk of a States committee would never destroy their notes after the minutes were typed. This is such an appalling outcome that I am embarrassed about it. This is why ... and the Minister knows about this; he must know about this. This is why I cannot understand how the H.R. procedure that we are talking about can withstand any scrutiny at all. They have this meeting. It is a bolt from the blue. Then they destroy the notes of the meeting. Well, they are going to look into that as a separate matter and we have been told interestingly the Chief Constable of Wiltshire police is conducting the investigation on behalf of the Minister. He did 2 things. First of all he passed on the complaint to the Chief Executive of States which it seems rather extraordinary given that he is fairly involved in the destruction of the evidence. But he then says in a letter that: "The matter you raise does not in my opinion fall in my remit to investigate." So the destruction of the evidence and indeed the suspension is not part of £250,000 job that we are getting anyway. Members will understand, I think, why I have so little confidence that the H.R. procedures followed in this matter will withstand any scrutiny. That is why I believe we should get somebody else, somebody independent, to look at them and check that everything has been done properly. So it seems to me there are 3 possible outcomes of today's debate. The first one is that the new Minister if he has any concerns about the H.R. procedure followed by his predecessor would reinstate the Chief Officer of the States of Jersey Police pending a review of the suspension and a possible disciplinary hearing. I know that is what I would do. The second thing he could do, the alternative, will be to accept my proposition which at least would in a month's time tell us whether everything is hunky dory in this matter or whether mistakes have been made. At the end of that if the H.R. review was negative he could then reinstate the Chief Officer and do the thing properly. Thirdly - and I hope this will not happen but I suspect it may do - the Minister could simply do nothing. Await the outcome of a protracted, expensive and publicly damaging investigation, await the outcome of a judicial review which the Chief Officer of Police has now applied for. It seems to me that is the worst possible outcome because it will be, as I say, damaging, expensive and it will prevent somebody from going back to work tomorrow morning who wants nothing more than to serve this community. I move the proposition.

**The Deputy Bailiff:**

Is the proposition seconded [**Seconded**]?

## **LUNCHEON ADJOURNMENT PROPOSED**

**Senator S. Syvret:**

I was going to propose the adjournment, Sir. I just wondered if I might ask through the Chair if there was indication from the Minister for Home Affairs whether he might be minded to accept the proposition.

**Senator B.I. Le Marquand:**

I am minded to robustly resist this proposition.

**The Deputy Bailiff:**

Very well. Then the Assembly will stand adjourned until 2.15 p.m. [**Interruption**] The Deputy has pointed out that apparently the new Members do not have sight of the Chief Officer's statement.

**Senator S. Syvret:**

I have a copy of it. I will email it to Members over the lunch break.

**Deputy A.E. Jeune:**

Excuse me, Sir, on that note, the proposer made reference on a couple of occasions to background letters that were sent out so there is obviously more than one I think.

**The Deputy Bailiff:**

I think the important thing is the point Deputy Green has made which is that all Members must be in the same position. I think it is a matter for the proposer as to what he does on other documents.

**The Connétable of St. Helier:**

I can certainly make sure that the disciplinary code and the statement of the Chief Officer are made available in hard copy before we re-adjourn.

## **LUNCHEON ADJOURNMENT**

### **PUBLIC BUSINESS - continued**

**The Deputy Bailiff:**

Now we are still continuing this matter which is in camera so I will ask the public gallery to be cleared, please. Yes, now Senator Le Marquand.

#### **2.1.1 Senator B.I. Le Marquand:**

The primary consideration as far as I am concerned in relation to this matter is that the Chief Officer should be treated fairly. I am determined that that should happen. For that to happen it must be upon the basis of legal and employment principles and not upon the basis of political considerations. In this matter I accept that I am in the hot seat. I have drawn the short straw. I have the poisoned chalice to drink. To me is appointed the difficult task of dealing with the disciplinary procedure in relation to the Chief Officer. I am advised that that responsibility at this stage is mine and mine alone in relation to the suspension decision and that it will continue to be mine and mine alone in relation to any full disciplinary hearing which may occur after I receive back the report from the Wiltshire Police. If I reach at that stage the view that the Chief Officer ought to be dismissed then I have to refer the decision on to the States of Jersey - to the full States - and then alone at that time will it become a mixture of disciplinary matter and political matter. I accept that the Constable of St. Helier shares my concern that the Chief Officer should be treated fairly. However, his proposition is simply not helpful. It seeks some form of external review of the

decision of my predecessor, the former Deputy of St. John, Andrew Lewis, but it has been overtaken by events. The first event which has overtaken it was not mentioned at all by the Constable in his speech and that is that I have been given notice of an application to apply for judicial review of the decision of my predecessor. I hasten to add that because my predecessor and I together are a corporation sole and anybody who succeeds me is part of that corporation sole, that his decision in a sense at law is my decision although of course I did not make it. Now the effect of that is that if leave is granted for judicial review then the very matter in hand - the way in which this was dealt with by my predecessor - will be reviewed by the Royal Court. Indeed in my correspondence with the Constable of St. Helier - although he did not mention this in his speech - I indicated that this was a good reason, in my opinion, alone for him to withdraw his proposition because what he is asking is for an external review by somebody or other based upon human resources principles whereas the Chief Officer is asking for something different. He is asking for the Court to look at the very same things. Now those 2 things are clearly inconsistent. It makes no sense whatsoever on the one hand him asking me to get somebody else to review it and on the other hand for the Chief Officer to be seeking judicial review. I wonder whether the Constable of St. Helier was aware of the judicial review proceedings because he certainly did not inform the Members of the existence of those if he was so aware. But there is a second way in which this has been overtaken and that is that I gave notice to the Constable of St. Helier yesterday that I was now in a position to indicate my intention to conduct my own review of the matters in hand. In other words, to conduct a full review in relation to the question as to whether or not the Chief Officer ought to be suspended pending the current investigation. Now that would not include going back into what happened in the past because there would be no point for that. But it would mean that I was going to look again at the whole issue in order to ensure that he was fairly dealt with. That second aspect - that second change which has occurred - my willingness to conduct such a review also, in my opinion, overrides and overtakes this proposition and renders it irrelevant. I would remind the Members that although I would be doing this in my capacity as Minister for Home Affairs, that I am not lacking in experience in such matters. I have considerable experience of conducting proceedings, both civil and criminal. Therefore, I believe that you can safely trust me to do this fairly and I would ask the Members so to do. Now I want to deal with the timescales because I have been criticised by the Constable in relation to delay. The timescales are as follows. The position is that I became Minister some time round about lunchtime on 12th December which was when the final Minister was in place. I immediately ... one of the first things I set out to do was to find out what had happened and the reasons for the suspension and what the nature of matters were. That took me some time and some meetings. I then sat down before Christmas and dictated a letter to the Solicitor General seeking advice from him in relation to a whole host of matters, some of which have not been raised by the Constable and matters which I thought were relevant for me to consider in relation to this matter. Unfortunately, due to lack of typists over the Christmas and New Year period, the letter did not go out until 31st December. I received a reply to that letter last Friday which, by my calculation, was 16th January. That is a reasonable period of delay because I can assure the House the questions that I was asking were extremely complicated. I then needed to ask further questions and have further correspondence with the Solicitor General in order to determine whether it was right and proper for me now to reveal my intention to conduct a full review of the suspension and, if so, upon what basis. It was only late on Monday of this week that I finally got the necessary advice back to enable me so to do and I immediately conveyed that information to the Constable of St. Helier. So there is absolutely no substance in any suggestion that I have been guilty in any way of delay in this matter. I have had to take advice on complex matters. I have done so. Now I also want to explain to the House that I am facing 5 different problems in relation to this matter and in so doing I hope to deal with the matter which Deputy Lewis raised of the difficulties I was in yesterday in relation to answering questions on a different matter. I face 5 different problems. Firstly, I face the problem any discussion in relation to the matter of the disciplinary matters of the Chief Officer must be held in camera by law. I wanted to go into camera so I could be more open with the Members and the Bailiff was not too keen. But

perhaps I should not have said that. So I tried to do my best to say what I could without doing that and without appearing to be avoiding the issue. Secondly, I face a problem because there is a confidentiality clause in the disciplinary code of the Chief Officer. That confidentiality clause I accept is primarily for the protection of the Chief Officer so that the public will not know the nature of allegations against him so that if those are not proven at some later stage it is possible for him to return to office with his name not being besmirched. But the fact is I am still bound by that. Now during the course of the speech of the Constable of St. Helier, he has acted clearly in contravention of the terms of that confidentiality because he has raised matters which are clearly confidential. He has even mentioned a further matter of possible investigation. I hope that he got clearance from the Chief Officer in so doing because that was a clear breach of the terms of the confidentiality agreement. I am perfectly happy if the Chief Officer will agree to this to lift all confidentiality in relation to the matter insofar as I am able to do, consistent with the other problem of matters needing to be debated in camera. If he agrees to that I will do that. As I say, the confidentiality is for his protection but at the moment I still feel bound by that and I hope that Members will respect that I am trying to act in accordance with the agreement with the Chief Officer. The third problem which I explain - and this was a problem which would have come out if I had answered more substantially the question from Deputy Le Hérisier - was that matters will be raised during the course of this debate discussion which may be matters that I will later on have to decide, either as part of the further hearing in relation to the suspension or in relation to any substantive subsequent hearing on the main disciplinary issue. I simply cannot express an opinion on those matters because I can form no opinion on those. If I am going to act completely impartially and fairly in a quasi-judicial role I must form no opinion on any matter, so that puts me in a further difficulty because the questions on matters which would force me to form an opinion on a matter upon which I should not have formed any opinion. The fourth difficulty which I face as a Minister is that the current Ministerial guidelines which are presumably binding upon me to some degree - I am sure the Chief Minister would like them to be entirely binding upon me - require that I do not make decisions without advice. Now this slows down the process. I personally find this very frustrating as a judge who is used to making his own decisions rapidly and acting upon them, but I am working within this discipline and having to retrain myself to be disciplined in this way but it is slowing things down. It took 16 days and I am not blaming the Solicitor General. It is a perfectly reasonable period of time to get an answer back. Another difficulty. Finally, a further difficulty I have - a fifth difficulty - and you will see why I am fairly well tied up in knots with difficulties by this stage is that I have been advised that I should attempt to distance myself from dealing directly with the Chief Officer or with Dr. Brain or indeed with the Constable or anybody else who purports to represent him. The reason why I have been so advised to work through intermediaries is so that I distance myself from the whole process so that I can act objectively and fairly in a quasi-judicial way when the final decisions have to be made. The big decision of course which awaits me down the line whatever happens in relation to the issue of suspension will be the issue of what to do in relation to the substantive disciplinary issues. So that is a further complication. I hope the House understands those complications and that I am not in the least wanting to be anything other than open. Now I also have difficulties in relation to issues of advice. I am a qualified lawyer of 30 years' experience. I have been a judge for 18 years. I am well able to advise myself on law but as a Minister I am having to accept the discipline of obtaining and receiving advice and in general, unless I think that advice is nonsense, abiding by that and there is a difficulty. **[Laughter]** In fact if it is nonsense I will go back to the adviser and try to point out why I thought it was wrong. But it is another tension. Let us put it that way. Now I have a difficulty in relation to the advice that has been given to me in relation to the question of whether or not the discipline code for the Chief Officer of Police should be made public or available to Members. It has been anyway this afternoon. But I have a difficulty with that because my instincts as a person who is naturally open and perhaps too open was, of course, it should be, but the advice I got was it should not be. I am not sure that the Attorney agrees with the advice but there we are. **[Laughter]**

**Mr. W.J. Bailhache Q.C., H.M. Attorney General:**

If the Minister can take an interruption. He thinks he has difficulties. [Laughter]

**Senator B.I. Le Marquand:**

There we are. But I have been blamed for having followed advice even though I did not think that advice was correct. There we are. Again if the Chief Officer is willing to lift confidentiality, generally all those difficulties will go away. As I say that confidentiality is for his benefit not for my benefit in any way whatsoever. Now I need to come back to my text. Now on the question of advice I want to make it clear what I have been doing here. My primary source of advice has been the Solicitor General because I decided early on that I needed to take mainly legal advice and that matters relating to human resources type knowledge - if I can call it that - were going to be subsidiary to the main issues. That is what I have done. My primary source of advice is and remains the Solicitor General although I do take advice from time to time from Mr. Ian Crich, the head of the Human Resources Department, but that advice is subsidiary to the main points. What is proposed and still proposed by the Constable of St. Helier despite the fact that it has been overtaken by 2 major events which in my opinion render it completely unnecessary and irrelevant is that, nevertheless, despite the fact that there is the possibility of a judicial review by the Court, there is going to be a review held by myself. But, nevertheless, there has to be some other review and it is suggested in the guideline notes that that should take place by the J.A.C.S. (Jersey Advisory and Conciliatory Service). But I can assure the Members that the main areas of dispute at the moment in relation to the ongoing issue as to whether or not the Chief Officer should remain suspended, the very issue that I want to now review carefully, the main issues did not lie in the area of expertise of J.A.C.S. They lie in the area of interpretation of statutes and interpretation of the disciplinary code. The Members have the disciplinary code in front of them. I can assure you that this is an absolute nightmare. It is very badly drafted. It is very ambiguous. But, nevertheless, as part of the poisoned chalice it will fall to me to seek to interpret it. It is not within the competence of J.A.C.S. to express an opinion on such matters. They are not experts on such matters. It is a matter for legal advice and for decision and I believe that I am fully competent to make those decisions and if I ultimately get those decisions wrong, the matter will go back to the Royal Court for judicial review in some shape or form because that is clearly the role that the Chief has in mind if he disagrees with me on matters of substance.

**Deputy P.V.F. Le Claire:**

I am sorry, may I ask the Minister to give way for a second? I am a bit confused. I ask for a point of clarification, please.

**Senator B.I. Le Marquand:**

Yes, certainly.

**Deputy P.V.F. Le Claire:**

I have been trying to follow carefully what the Minister has said, and I understood that in the first part of his speech that there has now transpired something that has overtaken the Constable's proposition, in particular one aspect, the Chief Officer is applying for a judicial review. In the last 2 sentences that the Minister spoke, he intimated that once he has decided, it would then be affordable for the Chief Officer to apply for a judicial review. Could the Minister, please, clarify my confusion and let us know categorically: (1) has the Chief Officer applied for judicial review; and (2) would any action that the Minister takes prohibit that review from occurring or stall that review from occurring? It seems to me that the intimation was that there is something the Minister is doing that might in some way preclude that review.

**Deputy M.R. Higgins:**

Can I just jump in as well with some other points of clarification so that the Minister can answer them all at the same time? I was going to bring up the same point as Deputy Le Claire regarding

whether he has applied for judicial review because if that is the case surely that is *sub judice* and we should not be discussing it anyway. Secondly, as far as his review is concerned, he mentioned that he was going to carry out a review but surely he is talking about a different review. He is looking at a review to decide whether the Chief Officer should have been suspended. What we are looking at is the process rather than the actual suspension. So perhaps the Minister would clarify, please?

**Senator B.I. Le Marquand:**

Yes. I am going to be technical now. What has happened is that I have been given notice of a date to fix a date for a hearing of an application for leave to be able to start judicial review proceedings. It is the very first step. Now I have not yet received advice as to whether I should be opposing or not opposing that and that is a matter that I will need to consider in due course. That is directly in relation to the issue as to whether the way in which the matter was conducted by my predecessor was correct. But in the meanwhile I have indicated my intention to conduct a review, not of whether originally what happened was correct but of the issue - the main issue - which is whether he should remain suspended. Now if I can further muddy the waters by explaining that even if the Royal Court were to strike down the original decision upon the basis of some technical failure in the procedure which is the issue which the Constable of St. Helier is talking about, I would still feel under a duty thereafter to conduct a further hearing with a correct procedure if the original procedure has been incorrect as to whether I should re-suspend him. Now one of the decisions I have to make in making a decision as to whether to offer at this stage or to indicate my intention at this stage to conduct the review as to whether he should continue to be suspended was whether pragmatically it was better for me to allow the judicial review proceeding simply to run so that the Court could determine some of the issues or whether I should intervene. But of course the first question the Court is going to ask I suspect ... I should not be looking at you, Sir, when I talk about the court of course.

**The Deputy Bailiff:**

I think for the assistance of Members, it will not be me. It will be the Commissioner.

**Senator B.I. Le Marquand:**

The first question the Court is going to ask is have all other possible steps to put right what may have gone wrong taken place. That is part of the paperwork in relation to the judicial review. Of course at that stage my representatives will no doubt say: "Well, even if things went wrong the first time, the Home Affairs Minister is now going to conduct a review to put things right on the procedural side even if they were not wrong in the first place." Now that may further confuse Members. But that is the reality and that is one of the problems in relation to this. Even if hypothetically the thing were struck down by the Royal Court upon a procedural technicality or even if hypothetically I were to go with this and seek other advice and on the basis of that advice contradicting advice which I have received already were to decide to lift the suspension, I would still need to go on to hold a further hearing to determine whether to re-impose the suspension because I cannot avoid that the issue remains even if technically it has been done wrong the first time, the issue remains should he be suspended now? I hope Members understand that. That is a further reason ... I am about to turn into a lawyer and say: "In my submission." But that is a further reason why this proposition just does not work. It does not achieve what it wants to achieve. The correct way to proceed is to allow me to conduct this review which will hopefully cure any defects which may have occurred technically in the first place, make a substantive decision and then for the matter, if the Chief Officer is unhappy, to proceed on to be dealt with by judicial review. There are issues which are simply not human rights issues. The interpretation of statute, the interpretation of this perfectly ghastly disciplinary code. I think that is one thing everyone agrees on. It was very, very badly drafted and is ambiguous but, as I say, the task falls on me to sort out that and the interaction of that and the Law and so on. The proposition assumes that the main areas for decision will be in the areas of employment law and human resources expertise. I can assure the House they

are not. There are such issues but they are subsidiary to the major issues which are interpretation of statute and of the disciplinary code. That is where most of the difficulties arise. There are also issues in relation to the question of what criteria should be applied in relation to a suspension. Those are matters of Jersey law and not anything else. Now there is a sixth difficulty that I face which I meant to mention when I mentioned the other 5. That is that I have been receiving letters, correspondence, directly from the Chief Officer - about 2 a week - some from Dr. Brain, some from the Constable. I have to tell you they are not all saying the same thing. They are saying different things and this is terribly confusing. This is why I have to hold a review to find out what is the case of the Chief Officer. What is he actually saying because frankly he is not asking for what the Constable of St. Helier is asking for? So I do not know where we are and why the 3 different approaches are being made. The proposition talks about a compliance check. What is a compliance check? I ask the question through yourself, Sir, of the Connétable that he explain what he has in mind. This is ultimately my poisoned chalice. It is ultimately the decision of the Minister for Home Affairs under Law. I can take advice from different people. At the end of the day I have to make my own decisions on it. It is not possible to insert some other body such as J.A.C.S. or some compliance check over the top of that decision. Indeed any attempt so to do or any attempt to interfere with the essentially disciplinary and administrative process could prejudice that process. One of my concerns is that if this debate this afternoon starts to go down a political line I will have to leave the Chamber because I cannot sit here and listen to matters which might be of a political nature which might prejudice me or otherwise affect me in the ultimate decisions that I might have to make. I am concerned that the House by engaging in this process may put at risk the credibility and the integrity of the ultimate decisions that I may make. Certainly if some process had been asserted over the top of me, it most certainly would do so in my submission. Now finally ...

**Senator S. Syvret:**

If I may just ask the Minister to give way and ask for a point of ... it is a genuine point of order. The Minister suggested that if the discussion became political, as he put it, he would have to leave the Chamber. I have to say I find that a somewhat surprising view, given that Ministers and others have all kinds of varieties of serious responsibilities in different areas and it would seem to follow that they would have to leave the Chamber and not take part in debates that impinged upon their responsibilities. It cannot be correct surely. The Minister is here as a politician after all and not as a judge.

**Senator B.I. Le Marquand:**

Yes, but I am here as a politician but when I am dealing with a disciplinary matter I am not here as a politician. I am here to fulfil a quasi-judicial role acting as someone dealing with a disciplinary matter. I draw a very clear distinction between those functions. Now finally I want to deal with some of the individual points which were raised by the Constable of St. Helier because there are issues here. Firstly, I have not slapped another disciplinary on the Chief Officer. What I did was to write to the Chief Officer giving him notice that there was a second area in relation to which I have concerns. Those concerns arose out of exactly the same document which led to the imposition of the original suspension and the starting of the Wiltshire matter. Interestingly enough I can say that in discussions which I have had with former Deputy Andrew Lewis to find out what he thought happened on the particular occasion, that he had the same reaction. He saw this other matter and felt it appropriate that it be investigated at the same time. What I did not want to find was that we were halfway through one investigation and then there was another matter or that one set of proceedings was completed and then there was another matter that needed to be looked at. I have to inform the House that I am gravely concerned that I have information from all sorts of sources that there has existed in the past, and may still exist within the States of Jersey Police force, a culture of bullying. I am also able to say although I am risking here with lifting confidentiality that the Chief Officer agrees with me because he wrote back to me in response indicating that that had been one of his concerns. The question was with what responsibility he might be at fault about him



having failed to deal with that. I have now received advice from different sources and upon the basis of that advice have decided not to proceed with a second investigation. So, that matter is set aside but that is the process there. I need to deal with this question of £250,000 which I think was £222,000, the cost of the Wiltshire investigation. I am afraid that the Constable has misunderstood the position here. That does not relate to an investigation into whether there should be a suspension. It relates to the investigation as to whether the Chief Officer is at fault in relation to certain matters. That money will be spent in any eventuality, whether or not the Chief Officer remains suspended in the interim period. So to suggest that that money would be saved is just completely incorrect. This morning the Constable of St. Helier read out the first part of the document which was passed to me in church yesterday morning. I was surprised that he alluded to that. I assumed that was a confidential communication between us but I need to be a fast learner in this job. He did not, however, read out the second part; the part that I did agree to. I would invite him through you, Sir, in his reply so to do so people can see what I was happy with. I was not happy with the first part simply because it was committing me to agree on principle to the very proposition which we are debating today. The Constable also mentioned the issue as to whether the original wording in the disciplinary code which referred of course to the Home Affairs Committee being changed to read the Minister for Home Affairs, whether that was right or not. That is one of the substantive issues that I would have to determine at any review and so I am not able to comment on that. I know what advice I have received but an issue for me to determine. The Constable of St. Helier also mentioned the issue of the destruction of the notes taken by the ... I am sorry, what is his title?

**The Deputy Bailiff:**

The Chief Executive.

**Senator B.I. Le Marquand:**

The Chief Executive of a particular meeting. Unfortunately those notes were destroyed. I was horrified when I learnt that that was so. I can do nothing about that but that is merely an evidential matter in relation to what happened or did not happen on a particular occasion. I think I have come to my conclusion. In short, well-meaning though this proposition may be, it frankly does not go in the right direction at all. It does not achieve any sensible result. There is also a factor that the timescales are much too long. The review which I am proposing to do of the suspension should take place much earlier and that is what I want to do. I invite the Members to reject this proposition and to trust me to get on and do this properly. [Approbation]

**Deputy M.R. Higgins:**

Can I just ask another point of clarification?

**2.1.2 Deputy P.V.F. Le Claire:**

I was going to begin my speech with a point of clarification from you. You did see me first. Could I press please?

**The Deputy Bailiff:**

Very well, carry on, Deputy. Deputy Higgins, you can raise yours in the coming speech I think.

**Deputy P.V.F. Le Claire:**

There is a lot to take on board especially when many of us are just laymen and we do not have access to the experience and knowledge that the Minister has had in proceedings and yourself, Sir. But also with the privilege of the legal position and the background papers, it is quite strange that in some future position we may be forced to decide upon the Chief Officer's future and yet at this point we do not have the privilege of having equal and full disclosure as would occur in any normal judicial process when somebody's future was at stake and they were before the proceedings of a fully constituted Assembly of one sort or another. I find it quite remarkable. But before giving an

opinion which may sway some people's views in future considerations, I would like to ask you, Sir, for a point of clarification in respect of the legality of what we are doing and the procedural issues that the Minister has raised. From my understanding, as has been the case in many propositions that I have brought and others this morning, there appears to be some frustration on behalf of the Minister to accept this proposition because it does not achieve what the Minister would wish it to achieve. Unfortunately, that is the trouble with Back-Benchers' propositions. Normally they do not set out to achieve what Ministers would wish them to achieve in the first place because many Back-Benchers' propositions do not have the same intentions as the Ministers or the departments or the Chief Officers that they represent. The question of legality though is ... or it may not be the right word but procedure that I am trying to establish in my own mind. If other Members are comfortable with it all then I ask them just to bear with me and talk among themselves if they need to. But I need to understand if something has been applied for in a judicial process as we have been clearly told this afternoon - a judicial review procedure has begun; has been applied for. The first step has been taken. I need to know because up until now my experience has always been whenever there has been a judicial review ongoing, I have abandoned propositions or I have stepped away from issues or we have all abandoned them because of the fear of interfering with the judicial process. I stood up to seek clarification earlier from the Minister who made great play of the fact that the Constable had not made this point during his speech that the Chief Officer had applied for judicial review and I sought clarification to see if judicial review had been applied for. The Minister intimated that the first step in seeking judicial review had been taken and he had received an application for a date for a judicial review hearing. My question is at what point does a judicial review begin? If as intimated it begins by the application and from there the judicial review has begun, are we not already past that starting point because if we are past that starting point how can the rule of law be applied where an individual who has been suspended - in their view wrongfully - who wishes to seek redress to the courts is inhibited from seeking quick, prompt and the right treatment by the fact that a Minister or a department suddenly says: "Put the brakes on. We have the procedure wrong. We will have to re-suspend you under the right format in the right framework so that next time we take you or next time you apply for judicial review, we will be on a stronger footing. In fact we will throw in something new which may give us a little bit more of a chance of defeating your judicial review when you apply for it." If the aims and the objectives of the Chief Officer are to return to work and he is seeking a judicial review because of the fact that he feels he was wrongfully suspended, the arguments that are being made this afternoon as I understand it by the Constable are not to do with the issues that occurred under his watch but merely to do with the process by which he was suspended. Not the matters but the process. If it is a matter of process, we seem to have a system that is deciding as it goes along what that process is. To help me understand, can I ask please, Sir - I am not ending my speech but just for clarification - who conducts the judicial review? Does the Minister sit in judgment of the judicial review?

**The Deputy Bailiff:**

No.

**Deputy P.V.F. Le Claire:**

So why is the Minister telling me and other Members that he has to remain impartial because he will be in a quasi-judicial role when he reviews this position having undertaken on his own behalf the decision to review this today because it would seem to me that any discussion whatsoever from here on in has passed the starting block of a judicial review. That I believe needs a ruling before I continue because if we are going to proceed along the difficult and confusing path that lays ahead of us as outlined by the Minister through no fault of anyone here then I would have something more to say that might influence Members in regard to some of the things that have been said today. I need a ruling from you, please, if possible have we entered the stage of judicial review in which case we should back off and if we have not then I will proceed.

**The Deputy Bailiff:**

Deputy, the position is that Standing Orders say that there must not be discussion of a case pending in a court of law in such a way as might prejudice the case. The Bailiff, as I understand from the Greffier, has been in communication with both the Constable of St. Helier and the Minister to say because this debate will be in camera then there is no risk of it prejudicing any court proceedings. Therefore it is in order for this debate to continue today. I think that is as far as I can go as presiding officer here. If you want further advice about the nature of judicial review I think it is a matter for the Attorney General.

**Deputy P.V.F. Le Claire:**

I think if the Bailiff has ruled, Sir, then to put the Attorney General on the spot, unless he is willing to speak - he does not normally wish to - I am the speaker. Although I have referred to him ...

**The Deputy Bailiff:**

It is simple. You were concerned, I think, as to whether this debate could continue and the Bailiff has indicated that in his opinion it does not infringe standing orders because it has been held in camera.

**Deputy P.V.F. Le Claire:**

Nevertheless a judicial review may have, in effect, by law been initiated as has been indicated by the Minister, Sir.

**The Deputy Bailiff:**

Yes, indeed.

**Deputy P.V.F. Le Claire:**

I find it remarkable that in a debate that is allowed to occur, in camera or not, that we have gone past a tradition or a custom of this Assembly to enter into debate when something has been made the subject of judicial review, personally. I have been told to sit down then, but it is not as quite as clear cut.

**The Deputy Bailiff:**

No, do you wish to make your speech now then, Deputy?

**Deputy P.V.F. Le Claire:**

I think I will make a very short one. There has been an allegation of there being a further responsibility on the Chief of Police which has been set aside in relation to a culture of bullying at the States of Jersey Police. When I was a member of the Committee of Management of the Public Employees Contributory Retirement Scheme my duties under that committee were to look after the responsibilities on behalf of the States for the ill-health retired. I have, in the past, signed-off from States employment workers, States employees, police officers under ill-health terms from the States of Jersey Police due to bullying from other members of the States of Jersey Police.

**The Deputy of Grouville:**

On a point of clarification. I thought we were talking about the procedure leading to this suspension, not the reason for suspension.

**The Deputy Bailiff:**

That must be right. This whole debate is about whether there should be a compliance check, as it is put, about the procedures followed. This is not a debate about whether or not the Chief Officer should be suspended, therefore it cannot be a debate about whether there is or is not bullying in the States of Jersey Police force.

**Deputy P.V.F. Le Claire:**

I just made the point because there seems to be some new revelation that it has happened when for years now it has been known within the heart of human resources and the States Government that that is the ...

**The Deputy Bailiff:**

Deputy, as I say, it is not relevant to today's debate.

**Deputy P.V.F. Le Claire:**

My point though is that I find the whole proceedings this afternoon extremely uncomfortable. Members are making light of it, well, jolly good for them if they are all that expert about this. I am not used to this. I find it internationally quite distressing to have this occur and I think that there is a case where we have on one hand clear evidence that the process that was meant to have been followed was not followed, and a well-intentioning new Minister who wishes to make well of what was a bad job. I am inclined to support the Constable because although I have every faith in the continuing sole corporation of the Minister for Home Affairs it is a request to him that the Constable is making this afternoon for him to conduct this review. If he chooses not to conduct this review because he believes he wishes to conduct his own then at least he will know how we feel about the previous process. For my part I am not happy with the previous process.

**Senator J.L. Perchard:**

May I ask a point of clarification from the last speaker? He said: "On one hand we have clear evidence that the procedures were not followed." That must have passed me by, I have not seen that clear evidence.

**The Deputy Bailiff:**

I am sorry, Senator, that is not a point of clarification. You can make the point in any speech of yours. I think we have had a lot of points of clarification today which do not really bear the name correctly. Constable of St. Martin?

**2.1.3 Connétable S.A. Yates of St. Martin:**

I am afraid this might be another point of clarification. My knowledge of judicial reviews is limited. I have had occasion to discuss this with the previous Solicitor General in relation to other matters. I seem to see here this afternoon that if the proposition is carried on my left we shall have a compliance check, and on my right if it fails we will have a review from the Minister for Home Affairs. From my memory, if it serves me right, that we seem to be with ... the Chief Officer has made application to the Royal Court for a judicial review, but as yet that has not been granted. One of the questions I seem to remember being told about is that the granting of judicial review will be subject to several matters and one of these matters is can the matter be resolved in other ways, and if it can or if it has been attempted to be resolved in other ways, i.e. by a review from the Minister for Home Affairs or by a compliance check, then a judicial review would be refused. I would like to ask the Attorney General how far I am off the line of the legalities of this, but it would seem to me that I would not want to be talking this afternoon in any debate that would stop the Chief Officer from having his judicial review. I do not know whether I am making sense but I would like the answer; what would be the effect of agreeing to have a compliance check or a review from the Minister for Home Affairs on the Chief Officer's wish to have a judicial review?

**The Attorney General:**

As the Minister has indicated the Chief Officer has taken the first step under the Rules of Court to seek to have the decision to suspend him reviewed by the Court. That first step is asking for a date to be fixed in order that he may apply for the Court's permission to go and bring the substantive proceedings. When deciding whether or not to give that permission the Court will have regard to whether or not there are other ways in which the matter could be resolved. Certainly the assurance

of the Minister that he is going to carry out his own review of everything that has taken place may be a reason which the Court could take into account in deciding not to give permission at that stage either to refuse permission or to adjourn the application for permission until later so it could be considered at a later stage after the Minister had carried out his review. Indeed, if the Minister so advises the Court that he is intending to carry out his own review that may well be the result. I think if the Bailiff has already expressed the view that nothing that Members might say in the course of today will make any difference to the court process Members should trust that and that must be the position.

**The Deputy Bailiff:**

Does any other Member wish to speak?

**Deputy M.R. Higgins:**

Again it is a point of clarification. I may have misunderstood what the Minister said. When he was talking about the codes of conduct he referred to the Committee, difficulties with it being simply referring to the Committee or not, that is one point. The second thing is, is the Minister saying that if the department admitted they got the procedure wrong that it would prejudice a case for the grounds of suspension or would result in any damages being awarded for getting the procedure wrong? I would just like some clarification of those points, please?

**The Deputy Bailiff:**

I am sorry, Deputy, the way we debate things is that one cannot be for ever asking the Minister questions. I think you must make your speech during the course of which you can raise some questions for the Minister to deal with in his reply. I think that is the correct way to deal with it.

**Senator B.I. Le Marquand:**

I think of course, Sir, I have a right to reply.

**The Deputy Bailiff:**

I do beg your pardon, of course. Yes, you are absolutely right. In which case I suppose we had better ask a point of clarification. I stand corrected, Deputy.

**Deputy M.R. Higgins:**

Two things; one, I was just seeking clarification. I may have misheard it or whatever, but there was a problem the Minister was explaining that he had with the codes of conduct, that it referred to the committee, or something like that. That is one point. The second point was that if his department admitted they got the procedure wrong, I am not saying they did, but if they admitted they got it wrong, would it prejudice their case for the grounds for suspension or would it result in the Chief Officer being awarded damages for them getting the procedure wrong?

**Senator B.I. Le Marquand:**

Just to clarify the first point. The original disciplinary code did not refer to the Minister for Home Affairs it referred to the Home Affairs Committee. The version that has been passed out to you is a version which refers to the Minister rather than to the Committee. The original document referred to the Committee; there is a point of contention on the part of the Chief Officer as to whether it is correct to read "Minister" instead of "Committee" in relation to that. The second question is a difficult legal question which I do not know the answer to. The question as to whether, if the suspension was procedurally incorrect, the department might be liable to damages? I do not know the answer to that question. It would not be right for me to opine. I am looking at the learned Solicitor who is somewhat squirming and suspect that he may not know the answer to that either.

**The Attorney General:**

With respect to the Minister, the Attorney is not squirming. The Chief Officer has been suspended on full pay. It is very difficult to see what damages he could bring.

**The Deputy Bailiff:**

Does any other Member wish to speak?

**The Attorney General:**

I should say even if there were a claim.

**Deputy M.R. Higgins:**

I hate to say this, there is one piece of clarification about the Minister's response to the first part. That is, I thought when Ministerial government came in all laws and everything else were amended that where it read Committee, Minister would apply, so the powers of the Committee would be vested in the Minister.

**The Attorney General:**

May I address the Assembly on this. Under the States of Jersey (Transfer of Functions from Committees to Ministers) (Jersey) Regulations 2005 paragraph 4 says this: "Construction of documents. In the construction of, and for the purposes of, any judgment, award, contract, certificate or other document passed or made before this Act comes into force, anything that is, or is to be construed as, a reference to the transferring Committee or its officers shall, so far only as may be necessary for and in consequence of the transferred effected by Regulations 2 and 3, be construed as a reference to the receiving Minister or any officer in an administration of the States for which the receiving Minister is responsible." The transferring Committee is the Home Affairs Committee, the receiving Minister is the Minister for Home Affairs. It may well be that the Chief Officer thinks he has a point, my firm advice to the Assembly is that he has no point about this at all, and it is absolutely plain that the disciplinary code functions move from the Committee to the Minister.

**The Deputy Bailiff:**

Does any Member wish to make a speech?

**2.1.4 Deputy F.J. Hill of St. Martin:**

I am rather surprised that there are not more people queuing up to speak on this matter because somehow or other ... yesterday I spoke about feeling very uncomfortable about the debate we were going on with the Woolworths issue; where here, I feel, is a rotten smell about this case. Having been a police officer for 30 years I have a lot of concerns about the process, almost use the word "stitch up". It seems rather odd that here we have a police officer of 42 years impeccable service, awarded a medal by Her Majesty and has been treated in such a manner that, as he says in his own speech: "Criminals would be treated better." To me it feels as though we have 2 new officers who have come to the Island, I do not know what sort of investigation they have taken part, but it seems quite convenient that while the Chief Officer is away that we can have some *coup d'état*.

**The Deputy Bailiff:**

Deputy, that is giving improper motives. You must confine yourself to the procedure of whether there should be an inquiry into procedure. Not the substantive matters and certainly not attribute motives to people who cannot defend themselves before this Assembly.

**The Deputy of St. Martin:**

I am glad you make the point, because the Chief Officer has not had a chance to defend himself. I feel somewhat unfortunate, bitter. I would like to draw Members' attention to the statement by the Chief Officer, and that is on 9.3B. Because what the suspension is all about is to see if the man can be out of the way so they can have a preliminary investigation to see whether there is anything to

charge him with. He has been suspended, and I will read: “The Ministers also claim the suspension can precede a preliminary investigation.”

**The Deputy Bailiff:**

One moment, what are you asking for, Senator?

**Senator B.E. Shenton:**

I just find it very unfortunate because very serious allegations have been made against the Chief Officer, far more serious than this Assembly seems to realise, and I think we are going down a very nasty and difficult road here. The Assembly is not aware of the facts. The allegations are exceedingly serious, they are not just something that someone has dreamt up. We are only getting the Chief Officer’s side of the story. I, myself, have made 2 very serious complaints against the officer ...

**The Deputy Bailiff:**

I am sorry, Senator, this is sounding remarkably like a speech. I have made it clear to the Deputy, please confine yourselves to the issue which is before the Assembly which is whether it wishes to commission a check on the procedure followed. Members are not to get into the merits of the conduct of either the Chief Officer or any other officers because that is not before the Assembly and the Assembly does not have any information about it. So if Members would confine themselves to the narrow issue which the Connétable of St. Helier has raised.

**2.1.5 Senator B.E. Shenton:**

I think it is worth pointing out that we hear, it almost seems, there is a suspension in place, then to find the evidence to support the suspension, which again as the Chief Officer says in his statement: “I defy any intelligent person to view the discipline code and come to the same conclusion.” I would just also like to draw Members’ attention to a very important issue that is on the back page under 14: “The Association which represents the interests of chief constables in the U.K. has reviewed my case. They have determined that my suspension cannot be justified and have written asking that I be re-instated with immediate effect. At the time of writing I am told that they have received no satisfactory reply and that further action on their part is now probable.” Again here we have quite an august body, Chief Constables of the U.K, who are of the view that due process has not been followed. I cannot see really why the Minister cannot accept the fact that we have a chief constable’s view. One other concern I have also is that if indeed Members do support this today, and I do not know whether the Minister is in a position to reply or chooses to, but my concern is that if indeed we do request the Minister to carry out the compliance check whether indeed the Minister would. I would feel sad, if indeed the House did vote or support the Constable of St. Helier, and then the Minister would not carry out the request. I would ask that Members would support the Constable of St. Helier.

**2.1.6 Deputy R.G. Le Hérissier of St. Saviour:**

This is the classic situation. Senator Syvret said earlier that the Minister is a politician when he is in the House but there is a subtle distinction between the word “acting politically” and “politicising an issue”. Obviously there are issues which the former speaker has just raised about the credibility of processes. What worries me, it strikes me, rather like this morning, there is more of a commonality between the 2 parties than we would like to accept. What I would suggest ... I am rather confused by the fact the Constable on a *prima facie* reading of the situation is simply asking for a review of procedures, as I see it. The Minister has slightly shifted the argument and said he will undertake a review. The key word to the Constable it seems is independent, independent scrutiny. I am surprised in the interests of fair justice and fair play; and before this thing runs out of control and does become politicised - which has been the danger with all the things associated with a child abuse investigation - before that happens would it not be possible for the Minister to accede to an independent review of the process which he could then decide what to do with when he

receives it. Because it does strike me as odd, and it contradicts a lot of what the Minister said about his own role, that here he is trying to separate out his political from his role as the ultimate decider of the discipline issue here, of which we will then become a 53 person discipline review panel, which of course is totally ludicrous but that is the way it is structured. Would he not accept that if he were in possession of an independent report that would enhance his credibility but that does not necessarily bind him to the findings of it, although obviously he would have to have some incredibly compelling arguments were it to raise some disturbing issues. Would he not accept that that is the way to go, that is the way to resolve this issue and we can move forward and not try and set to rights the whole issue of police management in this debate?

**2.1.7 Deputy M. Tadier:**

I will keep it brief. I will point out that I am a new Member, I am not a lawyer, so I may be naïve in some aspects but I know we are holding this in camera so I will not be making a total fool out of myself. I am also of the opinion that we have been asked to look into a compliance check, we are not here to debate the rights and wrongs of what the C.O. (Chief Officer) may or may not have done. Earlier we were talking about Deloitte and their behaviour and we said how terrible it was that they did not act according to the book, and that due process was not observed. It seems to me from the evidence presented to us today, I am certainly in no doubt that due process was not observed. I think there were 3 examples from what I can see. The notes being burnt is certainly at the very least an anomaly. There was no legal representation as far as I can see from the Constable of St. Helier from what he said to the C.O., he was offered none to take into the disciplinary meeting, he did not even know it was a disciplinary meeting. There also seemed to be a lack of notice. So as far as I am concerned there is no doubt in my mind that the process was not followed. Of course, like everyone else, I am very keen to find out why due process was not observed. Whether we do that through a judicial review, whether we do that through a compliance check as has been proposed, is neither here nor there to me, but as a new Member I am quite keen to make sure that due process is observed in all areas. Referring to the good Deputy of St. Martin's comments, I do suspect that if a member of the public had been arrested and the due process was not observed then that person could quite rightly claim that the charges be quashed against him. It seems strange that the C.O. here is not ... he could have the same claim to that. My initial reaction would be to back the proposition of the Connétable because I think that seems to be more thorough, but perhaps other people would like to speak on this issue.

**Senator J.L. Perchard:**

May I ask for a point of clarification. A second speaker now has said categorically that due process has not been observed. Is there any evidence before us that substantiates that? I have not seen any.

**The Deputy Bailiff:**

A speech or a question to somebody?

**Senator J.L. Perchard:**

It is a question to the last speaker.

**Deputy M. Tadier:**

I can only go on the evidence that I have been presented with and the cases that have been made, and it does seem to be that natural justice was mentioned earlier, and it does not seem that the Chief Officer was treated in a decent way. Whether that contravenes any due process is a matter of debate for this House, but that is the way I look at it. It does not seem that he was treated correctly. I do not think we would even treat our criminals that way. That is all I have to say on the issue.

**2.1.8 Connétable D.J. Murphy of Grouville:**

I recollect at our last session when the then Minister for Home Affairs made a statement to this House which was absolutely unequivocal when he said every single process had been followed to



the letter. He was pressured upon this several times by several Members and he repeated it. Are we saying now that by going ahead with a new review that we were either misinformed or that the whole process was flawed in the first place? I for one am perfectly happy to let the new Minister for Home Affairs carry on with what he is doing now and I think we should back him by not voting for this proposition.

### **2.1.9 Senator S. Syvret:**

It may come as something of a surprise to Members to know that I do try and proffer friendly advice to other Members from time to time. I did email the Minister for Home Affairs and suggest to him that he ought to really think seriously about accepting this proposition. He has chosen not to do that, but that is his choice. I was very much struck by listening carefully to his speech that his arguments appeared to be very much putting the cart before the horse. The States Assembly today in dealing with this matter faces 2 immediate moral and practical considerations which this Assembly has to address. Firstly, there is the question of the civilised treatment of the Chief Constable. The second, incidentally, and we have spent a great deal of time debating this this morning, is a responsibility for taxpayers' money. I will come on to the issue of the evidence concerning defect in the procedure adopted as Senator Perchard finds that so interesting. I have to say from what I have read of all this, and I have read a great deal of material about it, and spoken to a number of different lawyers. There is no way on God's green earth that any respectful court will do anything other than find for the Chief Constable on breach of procedure grounds. It is as open and shut as that. Senator Shenton says, in my opinion, and Senator Perchard has asserted, that there is no evidence, there is no evidence that the correct procedures were not followed, where is the evidence? It is worth bearing in mind that in fact the previous Minister for Home Affairs, both in his written statement which I have here, and in his answers to questions, merely asserted that he had been advised the procedure was correct and sound. He did not issue any specific denials of the description of events contained in the report by the Chief Constable which was sent to States Members. Indeed, neither has the current Minister for Home Affairs in his speech today. So the specific details, the actual events of what took place, how it took place, when it took place, as described in the letter from the Chief Constable have not been denied. Heaven knows there has been enough opportunity for such denials to be made. I found the general position of the Minister for Home Affairs to be very confusing and I would, again in all genuine effort to be helpful, ask him to consider accepting the proposition of the Constable of St. Helier. This, not least because the Minister for Home Affairs himself has said on several occasions during his speech, that he has to keep himself at arm's length from these things. That he will in many respects have to operate in a type of quasi-judicial manner. That he needs to avoid somehow becoming too contaminated by the politics of the situation. That being the case what better solution could there be than agreeing to the proposition of the Constable of St. Helier and just get this simple important issue resolved at the outset. Were the correct procedures properly followed, lawfully followed? It would not be the Minister for Home Affairs making that investigation himself, he would be asked by the Assembly to commission a body suitably expert to undertake such a review. It is important for newer Members to recognise that when we debate propositions what it is we are approving is the wording of the proposition, not the wording in the report. The Constable of St. Helier makes reference to possibly using checks in the report. But that is not what is specified in the binding important fundamental part of his actual proposition. The Constables asks: "To request the Minister for Home Affairs to commission a compliance check on the procedures followed by his predecessor, the former Minister for Home Affairs, in suspending the Chief Officer of the States of Jersey Police on 12th November 2008 and to report to the States on the outcome of this compliance no later than 1st March." There we have it; he is simply being asked to commission a review, a compliance check. As the Constable suggests in the text of his report, that could be any organisation, it could be an external police force, it could be a body in the United Kingdom that specialises in dealing with high ranking personnel, uniformed services, whatever. The choice would be there. All the Constable is seeking is that a review of that nature is undertaken. It should be undertaken because

the procedures adopted were manifestly wrong. The Minister for Home Affairs spoke of 2 different reviews, as though this were some kind of great confusion. He said on the one hand there is the Constable of St. Helier seeking a review of the procedure that was used and the suspension of the Chief Constable. On the other hand there is the review of the Minister for Home Affairs which is looking at whether the suspension of the Chief Constable is justified on the basis and facts of the allegations made against him. That is fine. They are indeed 2 separate reviews. Two separate pieces of work that could, if it were the wish of the Minister for Home Affairs, take place in parallel perfectly satisfactorily. There is an issue of justice here. The Chief Constable, apart from that one letter he sent to all States Members, has not had the chance to defend himself, he has not been able to attend this very short notice disciplinary procedure accompanied by a supportive colleague, a friend, a buddy or anything of that nature. He has been treated manifestly appallingly. The point remains, even if all of the allegations, whatever they may be, against the Chief Constable turn out to be correct, he, along with every other person, deserves due process. He plainly has not had that due process, neither the previous, nor the current, Minister for Home Affairs have issued denials of the specifics of events as described in the Chief Constable's letter. The matter is confusing and it is very serious which is why I think ultimately, quite regardless of Mr. Power's situation, it is greatly advantageous to this community if the Constable of St. Helier's proposition be carried. Jersey has had an awful lot of controversial publicity. The least painful way out of at least this aspect of it would be to undertake the independent review because if the independent review of the correctness of the procedure is not undertaken that will, I can assure Members, lead to ever greater and more contentious height of controversy, none of which will do the Island any good at all. There are a number of serious overlapping matters here. The Minister for Home Affairs himself, to his credit, described himself as being horrified when he discovered that the Chief Executive, Mr. Ogley had destroyed the evidence.

**The Deputy Bailiff:**

By title only, Senator Syvret, you know the rules.

**Senator S. Syvret:**

The Chief Executive to the States had destroyed the evidence. It is difficult to overstate just how serious an act that is. Destroying evidence. It is a gravely serious matter, and indeed when all of these issues do eventually see the full light of day it will be most interesting indeed to see whether anything that can be held against the Chief Constable of the States of Jersey Police gets remotely close to the gravity and the seriousness of the wilful destruction of evidence of a meeting that was not witnessed by a party who was accompanying the person who had been summoned to it, and a meeting that plainly did not follow correct procedure. A very, very serious matter. That is the kind of thing that will come out in court, should it go that far. That, believe me, will be seized upon by journalists. The destruction of evidence is absolutely unacceptable. It is up to Members, do they attach a greater importance to digging out of a rather foolish hole the previous Minister for Home Affairs and the previous Chief Minister or do we want to grasp the nettle and instead do what is right and the least painful option at this time? The destruction of the evidence is grave indeed. It relates ... I will not go into a great deal of this material because it is not appropriate or especially germane to this particular debate, which merely looks at the question of whether the procedure used against the Chief Constable was correct. But in the statement by the previous Minister for Home Affairs it asserted that a preliminary review by the Metropolitan Police had been received which raised serious concerns. Concerns of such gravity that it merited this quite extraordinary out of procedure prompt suspension of Jersey's Chief Constable. I am in a position to tell the Assembly that at that date, the 12th, no such Metropolitan Police report existed. This is made known to me and other people from sources within the Metropolitan Police. Members want to think a little bit more deeply about that and understand just how serious that is because on the morning of the suspension of the Chief Constable, the Deputy Chief Constable and the replacement S.I.O. (Senior Investigation Officer) gave that press conference to international journalists in which they too

asserted to the world's media that there had been an interim report by the Met. completed. It said a previous investigation into possible unexplained deaths at Haut de la Garenne was rubbish. At the time those men gave that press conference no such report existed. I just want Members to think about that and perhaps just begin to grasp the magnitude of the trouble we could be in. But setting that aside, the plain fact is the proposition of the Constable of St. Helier is entirely simple and moderate. It invites the Minister for Home Affairs to commission an independent review merely to examine whether the procedure used against the Chief Constable was within procedure within law. Indeed, it seemed to me that would go some way to meeting some of the problems that the Minister for Home Affairs perceives in saying that he has to remain at arm's length from the matter personally. I really cannot see any rational argument for failing to support the proposition of the Constable of St. Helier today. On the contrary, we have a detailed report written, given out by the Chief Constable following his suspension, which explains in detail the facts of what took place, when it took place, how it took place. Let all Members remember no specific denials of the detail of that description have ever been made, neither by the previous Minister for Home Affairs nor the current Minister for Home Affairs. We have sufficient evidence in front of us now to, at the very least, have serious doubts in our mind as to whether correct procedures were adopted. I put it to the Assembly that really we have to agree with the proposition of the Constable of St. Helier and if for no other reason show ourselves to be capable of governing in a responsible manner.

#### **2.1.10 Senator A. Breckon:**

In my experience in any employment disagreement or dispute, whether that is collective or individual, the best and the most efficient to do it are those as close to the source as possible and with the involvement of those concerned. Occasionally it might need somebody with an independent view to assist the process. Again in my experience with this, it is like digging a hole, if somebody keeps digging, they will keep digging and we end up with a very expensive hole that takes a long time to dig and you wonder what you are going to do with it. I have a very real fear that we are in danger of going there. I think with any process needs to be the rules of engagement. What happens when things go wrong? It is like anything, a contract of employment or a lease, the best place for them usually is in the drawer out of the way but when something gets broken or the sink falls off the wall or a wall falls down, who is responsible and you need to go back to the process. I am not convinced that that has been demonstrated here. There are processes where it starts about a conversation, a corridor, about whatever it may be, that then starts to become formalised in some way or other, with hearings, with written correspondence backwards and forwards, including the right to be accompanied by a friend, a buddy, whatever you call it. That can go to a full blown legal representation or however it goes. But again we need to go back to the source because those are the people who generally know what went on. I did receive an email, I cannot remember exactly when, but it was from, I understand, somebody representing or passing on the information on behalf of the Chief Officer with attachments. At that time I did not comment on it but I noted it because I had a fear that were this to become an issue then somebody or other, if not me somebody else, might be requested to comment. I thought at that time the best thing was just to keep my own counsel, I looked at it and said: "That is very interesting" and just left it at that, because I felt then it was not appropriate to comment on that because I felt it would reappear some time in the future. The other thing that some of the new Members certainly will not be aware of is that the former Minister for Home Affairs, we did have an in camera question session and I think there was a statement made and then it was part in public and then we went in camera. In that session the former Minister did admit that human resources in dealing with grievance and disputes was not his specialised subject. I did ask him a question: "What experience do you have?" He said: "Well, I took advice." As we have heard with some of the exchanges between the Minister for Home Affairs and the Attorney and the Solicitor General we can get legal advice but even some of that can be at variance on occasions, which is probably why we all need lawyers on occasions, because of that variance. But he did admit that it was not his specialised subject and he took advice and he said that was from personnel and other people, and I understand from memory it also went

before the Council of Ministers, I do not think it was part of a regular meeting, I think it was part of an extraordinary session, if you want to call it, that is to say the former Council of Ministers. The reason I say that is I feel there is enough there to demonstrate to me the process, which is what the Connétable asks in his proposition, commission a compliance check of the procedures followed by his predecessor. Compliance check of the procedures. It is not about whether an offence has been committed. It is about what should have happened regarding notice, hearings, led to a suspension, what should have been in place before that happened. From what I see, and that is probably not all of it, I do not particularly want to see - I am not volunteering to get swamped with paper - that is probably not all of it but from what I have seen I am not satisfied at this moment that procedures were, but they may well have been, but for me it is enough to convince me that a compliance check is ... the Constable is calling it, I assume he is taking advice on what the wording of that should be. From the Minister for Home Affairs' point of view, if that is another ... I do not know who is going to pay for it or who is going to do it, it could be an H.R. person; it does not need to be somebody investigating, it needs to be somebody with an experience of these issues and how they are dealt with at whatever level. I do not think it needs to be expensive, but that certainly would be something that would inform the Minister. I can well understand his frustration and confusion over the other issues and there is a danger of things running together here and perhaps ... somebody said here they should have waited. I understand, of course, if anybody is suspended then there is, at least in the public arena, it is not good to keep this hanging around too long. But I think if we did do that today and approved this it does send out the message that at least that is happening, and if the other cannot be in the public domain this would and it would be just the fact that it is being done, an individual could probably do this, I do not think it is an extensive exercise, and it would be a matter of investigating where we are and how we got there without looking for any guilt on what might have happened regarding an actual misdemeanour or offence. For that reason, I will support this and I did listen to others and I was, I must say ... Having said that - there is always a however - I was very impressed by what the Minister for Home Affairs said and the detail that he went to. I understand well his dilemma but having said that, I also feel that we have a duty to the individual and we have a duty to the public to do this because I think it shows that at least something is seen to be done and I understand why in its entirety it cannot be public about the very sensitive information that he has shared with us today. So for those reasons I will be supporting the proposition.

#### **2.1.11 Deputy A.E. Jeune of St. Brelade:**

I have to admit I am really confused, and my notes are all over the place. It is as a result of this we really are, excuse the expression, between a rock and a hard place here because this appears to be an H.R. issue in that there is not one of us, I do not think in this Assembly, who would not wish that any civil servant, any person employed by the States of Jersey would not be treated fairly. We would expect it to be with good practice and according to procedure. The procedures, it would appear, are written down here. There are major issues of confidentiality. But it appears to me that we are only getting one side. Because there is a confidentiality issue it would seem that the Chief Officer in this case has permitted his side to be given but we do not have the permission for the Minister to come back with whether or not procedure has been adhered to. We hear from the Connétable of Grouville that the previous Assembly was assured that procedure had been adhered to. So why do we need to have a review of the procedure? As I say it seems to me there are very, very many issues. I hear what was said about this could bring Jersey adverse publicity. What is happening this afternoon is happening in camera, so I do not see how it would necessarily, with all the confidentiality that is involved here, get out into the public arena.

#### **Senator S. Syvret:**

Point of clarification, could I point out I was referring to the result of the court action should we not make the right decision.

#### **Deputy A.E. Jeune:**

Thank you for the clarification there. However, given the adverse publicity that Jersey has already had, which we all know about, I would think an awful lot of the world's media would think twice before picking up something from Jersey and running with it. However, back to if we bring in a decision to go with even further review when we have been assured by the Minister that everything that ought to be done, is being done, we are causing further delays. We will be costing the States of Jersey money but if it is for fairness you cannot say we should not do it. But it is also going to delay any of the outcomes and that concerns me. For the party involved, I do not think it is good for him. I do not think it is good for the department. I do not think it is good for anybody. I really think we need seriously think about the way forward.

**2.1.12 Senator F.E. Cohen:**

We have recently elected a new Minister for Home Affairs. He had a distinguished career as a lawyer and latterly as senior magistrate. I really think he deserves our support. We certainly should not be directing him as to how he discharges his duties. I have no doubt that he will proceed in a diligent, honest and most accomplished manner. This is a man who has spent most of his life weighing up evidence and forming a conclusion. Are we really saying that the Minister is not capable of reviewing the procedures himself in relation to the suspension and coming to a conclusion without conducting an independent review? I will be voting against this undoubtedly well-intentioned proposition and I urge other Members to do the same.

**2.1.13 Deputy A.K.F. Green of St. Helier:**

I have no doubt that the Minister for Home Affairs is a man of absolute integrity and fairness, having worked with him in the past. It pains me to say this but I do have severe doubts about advice from our own H.R. Department having been a senior manager within the States before. I found that advice inconsistent and sometimes found a complete 360 degree change in advice in a 24-hour period. It pains me to say this but while I have absolute confidence in the Minister for Home Affairs, he will be getting his advice from that department in relation to human resources advice and therefore I think we should have an independent review of that process.

**2.1.14 Deputy M.R. Higgins:**

I also hold the Minister for Home Affairs in high regard but on this particular issue I think what it comes down to is if any one of us were faced with a situation where we were being accused of things we would want to be treated in the fairest possible manner. Without going into the issue of whether there were grounds for the suspension, it is not really our role, and it is going to be dealt with in another forum, but what does concern me is that the process appears to go against the principles of natural justice. I am sure the Attorney General will correct me if I am wrong, and that is that a person should be informed promptly and in detail of the nature and cause of any accusation against him; he should have a fair hearing by an impartial body; he should have adequate time and facilities for the preparation of his defence; and he should be entitled to defend himself in person or through legal assistance of a counsel of his own choosing. From what I have seen of the process so far none of that applies and therefore it should be investigated.

**2.1.15 Deputy J.B. Fox of St. Helier:**

I should declare an interest as I was a police officer, just for the record. I was never suspended and I have been retired for 11 years now, so, I might be out of date. I think the difficulty that we are all experiencing here is that we have been asked a very simple question by the Connétable of St. Helier for an independent review on what is, in his opinion, very important. But it is a very small part of the whole of this process, to be honest with you. We do not know what the complaints are, nor do we need to know. It is a need to know basis at this moment in time. The temptation would be to act as judge and jury which is not what we are here for. But from a police officer's point of view, and I can only speak in general terms as opposed to a chief officer - not a chief constable as Senator Syvret keeps referring to the Police Chief as; it is a Chief Officer, it is a lower rank than a chief

constable like in the United Kingdom. The point of issue is, is that there is a procedure. But there are also procedures for discipline whether it is in a police force or whether it is a Civil Service or whether it is in the private sector or wherever it is. Our problem is, today we are being asked to make a judgment without knowing all the facts, that is where the problem lies. Because in my previous life, when I was giving advice to the commercial world out there, that if you had reason to cause to investigate, in this case a discipline, first of all you looked at the degree and if the degree was that the person needed to be suspended, then you did not ring him up and say: "We plan to discipline you today and we are going to suspend you, would you please come in?" They could do all sorts of things that might prejudice the investigation. What you do is you invite them in to somewhere outside their workplace and you advise them of their rights, obviously, and the reason that they are being investigated and suspended, if that is the process. It does not deter any subsequent investigation where they have a right to legal advice or a friend, or whatever the process is, because it does not necessarily have to be a court thing, it is a disciplinary thing. But what will happen is that they will be told that they are not allowed to go back to their place of work, they must not associate with the people that they worked with, and more to the point is, in a police force case, their warrant card is taken from them and the security codes on the computer and various other things will be removed for the time of the suspension. The difference or the purpose of what we are being asked for is that at the previous in camera debate the then Minister for Home Affairs, who effectively had a very short term of office, would have known that having this duty to do would be very important, to have the correct procedures done and it would no doubt be challenged. So I would have expected him, which was the assurances we have heard from the Constable of Grouville which he told us, that he made every double-check that he could to ensure that the procedure that he had was correct. I believe him, he is an honourable gentleman, *et cetera*. If the procedure was wrong it will come out in the due process of the inquiry. The current Minister for Home Affairs, who we know is an honourable gentleman, who we know his previous life and his experience has made a promise to do certain things, one of which is to review the procedures at the moment. As much as the Constable of St. Helier has the best intentions, I do not see the necessity of this proposition as I think that what has been done so far is a process within the limitations of our knowledge, and certainly my knowledge, and I do not have all the information and as far as I am concerned, we have not received the information on both sides to be able to determine opinion and believe you me I have spent many years in being a detective and being an anti-terrorist detective to know that there are 2 sides to every side of every story and, therefore, you have to have a process to go through. I am satisfied that the process so far has been done and the future process will take its programme forward, and depending on the severity or the process of the case will depend on how long the suspension lasts of the Chief Officer or whether it remains within internal disciplinary, whether it is dismissed or whether it goes on to further criminal investigations, *et cetera*. At the moment, that is not what we are being asked to consider and, therefore, I will not be supporting this proposition at this time.

**2.1.16 Deputy D.J. De Sousa of St. Helier:**

Nobody is questioning the integrity of the current Minister for Home Affairs and whatever happened to innocent until proven to be guilty? We are simply being asked here to accept this proposition which is to commission the compliance check on procedures followed by the previous Minister for Home Affairs to make sure that the correct procedures were followed. I will be voting for this proposition.

**2.1.17 Deputy T.M. Pitman of St. Helier:**

Where to begin? As a new Member I thought I would wait until everyone else had spoken because I am well aware I have not got all the facts. I would really like to have all those facts but I understand the process. I would just like to say a couple of things. I am not a human resources expert but I have certainly had dealings with human resources and I would have to say that advice I have been given in the past has changed and been denied within a week, so I do not think we can

take that as all sacrosanct. People who know me will say that I am never 100 per cent in agreement with anyone else but listening to Deputy Higgins and Senator Syvret I have to say I am 100 per cent in agreement with what they have said. I will be supporting the proposition because quite frankly if we as a House do not do so, I believe ultimately in the eyes of the public, and it will get out into the public, it just shows Jersey in an ever, ever worsening light. I would suggest that to many people it will just confirm suspicions of some huge almighty establishment cover-up. Now I am not saying that is true but that is what people will think. Here we have a man suspended. Well, let me say to whoever suggested being suspended is a neutral act because that is the most nonsensical rubbish - excuse me - that I have ever heard in my life. I have represented people and it is not a neutral act. It implies guilt and I know it might be necessary, but it should not go on and on. What I would have to say, and I would ask this as a member of the public, is here we have a Chief Constable suspended in limbo yet we appear to have someone who burns evidence, and I would imagine that person is still trotting around carrying out his duties. The very fact of burning evidence, that person should be suspended and that should be investigated. I think some of the last few speakers are going off on a bit of a tangent, a smokescreen. It is quite irrelevant whether the new Minister for Home Affairs is a really great bloke. I am sure he is. I do not know him well enough but I am happy to accept that. It is totally irrelevant. What the Constable of St. Helier is asking us is about a check to see whether a process was carried out correctly. What is the problem with that? There is enough doubt in my mind that it was not, so I will support this proposition and I also hope someone looks into the burning of evidence because I think it is an absolute disgrace.

#### **2.1.18 Deputy G.P. Southern of St. Helier:**

I shall try and be brief. I can see people are struggling to keep up with the pace of this argument. I have had some experience of the Employment Law and disciplinary and grievance procedures, not only through studying the Law but being a union rep myself and quite frankly if this was Joe Soap, storeman, who had been treated like this and he was before J.A.C.S. or before an industrial tribunal it would not take them more than about 3 or 4 minutes to work out that his treatment of short notice of a disciplinary meeting, no attempt to allow him any companion into that meeting, no time to draw together evidence... it would just blow the case. That would be an unfair dismissal, an unfair suspension, an unfair practice. It just drives Trojan horses through all best practice guidelines on disciplinary and grievance procedures. Worse still, if this was Joe Soap, criminal, who had been nabbed doing something and he came before the magistrate and that list of: "Were you given access to some representation?" "No, Sir" and: "Were you given time to prepare your case?" "No, Sir." "Were you pulled in at short notice and accused?" "Yes, Sir." The magistrate himself will be saying: "I do not care whether he did it or he did not do it, case dismissed. Go away, you are free to go." **[Approbation]** That is the reality. In this case, we have got the Chief of Police and that is not the case. Why? This is a blatant case and the need for a review of the procedures whether they were adhered to or whether they are just blatantly wrong and written on a one-sided point of view. That is the case; that is what has been put before us and I will be voting for it and I hope other Members do to.

#### **2.1.19 Senator S.C. Ferguson:**

As previous speakers have said, we really have had only one side of the picture. All the evidence about the unfair treatment has come from one side. In a former life, to quote, I used to conduct Parish Hall Enquiries and you used to find that you would get 2 totally different views and if you had witnesses, every single witness would have a different take on what had happened. I think we are being asked to do something without information and with only one-sided evidence. As Senator Cohen has said, the Minister in - to quote - a former life, his record there gives me the complete confidence in his ability to conduct this affair. People are screaming that the rough notes have been destroyed. Well, I think you need to take a step back. What is the normal practice with rough notes? Some people destroy them, some people keep them. Do not jump to conclusions on a fact. The rationale behind the facts may be totally different to the conclusions you are jumping to

and, as the Minister has said, the relevant Chief Officer is already asking for a judicial review so to start muddying the waters with millions of reviews, again, it is going to take more time and justice will be delayed, and justice delayed is not justice. I think I have misquoted there, I apologise. I will not be supporting this proposition. It is very well meaning but it has not got the evidence to support it.

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

I am not sure we have reached the point where no one is being convinced anymore of anything, but I just have one question to ask as a question of clarification and if the answer is no, then I will say a few words and that is to Senator Perchard if I may. Does he still feel that there is no evidence that due process was not followed?

**The Deputy Bailiff:**

You cannot ask a question of Senator Perchard.

**The Deputy of St. Mary:**

Well, I shall plough and just spell it out in words of one syllable - or more if there are - what is at issue here because if you take this proposition the whole point about due process is, as Senator Breckon pointed out, that when things go wrong you have something to fall back on. You have a disciplinary code. That is where you go, that is what you follow. All this proposition is asking for is that we can satisfy ourselves that in this case the process was followed. It is important, you know, that this House follows its own procedures that are properly laid down, that this House follows the law. We heard yesterday that when we have an international convention which is slightly to one side but it is illustrative of the same issue, the Ramsar Convention, we suit ourselves as to whether we notify under the Articles that tell us that we must notify. This worries me that the perception will grow that this Assembly does not comply with its obligations and that is what this proposition is seeking to nail and put people's minds at rest on. So if I can just spell out 1, 2, 3 from these documents in front of us, one from the Chief Officer suspended and one from the disciplinary code, and I just take Members through and then we can see whether the code was followed or not. If you go to page 3 of the Chief Officer's statement, paragraph 6: "I had been given no notice that this was to be either a disciplinary meeting or a suspension meeting." Then you go to 2.3.2 of the code: "The Chief Officer will be provided with, in writing, the following (1) sufficient notice of the hearing, (2) full particulars of the complaint." Well they are not the same, are they? Number 2, we go to the seventh paragraph of the Chief Officer's statement: "I would be allowed up to one hour to consider my position" and there is a little gap: "I also protested strongly at the unfairness of the procedure and in particular the lack of any opportunity to make informed responses to matters being alleged against me." Then you go the code, 2.3.5: "The Chief Officer will be provided with the opportunity to present a response to the complaint including the submission of documents, statements and calling of witnesses and to respond to questions by the Minister. Witnesses may be questioned by either party." Thirdly, we go to 9.2 of the Chief Officer's briefing to us: "Two days after my suspension I was provided with what was said to be a copy of that letter. It is dated 12th November 2008 and in it the Chief Executive is instructed to 'conduct a preliminary investigation under paragraph 2 of the code'. Part 2 sets out the actions which the Chief Executive is required to take. These include the obtaining of the 'statements from available witnesses and from the Chief Officer'." That is one side. If you go to the other side you go to paragraph 2 of the Chief Officer's briefing notes to us: "During the course of that evening, I was unexpectedly telephoned at home by the Home Affairs Minister who told me that he wished to see me in the office of the Chief Executive at 11.00 a.m. the following day. He told me that the proposed meeting was in consequence of a presentation" and so on and so on and he was not given any inkling that it was a disciplinary matter, and the statements from available witnesses and the preliminary investigation, nothing was followed. I just wanted to go through that because it seems



to me that really there is no case. I do not quite know why we have spent 3 hours on this and I will be supporting the proposition.

**2.1.21 Deputy I.J. Gorst of St. Clement:**

It is a very small point. I just hope the Connétable of St. Helier will be able to confirm in his summing up that although it does not state it in the proposition, in his report he says that J.A.C.S. might be a suitable body to undertake this piece of work should it be approved today. I hope that he will reconsider that and confirm that he does not believe that that is the case because J.A.C.S. are there to advise and act as a conciliation service on the Jersey Employment Law, not on the Police Law which this matter falls under. It is extremely important that J.A.C.S. are and are seen to be both independent and impartial advisers to employers and employees and to trade unions, and this would not be an appropriate task for them to fulfil. I hope he can confirm that in his summing up.

**2.1.22 Senator B.E. Shenton:**

It is just a minor point. I have been in the finance industry for 30 years and if you have a trader or dealer which you have found to have committed fraud then the procedures as outlined often go out the window. You have to isolate that person, remove his access to the computer systems and get him out of the building as quickly as possible so that you can then undertake a full review and not to put the organisation into danger. It depends how you read the code. You can read it that if an allegation is exceedingly serious, and I put to you that maybe this would be the case, the code jumps straight to 2.3.3. It is not dismissing the individual. It is carrying out the investigation while suspended in order to protect other parties within the organisation and to ensure that there is no undue influence or any other type of interference with the investigation that may be taking place. I spoke to the previous Minister for Home Affairs at length and he assured me on more than one occasion that the code was followed to the letter and he has no problem with the actions that he was taking and that were taken with a great deal of thought and a great deal of advice. So I would ask Members to reject this proposition which I think was brought more out of a friendship for the individual than for any other reason because these are serious allegations.

**The Connétable of St. Helier:**

I make a point of order if I may. I would like to ask the Minister to withdraw that remark. He is impugning improper motives to a fellow Member.

**Senator B.E. Shenton:**

I am happy to withdraw the remark if the Constable has taken offence to it. However, I do not feel that the code was misused. The code clearly states as well that there should be no correspondence between the parties and yet that was breached but no one seems to pay the attention to that. We are not all aware of all the facts of this case. I think this debate is exceedingly unfortunate because if we were aware of the facts, many of us would vote differently. So I would ask Members to reject this and leave it for the Minister for Home Affairs to deal with the case in accordance with his experience and his knowledge.

**Senator S. Syvret:**

Just a point of clarification. We are in camera; this is a secret meeting and the Senator and others have alluded to very, very serious allegations. Let us hear exactly what the allegations are.

**The Deputy Bailiff:**

No, Senator, that is not relevant to the discussion. It is not relevant to the proposition now before us.

**Senator S. Syvret:**

But we are supposed to take this kind of innuendo against an individual without hearing what exactly he is accused of.

**The Deputy Bailiff:**

The matter of the allegations is not before us. Deputy of St. John?

**2.1.23 Deputy P.J. Rondel of St. John:**

I am somewhat torn on this one. Certainly, the Constable of St. Helier made a brilliant speech in his proposition I must say but, equally, so did the Minister. I have concerns having worked with both the former Ministers for Home Affairs and knowing that everything was not always right. But I also many, many years ago worked with the current Minister in the lower courts when he was a young lawyer. Now I am pleased to say that when I was prosecuting and he was doing the defence he never won a case against me [Laughter] but that said he has learnt a lot since then. He has learnt an awful lot and I am prepared to put my faith in the Minister [Approbation] and allow him that time to go away and investigate this thoroughly. I have been watching him over the last 30-odd years as he has climbed to sit in the chair of judgment and watched many of his judgments and I have found him to be a very fair man. That said I will not be voting with the Connétable. I will be voting against this proposition because I believe the Minister needs to prove to us and to the Island that he is the right man in the right position. [Approbation]

**The Deputy Bailiff:**

Does any other Member wish to speak? Very well, then I will call upon the Connétable to reply.

**2.1.24 The Connétable of St. Helier:**

I hope Members will be patient as I work through some of the questions that have been raised. The Minister for Home Affairs quite rightly began and I just want to clarify a couple of things that he did not appear to hear. First of all, I did refer to the judicial review being registered. I do not know if that is the word I used but I certainly mentioned it towards the end of the speech and, yes, I did take advice from the Bailiff before today to check that we could have this debate. I do not blame him for following advice as I think he thought, nor do I have any issue really with his desire to remain objective and impartial. I am not going to go into all the details of the Minister's remarks, but what concerns me about his approach is he said on several occasions that he regards the human resources procedure as being a subsidiary matter. The substantive disciplinary issue is what he wants to get on to and he said towards the end that the time scales of what I am asking would be a problem whereas, unless he has revised his view when I spoke to him I think yesterday, he said that he would not expect to conclude his review before May. That is a long time to keep a very highly paid civil servant suspended to say nothing of the effect on the family of the person. So if this proposition is not won I would hope 2 things: that the Minister does focus on the H.R. procedures and he makes sure, even if he does not think they are important, that they are properly scrutinised because I have to agree with many other speakers who believe that following our employment procedures is really important if we want to be a good employer. There were several other detailed points he made. I am not going to go into all of them. I do not think there is anything he asked me to come back to. Interestingly, he said the disciplinary code "was badly drafted and ambiguous and perfectly ghastly". Well, Members were saying later on that they wanted evidence that there was an H.R. issue, a problem with the H.R. process. If the Minister himself says that the code that has been used for this process was badly drafted, ambiguous and perfectly ghastly then what hope does anyone have for making anything stick against that member of the States' staff? He said there may have been some technical failures about the process and I think I have given evidence that there are indeed problems. I think one thing I will take him to task about is that he said he had been getting requests and that it was terribly confusing to have requests from different parties, and I believe that is disingenuous in the extreme of the Minister because all 3 parties that have corresponded that I am aware of, that is Mr. Brain from the Association, myself and indeed the Chief Officer of States of

Jersey Police, all of them want the suspension lifted and they want the disciplinary process to be conducted properly and that is all very much singing with a single voice. I am not going to go into the other matters. He did say that the investigation will cost £250,000 anyway whether or not we have this compliance check, but I would argue that is very much a matter for him. If he has the H.R. matter looked into, if there have been serious problems with it, then I doubt very much he will then want to commission a £250,000 investigation into what led to that suspension. I suspect he will be looking at a way of arriving at that information without that kind of expenditure. He says, as I said, that the proposition does not go in the right direction. That is because he is looking at this from a legal judicial perspective not from the human resources perspective. He says that my timescales are too long. Well, I have said the end of February we are looking for a report and that is a month away so I do not think that is a real problem at all. Deputy Le Claire is exactly right when he corrected the Minister and said P.182 is about process. It is not about the reasons for the suspension in the first place, although he did then try to look into the bullying allegations. The Constable of St. Martin raised the issue of the judicial review and we had advice from the Attorney General about that. It is a fact that the judicial review will expect other means of resolution to have been sought. Clearly, if this is not approved today then that judicial review is going to go on and, as I have said before, it is going to be expensive and there will be fallout from it. Deputy Higgins I thought spoke extremely well. He set out very clearly the principles of natural justice which he feels from his reading of the documents are clearly not being met. The Deputy of St. Martin defied any intelligent person to compare the code that is being used here with the version of events supplied to us. Deputy Le Hérisser said that a review of procedures that the Minister was calling for is crucially different from what I am asking for, because what I am asking for is independent scrutiny and I believe in this particular case and in this context that independent review is well worth the candle. Senator Perchard did not actually speak. He made various interventions **[Laughter]** and he kept going on about the lack of evidence which was a theme picked up by other speakers, not least Deputy Fox, Senator Ferguson and Deputy Jeune. They all said this was a one-sided story. Well, as was pointed out by a number of speakers, nobody has disagreed with the Chief Officer of Police's version of events. It was circulated to Members on 2nd December and nobody has disagreed with it. But even if, as somebody said, they think the Deputy of St. John or the former Deputy of St. John is a wonderful person, I think Senator Shenton phoned him up and was assured that everything that the former Minister did was kosher, and even if you agree with that, something has happened since the Deputy of St. John was the Minister for Home Affairs and that is the destruction of the evidence of a crucial meeting. So even Members disregard all evidence laid before them today. They have, and this has been admitted by the Minister who said he was horrified to hear it, so there is no disputing it, that the destruction of that event by itself is enough evidence to stop any disciplinary hearing in its tracks. **[Approbation]** The Constable of Grouville is perfectly happy. That is fine. It is the Chief Executive to the States who destroyed evidence of the first unscheduled disciplinary meeting with the Chief Officer of Police and the Constable of Grouville is perfectly happy ...

**The Connétable of Grouville:**

I am sorry, I have to intervene. I did not say that.

**The Connétable of St. Helier:**

I am not going to give way.

**The Connétable of Grouville:**

I did not say that. It is not true.

**The Connétable of St. Helier:**

Well, I am sorry ...

**The Connétable of Grouville:**

I am sorry, I am going to have to say he is misleading the House.

**The Deputy Bailiff:**

Will you give way, Constable?

**The Connétable of St. Helier:**

Yes, I am happy to give way, yes. [Laughter]

**The Connétable of Grouville:**

Very simply, I will not say that he has misled the House but I will use another word. He is misinforming the House. I did not say anything at all about the destruction of the documents. The only points that I made were that the previous Minister for Home Affairs was unequivocal in his assertion that he had done everything according to the book and everything was in order. That is the only thing I said.

**The Connétable of St. Helier:**

I impart my unreserved apologies to my fellow Constable. Yes, I think I went a bit far there. [Laughter] I think there were a number of speakers who seemed perfectly happy with the situation and said there was no evidence of any problems with the disciplinary process. I suggest to Members that the destruction of crucial evidence is a major problem in any disciplinary process. Senator Syvret correctly pointed out there has been no denial by the Minister, in fact by either Minister, of the evidence that has been put before Members and I would remind Members that the 5 key tests that I outlined at the beginning in my proposal, all of those 5 key tests have been failed in the course of this procedure. Some Members still think there is no evidence of that, but it is a fact that the Chief Officer of Police did not have any kind of representation when he went into that meeting. It is a fact that he has to date not been offered any legal advice and I am sorry if Members do not think that is evidence, well, that is a matter for them. Senator Breckon and also Deputy Southern, 2 very useful contributions because both Members have significant experience of employment relations and disputes and both of them are unequivocal about the fact that there really is a good reason here for looking for that independent advice. In contrast to that we have speeches such as that of my good friend, Senator Cohen, who seemed to think that because the Minister for Home Affairs is a nice chap and he admires him then he is capable of dealing with this matter. Well, of course, the Minister is capable of dealing with it but the crucial difference is that he is not independent. He is part of that organisation and, indeed, by his own admission he referred that second disciplinary to the very person who destroyed the evidence of the first meeting. So I put it to Members that there is a clear need for that separation, for that independence in the review of this process. I will not, as I say, go into all the speeches. I must come back to Deputy Gorst who said that J.A.C.S. would not be an appropriate body and I agree with him. I spoke to J.A.C.S. some time ago and they said they would rather not be involved, but clearly there are many, many experienced H.R. professionals. Indeed, they are on-Island as well as off-Island or one could even go to Guernsey I suppose, but there are plenty of H.R. professionals who in half a day would look at what has happened, they would look at the procedure and they would compare it with an agreed version of events by both parties and I believe that in half a day they would either give us the thumbs up or the thumbs down on this process. The Deputy of St. John I think at the end injected much needed humour into the debate. There is always a place for that but again he tended to fall back on his 30 year knowledge of the Minister as a good bloke and I am sorry, that is not what we are talking about today. I agree. I think the Minister is excellent. He is going to make a good job of it, but that is not what we are here to decide today. So just to summarise - and I hope I have covered every major contribution - I thank everybody who spoke even if I have not referred to them by name. In my view, any one of the failings that I have referred to today would and will compromise a disciplinary process once it gets on the tracks, so I think Members need to bear that in mind, and even if they set aside the document circulated after lunch by the Chief Officer, it is not denied that

the evidence of that first meeting has been destroyed, and I think quite honestly I would not go into an employment relations tribunal against that kind of enemy. You do not fight a battle if you know you are going to lose. So my question, do Members have confidence the Minister can conduct a quick and independent review when he has already said he regards the H.R. matter as subsidiary? Are Members happy that the independence is going to be here when we clearly have a conflicted Chief Executive Officer of the States? Members have had the privilege, if you like, of debating in camera but they will have to vote in public and I would remind Members that quite honestly if we do not stop this leviathan in its tracks it is going to rumble on. There will be a judicial review. There will not be a judicial review if we have the H.R. check carried out. I know that because I have had assurances from the Chief Officer that he does not want to go to war with the States. He wants to go back to work and if we have the review, we will see what happens. If the review comes out in his favour, then the suspension will be annulled and I am pretty sure this is not the sort of person who will be asking us for anything other than, as I say, the right to go back to work. If the review finds the H.R. has been correctly followed, no time has been wasted and very little money has been lost. I put it to Members that when we do vote in public today, the message we send out is as an Assembly we are going to say no to a short independent review of the way a senior Member in our employment has been treated, one which as I have said distinguished and experienced commentators have already said they find faulty. So I put it to Members, what have they got to lose by having this review? I think we have nothing to lose and we have everything to gain. I maintain the proposition.

**The Deputy Bailiff:**

I ask the usher to open the ...

**Senator T.A. Le Sueur:**

Before we do that, an allegation has been made about improper activity by the Chief Executive in allegedly destroying evidence. I did not intervene during the debate because I thought it was just an ordinary debating point but the Constable in his summing up has made great play of that and the fact is that the notes of that meeting were transcribed into a typewritten form. The typewritten form is in existence and has been circulated to all parties. The handwritten original has been destroyed and superseded by an identical typewritten document. So I just think in fairness to the Chief Executive whose integrity has been impugned, that that ought to be made known to Members.

**The Connétable of St. Helier:**

Can I just have the opportunity to reply to that?

**The Deputy Bailiff:**

One moment, I am so sorry. It is important to ask the **[Laughter]** ...

**Senator S. Syvret:**

I just wanted to ask a point of clarification on what the Chief Minister said. If it is in fact not the case that handwritten notes at meetings and at interviews are not considered of great evidential importance, could he explain to me why the police force want all of my handwritten notes from the variety of interviews and meetings I have had with survivors and others?

**The Deputy Bailiff:**

I am sorry, that is getting way off the point. Now, Connétable, you need to be able to respond briefly to this.

**The Connétable of St. Helier:**

Well, I must say it is most unsatisfactory the Chief Minister did not take part in the debate and I have now summed up, but thank you for allowing me to reply to his assertion. It is a fact that

whether it is a committee clerk or a detective constable in the States of Jersey Police, handwritten notes are material and to say that it was transcribed is frankly irrelevant. **[Approbation]**

**Deputy M.R. Higgins:**

Can I also provide some information as well? I know from my experience in the Financial Services Commission, all our notes were taken whether they were written or typed.

**The Deputy Bailiff:**

I am sorry. I think the debate has come to an end now.

**The Deputy Bailiff:**

We are back in open session and the matter before the Assembly is the vote for or against the proposition of the Connétable of St. Helier and the Greffier will open the voting.

<b>POUR: 21</b>	<b>CONTRE: 29</b>	<b>ABSTAIN: 1</b>
Senator S. Syvret	Senator T.A. Le Sueur	Deputy of St. John
Senator A. Breckon	Senator P.F. Routier	
Connétable of St. Helier	Senator P.F.C. Ozouf	
Connétable of St. Peter	Senator B.E. Shenton	
Connétable of St. Lawrence	Senator F.E. Cohen	
Deputy R.C. Duhamel (S)	Senator J.L. Perchard	
Deputy of St. Martin	Senator A.J.D. Maclean	
Deputy R.G. Le Hérisier (S)	Senator S.C. Ferguson	
Deputy J.A. Martin (H)	Senator B.I. Le Marquand	
Deputy G.P. Southern (H)	Connétable of St. Ouen	
Deputy of Grouville	Connétable of Trinity	
Deputy P.V.F. Le Claire (H)	Connétable of Grouville	
Deputy S. Pitman (H)	Connétable of St. Brelade	
Deputy M. Tadier (B)	Connétable of St. John	
Deputy of St. Mary	Connétable of St. Saviour	
Deputy T.M. Pitman (H)	Connétable of St. Clement	
Deputy T.A. Vallois (S)	Connétable of St. Mary	
Deputy M.R. Higgins (H)	Deputy J.B. Fox (H)	
Deputy A.K.F. Green (H)	Deputy of St. Ouen	
Deputy D.J. De Sousa (H)	Deputy of St. Peter	
Deputy J.M. Maçon (S)	Deputy J.A. Hilton (H)	
	Deputy J.A.N. Le Fondré (L)	
	Deputy of Trinity	
	Deputy S.S.P.A. Power (B)	
	Deputy K.C. Lewis (S)	
	Deputy I.J. Gorst (C)	
	Deputy A.E. Jeune (B)	
	Deputy A.T. Dupré (C)	
	Deputy E.J. Noel (L)	

**The Deputy Bailiff:**

Very well, so that brings that matter to an end.