

STATES OF JERSEY

OFFICIAL REPORT

THURSDAY, 24th SEPTEMBER 2020

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[9:32]

The Roll was called and the Dean led the Assembly in Prayer.

STATEMENT ON A MATTER OF OFFICIAL RESPONSIBILITY

1. The Chief Minister will make a statement regarding the continued response to COVID-19

The Bailiff:

Before carrying on with Public Business I have given leave to the Chief Minister to make a statement on a matter of his official responsibility in the Assembly first thing.

1.1 Senator J.A.N. Le Fondré (The Chief Minister):

I have asked to address the Assembly this morning to update Members on how the Government is continuing its work to keep Jersey in the favourable position we currently enjoy. Over recent weeks, the Government has closely monitored the developing situation in Europe and the U.K. (United Kingdom). Meanwhile we have capitalised on the summer months to enhance our preparations for COVID-19 during this winter. We have looked at how we can protect the freedoms we have regained since April through our safe exit framework and planning how we avoid the sort of second lockdown currently being enforced in certain other countries. Another lockdown would damage the health of Islanders and the health of our economy. It would cost us lives in delayed healthcare for other conditions and would cost us livelihoods in loss of income and jobs. As I said in my public statement on 28th August, we have been considering a package of preventative measures to keep cases low and stop clusters forming in the first place. It is important that we begin these preventative measures in the autumn, while cases are still low to stop these cases becoming clusters. I know that for some Islanders this will seem premature. But we have got ourselves into the favourable position we are in now by following sound medical advice and we must continue to do this to keep ourselves in this favourable position. The measures we are proposing are small changes to the daily lives of most and I ask that Islanders take them in the perspective that there is a global pandemic beyond our shores. If we can all keep together, all support the community and the most high-risk, we will all get through this winter together. I want to keep our lives, our livelihoods, and our economy on as clear and steady a course as possible through the winter. I want to keep our health services offering elective treatments, I want to keep businesses open and trading and I want for those who need to visit loved ones off-Island to be able to do so as long as possible. To do this, the Government has dramatically increased our local testing capacity through the establishment of our dedicated on-Island facility. We have enhanced our test, track and trace system so that it will be ready for the deployment of a mobile app. We have prepared a new public awareness campaign for flu and COVID-19 to make sure that when vaccines become available, Islanders know how they can access them. And, where possible, we have broken down the U.K. into smaller regional classifications to give more granular detail of where cases are and how we can balance the risk at our ports while keeping our essential connectivity to the UK working. Further on-Island mitigation measures were discussed by the Council of Ministers on Tuesday and will be publicly announced, in detail, next week. One such measure, which Members will have seen, is the wider use of masks in indoor public spaces (supermarkets, shops, the library), which the Minister for Health and Social Services is currently preparing the necessary legislation for. At the moment it is advisory; strongly advised. This will not include wearing masks in workplaces and will sit alongside further community testing and screening of front line staff and more targeted enforcement activity in the night-time economy and for those who should be isolating. States Members will receive a further briefing from Ministers and medical experts next Tuesday, before any public announcement. Jersey is in a good position. We have not detected transmission within the community, and we have an excellent test, track and trace programme in place to find and isolate those cases should they be detected. This strong position is in large part thanks to the ongoing co-operation of Islanders and I would like to thank everyone who has followed the guidelines and

done their part to keep the rates of transmission so low. Where guidelines have not been followed, we have intervened, and this has led to prosecutions. We will continue this approach throughout the winter to remind Islanders that we are not through the pandemic. The actions of the few will not be allowed to ruin the freedoms of the many. Members will be aware that our new on-Island testing centre, that has now been operating for over a week, is reducing average turnaround time down to our ambition of just 12 hours. It is with this new capability that we can update our regional classification thresholds and bring us in line with the European Commission proposed levels. Today, we will release new regional classifications, at a much more granular lower-tier authority level for England. These new classifications will be in effect from Tuesday morning and will require all arrivals from green regions to undertake a test both on arrival and after 5 days, if they are still in Jersey. For green arrivals there will presently still be no need to isolate until test results, though once our turnaround times do get below 12 hours, we will bring this in for the first negative result. This is how we will enhance our border protections. A further announcement will be made in due course to confirm when this will begin. The option to undertake a verified P.C.R. (Polymerase chain reaction) test before arriving in Jersey will remain as before, provided that a negative result is received within 72 hours prior to arriving in the Island. This will continue to ensure that regular business travellers can continue to frequent our Island, provided they take the necessary precautions. As always, full advice, including a breakdown of regional classifications and the steps for in-bound travellers will be available on the gov.je website and via our dedicated coronavirus hotline. In the meantime, I want to emphasise that we must not be complacent as a community. Physical distancing, frequent hand washing, the use of masks where appropriate and consideration for others remain vital in our fight against COVID-19.

[9:45]

I wish to express my gratitude to our medical professionals, officers across departments, colleagues in this Assembly, and to all Islanders for their collective efforts. We are in a more fortunate position than most jurisdictions, not only because of our geographic disposition, but also because of our economic resources, our P.P.E. (personal protective equipment) stocks and our testing capacity. But most of all, especially thanks to the co-operation of Islanders who continue to prove their resilience and determination to reduce the transmission of COVID-19 and to keep Jersey safe. With that, I will be happy to take questions from Members.

The Bailiff:

Thank you very much, Chief Minister. There is now a period of 15 minutes allocated to questions to the Chief Minister.

1.1.1 Deputy S.G. Luce of St. Martin:

Can I thank the Chief Minister for that statement? I completely concur with everything he said and I think we all owe S.T.A.C. (Scientific and Technical Advisory Committee) and all Islanders a great deal of gratitude for the position that we find ourselves in. The Chief Minister in his statement says the following: “The actions of the few will not be allowed to ruin the freedoms of the many.” Can I just ask the Chief Minister whether he was surprised at the level of fine given to those who have been taken to court for breaking the rules compared to our sister Island?

Senator J.A.N. Le Fondré:

I do not particularly comment on individual cases but I am comfortable at this stage that enforcement and compliance is appropriate but obviously, again if we need to do more, and it is one of the messages for today, is we will be doing more and we will be ramping up the enforcement levels. I think the reference to the few is that there are some people who either do not recognise that there is a problem globally or that they think we are all through it. As we have been saying, and as I have been saying for many weeks, we have to prepare for winter and this is part of that preparation. Can

I absolutely endorse the comments the Deputy has made endorsing mine in terms of thanking S.T.A.C. and all the advice and teams and officers and the public who have brought us to this place that we are in today?

1.1.2 Deputy G.P. Southern of St. Helier:

Can the Chief Minister guarantee for Members that he will inform us what scientific papers lie behind the overall move to increase to use of masks? In particular, the scientific papers not just the overall advice that is coming from the scientists. Can we have access to the evidence please?

Senator J.A.N. Le Fondré:

I will certainly absolutely commit to getting as much information to Members as I possibly can and, as I said, that is one of the purposes of the briefing being on Tuesday. I think that might be one for perhaps directly to the medical people as to what papers they can direct Members to. What I can say, in terms of masks; there are 2 issues. There is some certainly professional opinion that masks do assist. They are not the first measure but they are one of the measures that achieve what we are trying to do in terms of limiting the spread. There are 2 other factors. One is it is important, it does demonstrate to people that we are not back to normal and therefore it just sends that visual message. Perhaps most importantly, there is ... I will use the word "evidence", this is what I am advised, that the southern hemisphere has seen less flu transmission. The whole point of the issues around winter is that we are going into flu season as well. They have seen less flu transmission as a result of masks being worn. That then goes into the health of Islanders and then if the health of Islanders is good, when a COVID vaccine comes out then they are in a better place to receive it. But I will refer that direct question of the Deputy to the medics and they will be prepared to answer that question on Tuesday.

1.1.3 Deputy G.P. Southern:

As I ask all the time, can we have access to those papers, the scientific papers underlying the advice, before the meeting so we can ask the right questions knowing what those scientific papers say?

Senator J.A.N. Le Fondré:

I will refer that directly to the medics and S.T.A.C. and see what I can get circulated to Members in advance.

1.1.4 Deputy R.J. Ward of St. Helier:

What is the reasoning behind the second test after 5 days on arriving from green areas?

Senator J.A.N. Le Fondré:

It is essentially a matter of being on a precautionary approach to make sure that if there is someone who is coming in on day zero that if ... it is a double precaution. That is the main point. What we are saying, that with the on-Island testing we can increase our ability to test and therefore increase our ability to safeguard Islanders.

1.1.5 Deputy R.J. Ward:

I welcome that caution. Those who have received prior tests 72 hours beforehand, which are acceptable and negative, will they be expected to take a test after 48 hours, which is the equivalent of 5 days, as anyone from a green area would be?

Senator J.A.N. Le Fondré:

The microphone cut out literally ... I think I got the gist of the question, which is they will be expected the equivalent of the 5-day test. I did not quite catch exactly when but the principle would be they will be expected to take the equivalent of the 5-day test.

1.1.6 Deputy K.F. Morel of St. Lawrence:

Will the Chief Minister advise the Assembly as to whether the legislation that he mentioned that the Minister for Health and Social Services will be bringing to the Assembly, whether that will be enabling legislation or whether that will be the decision with regard to the wearing of mandatory masks? Will it be enabling legislation with the decision resting with the Executive or will the States be making the decision itself?

Senator J.A.N. Le Fondré:

I have to say I am not sighted on it because I have not seen it drafted yet, that is why we are giving a heads-up, if that is the right expression, because it will be coming to the Assembly; I think the intention is some time in November. My impression, but I will caveat this and again we can cover that on Tuesday, is that on the basis of a number of other pieces of legislation it would be enabling and then it would be a case of the Minister usually signing an Order, which obviously can be challenged in the Assembly. But obviously again, we would make sure that before it was enacted the Assembly was briefed on it before the decision was taken. Again, this is all one of those precautionary steps of putting in place. Can I add the caveat to that, that again we will update Members precisely on Tuesday?

1.1.7 Deputy L.M.C. Doublet of St. Saviour:

I thank the Chief Minister for keeping us informed. As any measures do have to develop as we head into winter, could the Chief Minister please confirm that a full Child Rights Impact Assessment will be made on any measures that are increased or ramped up going forwards please?

Senator J.A.N. Le Fondré:

The rights of children will definitely be taken into account on any legislation that is brought in.

1.1.8 Deputy L.M.C. Doublet:

Does the Chief Minister agree that a full Child Rights Impact Assessment should be done on every measure please?

Senator J.A.N. Le Fondré:

I think the point is that all proper steps will be taken.

1.1.9 Senator K.L. Moore:

Could the Chief Minister elaborate on the rationale behind the decision not to request arriving passengers to isolate until their first test result is received?

Senator J.A.N. Le Fondré:

As we have always said all the way through, this is always about a balance of risk to the Island and how we improve matters. As we know, to date anybody arriving from green areas does not have to isolate for the test. What we are saying is that when, with the on-Island capacity coming up to the point - and we are not quite there yet - this is why we are giving advance notice, and we are expecting it within a very short matter of weeks. We will hopefully give a better timeline to Members on Tuesday. When we have got that capacity, that we have got that and the average is down to around 12 hours or better, we will then be in a position to enforce that or introduce that measure without causing significant disruption to the connectivity in the Island as well. But also then balancing off the risk within the Island, which as I said, the whole position on this is balance of risk, maintaining well-being in respect of COVID, other health measures and the economic consequence of any actions we take. So it is a balance all the way through.

The Bailiff:

Can I just indicate - Senator, I will give you a supplementary question - I am proposing to take those who are asking questions for the first time and give them priority over those who are seeking to ask

questions for the second or third time. In answer to Deputy Ward, no, it is not possible to ask for a point of clarification during question time but it is possible to seek to pose a second question, if there is time available.

1.1.10 Senator K.L. Moore:

When taking decisions, what balance does the Chief Minister give, and his colleagues, to the importance of enhancing trust and confidence of Islanders and how they might respond to decisions taken?

Senator J.A.N. Le Fondré:

To date, I think the majority of Islanders do trust the decisions we have taken because despite criticism we have had on various points in time, they can see where we are today and that we are in a very good place. We do take account of measures. We do not want to ideally bring things in without sufficient notice and that is why we have been trailing the fact, since the end of August, that we will be making preparations for winter. This is a step in the process. There will be further communications obviously coming out as part of that awareness-raising campaign.

1.1.11 Deputy K.G. Pamplin of St. Saviour:

I also agree, thank you to the Chief Minister for making a statement today. Does the Chief Minister agree with me that this is a critical moment that the communication is essential? There are many Islanders who are still isolating, especially the elderly, and those with underlying health conditions. Everybody is doing a good job. We are not other parts of the world. But therefore the timing and the message of this has to be based on the evidence and the reassurance to Islanders that we are in a good place but we have to remember those who are, at this moment, waiting for a vaccination and reassurance the Island is in a safe place?

The Bailiff:

Is there a question?

Deputy K.G. Pamplin:

Does the Chief Minister agree?

Senator J.A.N. Le Fondré:

In terms of giving reassurance to Islanders, absolutely. In terms of continuing to protect those who are more vulnerable, again absolutely. As I said, this is one of the reasons we have been slowly socialising, if you like, the fact that we do want to do winter preparations. This is part of those measures. I will be doing a press conference later today, I think it is at lunchtime. Again, that is part of the whole campaign that is going to be starting to ratchet up. Again, as I said, details of the further measures are likely to be taken on Tuesday before, again, any further communications are done so that States Members continue to be kept informed upfront.

1.1.12 Deputy J.H. Perchard of St. Saviour:

I would just like to clarify something that is written in the statement, and I apologise but I was only sent it at 9.40 so I have not studied it thoroughly, but it states that once our turnaround times do get below 12 hours we will bring this in - "this" being isolation - while waiting for results ... we will bring this in for the first negative result. Is that meant to read "from the first negative result" and if not, can the Minister clarify exactly what that clause means?

Senator J.A.N. Le Fondré:

I always worry about challenging grammar with the Deputy or phraseology. Essentially people coming into the Island will have to isolate until the result of that first test.

1.1.13 Connétable S.A. Le Sueur-Rennard of St. Saviour:

I thank him for what he said today. This has been good for us to be on top of everything and to answer questions that our parishioners will ask us. I am just concerned about the older generation and Christmas coming up and visiting. Can he assure us that the older generation will be considered and will be taken care of and that they will not be isolated and forgotten about, like they were in March, April and May?

Senator J.A.N. Le Fondré:

The answer to the first part of the question is absolutely. We absolutely tried our best to avoid everything the Constable just referred to in March, April and May.

[10:00]

But I do take the point that there were a number of Islanders who were very concerned about what was happening around them. But I think again, like all things, and we have had discussions around this at the competent authorities meeting briefly, is that we know we have a long haul ahead of us to get through the winter months and we know, as well, the type of issues that the Connétable is referring to. I have asked that measures are in place to try and help even more than we did over the early part of this pandemic.

The Connétable of St. Saviour:

Can I have a supplementary please, Sir?

The Bailiff:

I am afraid that brings to an end the period of 15 minutes allocated for questions. If this had been on the ... it would show that it is open to a Member to propose an extension by up to 15 minutes for questions following a statement on official matters.

Deputy K.G. Pamplin:

Could I propose that, given the importance of the Chief Minister's statement?

The Bailiff:

Is that seconded? **[Seconded]** May I assume if anyone is against that that will be indicated within the chat. No. The period is extended by a further 15 minutes. Supplemental question, Connétable of St. Saviour.

The Connétable of St. Saviour:

No, Sir, I think it is best that the others get to talk and we get to listen. I thank the Minister for his answer to my first question.

1.1.14 Deputy M.R. Higgins of St. Helier:

One of the things that we brought in during the first stage of this COVID crisis is the volunteering aspect and the role of the Parishes looking after people who could not get out. Can the Chief Minister assure us that those systems are still in place and ramped up, so that we are more than ready for anything that may come over the next few months?

Senator J.A.N. Le Fondré:

The short answer is yes. In other words, we are reviewing it. We want to be ramping it up and we will be tapping into the same systems that were in place before, obviously learning from where improvements can be made.

1.1.15 Deputy I. Gardiner of St. Helier:

The Chief Minister indicated that if the results will be ready in 12 hours that self-isolation, until the negative results, will be required. For me, it means that we know there is a danger and self-isolation is important to reduce the risk. Why are we not doing it now?

Senator J.A.N. Le Fondré:

In all of these things, as we have gone through - and I know Deputy Gardiner's views on the matter, she has been fairly consistent on this all the way through - it has always been a balance. It has been a balance during the summer months, the risks have been very, very clear and been very, very low, and what we are doing is trying to maintain the risk exposure to the Island. By bringing in the test on day 5, and that will be coming in from Tuesday, and then the self-isolation when we can do it in a really good turnaround. That is because we can invest so much in the on-Island testing regime that we have in place. Also then, which we have not particularly referred to, there will be things like the tracing app that will hopefully be coming out during October. As a package of measures, we are going to be in a position that we have very good systems and it is right as well with the speed of the turnaround, with that whole balance I referred to previously, that we then start requiring people to self-isolate. But it will mean people who do come in or who are going away and returning to the Island, they can have that very quick turnaround while still self-isolating.

1.1.16 Deputy I. Gardiner:

Currently the turnaround is around 24 hours. Would the Chief Minister consider that isolation in 24 hours will damage the economy more than a possible second lockdown?

Senator J.A.N. Le Fondré:

The whole point is where we are at the moment on the Island, where we have a very low number of cases. At the moment we remain in a very good position, we intend to continue doing so. At this stage, there is no need for any of the measures that the Deputy is talking about. What we are saying, is that ... and therefore that is the balance of risk about maintaining our wider connectivity, which is important not only for the economy but also for the well-being of Islanders, the ability for them to go and see a family away, for all those university students and people to be able to come back and see their loved ones at home. But what we can do is that we believe by bringing it down to 12 hours, which we anticipate will be in a very short number of weeks - as I said I intend to give some more details to Members on Tuesday - that will maintain that balance and bring us into a particularly good position. But do not forget, to date, the testing regime that has been in place since the beginning of July, and which we were trialling in June, has served us very well.

The Bailiff:

Members are asking for an extension to question time. Standing Orders permit one extension, which is already taking place. Consequently there can be no further extensions and the question period for the Chief Minister will expire at 10.15.

1.1.17 Deputy D. Johnson of St. Mary:

In response to a question raised by a constituent only yesterday, will the Chief Minister ensure that in publishing any new rules as to the wearing of face masks they are accompanied by recommendations as to the frequency with which such masks should be used, their laundering and their ultimate disposal?

Senator J.A.N. Le Fondré:

Yes.

1.1.18 Deputy C.S. Alves of St. Helier:

The Chief Minister in response to Deputy Doublet's question regarding the Child Rights Impact Assessment Said that all proper steps would be taken. Can he clarify whether these steps include a full Child Rights Impact Assessment please?

Senator J.A.N. Le Fondré:

The point is where it is appropriate to do so it will be done. I am just trying to envisage if there is any legislation which would categorically not have an impact on children and therefore whether an assessment would be required. But where it is fairly obvious that there will be impact ... sorry, where there is a chance there would be an impact on children I would expect such an impact assessment to be done. That is why I made reference to all proper steps will be taken.

1.1.19 Deputy M. Tadier:

The other end of the age spectrum - and sorry if this has been touched on already by the Constable of St. Saviour - but will there be steps to be taken to make sure that the quality of life for the elderly, especially those in care homes who are with perhaps reduced faculty or mobility, that there will be a proportionality introduced so that their quality of life is not disproportionately diminished by steps, which may not be appropriate in their situation?

Senator J.A.N. Le Fondré:

I remain acutely aware of the issues that the Deputy refers to and the Deputy is not the ... I have always been aware of the Deputy's circumstances, but other members of the public have also raised that indirectly with myself. So I have raised that directly with the relevant officers and I have been assured that they are looking at the position to see what else can be done and what can be done differently. I do not yet have information on that but it is something that I am acutely aware of, as is the Minister for Health and Social Services, and we will be ensuring that officers do come back with the relevant advice and the relevant measures to essentially address the issues the Deputy is referring to.

1.1.20 Deputy M. Tadier:

The first question might have been slightly garbled on my part but essentially I think it does come down to an element of freedom of choice being introduced for those people who have lived their lives and want to make their own decisions about what level of risk they take. I completely agree it is a sensitive area but I think that we should fully respect, especially ...

The Bailiff:

Deputy, there are a number of people who wish to ask a question.

Deputy M. Tadier:

I will leave it there.

1.1.21 Deputy R.J. Ward:

I was just going to ask the Chief Minister, when we talk about coming from green areas, is it not the case that is everywhere, apart from somewhere that is amber and red, so therefore everyone returning to the Island would have to take a test and then they test after 5 days? Or have I misinterpreted that? In other words, who is not coming from a green area?

Senator J.A.N. Le Fondré:

In short the Deputy is correct. It will mean that everybody coming into the Island will have to take a test at day 5 unless ... sorry, anybody coming from a green and definitely an amber area will have to take a test at day 5. I cannot remember the exact position of people coming from red other than they have to do 14 days of self-isolation. The point is that it will be people from green who will be

taking their test at day zero but will have to self-isolate until the results of that test are known, and that will be when the on-Island lab comes up to full capacity.

1.1.22 Deputy K.G. Pamplin:

Given his previous answer to Deputy Ward, obviously if the virus does start transmitting across the Island, test, test, test is essential. How quickly can the testing regime react as it is right now if that was the case that we needed to be ramping up testing?

Senator J.A.N. Le Fondré:

The point is we are not in that position and we do not see that happening - and I am touching wood - and that is the point of bringing in some of the earlier measures to avoid that circumstance taking place. If it helps the Deputy, at the moment, as Members will be aware, certainly a week or so ago we were hovering around an average of 29 to 30 hours. I think today we are now down at 22. As the capacity of the lab increases one will see that average coming down. There are some tests that are coming back quicker but what we have to make sure is that the capacity is working and the whole system is stabilised and working very well. One of the issues that affects the average time is sometimes if a test ... the clock starts on the first tests. If for any reason somebody who is being tested that test cannot be processed, the swab has been damaged or something, they have to go back and have another test, which is done within obviously a few hours. But that extra time is added into that calculation. In other words, the clock started ticking from that very first swab. It does not start ticking on the swab that makes it all the way through the process. That can have an impact on the averages. So the point is, my expectation is that within a very short number of weeks the lab will be up to the capacity of, I think, it is 2,000 tests a day. We will have a very good on-Island reactive capacity if we needed it. If we saw that happening we would be taking the appropriate measures very quickly.

1.1.23 Deputy K.G. Pamplin:

Could he also update us on the contact tracing element of this process? Is he happy and reassured that the numbers are stabilised in terms of the people needed, as quite a lot of students were doing that before leaving for university, and how quickly could that be ramped up if that was also required?

Senator J.A.N. Le Fondré:

The short answer is yes, and as I understand it, the numbers within the teams are stable and everybody is well trained and experienced now. So we are in a good position.

PUBLIC BUSINESS - resumption

The Bailiff:

If there are no further questions for the Chief Minister I draw the questions to an end. Before resuming the debate that we had started last night, I understand Deputy Ash wishes to bring to the attention of the Assembly something that deals with future business.

Deputy L.B.E. Ash of St. Clement:

I am willing to defer my Proposition on drink promotion until the next sitting. I understand many people have meetings tomorrow, particularly concerning the Government Plan. I think we have a lot of pressing issues so I will happily withdraw that until the next sitting.

The Bailiff:

Chief Minister, you have indicated that you wish to say something?

Senator J.A.N. Le Fondré:

It is very minor. It is just to inform Members that I will not be, as it were, in the Assembly for the next couple of hours as I have a funeral to attend. I think as with a number of other Members.

[10:15]

2. Establishment of a digital register for all commercial and residential properties (P.91/2020) - resumption

The Bailiff:

Thank you very much, and thank you very much, Deputy Ash, that confirms the position as regards to future business. Then we now resume the debate on P.93, Deputy Higgins' proposition for the establishment of a digital register of all commercial and residential properties. Does any Member wish to speak on the Proposition?

2.1 Deputy G.P. Southern:

I have to start with the only contribution which has been made in this debate, apart from the proposer's lengthy exposé of what he intends, and that was from Senator Gorst yesterday. Quite honestly I was impressed, totally, by Senator Gorst's ability to hold 2 mutually exclusive ideas together at the same time. In the first place he said: "We have got a very difficult housing situation where we cannot afford to house many of our residents because rents are high, and higher than mortgages, and that we simply have not got enough space, enough property, to house our residents' population." Yet, he said: "We should be proud of the fact that we have got a very healthy property investment market where people who do not live here invest in property on the Island, and just to make sure they are making nice healthy profits from it we will support people who live in those properties, who have residential qualifications who live there, we will support them with rent assistance". So effectively, shoring up and making sure that we have a very healthy investment market, one that increases prices year in year out, as people take their investment and take it off the market, and they build increasingly expensive flats that nobody wants to live in. There we have it. A very healthy investment market for people who do not live here and people who live here you cannot afford to get anything. The shoebox is a luxury. Yet, what do we know about this market? Do we know the details, ins and outs of what prices are being charged, and what the impact of various measures are on the market, whether it is a commercial market or a residential market, or whatever, or a buy-to-let market, an investment market? We have got no real idea what is happening in that market because we do not spend a great deal on researching that market. What we have got here is if we want to do something about that market, one which I have said is probably toxic - it is a toxic housing market we have got - if we want to do anything about it the first thing we need to know is the data. Who owns what and where and how? Without that we cannot do anything. So it is all very well you and I, Members, when they come to election time, standing up and saying: "We have to bring house prices down. We have to build more houses. We have to house our residents" without saying how we are going to do it and what about knowing what the situation is on the ground. In order to do that we need the basic information of who owns what where. That simply is, I believe, what Deputy Higgins is proposing, and that is why I think his proposition should be overwhelmingly endorsed by every Member of this Assembly. So I am looking forward to this vote and I praise Deputy Higgins for bringing this. It has been long overdue. We have to get on with finding out what the market is doing and how therefore we can change the market and improve things for our residents. If we reject this I think, out there, people will hold their hands up in horror. We owe it to our electors, to our residents, to get hold of this market, find out what is happening and this is the way to find out. Then act to mitigate the worst aspects of what we have got at the moment, a housing market that is broken.

2.1.1 Deputy J.H. Young of St. Brelade:

I had not intended to speak so early but I think this is an important issue. I think the Proposition that we have before us is designed to fill a regulatory gap and a very important one because of the importance of housing to our community. I do not want to go into all of the defects of the current market. Those are well-known. But I do not think the Proposition goes far enough. The reason is,

is that clearly the proposal is that there would be a register of ultimate beneficial interests and that would be held by the Jersey Financial Services Commission. It would not be a public register. I think this is an important matter because we are in a situation now where I believe figures published show that 65 per cent, or thereabouts, of residential properties in Jersey are transacted at the moment through a legal structure called share transfer. At the present time, the administrative arrangements for that do not provide the same access either of the transacting parties or the identity of the property or the prices being paid. The system does not provide that information for share transfer properties and yet all of that information has for, I do not know, probably time in memoriam in Jersey, for freehold - in English terms it is called freehold - and indeed flying freehold properties have been recorded in the public register, of which anybody can look at if they so wish. It gives people the market information as well. It gives our Statistics Unit that. Whereas none of that applies in the case of share transfer. Obviously I am not a lawyer but I will try and explain why that is. What happens is that when we have a new development it gets planning consent, is that the property generally is put into a structure, a company by a developer, who then contracts to complete the development. In parallel with that, enters into preliminary contracts with prospective purchasers for the unit, very often of what we call "sold off plan" whereby the person agreeing, and incidentally I understand at that time the full details about the particulars of the company may not even be in final form. But nonetheless that is the way it works. What happens then is that the buildings are constructed and staged payments, the person is required to make staged payments, at the end when the new dwelling unit has been signed off, building control, planning, *et cetera*, then the money changes hands and the owner receives a share certificate, share in that company. Of course that goes in the register of the share company; whoever holds the administration of the company keeps those records. Of course, at the moment, that is not a public document although the information does go through to the States in terms of what we call land transaction tax, because a number of years ago the States decided wisely that these devices should not escape stamp duty and therefore they pay the equivalent. That information is there but it is not public. I have expressed concern about this many times. For example, in doing the Island Plan I have complained that the figures published on house prices, there is not the open access to the price paid information. So I think to myself, it is important to bring that into line. In advancing that view, I think from the comments that the Chief Minister has published - I think published yesterday - I am looking forward to hearing the Chief Minister's speech, which he said he would yesterday about residential properties, recognising that there are improvements that can be made to that system. I would not want to challenge the expertise of the Proposition from Deputy Higgins. He is an expert in not just economics but he used to be in the financial services world and he knows it backwards. If he sees a regulatory gap I am entirely content to go with it. But I think there is other work to do as far as the share transfer system, which I think really needs to be brought into line with the public registry in some way. Then we will know the information. I know there is this issue about buy to lets. Of course we know that the biggest probably proponent of the use of share transfer is our own development company, the States of Jersey Development Company. Those developments are all run in that way. In fact, when they recently published the figures I think, from memory - I have not got the figures to hand - probably roundabout 75 per cent of the properties there are being sold for investment. I make no comment on whether the people that buy them are local or not because there is not that information. But I do understand that the law prevents ... the only people that can live in those units are people that have the required qualification. So that is reassuring. But again there is not the transparency that there needs to be. Just for the complete picture, obviously I should note that this device of share transfer is not used by Andium Homes, as far as I know, and they are dealt with through flying freehold transactions, and also housing trusts do it through the public register. But it is done by our own development company and I would like to see that reviewed. I am going to support this but I make the point that I personally have expressed the view that we need to have improvements as well, in the lines that I have spoken of. It is going to help planning because we do desperately need to be able to have a better handle on these numbers, and information and prices and so on in terms of how we can have planning policies to try and get

some more sanity into the market situation on property, which is basically driven as a commercial market now. Very, very highly aggressive market. So I think that works needs to be done and I am hoping that the Housing Ministerial Policy Group; I am a member of that group and I have been very impressed with the work that has been done. It has been an excellent group. We have had great co-operation from everybody on board. I am hoping that that will come forward very soon and we will get some positive proposals. But a key element of that, and I have expressed the view in that group, is we need that transparency that a public register for the residential elements of share transfer ... only residential I am arguing for should be done. So I will support but, with those comments, I will then leave it to other Members to see if they want to follow through my points.

2.1.2 Deputy R.E. Huelin of St. Peter:

I am because it takes us one more step towards the digital world and it takes us that one more step towards policy making from facts and from data and not from opinion and anecdotes. I thank Deputy Higgins' endorsement of the Proposition that I brought in the summer for the register - not licenced - of landlords and tenants, both together, still only brings a small part of the sum of the information that we need to perform policy making, as Deputy Young says, towards the wider picture of planning and the housing we need in this Island. However it concerns me the data will be managed by the J.F.S.C. (Jersey Financial Services Commission) and needs clarification on how it will be used and integrated with the other databases as reference for wider policy decisions.

[10:30]

I fully understand the need for a register of residential properties. I think that is a theme that is cropping up. However I am not sure that the business case would support the need for the commercial equivalent. But what does concern me is the Deputy's reference to his long-time goal of regulating the property market. I assume his reference is to the residential market. This I am totally against and I would like him to clarify his intent, especially when it is made so clearly how open markets find their level through the economic principles of supply and demand. However, the Deputy covered in his opening speech, and I am delighted his proposition puts on record that the data will obviously be G.D.P.R. (General Data Protection Regulation) compliant - this is a statement of the obvious - anonymised, not available in the public domain and, most importantly, will be cybersecurity protected to a high level.

2.1.3 Deputy M. Tadier:

I am pleased to follow the last speaker because even though we have got different views perhaps about residential tenancy and inspections of properties, *et cetera*, I know that the last speaker is committed to understanding the housing situation in a much more informed way, hence the fact that registers are a way to do that. I want to talk in support of both a residential and commercial register because I know the latter, the case might not have been made for the latter and it perhaps is more obscure and more nuanced. But I think it can and should be made. What I do want to look at though is why we need a residential register. The issue has been expounded I think in part by many others, including my Minister for the Environment, who recognises the fact that there has to ... first of all, I think we all acknowledge there is a housing crisis. There is, to a certain extent, a housing shortage but I would say that I need to tackle the lie and the myth of supply and demand being the solution. If demand is the issue then supply is the solution. The reason that is not quite right is because we know that everybody who is currently in Jersey lives somewhere. That is not to say that there is not an element of homelessness and casual couch surfing, *et cetera*, but for the vast majority everybody lives somewhere but those people do not necessarily have security of tenure. For example, if there was a food shortage and we had people who had no food and were going hungry and we said: "What we need to do is grow more food" and then when you grow more food you find out that the food gets taken away by those who do not need it. So some people say: "I am going to have 12 loaves of bread" and you find out that the same people who were starving before without any bread still have no bread.

That is exactly the issue we have got here is that there are lots of houses which are being built but they are being owned outside of the Island. We know I think from experience that in most cases a mortgage is cheaper than renting but we have this perverse situation where people who need to rent because they cannot buy for whatever reason, either because we do not let them or because they cannot get a deposit together or they have not got the credit, they end up paying more in rents than they do for a mortgage. At the end of it they have got nothing to show for it. Yet, as Deputy Southern said, we have got a system whereby the States continues to support this to the tune of some £10 million a year in taxpayers' money just to the private sector whereby we have no idea who these individuals are. It is reprehensible enough that taxpayers' money is going to subsidise people who cannot afford rents to any landlord because effectively we are buying landlords' houses for them, often buy-to-let houses are being bought for very wealthy people already with taxpayers' money. Often it is taxpayers' themselves who are renting in the private sector. I mean, this stuff is completely perverse and you could not make it up. So that needs to be reversed, and it is even more perverse economically when that money is going straight out of the Island. I mean, why are we building buy-to-lets at all? Surely the conservative aspiration has always been home ownership, but if somebody owns 10, 20, 30 properties and they live in one of those properties that is 29 properties that somebody else cannot live in, 29 homes that 29 families cannot live in, in the Island. If we agree that is a problem we at least need to know the statistics. I think it is absolutely right about share transfer. I mean, yesterday we spoke about commitment to Jersey, did we not? But should you not need some commitment to Jersey in order to buy property here? Because we tell people they have to live here for 10 years before they can even rent in the open market, before they can even buy their own property even though they might be quite capable, but we tell them that it is okay for them to go and rent a property off somebody who does not live here and who does own perhaps vast swathes of property within our Island. We are still building them at the waterfront; I mean, what kind of Government and Assembly are we that we let this kind of thing happen? Yesterday we had a Back-Bench proposition which identified a problem, that problem was speeding, and it said: "The Government is not doing enough to tackle this issue, therefore, I am bringing this Proposition, an in-principle proposition, and I will work with Government Ministers to bring forward a workable solution." Again we have got another Back-Bencher today, it is a perhaps more sophisticated proposition, but it is saying: "I have identified a problem, we need quality information" because we will all have different analyses of the situation. I have given my analysis of what I think the problem or part of the problem is, others will have different analyses. But unless we have the facts to back that up then I think we are kind of all wasting our time. I think there is no reason not to support Deputy Higgins' proposition, certainly on the residential. Let me touch, before I finish, on the commercial element of this. I think there is a strong argument as well because we are not all commerçants, as they might say in France, but we know that our constituents, whether it is in Les Quennevais - and I speak particularly at the moment to my Parish representatives - but this is something that can be replicated certainly in St. Helier and maybe elsewhere. How many shops are having to close because they cannot afford to pay the rents; independent shops? I know Mini Mall for example - I do not mind mentioning them and I do not think they would mind me mentioning them - they were nominated for an environmental award because they wanted to produce a sustainable model. But one of the challenges that they and so many other small independent shops face is that they cannot afford the high street rent. The fact is that impacts on high street rents are going to be different presumably to those that affect the housing market. But, nonetheless, I think we still need to understand them. The issue in Les Quennevais is exactly the same. We have a whole precinct which is owned outside of the Island and what it means is that if ever we wanted to get our heads together and decide how we might try and regenerate the Les Quennevais area. Whether we want to put some cafés in there, whether we want to put some Parish or public money into redeveloping and regenerating a square there where people can sit down al fresco, and it could be some kind of private/public investment, or whether we wanted to take some ownership of those shops; it is really difficult to do that when the people who own those properties are outside of the Island and they are not real people, they are an

investment company that own those areas. We cannot even sit down and have the conversation with them about putting up a Christmas tree, for example. I mean, how difficult was it to put a Christmas tree up in the Les Quennevais area whereas in St. Aubin it is much easier because that is part of the public realm. All of these kinds of conversations are much easier when you know who you are dealing with. There is huge merit in adopting this Proposition today. We do not need to make heavy weather of it and also I think we can say to Deputy Higgins, who we might not always agree with on everything, yes, thank you for bringing this to our attention, we recognise this is a huge problem for the Island. It is also an area of course where there is a huge vested interest but it is one that we can collectively, if the will is there, put our heads together. But to do that we need the right information and good quality information that these registers will provide.

2.1.4 Senator S.Y. Mézec:

I am very pleased to follow Deputy Tadier who I thought made an excellent speech just then. In a world where there was a justice, that argument that he advanced would put an end to this nonsense argument that somehow all of the solutions to our housing crisis are based on simply dealing with supply and demand, which as far as I am concerned is like hoping that magic will somehow fix these issues. It is clearly nonsense and I think he used some good examples there. What I said during the election campaign in 2018 was that it does not matter how many homes you build if all of them end up bought by extremely wealthy investors, some of whom might not even be based on the Island. That will not help with the affordability of houses for people who need those homes here in Jersey. I said - similar to what Deputy Southern said in his speech as well - that our housing market is broken. You have to ask yourself what is the purpose of a housing market. Does it exist like lots of other markets exist, which is to extract value out of something and distribute it to shareholders? Or does it exist to provide people with that basic need which is a roof above their head for them to be based and establish their hopefully happy lives from there? The fact is that our market is swayed far too much to the investors and people are suffering because of that. We can see the trends of housing prices over years and compare that to average earnings and see that housing is more unaffordable now, particularly for people of my generation who might want to try and get on the housing ladder, compared to what it was for our parents. There is a real injustice there that people need to accept is real and exists and use that to determine how we move forward. I think that the aspiration that Deputy Higgins is trying to meet with this Proposition is absolutely right. We do not know what the extent of these issues are in the housing market. We do not off-hand happen to know right now how many properties are owned by foreign investors, we do not know a breakdown of that. We do not know what the future breakdown of that is going to be or how we can predict that; even though there are dribs and drabs of information that will be held in different sources that we might not have appropriate access to right now to help make those policy decisions. I thought the Deputy of St. Peter's speech was curious, as it often is on those matters, where he had seemed to suggest that we will want this information but then has absolutely no idea what to do with it when we get it. Frankly he would probably be terrified if he did hear some of those proposed solutions because some of those are going to challenge vested interests. It may well be the case that we are going to have to ban certain behaviours if we are going to put Jersey residents and those who aspire to be homeowner and occupiers, or even just comfortable renters in Jersey, if we want to put those people first that may necessarily mean putting property investors second and saying: "This behaviour is harmful to the needs of the people who we represent and so we are going to have to curb it." Some will ideologically oppose that, even when evidence demonstrates that it is the right thing to do, but we will just have to get to that point and having that information will obviously be something that will make it easier for us to do that. I hope it would also enhance what we are hoping to do when the Housing Policy Development Board report comes out, which is going to make proposals on other areas of housing policy to do with how we deliver more homes. The great focus of that will be on affordable homes where when it is done through the social sector there are no investment opportunities, it is about providing a social need; or about providing homes for first-time buyers where there is a benefit

retained in perpetuity for first-time buyers so they cannot have investors swoop in like the disgraceful way that Margaret Thatcher in the U.K. dealt with the right-to-buy scheme, which has no public benefit now because safeguards were not put in. We will learn from those mistakes and not replicate that here in Jersey. I think the only issue that I have with this Proposition - and Deputy Higgins and I spoke about this yesterday so he might be upset with what I am about to say but I genuinely do not think it is unhelpful to him - is that I think this Proposition can stand fairly well with parts (a) and (c) and I sort of think that part (b) is too prescriptive.

[10:45]

There are still some issues to reconcile with exactly where this digital register would sit. So I would prefer not to support part (b); there are still questions on that. But I would say to him that in not supporting part (b) that does not exclude that opportunity being arrived at through the process of going through part (a) and implementing that. I could still be an option, it just provides us with greater opportunities to consider where the best place for it might be. So I hope he accepts that is still helpful for him. Just to conclude, I think that parts (a) and (c) are probably a good thing to go for so I would support that. I am probably not going to vote for part (b). I just want to end possibly foolishly by alienating some people with the last point I want to make, but I was inspired to say it by some of what Deputy Tadier said about the cost of a mortgage versus the cost of rent. Lots of people in my generation, known as Millennials, often get older people condescend to us and tell us that the only reason we have the progressive views that we might do on the housing market is because we are inexperienced and we do not know what it is like to pay a mortgage and, well, when you know what it is like to pay a mortgage then you will mature up a bit and have a more rounded view on these issues. We can, I think quite confidently, reply to those who might condescend to us in that way that we do know what it is like to pay a mortgage, the problem is it is not our mortgage, it is somebody else's mortgage, and that we end up excluded from those opportunities to buy our own home to live in because too many people are sweeping in and seeing it as a commodity to make a large profit on and not as a basic human need. So I hope that this Proposition will be a helpful step in moving towards that sort of housing market; a market that works for people who need a home and not for people who simply want to extract value, some of whom have nothing to do with Jersey and simply take money out of our Island and out of our economy to put into their pockets for who knows what. That I think is a bad position to be in so parts (a) and (c) will give us I think a good grounding to take the next steps on that to make this a market that works for ordinary people, so I will support parts (a) and (c) but probably not (b).

2.1.5 Connétable R.A. Buchanan of St. Ouen:

I have to start this speech by saying that it is not normal for me to say that I agree with virtually every word that Senator Mézec said, but in this instance I do. I think his comments about part (a) and part (c) are entirely correct and appropriate. We all know that the housing market is broken and to fix any market having market information is absolutely vital. We need to know what is going on; we need to know who owns what properties and we need to know what they are doing with them. Deputy Higgins and I have crossed swords over a number of issues but we will not be crossing swords over this one because I entirely agree what he is trying to do. However, I have to say what I cannot agree with - and I am with Senator Mézec on this - is part (b). In my mind it is not appropriate for the Jersey Financial Services Commission to be undertaking this work. If one looks at their website they quite clearly state they are the regulator for financial services in the Channel Islands. They are responsible for regulating, developing and supervising the Island's financial services industry, and that is their role in life. As the financial services industry is our largest industry and our biggest revenue generator we need them to be focused on that 100 per cent. For anyone who thinks they have got a bit of spare time because there is not much going on I can tell you, you are entirely wrong. There is a huge amount going on. The most important thing we have coming up is the national risk assessment which will be undertaken by MONEYVAL. The outcome of that - which will be

incredibly tough and requires the J.F.S.C. to work collaboratively with the finance industry over a year to 18 months to achieve the standards set by MONEYVAL - will have a profound effect on our finance industry; not if we get it right but if we get it wrong and we get downgraded it will impact the future wealth and prosperity of the Island for a number of years to come. Do not let us kid ourselves that we are living in a favourable climate; we are just about to go through I think a very painful Brexit, we are not sure of the outcome yet but unfortunately in the past we have been able to work with the Europeans and at times achieve the results that we want, but we have had our large neighbour, the U.K., alongside us in these negotiations. I would not like to say that the Europeans would be less friendly but, nevertheless, the protection of having a large country alongside us will not be there and we certainly get the feeling that we will be under greater scrutiny going forward. There are also a number of other activities which the J.F.S.C. have to undertake going forward, and my Minister mentioned those. We need to regulate the pensions industry because there will be greater scrutiny from the U.K. Inland Revenue going forward and not having a properly regulated pensions industry in terms of the way we regulate some providers will not help us achieve Q.R.O.P.S. (Qualifying Recognised Overseas Pension Scheme) status going forward, which is vital for the growth of our pensions industry. We also need to regulate other parts of the industry, particularly instalment credit firms who sort of slip through the regulation, and we are working hard to get them into regulation. Furthermore, I think as we all saw over the weekend the publication by journalists in the U.S. (United States) about S.A.R.s (suspicious activity reports) being leaked from HSBC rattled around the world very quickly and went straight to the headlines of most major media outlets. The focus was very clearly indirectly on those jurisdictions, as it normally is, that provide services to high net worth individuals, and Jersey of course did not escape from that even though we were not affected by it. It just highlights how much scrutiny the Island is under and how important the role of the J.F.S.C. is in making sure that we have a robust regulatory regime so that when this sort of thing happens we do not get caught out. I for one would be seriously concerned if we allowed the J.F.S.C. to become deflected in doing what is necessarily an important task setting this register up. It is not their focus, it is not their management focus and it is not the focus of the board. Another outlet for this needs to be ...**[Interruption]** I am also not entirely convinced that the registry office software will achieve this task. I know Deputy Higgins has had discussions with them. It may do. It may also require a lot of work to get it into shape to do this work. But in essence we do not want - or at least I do not want - to see the J.F.S.C. management and board of directors refocused on to something that is not their core purpose in life. When this Proposition comes up I hope that he will split it up and unfortunately I am not able to support (b). I think part (c), which requires the Council of Ministers to set up a register is the way forward. Let the Council of Ministers decide where the best place for this is, let them set it up and let them fund it. We are going to have to fund it in any case because the J.F.S.C. - even if the register only partly works - will have to take on more staff, they will have to improve their software; so the costs are going to be there anyway and I do not think there is a great saving in putting it into the J.F.S.C. There are also some central conflicts of interest in my mind. If we are setting this register up then are we going to require people who register their properties to provide source of funds and know your customer information, and if we ask the J.F.S.C. to undertake this work that is work that is normally undertaken by the finance industry, which they regulate. So there is a bit of a conflict there in my mind in any case. So in short, I know time is pressing, I will wrap up, because I am not convinced that the right place for this is the J.F.S.C. I think another body or setting up a branch within government to do this would be much more appropriate. We do not want to take the J.F.S.C.'s focus off their core task which is regulating the financial services industry and getting us through this forthcoming national risk assessment. To give them this, in my view, would be a mistake. I am more than happy to support the rest of the Proposition; I think it is excellent. I think having market information on properties and who owns them is an excellent way forward and I think it will help us devise policies which will improve our position in the housing market and provide houses for those people who really need it in this Island. So with that I shall finish.

2.1.6 Deputy K.F. Morel:

I am entirely supportive of this Proposition. I spoke to Deputy Higgins probably about 2 years ago and we discussed this idea and he said he would be bringing a proposition, so I am very pleased to see the Proposition before us at last. I will not go into any detail because I would just be repeating what has already been said, but I do have 2 questions to ask Deputy Higgins that I would appreciate it if he could respond to fully in his response at the end. The first is with regard to the J.F.S.C. because I - for the same reason as the Constable of St. Ouen and others - have concerns about that aspect of this Proposition. If I was to be able to support it I would need to know that Deputy Higgins has consulted with the J.F.S.C. and asked essentially whether they would be happy to host and administer the system; so if he could provide that in his response that would be very useful. The second part is as to the nature of the register, because in the report Deputy Higgins states that this will be a register to show ultimate beneficial ownership of properties in Jersey, but he also goes on to say that the register will be created by using Royal Court property sale records and the Parish rates registers. Neither of those registers would show the ultimate beneficial ownership necessarily in any situation where a property is owned by a company. The Royal Court property sale record as I understand it would just show company X owns this property, and the Parish rates registers would say the same thing, but that company could be a subsidiary of several other companies, none of which would be shown by the Royal Court property sale records and the Parish rate registers. So with that in mind, would Deputy Higgins please advise the Assembly as to how he expects the actual ultimate beneficial ownership information to be provided because I really do not believe that those 2 sources of information would give that information at all.

2.1.7 Senator L.J. Farnham:

I have a lot of time for Deputy Higgins and I do not know if he remembers he used to teach me consumer legislation at Highlands and I still have the landmark court case of *Donoghue v Stevenson* emblazoned upon my mind, but that is about it in terms of legislation. It is not relevant to this so apologies for mentioning it. But I just want to touch base quickly on the issues of our housing strategy, or lack of it. I am not being critical of the Minister for Children or Housing or previous Ministers for Housing or committees. Perhaps the Assembly has not done enough to put a strategy, an action plan, we do not have the vision; and there are ways to resolve our housing market and the challenges within it. The private rental sector is an essential provider of homes because not all Islanders can afford or even want to own their own home. A lot of Islanders will choose to rent for a number of different reasons so we must not discount that as unimportant. Just by the way, some S.o.J.D.C. (States of Jersey Development Company) figures, and the S.o.J.D.C. now have a policy that has been in place for about 18 months that they do not sell to external investors. The new Horizon development for example is sold with about a 50:50 split between owner occupied and local buy-to-let. Only 4 are external investors and they were committed before the S.o.J.D.C. policy, so that is good news. I believe from talks we have been having within Government there is an appetite to do something about restricting external buy-to-lets because I agree with the Minister for Children and Housing, and many other Members, it is not helpful as we work to introduce a vision and action plan for sorting out the housing problem. There have been some fantastic examples of first-time buyers projects and also I can praise S.o.J.D.C. with the Horizon development because they have a scheme there which allows buyers to pay the deposit during the build period which has helped many young people to get on to the ladder because they can save for the deposit in that way while the property is being built. So that is just one example. Members will also look around the world to other very, very good examples of jurisdictions with similar challenges with land and population where they have managed to introduce significantly the home ownership among their communities.

[11:00]

We have to have more vision and more action, all of us, because I think most of us promise this, as we do in every single election, and we should all be slightly embarrassed if we have not made any

progress when we come to the next election. I just wanted to join the recent calls as well for the concern over paragraph (b). I would urge Members if supporting this Proposition not to enforce it on the Jersey Financial Services Commission at this stage. As Senator Gorst and other Members have explained, there are huge challenges coming along the lines and we are working with those in parallel with our continuous efforts to strive to be world leading regulators. So I would just ask Members to support (a) and (c). I believe that will achieve what Deputy Higgins is looking to do and I thank the Deputy for bringing this because if we do this and we get it right it will provide essential information for developing the longer term housing strategy.

2.1.8 Deputy R.J. Renouf of St. Ouen:

I am pleased today to be back in the States Assembly for the first time in almost 6 months, and from the seat I am occupying I can look up and I can see the recognition we give in a plaque to Sir Walter Raleigh, or some people might think it is Rawley at the time, who was Governor of the Island from 1600 to 1603. The reason I am remarking on this, it was Sir Walter Raleigh who established a public registry of land transactions in Jersey which is still running and which is a fundamental underpinning of our system of land holding in Jersey. It is a public registry, which means that all transactions in land in Jersey are recorded publicly and that information is available to the public if they wish to research it. That was not a new innovation, in the sense of it being public, because previous to the establishment of the registry all transactions in land were announced in the Parish churches after its divine service each Sunday. That was simply because land in Jersey has always been treated as a matter which it is right that the public be informed of; that land holding should not be a private affair but it needs to have a public acknowledgement of who is the owner of this precious commodity in the Island. When one acquired a piece of land the concern was that you owned the site which meant that you owned right down to the centre of the earth, and you owned in law to infinity, right up through the atmosphere into space technically. Which is why that when aircraft started flying about legislation had to be introduced to allow flights to fly over land, and even now if your neighbour wishes to develop his property and have a crane which might over sail your land that needs to be negotiated. That was the concept of property ownership in Jersey, but of course the time came when people wanted to build apartments and own something that was above something else. That was not possible in Jersey because the land was simply the one thing and whoever owned the land could not tolerate somebody owning something that was flying over the land. So how would apartments be built? Fine if they were to be rented, but how could apartments be sold? Well, lawyers in the 1960s I think came up with an innovative solution which worked well at the time, it was the share transfer system in which the company owned the land, the company owned the building, and what people buying obtained was a right to occupy a part of that building. There was no question of them owning any of the bricks of mortar; they simply acquired a right to occupy. It does work because together they form the shareholders of the company and they control it and it works for them. But it might be thought to be unsatisfactory because the ownership of shares in Jersey is not a matter of public record, so it was not known easily who were the ultimate owners of these properties owned in share transfer companies. It was thought unsatisfactory in that respect. There were also other legal reasons why it was not as perfect as a freehold ownership, so the in 1990s the States passed a flying freehold law which allowed apartments to be built and ownership to be given of apartments in a way which did not offend that fundamental rule of owning to the centre of the earth and up into the sky. So under the flying freehold law one can now acquire an interest in land, being an apartment, and you also hold in common with other apartment owners the structure of the building and the common parts of the building. It is also better, I feel, in terms of the arrangements between the various owners of the apartments. That was introduced by the States because it was recognised that the share transfer regime had its limitations and this was needed for good commercial reasons in the Island at the time and, as I recall, it was felt that share transfer would gradually wither on the vine because this was a good way, a better way, of acquiring an interest in a block of apartments. But in fact share transfers have continued still to be used and seem to be more popular over the flying freehold regime. Why?

There is no real distinction in the way the 2 schemes operate; one can still live in apartments whether they are flying freehold or share transfer and be untroubled. It may be simply because the share transfer regime offers privacy and confidentiality. It allows somebody to acquire a shareholding when they are not qualified for housing purposes; quite legally, it is not a device, it allows that ownership. It does not allow the occupation of the flat, which still has to be made available to locally-qualified residents, but it is not a public transaction so Deputy Higgins is quite right, we really have no knowledge in a public registry of who is acquiring these shares. To come back to basics, it offends the principle that Sir Walter Raleigh set up that there should be that public registry of all land transactions. I think it is right that we attempt to adhere to that principle in Jersey, recognising as we have for those centuries that the public record of who owns land is important and is strategic in the Island; so I can give support to the ambition of Deputy Higgins in this. It is going to be difficult to draw together the database that he suggests because the public registry has not been designed around the sort of database he would like and neither has the public rates system. But his proposition requests the Council of Ministers to go away and do all that it can to try and bring these things together. As I said, I do not think it will be easy, there are issues - and Deputy Morel just referred to some difficulties - I think there is a difficulty also in relation to foreign companies who may have bought shares or indeed who may even own property in the Island, because it may not be that the J.F.S.C. has the necessary details of foreign companies. But it is still a worthwhile effort to undertake I believe, and therefore I shall be supporting Deputy Higgins in his paragraphs (a) and (c). I share the concerns about being prescriptive at this stage as to exactly who manages the database that we would try and create so I will not be supporting (b), but I think this might well take us a step further in addressing this problem if we could adopt (a) and (c).

The Bailiff:

Does any other Member wish to speak on the Proposition? If no other Member wishes to speak then I close the debate and call upon Deputy Higgins to respond.

2.1.9 Deputy M.R. Higgins:

I would like to thank everybody who has taken part in the debate. What I would like to do is go through some ... and it will not be as long as my opening. I am sorry, I was so angry at a comments paper that came in so late that was so misleading that I felt that I had to go through it in detail. However, I will address the points that have been made. Now, what I would say is you can always tell when the Council of Ministers are rattled and may not get their way. Note that the speakers who have been posing part (b) and the J.F.S.C. are Ministers in the main, and I will come to that in a moment, but let us start off with Senator Gorst. He started the thing rolling and, as I say, when they feel rattled they start throwing in the spectre of a fox among the chickens or a fox among the Constables or something like that. What they say - as Senator Gorst did in his speech - is that if this Proposition goes ahead then the Constables, the Parish system, the Parishes and the world as we know it will go, because he says if the data goes from the Parish registers to the J.F.S.C. it will be the end of the rate system or their ability to control it. Nothing is further from the true. Whether my Proposition of going through the Financial Services Commission goes through or people oppose it and say let the Government find another way, they are still going to have to get that data from the Parishes. I would think it is far better that it goes to a body like the Financial Services Commission, which is independent of government, rather than a government department. If you talk about mission creep then you will certainly see it then because, as all people do, you will think: "This information could be useful elsewhere." So if the Constables are worried about losing any part of their functions, put it to the J.F.S.C. Also Senator Gorst and a number of other speakers have questioned the need for data on the commercial property market. My main emphasis always has been the residential housing market. I am concerned about the fact - and I have been since I entered the States - that our children and many of our citizens cannot get their own home. That is my main part, but on the commercial property side let me say this: we still should have data on that. We are being told all the

time that one of the reasons why the cost of living in Jersey is so high is because of the high rents and leases that commercial firms have to pay, and because of that they keep on raising prices and charge the consumer more to cover their costs. If that is true then we have to look at why the costs are so high. Because we do not have any data, we do not know who owns the commercial premises in the Island, whether it be in the high street or whether it be warehouses or whether it be various other units. If we do not have that data and they have been bought up by outside companies - by "outside" I mean outside the Island - then we need to address that issue.

[11:15]

For example, I mentioned the idea of competitive structures. I am not saying there is a monopoly; there will not be just one firm that owns all the properties. It is probably a duopoly situation where you get 2 large companies; it could be an oligopoly, 5 or more. The thing is, a small number of foreign organisations could own most of the commercial properties in the Island. We do not know. We also do not know if there is any collusion, and if you do not know who owns the property you do not know who is talking to the other. Sorry, just going back one further point to the idea of the foreign commercial owners. I worked in the Financial Services Commission for 12 years and during that time I also was the registry manager and running the Companies Registry and we had to delve into who owns a property. At one time it was acceptable for companies to be created in Jersey and you were just told it was an investment holding or it is a property holding, and the Commission in times past used to approve those companies and they went through. Then obviously as time has changed and we have to look at money laundering and we have to look at a lot more sort of detail, we started drilling down into investment holdings and property holdings, so we found out who ultimately owned the companies. I can remember the Companies Registry brought in fast track company incorporation. If I remember correctly we were supposed to incorporate a company within an hour to make us very competitive worldwide. We very soon found out that large financial firms were putting through very complex corporate structures, and there was no way we could figure out who owned what and so we had to start delaying those incorporations, and in fact I can remember spending I think 2 hours just mapping out the structure on large sheets of paper to try and see who the ultimate beneficial owner was. In the end we had to instruct them that they had to give us the information so we knew exactly who owned what. So what I am trying to say is many of the companies that we think even are local companies or we may think it is locally owned, they may not be, and they have layers of companies. I will address some of the other issues later but, in terms of this, the point I am making is we may have a problem but we may not, but until we know who owns it and we can look at the relationships between the various companies and so on, we will not know if the prices are being driven up because of a monopoly situation or a cartel situation or whatever. In fact I will address one of Deputy Huelin's points now, and that is he mentioned I would like to regulate the market. I am not saying regulate the market, I am saying we have got to have the data first to see if we do have a problem. If there are anticompetitive structures there that are driving up these prices, which are driving up prices generally throughout the economy, then we need to address it. But it is not for me to address it. The data will be going to the Government; it is for the Government to come up with policy measures to deal with whatever problem they find, not me. I will certainly be watching it but it is for them to bring the proposals to the States. So I do think there is a definite need to gather the data on the commercial property market; very importantly though there is the point about the residential property market. I have been looking at academic papers, I have researched this for a considerable period of time, and looking around Jersey is the ideal place for foreign domestic investment. For example, the idea that we have no corporation taxes, we have no capital gains taxes, so if I am a foreign investor and I buy a property and I buy it at for example £100,000 and I sell it for £150,000 I make £50,000 profit. Not like in the U.K. or elsewhere where a portion of that would be taken by the Government. If I am renting out property then I only pay 20 per cent tax on that, but again I have allowances which I can have which makes it very attractive for me to invest in Jersey. If we look at the other effects of foreign investment, basic supply and demand

is that if we have all this money coming in from outside competing with local money then the demand for these properties will go up, which forces price up. It is basic economics. In Jersey we have what is called an inelastic supply of property; in other words there is very little. A small decrease in housing will force prices up higher. It is fundamental. We need to deal with this situation which is denying our people properties. One point I want to make is a play was made very early on - and certainly in the Council of Ministers' comments paper - about the Data Protection Law. Now, I have asked the Information Commissioner to tell me what he thinks about the Proposition and I am just going to read 2 paragraphs from the letter I have received from him: "I have reviewed the document you sent me. I can identify no conflicts with the Data Protection (Jersey) Law 2018. However, I would recommend that the States Assembly pass a law that governs the operations of the proposed registry with specific provision authorising the collection and use of the personal data involved and limiting the use of that data for those specified purposes." This is why I put that into the Proposition; it will be for a limited purpose. He also said: "I can confirm that the Proposition as drafted does not raise any general privacy concerns. The Proposition limits access to the registry to the Government of Jersey for specific public policy purposes. I see no concerns relating to the rights and freedoms of data subjects." The only other point I would make on that is whether you support it going to the Financial Services Commission as I am proposing or you do not support part (b), and it goes to the Government, they are going to have to do exactly the same thing. So no matter what we do we have got to conform with what the Commissioner is saying. Just looking at, for example, comments made by Deputy Young, and he mentioned share transfer markets and he mentioned about the number of properties that have been bought and sold. I have been looking at the Housing Policy Development Board and I have been going through their minutes and I have spoken with some of the people who are on it, and can I just mention at the very beginning, one thing that they have no information on: foreign direct investment. They were told: "Someone else is dealing with it." Well no one has mentioned at all that anybody else has been reviewing foreign direct investment, and so this Proposition will bring it forward and will give them the information. They also say they do have trouble with share transfer and with flying freeholds, I think it is. What I will say, if we get this register going then we will have to perhaps gather other data, and I still think it should be consolidated within the Financial Services Commission. I agree with Deputy Young, it does not go far enough, but let us get this register in place and we can add to it. Other forms of data, such as what he said, the information contained in the land transaction tax records, they can be incorporated as well as the Royal Court records and the Parish records. Deputy Huelin, I hope I have answered his question regarding why I want us to look at commercial property. I am not trying to regulate them. I believe we could have a problem from what we are being told; the data will tell us whether we do. It is not for me as an individual to regulate the market, it is the Government's to make propositions if they find we do have a genuine problem in that area. Deputy Tadier, I would like to thank him for his support and I agree with him fully. I find it criminal that we are having to subsidise the rents that people are paying in the Island. Why? Why, because house prices for example are 20 to 30 per cent higher than they should be, I believe from foreign direct investment alone, looking at all the other centres I have looked at. I might add, the characteristics in Jersey are even more favourable for this type of investment than in some of the countries I looked at. I would also say too that why I believe it is criminal is that we have basically established a system that makes rents in the social housing and the public sector at 90 per cent of market rate. We do not control what the market rate is. Yes, it is determined by supply and demand and we know that supply and demand is distorting the market, so the foreign money is coming in and also money from some of our 2(1)(e) s is coming in and is being invested in existing housing stock. If it is the existing housing stock it will force up the price. I have no problem, whether it be foreign or even domestic investment in property, if it is new developments which are creating new houses, new flats, which are then sold or rented to local residents that is beneficial. But buying up existing stock is not and we need to address that, especially the worst abusers, I believe very large companies coming in, we could have sovereign wealth funds, we could have unit trusts. There are all sorts of institutional bodies that could be driving up the prices in Jersey

but we just do not know and we need to know. Again, going back to the idea of why should the taxpayer be having to subsidise rents when the prices are being driven because of our lack of policy. We have failed to monitor what has been going on and we are paying a price; the ordinary citizens of this Island are paying a price for it and we need to address that. The only other point I would mention, he also mentioned the commercial market and the reason why I want it is I am stressing commercial structures are very complex. You could have 4 or 5 different companies and you have to go through the whole chain to see who the ultimate owner is, and unless you have that information you will not be able to deal with anything. Senator Mézec, I agree, the whole supply and demand arguments that are advanced are a fallacy. Supply and demand, yes, but markets are not perfect; markets can be manipulated through cartel arrangements or they could be manipulated by market concentration, duopoly, oligopoly, *et cetera*. Again, I agree with him, the main purpose of my Proposition is the housing market and I do believe very, very strongly that the purpose of the residential housing market is to provide homes for our people. It is not an investment vehicle in the same way as stocks and shares are traded on the stock exchange. We should be looking at putting the people first above money returns. I was surprised, well in fact I was not surprised because Senator Mézec is going along with the Council of Ministers on the idea of not having the J.F.S.C. If people do not support part (b) what will happen is it will be left to the Government to try to figure out how to do this. Remember what I said earlier; our computer systems throughout the States are archaic. The legacy systems we have in place are really, really bad. States Members have had briefings on this. I hate to say it as well but they are not even the most secure systems. The Financial Services Commission, because it has the Companies Registry and all the other registries, has to have much better standards of security than the States has at the present time, and I do believe it is vitally important that we have it in the most secure place. The other thing about if it is not the J.F.S.C., remember the Government will decide. Look how long it takes them to do anything. Besides that, with the equivalent they have got they are going to have to try and marry up all these systems; it will take ages and I do not think we will achieve it. They say that I will not achieve it by 2021, well they certainly will not and I am convinced of that. The Constable of St. Ouen again does not agree with part (b), well, I have answered that part of it. He is following the line of the Council of Ministers. However, he said we should not be using the Financial Services for other than their regulatory function. Well, how many Members realise that the Financial Service Commission is a source of taxation for the Island Government? In the Companies Registry when a fee is charged for forming a company, I cannot remember the exact percentage but I think 75 per cent of that money goes into the States coffers. So we are using the Financial Services Commission as a backdoor source of taxation.

[11:30]

Is that right? In addition to that he said that we should not use the Financial Services Commission because the MONEYVAL evaluation is so important in the Island. It is. The Island in the last MONEYVAL assessment - I think I was at the Commission at the time, I am not sure how long ago but it is possible, I remember we took part in many of these exercises - we achieved 48 out of 49 of the criteria, and even on that one it was accepted we would try to do well. We were better than the rest of the world in that area. I have no reason to believe that we will not be high up anyway. However, what I am proposing reinforces the reputation, you could argue, and the ability of the Financial Services Commission to regulate. The Constable of St. Ouen also mentioned the "Panorama" programme, the newspaper, suspicious transaction reports that are suddenly going in all the newspapers and around the world. Real estate is a major source of money laundering. That is why, for example, the Commission has sent out guidance to real estate agents, why they have to supply data and why finance firms have to do it. If they have this register and they know who owns the property then they will be able to compare that with the data they are getting back from the finance firms and from the real estate agents and so on, and it reinforces their knowledge of who owns the property and where the money has come from. So I think although the main purpose of the register is to help us with the housing market, it is really being used to assist the Financial Services in this

area; it is not a detriment. In fact, logically we could say that perhaps there is a case as more and more registers are being created that the registry function of the Financial Services Commission could be removed from the Commission itself. They can still get the data from it with regard to company ownership and who owns what, but it could be a case for having an independent registry and then other data could all be collected in the one source. However, that is for the future and another argument. I also believe what he was saying about supplying data to the Commission, know your client and all the rest of it, which is cumbersome, expensive, time consuming, *et cetera*, is a red herring. I think he is just saying that. On that point I will leave that. Deputy Morel said that he had concerns again about using the J.F.S.C. and he asked me some questions, and he asked me whether they would be happy to host the register. Well from the time I was in the Commission and in the conversations I have had, they say they are happy to assist the Government. If the Government of this Island, the Assembly, would like to have something in place with them they will do it. Yes, at times they are busy and they are dealing with other things. We would have to resource them by giving them additional support in terms of one or 2 members of staff, depending on the level of demand. That could easily be covered by a small fee for recording all transfers of property. I might add that with everything that the Government is thinking of doing, whether it be pensions or money lending or whatever it is that they want the Commission to look at, the Commission will probably outgrow its premises and will require more people. That is a statement of fact. But at the moment they certainly told me in the meetings that I had they would be happy to accommodate what the Government does. As far as ultimate beneficial ownership; the point I keep on stressing the use of the Commission is no one else has the information who the ultimate beneficial owners are. The register in the Royal Court, the Royal Court records of sales, as I say, will say such-and-such company, such-and-such trust, such-and-such foundation owns or is purchasing the property. You do not know who hides behind that. Even if it names the company I do not believe there is a requirement that they have to explain who owns that company. Could it be another company? Could it be another 3 or 4 companies? We do not know. The same is also true of the Parish rate record. All that happens is they have whoever owns the property, a company, they may have a registered address, and they send the rate assessment form to them and they send the rate demand to them. They do not know any more. Again, there could be multiple structures before you get to the ultimate beneficial owner. Only one body knows who they are and that is the Financial Services Commission. They have the Companies Registry and they know who owns every company. They do not have a register of trusts or a register of foundations in the sense that they know who the owners are. But they have the right by law to demand it from the financial service company that has set up the trust or the legal company that has set up the trust so they can get the information. No one else can get it. Whether you go through me or not the Government is going to have to go through the Financial Services Commission to get that information. So I hope that answers the reason why I believe the Financial Services Commission is central to dealing with this matter and dealing with it quickly. Senator Farnham mentioned the private rental sector and how important it is to the housing market. I fully agree. The only thing that I am concerned about in that sense is the fact because prices have been pushed up artificially that we are having to subsidise to the tune of £10 million, as Deputy Tadier said. That is a wasteful use of taxpayers' money. Let us just deal with the market. Again, he is following the idea of the Commission ... I really do think by taking out part (b) you will not achieve it by 2021, it will take many years, it will cost more, and we will not make any significant progress at all. Again I thank the Deputy of St. Ouen for his comments. It was interesting, and I agree with him about share transfer companies and so on. Yes, it may take some time to integrate but I think we have got to do this. But he did say one thing that I was surprised, he said that he did not think the J.F.S.C. may have the details of foreign companies. Well if we have not we have got a major regulatory gap here and we need to find it, and I will be asking questions about that after this debate has concluded. Again, as a Minister, he is following the party line and is not supporting it going to the Financial Services Commission. Can I just say in conclusion, that I started off yesterday by saying that in the 12 years that I have been in the States we have accomplished very little to deal with

the housing market and the housing situation and housing our people. This has got to stop. If house prices which cause, as I say, rental prices to go up as well because of the returns that the owner of the property - the foreign or domestic owner - the 8 per cent or 10 per cent that he is going to get on his return; they are forcing up rental prices. If Members believe it is acceptable that prices are 20 to 30 per cent higher than they should be in the housing market and 10 per cent higher than they should be in the rental market then they should vote for this Proposition. If they really are genuinely concerned about dealing with a housing crisis then I urge them to support (a), (b) and (c) of this Proposition so that we take a positive step to reduce the cost of housing in this Island. When we get to the population policy and deal with that and lock it down then maybe we will finally make some progress. So I urge Members to support all parts of the Proposition and I move for the appeal.

The Bailiff:

Thank you very much. Are you prepared to take each of the parts separately, Deputy, did I miss that?

Deputy M.R. Higgins:

I had said I would. I could call their bluff by saying we will take it as a whole but I really do believe that Members should ...

The Bailiff:

Well the answer is you are prepared to do so, thank you very much indeed. Very well, the first vote will be on part (a) of the Proposition and the Greffier will post a link into the chat as soon as possible. It is there; I open the voting and ask Members to cast their vote in the normal way. If Members have had the opportunity of casting their votes, and obviously if the link is not working please do cast them in the chat, but if Members have had the opportunity of casting their votes I ask the Greffier to close the voting.

Deputy M.R. Higgins:

Sir, once the vote is finalised could we have the contre and any abstentions?

The Bailiff:

I ask the Greffier to read out the contre votes.

POUR: 37		CONTRE: 5		ABSTAIN: 0
Senator L.J. Farnham		Senator I.J. Gorst		
Senator T.A. Vallois		Connétable of St. Clement		
Senator S.W. Pallett		Connétable of St. John		
Senator S.Y. Mézec		Deputy J.A. Martin (H)		
Connétable of St. Saviour		Deputy G.C.U. Guida (L)		
Connétable of St. Brelade				
Connétable of Grouville				
Connétable of Trinity				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Ouen				

Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy L.B.E. Ash (C)				
Deputy K.F. Morel (L)				
Deputy of Trinity				
Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy J.H. Perchard (S)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

The Greffier of the States:

Those Members voting contre were: the Constable of St. Clement, Deputy Guida, the Constable of St. John, Deputy Martin and Senator Gorst.

The Bailiff:

Very well, we come to part (b) of the Proposition. I ask the Greffier to place the link in the chat. The link has now been posted. I ask the Greffier to open the voting and Members to cast their vote in the normal way. If Members have had the opportunity of casting their votes I ask the Greffier to close the voting. Part (b) has been rejected:

POUR: 14	CONTRE: 28	ABSTAIN: 0
Connétable of Trinity	Senator I.J. Gorst	
Connétable of St. Mary	Senator L.J. Farnham	
Deputy G.P. Southern (H)	Senator T.A. Vallois	
Deputy of Grouville	Senator S.W. Pallett	
Deputy M. Tadier (B)	Senator S.Y. Mézec	
Deputy M.R. Higgins (H)	Connétable of St. Clement	
Deputy J.M. Maçon (S)	Connétable of St. Saviour	
Deputy R. Labey (H)	Connétable of St. Brelade	
Deputy S.M. Wickenden (H)	Connétable of Grouville	
Deputy G.J. Truscott (B)	Connétable of St. John	
Deputy J.H. Young (B)	Connétable of St. Ouen	
Deputy of St. John	Connétable of St. Martin	
Deputy R.J. Ward (H)	Deputy J.A. Martin (H)	
Deputy K.G. Pamplin (S)	Deputy K.C. Lewis (S)	
	Deputy S.J. Pinel (C)	
	Deputy of St. Martin	
	Deputy of St. Ouen	
	Deputy L.M.C. Doublet (S)	
	Deputy of St. Mary	
	Deputy L.B.E. Ash (C)	
	Deputy K.F. Morel (L)	
	Deputy G.C.U. Guida (L)	
	Deputy of Trinity	
	Deputy M.R. Le Hegarat (H)	

		Deputy S.M. Ahier (H)		
		Deputy J.H. Perchard (S)		
		Deputy C.S. Alves (H)		
		Deputy I. Gardiner (H)		

The Greffier of the States:

The 12 who voted pour were: Deputy Labey, Deputy Maçon, Deputy Young, Deputy Ward, Deputy Pamplin, Constable of St. Mary, Deputy Truscott, Constable of Trinity, the Deputy of Grouville, Deputy Southern, Deputy Wickenden and Deputy Tadier. On the chat I would add Deputy Higgins and the Deputy of St. John. Those voting contre were: the Deputy of St. Martin, Deputy Doublet, Senator Vallois, Constable of Grouville, Senator Farnham, Deputy Lewis, Deputy Ahier, Constable of St. Saviour, Deputy Perchard, Deputy Le Hagarat, Deputy Alves, Senator Gorst, Deputy Morel, Deputy Guida, Deputy Pinel, Constable of St. Brelade, Deputy Martin, Senator Pallett, Constable of St. Ouen, Deputy Gardiner, Constable of St. John, Constable of St. Martin, Constable of St. Clement, Deputy of St. Ouen, Deputy Ash, Deputy of Trinity, Senator Mézec, and on the chat the Deputy of St. Mary.

The Bailiff:

Very well, we now come to part (c) and I ask the Greffier to put into the chat a vote on that. It is now posted on the chat; I open the voting and ask Members to cast their vote in the normal way.

[11:45]

If Members have had the opportunity of casting their votes I ask the Greffier to close the voting. Part (c) of the Proposition has been adopted:

POUR: 34		CONTRE: 7		ABSTAIN: 0
Senator L.J. Farnham		Senator I.J. Gorst		
Senator T.A. Vallois		Connétable of St. John		
Senator S.W. Pallett		Deputy J.A. Martin (H)		
Senator S.Y. Mézec		Deputy K.C. Lewis (S)		
Connétable of St. Saviour		Deputy S.J. Pinel (C)		
Connétable of St. Brelade		Deputy L.B.E. Ash (C)		
Connétable of Grouville		Deputy G.C.U. Guida (L)		
Connétable of Trinity				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Martin				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy M. Tadier (B)				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy of St. Martin				
Deputy of St. Ouen				
Deputy L.M.C. Doublet (S)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy J.H. Young (B)				
Deputy K.F. Morel (L)				
Deputy of Trinity				

Deputy of St. John				
Deputy M.R. Le Hegarat (H)				
Deputy S.M. Ahier (H)				
Deputy J.H. Perchard (S)				
Deputy R.J. Ward (H)				
Deputy C.S. Alves (H)				
Deputy K.G. Pamplin (S)				
Deputy I. Gardiner (H)				

The Greffier of the States:

Those who voted contre were: Deputy Martin, the Constable of St. John, Deputy Guida, Deputy Pinel, Deputy Ash, Senator Gorst and Deputy Lewis.

Deputy M.R. Higgins:

Can I just say before we move on to the next item, I would like to thank people for supporting the idea of the property register? Obviously I am disappointed they did not go with the Financial Services Commission but let us all hold the Government to getting this registry in place by 2021 and start dealing with this problem finally. Thank you.

The Bailiff:

Thank you very much, Deputy.

The Greffier of the States:

A point of order by Deputy Pamplin.

The Bailiff:

A point of order, Deputy, yes? Well, that is not really a point of order. I think if there is to be any suggestion of staying beyond 5.30 p.m. this evening then that is a matter that any Member can raise. Perhaps the correct time to raise it is immediately after the luncheon adjournment, and the chair of P.P.C. (Privileges and Procedures Committee) can consider that now you have raised it in the chat.

Deputy K.G. Pamplin:

Thank you, Sir. I only raise it now before lunch because the lunchtime period may give more time for parents and the like to make arrangements in what is a very busy order paper just looking at the debates coming up. So I raise it as early as possible to give as much convenience for Members who do have commitments outside the Chamber for tonight and tomorrow.

The Bailiff:

Very well. Chair of P.P.C., do you wish to make any observations at this point?

Deputy R. Labey of St. Helier:

Well the Assembly voted yesterday to sit tomorrow, which I think probably negates the requirement to go later today, is my feeling.

The Bailiff:

Very well. Can I suggest, so that we can move on, consideration is given to that over the luncheon adjournment and in the event that it is necessary to make a proposition in connection with it after lunch then we can deal with it then so Members know where they stand. But you have indeed raised the point, Deputy Pamplin, for consideration.

3. Ministerial Government: Review (P.98/2020)

The Bailiff:

The next item is Ministerial Government, P.98, lodged by Deputy Young, and I ask the Greffier to read the Proposition.

The Greffier of the States:

The States are asked to decide whether they are of opinion – (a) to agree that an independent panel should be established to review the operation of the current machinery of government in Jersey and, in particular, to consider – (i) the role of the Council of Ministers, Ministers and Assistant Ministers and whether the current division of duties and responsibilities between these and officers is appropriate. (ii) the government departmental structure and whether the current political oversight, direction and control of government departments is effective and appropriate. (iii) the role of Scrutiny Panels and the Public Accounts Committee. (iv) the role of Policy Development Boards. (v) whether the current machinery of government enables all elected States Members to make an effective and meaningful contribution to policy development and its implementation and, if not, what changes would be appropriate to enable greater involvement of all elected members in these matters. (b) to agree – (i) that the chair and members of the panel should be appointed by the States and that the panel should be chaired by an appropriately qualified person and be comprised of 4 other members, all with relevant knowledge and experience. (ii) that the panel should, on completion of its review, produce and present to the States, through the Privileges and Procedures Committee, a report setting out its findings and recommendations. (iii) that the panel should be requested to complete its review no later than the end of July 2021 to enable its recommendations to be considered and, where appropriate, implemented at the time of the appointment of the new Council of Ministers after the May 2022 elections; (c) to request the chairman of the Privileges and Procedures Committee, in consultation with the president of the Scrutiny Liaison Committee and Chief Minister, with administrative support from the Greffier of the States – (i) to take the necessary steps to identify, for approval by the States, the chair, and members of the panel through a transparent process agreed with the Jersey Appointments Commission. (ii) to draft, for early approval by the States, detailed terms of reference for the panel.

3.1 Deputy J.H. Young:

Today I am bringing forward this Proposition intended to enable the improvement of our system of government for future elected Members to deliver their policy commitments to the public. In doing so I am bringing this as a private Member and I want to thank the Chief Minister and my ministerial colleagues for allowing me today to bring this, recognising that for me this is a very longstanding pre-election commitment. The starting point is that if there is purpose in politics it is to bring about change and deliver real improvements in the lives of people who have put their trust in us to represent them, and in that way society and community make progress. It could be material benefits or opportunity at maintaining a better quality of life, especially the aesthetic and cultural aspects. That is the heart of our democracy. What I would hope today, my Proposition provides a route map for addressing and resolving real underlying and longstanding concerns about our current machinery of government, which despite often improvement in that government those views are prevalent in our community. Those voices have a sense that the character of our Island's Government has radically changed in a way that those people find alien to Jersey, and a fear that Government is progressively moving closer to becoming like the United Kingdom and adopting philosophy and old complexities which will serve to increase that disconnect. Of course unlike the U.K. we do not have the effective safeguard in our Government that mature party politics provides. In those systems their elected members submit their policy intentions well before election and the majority party adopts a programme to put them into action. Unfortunately our politics in Jersey is not yet mature enough for that and of course the independent spirit of Channel Islanders resists that, understandably. Consequently policies are developed rather *ad hoc* after election and they are uncertain and rely on collective consensus. So it was that the decision 15 years ago to sweep away the system of consensus, which was inherent in the previous committee system, to a ministerial system was high risk, and the

benefits were recognised at the time as very uncertain. I think those issues were very neatly summarised in a paper written by former Senator and former Bailiff Sir Philip Bailhache in the *Jersey Law Review* in October 2005. Presciently, he entitled it *Ministerial Government - A Brave New World*. I think I have copied that extract to Members. He says in here, at the end of his analysis, he expressed hope that Members of the States who are not in Government should not be regarded as the opposition. It remains to be seen whether these hopes will be realised, as Sir Philip says. I think 15 years on there is little evidence that the benefits of the ministerial system have materialised. Worryingly there is plenty of evidence that those risks highlighted at the time have arisen and they have been, I believe, intensified by *ad hoc* subsequent changes to the ministerial government, or what I would regard as tinkering. It has evolved through several phases of change and all those have strengthened the centralisation of political power. Particularly the most recent changes in 2018, they have greatly strengthened the influence of our civil servants. Of course this is well-intended; it is well-intended to approve implementation of policy which is set by politicians and the management of that policy. However, there is a very big risk that where there are inherent weaknesses in the political machinery which limits Members' opportunity to work effectively, if for whatever reason the civil servants then have to fill that void, and that means that those civil servants are in a situation where they effectively drive change and shape policy. I am not saying it is happening, I am saying there is that risk. So the key question I propose that I want the review to answer, if you approve it, is whether the balance of power between elected Members and civil servants has changed, and whether it has weakened the opportunity for our elected Members to set policy and meet the promises they made on election. Now, I have produced a long report and I have explained a large number of specific organisational issues in my report. They are examples; they all flow from and underpin those key questions that I have highlighted. I apologise today to Members for repeating things in the report but because this is my one interview and today is my first public opportunity to voice and put on record these unresolved issues which many people have spoken to me about and thanked me for bringing out into the open. The first starting point is - it is a technical issue, I am afraid - but it is what the corporation sole legal status of each Minister. That arrangement was put in place to retain the political separateness of each department and political accountability of Ministers. That was when the system was introduced. Of course that was criticised as being silo thinking. In 2018 P.1 substitute a single entity status as the Government of Jersey so that all decisions could be made by any Minister acting on the vote of the Council of Ministers, regardless of their role. Of course that was against the advice of former Bailiff and Senator Philip Bailhache who warned strongly against it. Sadly his amendment was lost and what we have ended up with in the law now is a strengthening of power of our chief executive, and the weaknesses inherent in the system have taken Jersey down the road towards the fears as expressed early on in Clothier of an elected system where really the Members do not have control with unprecedented concentration of the power. Of course the Chairmen's Committee of the day - and I think, I may be wrong, that our present Chief Minister was that chairman - considered the changes rushed. I want to put on record though in saying those things that I trust Senator Le Fondré, our Chief Minister, not to abuse that power. But I believe a system that relies on individual personalities when in positions which are transient does need a review. Thankfully we do not have the single entity amendment yet because of clever drafting those changes require the States to approve regulations and pass an Appointed Day Act. The Chief Minister has said in the written answer he is planning to do it this year; I ask him please not to do so. The Isle of Man, although it was looking at the system, has not gone ahead and done so and they were worried about that because they consider their party system is too weak for a safeguard. In Scotland they do have a single entity but of course they have effective party politics. On that point we have the worst combination in Jersey to introduce single legal entity; no party politics, a unicameral Assembly and a Scrutiny weakened not because of the lack of commitment from our Members but the limitations imposed by the machinery of government. The next point that people have referred to me, and we all know this, the Troy rule; brought in for good reasons, so in theory that the Council of Ministers can be got rid of by a majority of Members. But that has not happened. The position was of course

that my Proposition does not bring in any change to the electoral system. Whatever electoral system happens in the future that will make no difference to the machinery of government. So, despite warnings, there was that cherry-picking, but a vote of no confidence in the States requires all of the various fractions in the States to combine and of course I think that is extremely unlikely to happen so I think that is a safeguard in theory.

[12:00]

Then there is the issue about what individual Ministers can do on accountability. Of course when the States decided to go for the ministerial system they made a decision that there would be a number of portfolios of business and each would be the responsibility of a Minister and one or 2 other Members, so each department should have the responsibility. Of course that was inscribed in a proposition, but it has never been changed. But the model we are now working to or the target operating model introduced post-2018 which has come into force since I became elected, provides for one department serving 4 different Ministers. So we have a mismatch between civil service structure matching with ministerial responsibilities, and I am concerned that that has been done without a mandate from the States. Of course the importance of this was illustrated with Sir Philip Bailhache's paper again where he referred to the importance of Article 25(6) of the States of Jersey Law which said that: "The senior officer in any administration of the States for which a Minister is assigned responsibility shall be accountable to that Minister in respect of policy direction." He said that was really important. But what happened? That provision was deleted as part of proposition P.1/2018. I searched for an explanation in the Amendment; nothing. It is silent. Clearly Members can see that is an issue that has to be relooked at. So the challenges for where we have one department of I.H.E. (Infrastructure, Housing and Environment) working with a single director general to serve a number of different Ministers, those challenges for all the parties and potential for conflict is high. I think it has seriously weakened political direction oversight and I think that is something we should look at in the review, because what is necessary is accountability and transparency which is simple to understand and which all parties recognise that make a ministerial system work. One only has to listen to some of the issues or complexities that arise in Scrutiny Panels to realise that is a real problem. Now, it is true that a possible solution is for a future Chief Minister to redefine ministerial responsibilities, maybe perhaps having a single Minister for the Environment and Infrastructure, as is done elsewhere. But, of course, that would require a separate body for regulation, planning, environment and so on. I think there is merit in that and it is worthy of consideration and it has the ideal potential for creating a properly resourced body capable of setting and enforcing standards. Another issue is about the effectiveness of Scrutiny and, of course, here I have the benefit of serving as a chairman for 3 years. I experienced at that time the frustration of having the efforts of my panel limited. I think there was at least one former Minister who varied, I think on my reading, between tolerance or lip service at worst and perhaps regarded us as a bit of a nuisance. Now, that is a system that I found was wasteful for me and my team, and it is a shame that when you look back so many outstanding reports and recommendations of Scrutiny lie idle in our archives, huge amounts of resource there. Then, now and again - it does not happen very often and thankfully it does not - there is a tendency to play politics. I think all the reports at the time of bringing in the ministerial system highlighted that. Of course, that really does not help. In looking in the record I did send Members an email listing the number of reports that I had found. I was astonished at just how much they were. The lack of inclusivity for Members who are not in the Executive is a key point. A number of proposals have been considered over the years to redress that particular problem. Because the question is: do non-Executive Members have limited opportunity to fully contribute to policy? Are they excluded from important processes of decision making? There is no question that if one reads those reports that I have listed many past Members did, and present Members ... and, of course, at the moment I am not aware of the views of Members but I would be surprised, with consistent remarks over the last 3 Councils of Ministers, if those issues will have changed. For example, what are the solutions that have been considered? Well, the idea about the States at the same time as

electing Ministers to also elect Members to ministerial boards. Or there was a proposal for what was called non-Executive Members to assist. These were included in reports from the Chairmen's Committee, P.P.C. reports, Senator Breckon, Senator Ferguson. They all build on the principles of the original Amendments brought by the late Deputy Mike Vibert at the time. Of course, Deputy Martin as well highlighted that the change was constitutional and should have been put into a referendum. All those suggestions have fallen, but I believe these ideas that are current of trying to make a hybrid system have real merit. I think it is too important to close our minds to them. Of course, we got close to that with the Chief Minister's adoption this term of policy development boards, which have gone much further because they include non-States Members as well as Scrutiny members. However, all members of such boards are selected by the Chief Minister and set up on an *ad hoc* basis. I think that idea as a principle is too open to patronage and I think it has been a useful experiment, but I think this cannot be as effective as a more formalised structure. Now, the issues about Scrutiny, our Chief Minister - and I want to praise him - has worked to achieve a good relationship with Scrutiny and made efforts to work in harmony. But, of course, there are limits by the system. The timescales for it are far too compressed. Access to information is always slow at best, and proposals and comments do come very late in the day. It is the system that forces that. I do have the impression, listening to some of the panels, that some corporate officers do see Scrutiny as a bit of a complication in having to respond to requests. Of course, the irony of this is at the same time - and I have found this - Ministers' workloads are extremely high and there is constant pressure to input on policy matters that tends to be unrelenting, taxing in the extreme even. I am not afraid of hard work, I work full-time, but I delegate routinely. When the system was set up, there was debate about whether you could have part-time Ministers. Well, we know that is not possible so there is an issue about Assistant Minister support. Now, we have a limit and, of course, Ministers have a very limited opportunity to build a political team and I believe there is a case for more Assistant Ministers to help them discuss and brainstorm policy before it gets committed to. Because policies, when they are tested, are more robust. Then ministerial responsibilities are extremely wide. Now, in mine, I am not going to list all mine but thankfully I have one Assistant Minister I share with Home Affairs, but thankfully my Assistant Minister, Deputy Guida, is exceptional. But, of course, again a system that relies on that dependency of individuals needs review. Then the issue of newly elected Members, and I faced this myself when I first came into the States, my first term. There is a bit of a lottery there because Members used to be asked by the Greffe what were their interest areas. Under the committee system, they went into committee membership. But today a new Member finds within days of election that the States vote for Ministers before they have any opportunity to assess candidates' political ideology, which ties in with our lack of party politics. That kind of closes the door for them, effectively. So if you end up in the wrong place or your policy preferences are closed to you, it means that there is limited opportunity for that Member. They are not able to contribute to policy, and I do not think that makes sufficient use of Members' time and experience. I would like to see the review body look at ways of tackling this to ensure that they are not left to the lonely task on the Back Benches of having to pursue their policy objectives and promises with the support ... and here I praise the Greffe and the work they are doing to try and strengthen that, but I do not think it is the full solution. Now, again, if Members think I am knocking the ministerial system, I am going to say I have seen the strengths of it in the speed of decision making. But I do think we are entitled to ask has the system delivered the promised service improvements. Has it been translated into effective policies for our public services? Of course, most recently, yes, we have seen its success with our excellent joined-up COVID response, and I want to acknowledge that and give praise to all those Ministers and civil servants, all the D.G.s (Director Generals) and their C.O.s (Chief Officers), who have delivered that for us. So, I have seen the advantages of the ministerial authorities evidenced by COVID, but of course the Assembly has to be recognised as the master. I believe that the organisation of government in a national emergency is not the same consideration as long-term policies within a democracy. That requires the inclusion of Members' participation, accountability, openness and transparency and, above all, the confidence of the public. I have also seen negative results, sadly, of

ministerial government in action. Of course, it is no consolation if we do make mistakes and do the wrong thing to say: "Well, it does not matter, we did it quickly." Sadly, the best example is the hospital project where I am convinced the committee system would not have produced 2 flawed schemes. Of course, in other cases no policy decisions have been achieved or we are still waiting for them. I say one word: population. Of course, at the time I think there was an issue that it was influenced by U.K. fashion when we set the ministerial system because the U.K. at that date required all local authorities over a certain size to set up cabinet governments. Of course, years later, the unwisdom of this was recognised and local authorities were allowed to revert back to committees or find alternative hybrid systems which suited them. Cornwall County, for example, which is noted for independent members, was one such. So we should be open to review. Then ministerial issues, the big issues. Ironically, the committee system was swept away or it died because of lack of joined-up integration of policy. Yet I find it ironic that the big decisions in Jersey still elude us, despite the 15 years of ministerial system: delivery in housing, migration and population policy, and the balance of tax and spend. So, strangely, when you look back on the housing body, I found looking back that the delivery of government housing was greater under the committee system than it has been in the ministerial system. So there are these choices. I am not prejudging the outcome of the review. I have set in place what I call a route map, a process to resolve these issues once and for all. I have to admit that my experiences of the ministerial system in my 2 years have been coloured by the inherent problems in taking responsibility for a quarter part of what was G.H.E. (Growth, Housing and Environment), now the I.H.E. Department, and feeling the disruption and uncertainty and having at the same time to come to terms with a completely new corporate bureaucracy, which I do find complex and overwhelming. I do ask whether such complexity is really necessary in a population and a self-governing Island of 107,000 people. Does it have to be like that? I would like to hear a review look and see are my doubts right. Can the costs be justified? Are they justified by the benefits? Of course, it is true that I had experience of the committee system in my 30 years working in connection with the States of Jersey. Out of my 40 years in the Island, 25 were with committees as a civil servant, 13 of them as a Chief Officer working with 6 different committees, before my redundancy. Of course, I gave up that role and I did so to facilitate the transition to ministerial government, having spent a year or so setting up the new system. Some Members may feel that I am biased in favour of that and on the Proposition what I am really about is to try to put the clock back.

[12:15]

My answer is no, but I do feel that the issues I have set out in the report and what I am talking about today are valued issues that are unanswered, and I do believe I am well placed to judge the merits and demerits of all of the alternative systems. Committees were positive. They were popular with the public and closer to the electorate. Of course, all the phone calls that I get from people, people say that. Communication was good because Members sat on more than one committee. Civil servants were most definitely not in charge. Their job was to advise and implement political aspirations. I personally felt very accountable and I am absolutely sure my colleagues did. Working relationships were strong but there was the issue of clash of personalities. Officers who did not perform and those who challenged political authority of Members, well, they did not remain in the roles for too long. The political dynamics were volatile, with lots of votes of no confidence. But it was true that silent politics in the end and this issue about bureaucracy, although I think the bureaucracy could have been dealt with, but silent politics was the big issue which led to the change. So, my mind is open to the outcome but I am very clear that we need this reviewed. The key point is to learn the lessons, what has worked, what has not worked, and if there is change possible what practical changes can be made. My own view is to have those done in time and a timetable that allows them to be made so that the next group of States Members ... and, of course, Members know that I have declared my position that I will not be one of those, so my role is that I want to leave a process of a legacy where Members have a better chance at delivering and achieving for the future. So, the P.P.C. response to my proposal, I am very pleased they said the issues are not insurmountable

but they put a question on the timescale. Well, the timescale is very tight and P.P.C. ... I had hoped, of course, originally that we could have had an earlier debate, but nonetheless I thought today was really about the last date possible for it to work. Of course, if that body does come up with fundamental change as opposed to improvements, then it is right, and I have to concede this, that fundamental change will take longer than that and, therefore, there will probably be issues that would have to go forward through into the new Assembly. Because I remember the transition from committees to States to a ministerial government took several years and, of course, it had a cost to it. So that is not a thing one would entertain lightly. So, the panel have also asked me about my thoughts on the panel. My preference would be for a locally-based Chair, ideally I think with legal background, with experience in public sector or political life. I would expect that person to have input in the choice of their panel members and personally I would favour a balance of 2 local persons and 2 off-Island persons, either with an academic background or a track record in public sector work, consultancy advice or whatever. I have not been prescriptive about that because I think that role is for the P.P.C. I wanted to make sure that there is the consultation on that matter with the Chief Minister and the chair of the Scrutiny Liaison Committee, and I think that is important. Now, also the P.P.C. have raised the cost. Now, why do they put a figure of £100,000 on it? I think because that is an absolute minimum. Of course, in my judgment, the importance of the project does warrant a higher figure. One of the key things is whether or not the persons, the members sitting on it, are either able to act pro bono or at cost, but either way I would put an upper limit of a quarter of a million pounds. It is, I think, for that dialogue with the P.P.C., the Chief Minister, and with the Assembly agreeing. It will be the Minister for Treasury and Resources to consider funding. Now, of course, what I am told is that there is no money there at the moment, but it is hinted in P.P.C. comments that there may be some scope in existing Greffe, Assembly and Scrutiny budgets. I think one other point that P.P.C. argue, or at least point out, is terms of reference being a key point to take time to do. I do not think there is a need to reinvent the wheel. If Members look back at the reports that I highlighted, you will find that the P.P.C. reports include all such terms of reference in their ... all that work is done. So, that, I think, included ... and also Senators can do the same work, so I think that is adequate. So, I have spoken for 29 minutes. I tried to keep it to 30 minutes. I want to finish with a quote from Sir Cecil Clothier, which I put in italics on page 13 of my report because I really think it is important. It says: "Democracy" ... this is the late Sir Cecil Clothier in his final quote and it is really important in his report: "Democracy, rule by the people, cannot mean that all people rule. Such a fragmentation of power would result in no one person or even group of persons having enough power to get anything done. For the opposite of democracy, the Greeks produced autocracy, whereby all the power resides in one person who, as has so often been remarked, may eventually be corrupted by it. Presumably, the trick, the most difficult in human affairs, is to find the point of balance between the extremes of authoritarianism and the wholesale decentralisation of power. The human race is constantly trying and often failing to balance on this invisible point. In the spectrum of democracy, we believe on the evidence that Jersey has gone far too far in the direction of distributing power with the results to which we have referred." It was that key point that led to the decision 15 years ago, and I think now what I am saying is let us check it out and see whether in finding that Clothier balance we have it right or whether we need to adjust in detail or in any other way. I want to thank Members for allowing me and sticking with me for this long speech, which I do not normally make; 31 minutes. I would like to make the Proposition.

The Bailiff:

Thank you very much, Deputy. Is the Proposition seconded? [**Seconded**] The Proposition is seconded. Does any Member wish to speak on the Proposition?

3.1.1 Deputy J.H. Perchard:

I do not mind speaking early on this Proposition to get the ball rolling, as it were. I will not speak for long. I will be supporting the Deputy in his proposition. I think a review is necessary. I would

like to just pick up on what he spoke about in his opening remarks regarding the work of Sir Philip Bailhache. At the end of the last term, Sir Philip brought an amendment to the machinery of government proposal regarding Articles 9 to 11. Those Articles were regarding a single legal entity, but in his report he also raised concerns about lines of accountability and centralisation of power. Sir Philip argued in that paper that those particular Articles of the machinery of government proposal were taken in undue haste. He foresaw a lack of clarity on what was proposed between the relationship between Ministers and departments and, indeed, as the proposer has pointed out, those fears are somewhat realised in the sense that departments are not mapped to ministries. While that might be desirable in some ways, given that the proposer is a Minister and has mentioned this as something that perhaps is not working for him, I think it is fair to say that what Sir Philip suggested might happen has happened to some extent. He goes on in his paper to talk about the centralisation of power and he raised that as a concern and discusses the new structure that Members, I believe at that time - before my time - had been briefed on regarding the insertion of an accountable officer between a Minister and their Chief Officer. Sir Philip did suggest at that time that this would mark a huge shift in departmental relations and he states quite clearly that while, of course, this insertion of an accountable officer is desirable for other reasons, he states, and I was just going to read you a quick quote, that it comes close to creating this classically undesirable division of accountability. He goes on to describe the fact that Ministers would be required to be particularly diplomatic and sensitive when negotiating that relationship between their Chief Officer and accountable officer to ensure that Chief Officers are not serving 2 masters, as it were. He uses that phrase "2 masters." But what he argued at the time was that, given the potential outcome of this huge shift, it was too soon to implement some of the Articles and he was largely supported in this amendment. I think in the end he only lost it by 2 votes. So, in short and in summary - because I know this will be a long debate and many Members will want to speak - I am quite optimistic about this Proposition. Because the concerns raised by both Sir Philip at the time in 2018 and by the proposer now and previous Members I am sure, those concerns have not disappeared. What I feel that this Proposition allows is for those concerns to be given a value as such. Sometimes we feel that something is not working, but if it is looked into there may be a lack of understanding of the procedural process that one needs to employ in order to succeed. Sometimes in Scrutiny it feels like it is difficult to hold officers to account and sometimes the lines of accountability and the structure is not made clear enough. It is hard to distinguish between that feeling and what is the reality. Of course, my feelings on that might represent the reality, it might indeed be a case that lines of accountability are obscured and inaccessible to Scrutiny. On the other hand, it might be the fact this huge shift that has happened over the last 2 years has resulted in confusion but is easily remedied. I think that a review and a subsequent report and outcome of the review will be a very helpful tool in establishing what is and is not working across the membership and to provide positive and productive solutions to those problems. I am also comforted by the fact that these concerns span the political spectrum and if we look back at the people who shared the concerns of Sir Philip at the time and, therefore, I can only assume share of the concerns of the proposer, they span the political spectrum but also are largely in Government today. We have Senator Ferguson, Deputy Higgins, the Deputy of St. Mary, the Constable of St. Saviour, the Constable of St. John, Deputy Truscott, Deputy Tadier, and then members of Government such as Deputy Pinel, who is now Minister for Treasury and Resources, the Deputy of St. Ouen, who is now the Minister for Health and Social Services, our own Deputy Chief Minister, Senator Farnham, and Senator Le Fondré, who is, of course, our Chief Minister. These people who are currently serving in Government shared those concerns at the time. I would be surprised if those people who had those concerns at the time would not be interested in a review of the changes as proposed because, of course, our views change over time but concerns are only waylaid in the face of evidence. So, as I say, I am feeling very optimistic about this Proposition because it seems to bring together the concerns of people who are in Government now and who are not, and it seems to be something that we all are interested in assessing.

[12:30]

I for one, if I had voted for something in the past because of a concern I had, I would certainly welcome any proposal to review those previous concerns and to be assured that they are either no longer concerns or that there are productive and positive ways in which we can rectify or fix any problems arising from those concerns. That is all I am going to say on the matter, and I thank the proposer very much for this opportunity. I look forward to hearing the rest of the debate.

3.1.2 Deputy J.M. Maçon of St. Saviour:

My speech is going to be, unfortunately for Members, quite a divided one because even in my own head I am still working this out. I know some Members at home and listeners on the radio will be thinking: “Oh, here we go again, there they are in that big House yet again talking about themselves when there are other issues to get on with” on the one hand. On the other hand, as Deputy Perchard has pointed out, it is very healthy to take stock sometimes and review, hold up a mirror and look at yourself and say: “How can we do things better and how did we get here?” So, for me, I think overall this is a healthy thing to do. I suppose my concerns, which I would like Deputy Young to comment on - and, again, I am split on this - when you talk about the machinery of government, yes, you can map it all out on paper and how it looks, but when you are there and you are doing it and you live it, it does not necessarily always match how it all looks on paper. So, when it comes to the terms of reference for people who will sit on this, part of me wants to say it absolutely should not be former politicians, it should not be people who have signed nomination forms or really have had any involvement, because we are a small community. Inevitably, there are going to be links and little agendas that are going to be pushed and people are going to be lined up to be put on this in order to push other people’s agendas in the community. But then, as I said in the first place, unless you have lived it and seen it and experienced it, you will not always get those kind of intricacies and the nuances and, quite frankly - we are political creatures - the politics that go on when you look at how it works. If you do not involve that knowledge in some way, how can you appreciate the full system? So, those I suppose are my concerns and the tussle that is going on in my head. What I do want to say is, of course, even going back to the Clothier review, which was yet again saying Members get too involved in the operational issues of departments, they should step back, they should be able to tackle more of the strategic cross-cutting issues which are affecting the Island, and this is where the committee system has been falling down, they argued. I do reflect when do we really get the time to sit back and look at the strategic issues that affect the Island. I know a lot of members at home think we just turn up here every 2 weeks and we are twiddling our thumbs in between, but we are all running around incredibly busy, trying to get things done in our Parishes, in our departments, on Scrutiny, to try and improve the system one way or another. What we need is the time to look at these bigger cross-cutting issues and the strategic issues which we never really seem to get a grasp on. That ultimately comes down to how we apportion our time and where Members put their energy. Of course, we all know that our constituents out there, if you say: “I have put in a really good transport strategy” will say: “Thanks very much but the light on the corner of the road has not been fixed and I contacted you 3 times about it.” Again, Members, being political creatures, will inevitably have to expend their energies on those types of issues, but again it takes us away from, as I said, the strategic issues which we really should be concentrating on. What I would hope from this particular review is more of an aspect about how we can focus attentions on those types of issues because that is one of the big failings, I think, which has not been addressed since the Clothier review.

3.1.3 Deputy M. Tadier:

I do not want to poop on anybody’s party if that is the ... or be a party pooper. Sorry, the latter is probably acceptable parliamentary language, not the former. I get on well with Deputy Young and I work closely with him and I really respect him. He normally has a particular clarity of thought. We do not need another review. If I may be so bold, the analogy I would think about is that somebody has a leak in a house and there is a big hole in the roof and in the ceiling and it is patently obvious

and rain is pouring through. We have a group of people in the house saying: "What shall we do about it? Maybe we need to get some more towels to soak up the water. Maybe we need to get a bigger bucket because we cannot hold all the water that is dripping through the roof, through the ceiling, into the bucket. Or maybe we need to get a different mop because we cannot mop up the water quickly enough." So all of these people who are co-sharing this house are thinking of different ways, and then they start arguing, of course: "Why do we not maybe consider what colour towels we should use to mop up the water or maybe we should get a different type of mop, an organic one with a wooden handle." No, it is blatantly obvious that there is a gaping hole in the roof and ceiling and that the system is broken. If you get an independent person in, a genuinely independent panel, they will tell you the reason your system does not work is because you do not have party politics. Deputy Young said it himself. He said that there is an issue when you get new Members into the Assembly. The first thing we do is elect a Chief Minister and elect a Council of Ministers and we do not know what the political persuasions are of those new Members. Well, how do people get elected if nobody knows what their political persuasions are? It means you have a fundamental democratic and political problem there. If the public do not know what the political nuances are and the political opinions are of the people they elect, then why are they in politics? It is because we have a ... complete mess. Sorry, I had to check my parliamentary language there. We have a complete mess of a system. We have politicians who are not political, presumably, but of course we know that when they are in they become very political. So you know what, be honest and tell the public before an election what your politics are. Tell them who your alliances are and who they are going to be with, because that is how politics works. That is how it happens the world over. We cannot just say: "Oh, but Jersey is different, Jersey is special." No, in one form or another party politics exists everywhere in the world, within the Commonwealth, and it exists for a reason. That does not mean, of course, that we have to do things like the U.K. It means that we form our own policies. It is very strange that Deputy Young and myself are both members of the U.K. Labour Party and we share similar views, but in Jersey where we both work together we cannot even be a member of the same party. So, I would invite Deputy Young to just ... the Americans have an expression for it which involves a pot and getting off the pot, and the other part is not parliamentary. So I would invite him to do that and just say: "Look, why do you not either join Reform Jersey or form your own party with a group of people and then at the next election contest seats and try and get a grouping so that the public can at least give it a go." The other point is that there is not going to be an independent panel that you can find in Jersey because it will be people who presumably have worked within the system and either have some level of affinity and hold our current system and cherish it within their hearts because it has served them well, or it will be people who have been in politics and been disaffected by the system. Because you will need people who are experts, presumably. So there is no such thing as an independent panel and, if there were, the independent panel from the outside would just tell you to do things properly and form a political party. The last point is that since 1948 - and I might be chastised for saying this - we have had one party in power and the name of that party has effectively been finance and big business. Jersey's point, and you see it when it is marketed even within the Government's own papers on financial services about stability, and they take great pride in the fact that fundamentally nothing can or will change politically in terms of taxation. It is plastered all over their documentation that you cannot change the tax regime because it is stable. That serves people who do not live in the Island. That is what they have built a cornerstone on. If you cannot have the fundamental levers to make political changes about raising revenue and spending within your own tax system, then it is virtually pointless. So, there are all these issues in the mix. There is also the fact that Members voted in the last Assembly for P.1, which gave so much more power to the autocrat that Deputy Young spoke about. They just handed power on a plate to create that autocracy but without the check and balance of party politics. Now, the first thing I would recommend is that Members decide to join a party. The second is that I think that Deputy Young should consider bringing a rescindment of P.1 because there are many things in that which are toxic, and then the third thing I think that is needed is that politicians and Ministers start acting with leadership and that they start telling the civil

servants, including the chief executive, what they want him to do and not the other way round. We should not have anyone in the civil service dictating to us and often contradicting the decisions that have been made in the States Assembly, coming back with different figures. I make no apologies for giving the example of the arts figures. The States Assembly decided that they wanted 1 per cent for the arts, yet we have civil servants coming back and basically messing me and other Ministers around, changing figures which they have absolutely no authority to do. In a different world, if we had a proper, strong and accountable system, the Ministers would turn around to those civil servants and say: "You are acting in a complete breach of what you should be doing and if you carry on like this you are going to get the sack." But as things stand, the elections roll on, civil servants stay in the job. They create policy because they are filling the vacuum that politicians should be filling themselves and they cannot be entirely to blame for that. So, I think the analysis of what is wrong with our system to me is quite clear. We do not need another review from a non-independent point of view to tell us what to do. I think those Members who have clear policy points of view, whether they are left, centre, right, liberal, authoritarian or libertarian, they need to come together and effectively work together with a clear set of policies. For goodness sake, do it before the election, do not wait until you have been elected to decide whether or not you like politics. It is completely immature and now is the time for Jersey to take the step and jump into a mature way of politics, which is a party politics which is fit for the context of Jersey. I leave the speech there.

The Bailiff:

Thank you very much. We are almost at the time where it is traditional to consider the adjournment. Is the adjournment proposed?

LUNCHEON ADJOURNMENT PROPOSED

The Bailiff:

Very well, the Assembly stands adjourned until 2.15 p.m.

[12:43]

LUNCHEON ADJOURNMENT

[14:16]

The Bailiff:

We continue with the debate on P.98, Deputy Young's Ministerial Government: Review proposition. The next to speak is the Connétable of St. Martin.

3.1.4 Connétable K. Shenton-Stone of St. Martin:

This Proposition does not ask us to pass judgment as to whether we believe the current form of governance is good or bad and it is not here for us to decide on its future. This Proposition is simply asking us to undertake a function any healthy democratic Assembly should be happy to sign up to. As a parliamentary democracy, it is never enough to simply stand still and consider our structures to be unmovable and beyond change. Institutions such as the Council of Ministers must be subject to constant scrutiny and improvement so that they fulfil the roles they have been created for. To conduct this review is not to pacify or stymie ministerial government. Rather, it is to accept that it is necessary for us, as democratic representatives, to consistently challenge how we are governed and whether this governance can be improved and made more accountable so that we can give the people of Jersey the representation they deserve and the confidence that this form of representation is working for them. If the conclusion of this review is that a different form of Government could deliver greater democracy, greater accountability and improved policy development, then it will be up to us, as elected representatives, to examine the evidence and make the final lasting decisions. Jersey's constitution and political history has perhaps been overlooked within the public sphere and I hope that this review helps to create an open, detailed and communal discussion on how we, as an Island,

work, how we can improve our governance and how Jersey's governance has evolved over the course of its millennia long history. I know that the Deputy of Grouville has been doing some excellent work on this issue as part of the review of Island identity and I hope that this feeds into the review. As a Member of the Assembly, I am aware of the frustrations that many Islanders have with how a government functions, what accountabilities it needs and how policy is developed and we should use this as an opportunity to create a clear and permanent discourse within the Island of government, both civic and academic. However, I must urge both Members and those who may one day sit on the proposed panel to consider the need for this review to engage beyond the walls of our 3 main buildings of government, this Assembly, Morier House and Broad Street, and actively engage with the Island's many communities and local Parish government. Through this, the panel would be entrusted with a thorough and sophisticated understanding of all parts of Jersey's political system and ensure that they fully understand both the reach and limits of Jersey's ministerial government, also the forms of governance that are active on the Island and how they interlink. While I cannot say how the panel would function and gather research, I do hope that the chair of P.P.C. will agree to seek consultation from all Members of this Assembly and Islanders when determining the terms of reference and scope of this review before its presentation to the Assembly in July 2021. I would suggest that an amendment be brought for the 2021-2024 Government Plan to ensure that the Assembly provides this review with the funding it needs and that the review panel regularly updates the public on its work while making all research and briefing papers used by this panel available and easily accessible to Islanders whenever possible. Having been a Member of the States since June 2018 and since that date, working in Scrutiny, I am well aware of the divide between Scrutiny and ministerial government. I am well aware of the discrepancy into resourcing even though resources to Scrutiny have recently been enhanced and, for this, I am grateful. Those in ministerial government have far more access to resources and staffing levels. This imbalance in resourcing is not good for good governance. I am also well aware that the number of ministerial governments cannot outnumber those of us who are the non-Executive Members. The problem is we are aware of the de facto Members of Government, those who feel that they are Ministers without title. I grew up in a time with the committee system and I have to say - and I am surprised with myself to admit - that I do believe more was achieved under the committee system than the ministerial government. In a committee, there are several States Members sitting on the said committee and not just a lone Minister with an Assistant Minister to stand up to an extremely strong civil service. Whether one likes it or not, it is time to say that there is a "them and us", Ministers over Scrutiny, and why should this be? This discrepancy desperately needs to be addressed. I would advise that if the ministerial system is sustained, all Members elected to ministerial government should have served time in Scrutiny. Otherwise, believe me, they do not understand the system and the true function and role of Scrutiny. As I said at the start of my speech, as a parliamentary democracy it is never enough to simply stand still and consider our structures to be unmovable and beyond change. Institutions such as the Council of Ministers must be subject to constant scrutiny and improvements so that they fulfil the roles that they have been created for. I fully support Deputy Young's proposition. Thank you.

3.1.5 Deputy L.B.E. Ash:

I was not really going to speak on this at all but, over the lunchtime, I had a while just to think about it. I am moved to speak to back up Deputy Tadier's comments because I think he made some good points, particularly about party politics. Over the years we have had various reviews, have we not, about how we should be governed and how the system should work? Members have generally chosen to cherry-pick the parts they like and ignore the others. We saw a good example this year when the Assembly voted against putting in place an equitable voting system as suggested by many observers, including the Commonwealth ones at the last election. What can make our system inefficient and slow is not ministerial government and it would not be the committee system. It is the fact that we have 49 ... well, 44 if you take out the 5 Reform Members. We have 44 individual Members who are unaccountable to any hard and fast policies. I looked up what I said at the last election on my

pamphlet that was distributed around with everybody else's manifestos because I think it is quite pertinent, and I will just read a little bit, if I may: "Not all fairy tales begin with 'Once upon a time'. Some begin with 'When I am elected'. In Jersey, it is a tale that bears more than an element of truth. 'What are you going to do?' would be a fair question to ask any candidate. It would equally be wrong of them to tell you. Due to a lack of a party system, one person out of 49 cannot possibly guarantee anything. What you are entitled to ask and demand an answer to is: 'What can we expect you to stand for and what principles will govern your thinking?'" That, while better than nothing, is a woolly way of going about things. We really need people to be able to say what they are doing. This is why we need a party system, firstly, so people can see what they are voting for and it is right out there; secondly, at the following election, people can see if those promises were put into action should you have a majority party elected and they would be accountable for doing that; and, thirdly, because people would see where people stood politically. We had a poll in the *J.E.P. (Jersey Evening Post)*, or not even a poll, but the Members were asked I think just after the last election where they stood; were they left, right, centre-right, centre-left? There were only a handful that, if I look back now, I would think were anywhere near realistically where they stood. The Constable of St. Clement who said he was to the right was probably correct and Deputy Southern who said he was an old-fashioned socialist which, again, was correct. Others, their view of where they stood politically, to my mind, was a million miles away but, equally importantly, it will speed up debate in so many cases. It would also enable a Government Plan to be put together much quicker. As I say, I feel we do need party politics. What I do not feel we need is another debate on what we have debated for and will choose to ignore it if we do not fight now. Thank you.

3.1.6 Senator K.L. Moore:

I feel that I have over the many years of both observing and partaking in the Assembly, experienced the 4 stages of it. Firstly, as a journalist observing the committee system and then, as it moved into the shadow ministerial government system and then of course being a Member first in Scrutiny and then the Minister and now back to Scrutiny. So I have an understanding of the pitfalls and the triumphs of each and every one of those systems because, like most things, neither of them is absolutely perfect. What is important is how those participating in whatever the system might be act and, personally, I think it is extremely important that the ministerial government system that we have, if properly observed, can be very positive because it enables a correct system of accountability and a natural tension between our roles to ensure that that accountability is achieved. Today, I attended the joyful funeral for the former Constable of St. Peter, Mac Pollard. During the addresses to those that were gathered there, there was one reference to Mac's experience of introducing the green lanes system to the Island. It was mentioned that he brought his proposition, which was fought by the Infrastructure Committee who did not agree with his proposition. But of course being the very positive, engaging and courageous Member that he was, driven by his vision and his desire to help Islanders with the issue that he saw of speeding, he managed to win the day and win the Proposition despite the contrary view of the Infrastructure Committee of the day. I take the view that we do need to respect our roles in the Assembly rather than engaging in another review, when we should really be concentrating our efforts and our attention on how we help the Island to recover from the COVID experience and secure our future, not only for the current generation but those who are to follow. We should, however, look to ourselves and our own actions in our role. As the previous speaker Deputy Ash said, we do need to be clearer with the public at the ballot box about where we are coming from politically, what we intend to achieve and that would be a great step forward. Also, once we are elected, we can all behave in more embracing ways that improves the way that we work together and therefore improves the results that we can deliver for the public. I truly believe that we are all here to see the very best outcome that we can for the public because that is what has motivated us to stand for election in the very first place.

[14:30]

Perhaps we can all embrace the former Constable of St. Peter, embrace his *joie de vivre* and his desire for action and outcomes and take it upon ourselves, rather than supporting this Proposition today, but just to be, in the future, a little more Mac and a little more positive in our actions and delivery for the public of this Island who we are here to serve. Thank you.

3.1.7 Deputy K.F. Morel:

It has been interesting listening to those speeches previously. It is interesting because it is clear that this matter of the ministerial system that somebody like I have inherited from those who voted for it in 2005 is not functioning properly. I do stick with that idea that it is not a system which functions properly or functions well for Jersey. There is no doubt in my mind that the current system we have has been designed essentially for political parties, but the reality is that the people of Jersey keep rejecting party politics and they do so for good reason. Party politics is divisive and party politics is tribal. The electorate of Jersey are used to and want us to work together as an Assembly but this system, sadly, does not allow it. We feel it very keenly in Scrutiny and we feel it even more keenly or we felt it even more keenly in the first months of this pandemic crisis when 28 brains were excluded from creating advice and helping with decision-making and at a time of crisis, that seemed like a ridiculous situation for the Island to find itself in. With such a small Assembly, we cannot afford to waste or exclude talent but that is exactly what happened in March, April and May of this year. There is no doubt in my mind that I do want to see the system we have altered to become more inclusive and more collegiate. In Scrutiny, we have problems. We see the difficulties we have with getting information from the Government, the difficulties we have in criticising in a way in which a defensive Government does not see it as an attack. All of these things are to the detriment of our political system and they do need to change. There is a problem with the Proposition before us and that is that it asks for a review, and I can almost hear the yawns of Islanders and the sighs of despair as they hear the idea of another review coming forward. It is for that reason that I do not feel I can support this Proposition. I have the pleasure of sitting next to Deputy Young in the Assembly and so he and I have discussed over the past 2 years plenty of times how this system is not working for the Island. He knows that I support his view that the system does not work but, sadly, I thought he would be bringing forward a proposition which suggested an alternative way forward. A review is not that alternative way forward and a review which excludes States Members from being on the panel is even less of a way forward for I feel it is only States Members who, when they are in here and operating within the system, are in the position to see the ways in which it does not work. I do not, for a second, think that Islanders are there shouting: "The Scrutiny-Executive divide, is it not terrible?" For them, it is not such an issue. It is when you are in here working that it is a real problem and so I believe the answers have to come from States Members, not from an independent review which will cost money or divert resources. So if this Proposition is rejected, I will take it upon myself to join together with other Members of the Assembly - and I do not know who they would be today - to come together to work on creating a new proposition which takes the best of the system we have and amend it to encourage a more collegiate way of working so that this divide, which does no service to the Island whatsoever, can be overcome and can create an Assembly in which all 49 of us are able to work together in driving this Island forward, rather than an Assembly which, at the moment, suffers from division and, as a result, does not in any way make best use of its resources. I feel we do need this if we are to honour the Island's view of not wanting party politics. It is interesting. Party politics is not something that we, in law, create. Party politics is something which comes from Islanders through their voting and through their own groupings. Yet, they constantly, through their actions, have shown us that they do not want this. They prefer independent Members and so I feel we do need one last try to make the system work by tweaking it and I do personally have ideas. I do look at the Alan Breckon proposition of 2010 and there are things in there which are worth looking at and I do highlight to people. I think if I can work together with a group of people, we could bring forward a proposition which the States could then look at and say "Yes" or "No" to that proposition rather than going down a route of, sadly, yet another review. While I completely support Deputy Young's

view on the system and his intentions with his proposition, I cannot, sadly, support yet another review and, for that reason, I will be voting against.

3.1.8 Deputy J.A. Martin of St. Helier:

It is a real pleasure to follow Deputy Morel. I am not going to say much in this debate after 20 years and we are going to hear a lot of speeches of why we will and why we will not. I was fortunate enough to do 5 years in the committee system. I, after a 4-day debate on the Amendment that Deputy Young spoke about, the late Mike Vibert amendment lost by 2 votes and I think today we will be in a different place. I cannot, for the same reason as Deputy Morel, sanction another review when I have just got Clothier up again and, literally, we have done part of the Machinery of Government. We have not done anything about our electoral system. We keep bringing it back. We have not done anything about that. Now the public are just as miffed about that. You can listen to people who will say: "I do not think this Council of Ministers are working the system." Another minimum of £100,000 to look at something when all the reports have been done. I do not criticise Deputy Young here because I do think if we had not have gone through the last 6 months of COVID, he could have put all those propositions together and maybe come up with something, as Deputy Morel has just said, and it would have been a "Yes" or "No". I listened to the Constable of St. Martin who said: "It is always good to sit back and have a look at ourselves." But we have done that so many times and we just shelve half of the report or most of the report and we do not follow it through. In Deputy Young's opening speech, he criticised the departments. Well, Clothier said 7 departments should be substituted for 24 committees. Seven departments. He had a really clear structure. I remember reading that report in the cold light of day being probably into the Assembly for a year and it sounded all very complicated and the main thing that I remember is we were all going to be called M.S.J.s (Members of States of Jersey) and people hated it. That was the main topic of discussion. For this 2 or 3-year review, it listened to loads of Islanders, it listened to ex and standing politicians and that was the main criticism, but we could not do the electoral reform before as well as changing the machinery of government. I really do think that Deputy Young is really, really trying hard to get where we should be or move it a little but, literally, I cannot sign up, as I said when I started, to another review when we have literally not got anything in that we should have got in in the last 20 years. At this time, you are going to see the Government Plan soon and I am saying this to all States Members. To every penny, we will be asked: "Why are you spending extra here? Why are you not saving more there?" But, straightaway, a stroke of a pen, £100,000 and it will be more to do a proper Clothier-type report or maybe look at everything that the Constable of St. Martin has just said. £100,000 will not even open the door. I cannot support it. There have been enough reviews. Let us get together. Let us work together. You want to be more inclusive. We can do it. We can do it ourselves. We have all got moral support after we get the Government Plan out of the way. Let us hope we get through the winter without too much interference. I am not saying there will not be with the coronavirus but working together, we can do it. I am not signing up for all the reasons that have been said before from other people and especially when you cannot have sitting States Members, or even perhaps ex-States Members, who know what the job entails. Sorry, I cannot support it, Deputy Young.

3.1.9 Senator T.A. Vallois:

It is difficult to know where to begin and there have been some great speeches already. This is an extremely complex area and I understand why people are suggesting that such a review or having yet another review to try to resolve some of the issues we are already completely aware of may not be the right thing. I think one of the things that I have to make clear straightaway is an apology to the Constable of St. Martin. She stated about a divide between Scrutiny and ministerial government and that there is this "them and us" type of situation. I have served most of my time in the States on Scrutiny and I believe it is absolutely invaluable in terms of ensuring the right policies and legislation. We do not always get it right, nothing is perfect, but I suppose it does depend on the Minister and the

department's willingness to engage and work with the relevant Scrutiny Panel. I come to the fundamental points around what ministerial government is and what Parliament is and how the separation clauses are required around the machinery of government. I do have concerns around an independent panel. I believe fundamentally that there should be a standing committee to consider changes to the machinery of government that is an ongoing standing committee through each term. I call on P.P.C. to identify and ensure that there may be some way of going about this and, of course, Deputy Morel mentioned about working with other Members to fix some of the problems and issues we have come across. I would be more than happy to work with colleagues to try and improve the system that we are having to work within. I would suggest that although people are turning around and talking about reviews not helping Islanders, if we cannot get our fundamental governance right and we are increasing bureaucracy and we are causing more problems in terms of the way that we govern the Island, it is going to be even more difficult for us to amend and support the changes that the public expect to see. Now I am fundamentally of the view, having been party to 2 machinery of government reviews, that ministerial government only paves the way to a political party system and there are a number of reasons for that. Our machinery of government system is set up on the basis of a former Westminster system and one of the fundamentals that we identified in both reviews is this recognition that because, historically, every Member that was voted in played a role in policy and legislation and, to a certain extent, operational issues; everyone was inclusive. But with the divide in terms of legislature and government, that has changed the roles but it enhances the openness and transparency that is required. That is why I believe Scrutiny is completely invaluable in terms of our roles and accountability in governance requirements for the public. Inclusivity has been the main problem with a predominantly independent ministerial government. I have considered some of the issues that I have seen and I have been concerned about, whether it has been as a member of Scrutiny or whether it is now. This is my first time as being a Minister.

[14:45]

I think we need to be aware of and we need to be careful of the power that the Assembly hands over to Ministers and our reference to, for example, such things as the Targeting Operating Model which was mentioned in Deputy Young's speech at the beginning. That was signed off during a time of purdah when everybody else was running for election and so you have to question and ask about the Government's processes and how operation, strategic and policy requirements are separated in an appropriate manner. I understand, and I am concerned, about the ability for a single Minister to be able to hold, what I would say, the Executive to account to implement, whether that is what the Minister wants to achieve or whether our Back-Bencher's amendment has been signed off. We have heard many times from many Members about the ability to implement some of these issues. I do have concerns with the ministerial government and machinery of government but I go back to my point about I think we should be a standing committee. I think this is something that is going to be evolutionary in terms of we are still learning. The Machinery of Government that came in in 2005 was brought in in terms of the bones but not the meat and there are some things that I am considering that I think would be appropriate to bring forward to amend in terms of making this much more collegiate and probably much more committable. Deputy Morel referred to Senator Breckon's original proposition but I do recognise that there are a number of people that are particularly for a party-political system. I think we ultimately have to decide what is best for the public and how best we can ensure that, as Deputy Perchard has mentioned, the lines of accountability are appropriate. The fact that we have a separation in our legislation now that has not been brought forward in a whole de facto in terms of our Employment of States of Jersey Employees Law, our States of Jersey Law and the Public Finances Law, they all work together in terms of our ability to govern the Island in an appropriate fashion. I am not sure, learning from experience and seeing what has happened historically ... and I will refer to the Electoral Commission because, ultimately, if we are referring to a 20-year old report of Clothier which Senator Young did refer to as a quote at the end of his speech, I think we have a situation where we do not quite have an identity in terms of how we are going to

move this forward with regards to Machinery of Government requirements. Ministerial government requirements are the responsibility of the States Assembly and I have always felt that the States Assembly is absolutely de facto the power in terms of changing what we think is wrong. If those Amendments by, for example, Senator Bailhache, that has been mentioned were not correct, we have the power as an Assembly to change that. Every individual Member of the States has the ability to come in and amend policy or legislation. Ultimately, I think we are stuck in a position of whether we want ministerial government or whether we want a committee system. I think only the people that have experienced their time in the States, whether that be on Scrutiny or whether that be in ministerial government, would be able to support the changes and the amendments that would be needed for that. I would hope that it would be an objective and evidence-based requirement and not patronage, as has been mentioned by other Members. There are some particular areas around things that we have set up during this term. We have a Ministerial Support Unit that was never in place previously. We have a department for policy performance and planning that was never there previously. I would suggest that maybe there is a question about a separation between implementation and strategic and policy advice when it comes to ministerial government. So these are just some of the ideas that we could possibly think about going forward, but I am not sure I can support this Proposition with regards to the independent panel. I would say, and I would ask, that there should be some form of standing committee under P.P.C. with the relevant people that really want to make a difference in terms of our governance in the Island. We have always had issues with regards to governance and I would be more than happy to be a party to that and help to continue to improve on what we have worked on over the last 15 years. Thank you, and I will leave it there.

3.1.10 Senator S.Y. Mézec:

I am really enjoying this debate so far. I think there has been some really interesting contributions and I think that the speeches that were given by Deputy Tadier and Deputy Ash really got to some of the points, and I congratulate them both on their contribution. I also want to congratulate Deputy Young for, I think, diagnosing the right illness here but I want to castigate him for I think trying to prescribe the wrong medicine. So I will be voting against this Proposition and urging other Members to do the same. I have spent 2 years on the other side as a Minister in Government after spending 4 years in political opposition providing what I thought was relentless critique of the previous Government and now, being an insider, this has done nothing but solidify my view that our government system is absolutely poisonous. It lets down the public who we serve, it leads us to waste so much time and money avoiding taking responsibility for the decisions that we ought to, we outsource our decision-making so frequently, we spend huge amounts on consultants and look where it gets us. Ten years further down the line since we discovered we needed a new hospital and not a brick laid. We cannot even get a decent shortlist put through our government system. We find ourselves with decisions made by this Assembly still ignored by goings on behind the scenes and we find Ministers unable to deliver on some of their own election promises, even when they were clear about doing that. Shortly after I became a Minister, I had an incident behind the scenes where I took part in a meeting with some other ministerial colleagues. We made a decision, we voted on that decision and then, a few weeks later, I found out that one of the civil servants administrating that meeting had decided to overrule us after that meeting. I had to go straight to the top and fight to get the original decision put back in, which I should not have had to do if we are a democracy. I have found the last 2 years in trying to deal with the social housing rents issue, something that was a key election promise from me, absolutely arduous and I have felt stonewalled and sometimes even ignored by civil servants who I am not convinced buy into what my policy ambition is there. Again, something that should not happen if we are the democracy we claim to be and I have considered resigning on several occasions because of this. Time after time people say: “We just need to get rid of these awful politicians and elect some better ones and that is what we need. That will make things better.” How many times do we have these elections where those who have not lost faith yet go out and cast that verdict and they get exactly the same thing over and over again? The new boss turns

out to the same as the old boss. There can only be one solution to this. It is for candidates to group around their shared values and their policy priorities and get elected together with straight numbers and walk into those officers on Broad Street, hand over their election manifesto to the civil servants, to the C.E.O. (Chief Executive Officer) and say: "This is what the public have voted for. Now get on with it and deliver it." If the public do not like what that Government do, then they can throw them out and replace them with a new bunch who will do something different instead. The solution to our broken democratic system and our broken government system is party politics and that will require voters to be more realistic in what they expect from those Governments but it will require candidates to be more accountable too. That is why I cannot vote for a proposition that I think completely misses the point and attempts to make the best out of a bad situation rather than getting to the real issue. It is an issue that, I am sorry to say, I know the proposer of this Proposition, deep down in his heart, knows is the right thing to do. In his opening speech, he said that our politics is not mature enough for party politics, which is a really, really interesting way to phrase it because what does that really mean? Well, it means if our politics is not mature enough for party politics now, then we have immature politics. So his proposition is about trying to get things better within the framework of immaturity rather than saying: "Let us have a mature system instead that we can use and that will deliver on those ambitions." He said that he wanted a better system for delivering policy commitments and I think back to the last election - and apologies to other Members who might be offended by me saying this - but most election candidates do not have policy commitments. Our elections are little more than a glorified personality contest and we get into the Assembly, we elect our Government and we spend 6 months coming up with policies and coming up with our common strategic priorities. Six months. In any other government system, they would have it done in a week because their policy commitments would be decided before the election, not afterwards. In those 6 months, politicians run around like headless chickens and the civil servants can continue to advance what they feel is right for the Island, often perfectly legitimately, and many of these public servants who I work with I think are fantastic public servants but it is not a good system. I like to make the analogy with a business. Imagine operating a business for 6 months without your plan in place. What a shambles that would be. Nobody would accept it there. We should not accept it in our government system as well. He talked about the balance of power between politicians and civil servants. I do not know if I have the exact words right noted down in front of me but he said something to the effect of he would be convinced that a committee system would not have dealt with the hospital fiasco the way that our current system has. I say to Deputy Young, if we had a committee system, it would take them 10 years to figure out what colour to paint the hospital. It would do nothing but lengthen that process, have politicians arguing among themselves within that committee as opposed to the bigger committee that is essentially the States Assembly. I think he is dreaming if he thinks that sort of system would deliver better for the Island. So just on this example of the hospital, because I found this example when I discovered it to be really persuasive, other small democracies in non-sovereign states like Jersey where party politics is common, where it exists normally, I came across an example in the British Overseas Territory of Gibraltar where, in 2011, they had a general election. The public chose to kick out the Government that had been in power for about 15 years and replace them with an entirely new Government and in that Government's election manifesto, they said that they were going to open a university, a University of Gibraltar this would be, and in that 4-year electoral term from 2011 to 2015, they committed to opening the university.

[15:00]

They found a site for it, they got contractors in to build it, they staffed it, they opened it, they admitted students and it cost them £10 million to do so. In our system, it would take us that length of time and that amount of money just to decide where to put such a building. So much more effective, efficient and value for money is a party system to implement these sorts of public projects for the benefit of the people who we serve versus our current system. Nobody in those systems looked on other jurisdictions to have a committee system like our neighbour just a few miles across the water and

thinks: “That looks like a good system. We will try that.” The direction of travel is always towards a more democratic system and party politics. I think perhaps the most dangerous thing that I think I have heard in Deputy Young’s speech is he talked about how, if we have this committee, he would want somebody with good legal expertise and he would want somebody who understood what the public sector was about as well, and of course that narrows it down as to who could do that. At the same time, we had 2 speeches, one from Deputy Young and one from Deputy Perchard, talking about the former Senator Philip Bailhache and his contributions to this wider debate. I tell you I have nightmares about the prospect of bringing somebody like him back in to do this when there is irreparable failure behind those people as well, the previous Electoral Commission being one. Opposition to a democratic separation of powers and opposition to having a democratic electoral system where everybody has an equally weighted vote. That is not a route to getting a more democratic and fairer system for the people who we represent. So just a final point that arose from some of the points made by Deputy Morel who asserted that the public keep rejecting party politics. I say that there is simply no evidence of this whatsoever. It is something that occasionally is talked about as some sort of historically observable fact when it most clearly is not. The majority of the time in Jersey’s history as having a parliamentary system, it has had party politics. Through the 1700s, the 1800s, early 1900s and post-war as well. It is modern innovation to not have party politics in Jersey and this idea that the public keep rejecting them, I think you can argue against by pointing out 2 things. Firstly, at the last general election in Jersey, of everybody who turned out to vote, at least 40 per cent of them voted for a candidate who was a member of a political party. That is better than most parties do in most democracies when you look around the world, especially those with proportional systems. That was people voting for a political party in Jersey with a centre-left platform. How many people there may be out there who are also convinced of the need for party politics but who quite legitimately do not want to vote for a centre-left party and would prefer to vote for a centre-right party and so cannot bring themselves to vote for us. We just need an extra 10 per cent there and we have a majority. I think that he is wrong to say that the Island has rejected party politics, as it quite demonstrably has not. I remain absolutely convinced that when my good friend Deputy Ash and his colleagues, who hold a centre-right political philosophy, which I disagree with but which I respect their right to have, organised themselves into a party - and a credible and decent party I am sure it will end up being - we will have an election where there is a centre-left offer and a centre-right offer plus those who still believe in an independent system. I am confident that the independents will get absolutely drowned out because they will simply not have a platform to offer that is as attractive to voters and to the public as those parties will. I have to say I found it quite amusing - although I agree with him for wanting to vote against this Proposition so I will try not to upset him too much - that he went on to say that, as an alternative to voting for this Proposition, he would want to work as a group with other Members to find some sort of solution. Working as a group. What a great idea. It is called “party politics”. That is what the definition of a group of politicians is where you work based on your common ground to find those policy solutions and work to implement them. There is strength in numbers. You are more effective as a politician when you work with others. This idea that if you force people together into committees where they do not share those values, do not share those policy aspirations that somehow they will be more effective, there are plenty of clichés to roll off to argue against this. “Too many cooks spoil the broth” or the idea that “a camel is a horse designed by a committee”. Of course, what will simply end up happening is politicians who do not agree with each other on those basic points who are on those committees will argue among themselves. Meanwhile, the officers who attend those committees will learn how to play off those Members among each other and then drive the agenda. They will end up by empowering them. This idea that the old age of Jersey’s committee system was a golden age for the Island simply baffles me, though that system existed largely before I was politically conscious. It was abolished when I was a 14 year-old. Let us just remember that it is that committee system that gave us Zero/Ten. It is that committee system that gave us decades of failure in child protection and even it is that committee system that gave us ministerial government so even that argument, I am

afraid, does not work and holds no sway. I urge Members of this Assembly not to waste further time and money with this navel-gazing and instead to work to the best of your ability, as I believe that I am trying to do, even with great difficulty as it often is, within the system as it exists. There is nothing wrong with a ministerial system. It is a good system. It is system that is chosen around the world from democracies, particularly new democracies as well when they are formed. Work under that system and try to make a difference. Deputy Morel talks about the introduction of Zero/Ten being after the ministerial system came in. I said it was dreamt up under the committee system. It took years to get to that point. I urge Members to vote against this Proposition and work within the framework that we have to deliver for the people of the Island and I hope eventually some Members will wake up and smell the coffee and realise that they are stronger when they work together and that party politics will deliver our aspirations for the people we are privileged to serve.

3.1.11 Deputy K.G. Pamplin:

It is always a pleasure to follow Senator Mézec who always is good at getting his points across. I was not going to speak on the debate but I have been listening intently and I just wanted to chip in briefly about my experiences as a politician who has been halfway through his first political term. During the election period, it was a topic often discussed personally and in the wider aspect about opinions on parties and convention. I have to be honest and say I have got my inclinations, I have got my beliefs but I cannot fully form a decision until I have done this job, if I am elected, because I have to base an opinion eventually based on experiencing it myself and I am halfway through that process as being a politician in name. So in forming my own conclusions, I think to bring it back to the Proposition, I can totally understand where the Deputy is coming from because Deputy Young has had a long career on both sides of aisles in terms of his political career, civil service career and he has experience. I value all the experience of all Members for somebody like me, for those who have been here for 5 minutes or 500 years and it is really important to listen and observe where those frustrations have fallen because that is the only way we learn and evolve. I was fully supportive of the intentions of this and possibly now, listening to Senator Vallois and Senator Mézec, the time for this may have passed. Senator Vallois alluded to the previous Assembly before us made the decision, because I remember her covering it, on the last day of this Assembly of the night of the nominations and various things happened in-between. So when we arrived, a brand new Assembly with a new injection of States Members, we had to pick up these reins and had to get cracking, so we were already on that back foot and we had to learn quickly. I just want to pick up on another point that somebody said. It might have been Senator Mézec in terms of manifestos. He is quite right to pick that out I believe. I think that is really important because when I made the choice of where I was standing as the local Deputy in the District of St. Saviour where I grew up, there were many functions to manifesting why you believe you should be worthy of votes of that district. It was going around speaking to parishioners, understanding the local issues and what they wanted to seek representation in the Assembly but also at a Parish and District level, and then in the wider aspect of where we are politically and what the Island was needing going forward. So my manifesto was very clear on my experience, where I was coming from, my previous roles in life and I made it very clear that my passions were going to be always directed around the world of mental health, health in general, the charity sector, and I am here to learn and I am here to work. After the extraordinary experience of the election and then the first couple of weeks of the Assembly from the night after the election to the oath of office into the first couple of weeks, it was a strange scenario to wrap your head around very quickly and you could already see the tensions and the problems manifesting very quickly but you had to move fast, and so we did. So I realised my place was always going to be learn and be as helpful and practical with anybody, and Scrutiny gave me that position. Very quickly our panel, made up of different members of different political spectrums and backgrounds, came together with one of my biggest passions, and many others in the States, we felt and I personally felt, is the Island's mental health services. Then we got to work on an 8-month review through the summer period while we waited for government policy to come forward, like Senator Mézec explained. Then we were in

a place to position, in front of the Minister for Health and Social Services and his department and then the Assembly, an extraordinary piece of work that included members of the Island, members of professional and non-Executive Members to Government Members a report that the Minister for Health and Social Services, to his great credit, and Senator Pallett and others, accepted. Because of my tenacious coming back every 2 weeks and in our Scrutiny meeting pushing that, we have seen an extraordinary amount of effort in the world of mental health that has been severely lacking for many, many years and finally we are seeing work, for example, on Orchard House which is way past its sell by date, and it should not be but it is, and it is doing what it can. We are seeing things happen that were talked about for many, many years; a place of safety, investment in mental health services. My chair is to the right of me and the rest of our fellow members, made up of Deputy Alves and the Deputy of St. John, we steered the Government into making decisions and supported that. We have a very good relationship with the Minister for Health and Social Services who is just to my left. We scrutinise him in our Scrutiny Panels. Sometimes there is frustration but he recognises, having done the job that we have done, that is part of the course. We want the same outcomes. We want to support and improve the health of this Island, and we may disagree at times, but we always come around to the assertion that we all want the same thing. That is not based on political boundaries and not working together. Equally, Deputy Ward, who sits behind me, him and I have worked tougher on the Care of Children Review Panel. I am the Vice-Chair and he is the Chair and we have other members on that panel and we are fully committed to the findings of the Care Inquiry and seeing those come through and, again, we have worked very constructively. I will not go into our football beliefs because we are fundamentally opposed there who the best team in London is but the point is I believe, at the end of the day, what the public want to see and why there is so much apathy in politics is because they just want to see us as Islanders, as grown-ups, as professionals in all walks of life and with all sorts of views and opinions work together in the best interest of the Island. That is what I believe this Assembly has been good at. Then the pandemic came along and in a crisis you cannot hide the good and the bad of anything. You cannot. The good that came to the forefront of the pandemic, we were the forebearers. I have been celebrating that in a C.P.A. (Commonwealth Parliamentary Association) conference speaking to many members around the Commonwealth.

[15:15]

We were the first legislators to come together virtually to hold the Executive to account in the best interests of people and, yes, it was frustrating because of certain frustrations of the early embryonic stages of how ministerial government and the Government of Jersey was working. We all came together because we recognised that is what needed to happen and we have all brought propositions. One of the most standout moments I believe, and there were 2, was when Deputy Perchard brought her proposition about the COVID-19 Exit Strategy. That conversation was happening around us in the public, at the school gates and at our homes. Were we doing the right thing? We were seeing what was happening in New Zealand, in America, in Guernsey and whatever and those discussions were going on and it was in real time. Then we had that similar debate in this Chamber and the Island was watching and engaged with us. If you go back pre-pandemic, how hard it has been to struggle to connect with everyday folk who are working all hours to try and put food on the table in an island with a high cost of living and many, many other challenges, that they have grown distant from the political sphere for lots of different reasons. But the pandemic brought us all together and, finally, we were discussing things that really affected thousands of people watching live webcasts of this Assembly on Twitter or a press conference from the Chief Minister and the Minister for Health and Social Services on Facebook. Suddenly we were bridging connections, the pandemic forced us into doing those brave steps that maybe, as Senator Mézec mentioned earlier, we may not have done because we would have maybe had to have reviews and hearings and debates before we came to decisions; the pandemic made us act nimbly. Remember those days where we were coming in and we were having extraordinary sessions debating emergency legislation. We should be proud of the fact that we did not just step back and let the Executive run away. We scrutinised, we brought

amendments, we challenged and then we came forward together to support the Government. We still challenge that but it is not out of personality, it is not out of: “I think I could do a better job because clearly I cannot but what I want is the best” and to drive that forward; that has always been the point here. Yes, party politics may come down the line, we cannot deny that. If that is what the public want and that is what is presented, then we will go with that. I am of the opinion that people should decide. But right now I think we have to also play a tune to the wider aspect of the world that in the United Kingdom right now and in America, with their contentious election, it could be argued, coming up, that the 2-party system is not working and that people are getting in fact more and more engaged into politics and seeing the systems and thinking: “Hang on a second, who am I voting for?” The Labour Party have gone through various different formations, although it is left of right of its own party. The Conservative Party are struggling at the moment as well it seems, in the American system and around the world. I think people are not defined anymore like they used to be by their definition of politics, much like we are not defined by the colour of our skin, our sexuality, what school we go to or whatever. We are also, equally, not simply divided if we are blue or red or left or right. The world, as we now know, is not as simplistic as that. Shared beliefs, shared values working together and being transparent is absolutely fundamental and I think, bringing it back to the Proposition, that is what Deputy Young is trying to achieve here and I was fully supportive of doing a review. However, as others have stated, right now where we are, coming in October, hearing the Chief Minister talk this morning, reminded me of where we are in the pandemic, the Government Plan that we will see sight of on Monday, the pressures externally on the budget and spending on this Island. The healthcare model is a huge moment in the future of this Island’s healthcare delivery and, equally, the pressures of the Islanders who are looking to us right now with unsurety in their eyes about the academic nature of the teaching of the children of this Island, the recommendations to the Care Inquiry that need to come through and the improvements to the Islanders way of life. As well intentioned as the Deputy’s review here, I want to see a proposition that is borne out of all of us collectively saying that democracy has to be nimble; we have proved that in the pandemic. This democracy, one of the oldest established in the British Isles, we are so nimble, so fast. How quickly did we create a Standing Order to enable us to work remotely? It is incredible in politics. Other jurisdictions will have struggled but we have proven we can be nimble, we can evolve to what the Parliament of the time needs; not of 2005, not of 2001, of right now and that has to be allowed to continue to evolve to meet the demands of the Islanders. We should not be hung up on this report or that report in the time; what is best for the Island’s people should determine what we do. We need to be brave and we need to be supportive of each other and that is what I would like to see. I would like to see the Deputy’s proposition come back as an actual proposition so we can continue this debate because it is clear many people have got views on this.

3.1.12 Deputy S.M. Wickenden of St. Helier:

Where to start? Firstly, I would like to say congratulations to Deputy Morel for his speech; I thought it was excellent and I would be more than happy, as somebody that has served both on Scrutiny and in the Executive, to help him with the work that he wants to undertake. I think it is a great idea. There are definitely some changes, which I will talk about a bit later, that I think do need to happen. Is what we have got in front of us good, another review? I stand with my fellow Deputy, Deputy Martin, who says that we have had plenty of reviews that have talked about plenty of changes and how things are going to happen. Spending money now on another review is just not the right thing. But I would like to also stand on record and say to the people who think that the civil service run the ministerial portfolios is utter nonsense, from my point of view. My Chief Officer does not lead me where he thinks that we should be going; I lead and he follows. He gives me the information of what is going on and asks me what I want to do about it and I give him my answer. I do not get led by any of the civil service and it is just a rumour that gets spread around far too much. I am sorry if Deputy Young feels that he is not able to lead his officers in the same way. I do not know why and his officers are very good; I know a lot of them. On the review that Deputy Morel talks about, I think it

is sad that some think the best way to work together is only in a party political system. I think the idea that you cannot work in a collaborative way and just as effectively creates an attitude of atmosphere of conflict and opposition, rather than collaboration. I think it is great when elective representatives come together to achieve a common goal but it does not have to be in a party system and it does not have to start at an election. We all work together in this Assembly. We all vote together and this opposition-styled politics just really does not fit with this Island very well, and I do not like it. Some of the changes, I think, that we will talk about that need to happen, let us say, for instance, that one party had a big majority in the election and they came into the Assembly and we know how the process works, that we vote in our Chief Minister. Of course, they have got a majority so they choose their Chief Minister and they go through and they start setting up what their Cabinet will look like. But in this system they could also turn around and say: “Do you know what, we could put one of our people in the head of Scrutiny that scrutinises the Chief Minister or the Minister for Treasury and Resources?” Our system allows us to turn around and let a majority vote the same party into the Executive and Scrutiny sides of our Assembly, so that absolutely cannot be right. There is clearly a massive flaw in our Standing Orders that, if we were to go to a party political system, allows that to happen. Because that is not good scrutiny and it is not good governance to allow that to happen because it would put a mockery on the whole scrutiny of a ministerial government. There have been comments about problems with Scrutiny and the Executive and I do want to go on record myself and say that this Government has been more transparent than the Government before, and the Government before has been more transparent and more sharing than the one before that. It is obviously, clearly, still not working. To the new Members that are frustrated about the level of sharing and transparency, it is definitely better this term than it was last term. I know that the last term was definitely better than the term before, so we are improving, though there is a way to go. I will go back to the Proposition; I cannot see that it is going to be in any way useful to try and run another review in the way that it is put forward and I cannot support this Proposition.

The Bailiff:

Thank you. Deputy Young, did you have a point of clarification you wish to raise, either ...

Deputy J.H. Young:

I would like for the Deputy to clarify, I think he said, if I listened to his speech correctly, that I said that I feel that I am not in a position to make sure that the officers follow the policy discussions that I give. I do not think I said that and I would like the Deputy to clarify what he said because that is ...

The Bailiff:

I think that is a point of clarification not of the Deputy’s speech but of your own speech, Deputy, which you are perfectly entitled to make to clarify what it was you in fact said; that is perfectly ...

Deputy J.H. Young:

Thank you for giving me the opportunity to clarify what I said. I certainly did not make criticism of my own officers, I made a general point that where there are political problems then the civil servants have to step in. I think I have said enough and I will say more in summing up

The Bailiff:

Very well. No, that is a legitimate point of clarification but you cannot really go any further than that.

3.1.13 Deputy G.P. Southern:

What an enlightening debate this has been. While I would love to say to Deputy Young I will support his proposition because it has many good values in there and good questions, the fact is I cannot support this at this time. I cannot because, quite frankly, along with 2 other Members of the States,

the last 3 of us have seen this happen before. This, effectively, is Clothier and what happened last time was that Members of this Assembly ganged up on the Clothier report and pulled it apart, cherry-picked it and achieved very, very little. I suspect that that will happen again. No matter what this review produces I believe it will be wrecked by Members of this House. Why is that? Why is that? It is because our politics is absolutely and undoubtedly broken. There is no connection at all between the electorate and what happens in the States Chambers. There is no connection. Why? Because we stand time after time on vague sort of wishy-washy statements and sometimes promises, never actions, and we are not accountable and there is no connection. I very much fear that that would happen again. When I say this is Clothier different, let us just see. We are asked to review: “The role and respective responsibilities of the States and its departments in achieving an efficient and effective strategic and business planning and resource allocation process” is one of the tasks. Another one: “The government departmental structure and whether the current political oversight, direction and control of government departments is effective and appropriate.” So, 2 things to review there, 2 factors to review there, one of which is 20 years old and came straight out of Clothier and one is 6 months old and came out of Deputy Young’s thoughts but both of them sounding pretty much identical. Digging out my battered copy of Clothier, December 2000, almost 20 years to the day, I will just pick out 3 passages from the overall report.

[15:30]

It was 60 pages worth and very comprehensive in terms of its membership, which we were arguing about very early on about, how do you get independent Members? You have to, I am afraid, go elsewhere than Jersey because anybody in Jersey will have an opinion on what we should be doing and what we should be doing better and, if they have not, they have got no interest in politics and they should not be doing the review. I look down at the people on that review; we had Sir Cecil Clothier, Sir Kenneth Bloomfield, Professor Michael Clarke C.B.E. (Commander of the Order of the British Empire), John Henwood M.B.E. (Member of the Order of the British Empire), Dr. John Kelleher, Mr. David Le Quesne, Mrs. Anne Perchard, Mr. Colin Powell O.B.E. (Order of the British Empire) and Sir Maurice Shock; a list of very prominent and very clear-thinking members who produced a report, 60 pages worth, as I say, which was abandoned and wrecked. Let us just have a look at what they said about the Senators. In 3.7.2 they say, page 14: “We received no convincing evidence that there was a significant difference between the nature and content of the Senators’ role and that of the Deputies. In an Island about 9 miles long by about 5 miles wide, with excellent communications, we found the distinction between Senators and Deputies less than plausible and in practice there is little difference in the contributions to debate of either category of representatives, nor can the Senators do anything which the Deputies cannot also do.” Very critical of the Senators; so what happened there? The Senators wrecked the report and refused to co-operate with it and voted not for their own Christmas dinner. Turning to the Constables, 3.8.4 on the opposite page: “We were impressed by the evidence of many of the Constables to the effect that they placed their work in the Parishes at the head of their priorities and were left with the impression that some of them felt somewhat uncomfortable with their position in the States. Indeed, an analysis showed that in general the Constables asked fewer questions, introduced fewer propositions and spoke on fewer occasions than the Deputies for their respective Parishes. In view of the new structure which we propose for the States, the Constables would, if they were to remain, have a heavier workload in the States than they do at present and might well have difficulty in discharging both offices satisfactorily. Many witnesses told us how busy the Constables are in their Parishes and how excellent and useful was their work there. We believe that this role could be developed and its dignity enhanced. If it were and if the position no longer carried with it the requirement to be part of the States Assembly, we believe that more candidates for the post of Constable could well come forward.” How about that? What happened to that? The Constables ganged up and they gave it a good kicking and that did not go through either. Finally, to the nub of the issue, what is wrong with our politics? We have not got party politics. There is nobody, apart from one party, prepared to stand up and say: “This is what we

believe in, this is what we will do, this is what we will act on.” Therefore, form the link between what the electorate can expect and what might happen in the States. On parties, Sir Clothier had this to say: “Political leadership is usually associated with a party system. Jersey people regard it as a great virtue that the Island has no party politics.” A further theme in the evidence was: “A complaint of lack of leadership. Those who raised the complaint often said with the same breath that the notion of a party was obnoxious to Jersey. Yet a leader with no followers is a contradiction in terms. We wondered whether those advancing the complaint really knew what they wanted. What they must really have been complaining about was a lack of clarity in policy-making by those in executive power.” Pretty impressive, I would have thought, as to why we are getting things wrong. What is proposed today in terms of repeating, I say it will be virtual, a repeat of the Clothier report from 20 years ago. What we are saying there does not address the central issue of party politics, which is the only way to get things done and the only way to hold people to proper accountability and there I rest my case.

3.1.14 Deputy R.J. Ward:

I am pleased to follow my party colleague. This is a really interesting debate, it really has been interesting and it is interesting to be sat in the Assembly, quite an empty Assembly at the moment, listening. I would say a few things to begin with, first of all, I would like to offer some words in order to save the Assembly what looks like £100,000, which I believe is an unnecessary spend on yet another review. I will give you an idea of what we should be doing in order to deal with the issues. They are genuine issues and I share many of them. First of all, I advise that people need to organise, before elections people need to organise, they need to be absolutely clear about the political hue they come from and that is important. We cannot deny that and the world has not changed so much that the underlying political beliefs that you have are important to the way in which you conduct yourself when you represent because they are the basis for all of the actions that you take. Indeed, they are the basis for actions that you take if you contradict them, so that you do not look honest. It is no good having a set of morals and then saying: “It is okay, if you do not like those, I have got another set of morals that will fit into this criteria.” That is where we need to come from. Then you need to develop policies and this, to me, is where the committee system is very important, for the committee system must come before the election. People need to sit down in their groups and need to thrash out their politics, they need to thrash out their policies that best fit the Island and then they need to take those to the electorate and say to them: “This is what we will do, these are our pledges, this is what you can expect from us.” That is clarity for the electorate and I think at that time it will also encourage more people to be involved because they will know what they are voting for. We have a first-past-the-post system, which will obviously throw up differences. But I think the fact that a significant number voted for those parties that were declared at the Royal Courts, which is the party that I am on. I will say one thing here that is really important, I would say do not be afraid of political parties. Do not be afraid that you lose your identity; that is absolutely not the case. I stood only because there was a political party because of the importance of that and the clarity of thought and the clarity of policy and I am not going to lose my identity in that, and that is a very important point to make. When you have these principles and you have these policies and then you are elected, you need to enact them. This is where the first problem comes from in our set up because it is nigh on impossible for any Member as an individual, for any Member as just one Member of a party that is developing, to enact policies and there are gaps. When there is uncertainty in what happens in those spaces, that is where civil servants, by definition, have to step in, in order to provide leadership that is not there. We complain about it all of the time but we do not come from the electorate to this Assembly with that clear leadership as groups. This is 6 months it has spent developing a Common Strategic Policy. I have said this before, it infuriates me; that is 6 months wasted where we are not enacting on what we have. I consider this to be a 4-year term. I think it is arrogant and wrong to assume that you would be re-elected. Therefore, in those 4 years you need to achieve as much as you possibly can as an individual within a party, if you are in a party or within a group, but you need to be straight up

about that. Let me put it this way, it is very funny being in Reform because what happens is you become an easy target and we see it a lot in this House. In fact I think the amount that Reform has been mentioned in the last 10, 15, 20 propositions that we have brought and debates is really quite healthy for us because we are getting the name out there. I thank Members for mentioning us so often. But I would say that if there was a more conservative party set up you would do well, you would do very well. If I am being absolutely honest here, I do not see anything other than a few coalitions being developed to run this Island in the next 3 or 4 terms, even if there was party politics because it is a very mixed Island politically. What you would have, you would have to have a compromise but it would happen early, on clear policies, on clear thought and then you could sit down. Within a week you would have those policies and you would hand them to the civil servants and, as was mentioned before, they would just get on with it because that is their job and we pay an enormous amount of money for that. But what we have is an inability to enact them because we have an inability within a structure, and it is not about individuals. I am not doing personality politics, it does not work and all it does is create arguments and disaffection, which is wrong. But structurally it is wrong. It is wrong because Ministers do not have the primacy that they need to make the decisions with the rest of the Council of Ministers. Do not give somebody a job, say go away and find me what to do and then when they come back say: "I do not like that based upon a political hue, which I am not going to tell you about but you are going to have to guess it." It must be almost impossible to lead in those conditions. But then actions need to be scrutinised and I want to address this issue of Scrutiny. We were privileged to go with the Commonwealth Parliamentary Association to visit committees in the U.K., which are their version of Scrutiny, in the House of Westminster. I watched the Scrutiny Committee and I watched this poor Minister being given an absolute battering by this committee. I had to sit there and look up on my phone each Member and what party they came from because it was not clear. There were Conservatives, Liberals and Labour Party members and it was the Conservative member who was giving him the hardest time; that is because Scrutiny is a process. It is a process of analysing and looking into whether or not there is value to what is going on. The idea that you cannot have parties scrutinise you, that is utter nonsense. The only reason you would have that is if you do not have a number of different political parties. To say there is tribalism only within parties, I am sorry, you need to look very carefully at the Assembly and the way it works. Decisions and agreements made in the back tearooms are not healthy for politics; they need to be transparent. Then we need to take action. The actions that we take, as I say, have a limited timescale. If those actions are taken and scrutinised and then go in to account for it, when you come to the next election you will either decide, yes, that was the right action being taken by that group, that party, that alliance or it is not, and then you are voted for or not; that is the way democracy works in western democracy and that is what we need to be looking at. Unfortunately, we do have a divide. We have a divide. I hope this can be listened to and I will try and be absolutely open about this. We have a divide between the Executive and the non-Executive and I have said this before and I will say it again, the biggest divide there is the resourcing of those 2 areas. The Executive has a huge resource at Broad Street and offices, *et cetera, et cetera*. Scrutiny has got a little more recently with a few researchers but as a non-Executive member trying to produce a role and be part of influence in Government. I remind everybody that we all have an equal vote and equal right to bring propositions in this Assembly. As an individual Member, whether you are part of a party or not, you do not have those resources if you are not in the Executive. That produces an inequity that must be addressed. I would rather spend the £100,000 that could go to this review into providing resources for non-Executive members to allow them to serve their constituents more effectively than waste the money on yet another review, which, as Deputy Southern said, and let us be quite frank, would probably be ignored like most propositions, but I will not get on that high horse again. I think the notion that we can just find some sort of agreement that exists in the ether because that is the way a truth is. There is a truth out there and we just need to look for it; I think that is fantasy politics.

[15:45]

Politics is difficult. It is about principles, it is about policy, it is about underlying beliefs and it takes time to get those beliefs together but you need to do that before you come to this Assembly. You cannot wait until you get here to decide on what your politics are. It is failing and it is failing in terms of the role that we take; the structures that are equally set up to not work as well as we want to. I do not have a problem with ministerial government, as long as you have a proper structure to run it and the support from Ministers, *et cetera*. As for a Chief Minister, yes, and he or she, and that is the other thing I will come to, needs to be accountable. That role is such an important role, it is such an important leadership role and let us be controversial, if that role is going to be taken on it should be paid more. It should be something that has genuine, not only monetary but systemic value as well, and perhaps we are missing a trick there. Then talk about diversity. We talk about diversity a lot in this Assembly and one of the things, one of the huge advantages, that people do not look at when it comes to party politics is as a party. I always say this about Reform; I do not believe we are diverse enough. We need to attract more women to our party, more from ethnic minorities. We need to address those from different sexualities, whether they have disabilities, and we need to do that otherwise we will not have a genuine picture of our society and we cannot be truly representative. It is only within that sort of party group you can look at the overall that you bring to the Assembly and discuss: "Are we doing this well enough?" That is my point, the primacy of that organisation needs to come before elections and before we sit in this Assembly and try and make key decisions that affect people's lives. That is why I believe that party politics is the right way and that is why I believe that that is the only way that ministerial government can work. I am not sure about the committee system; I think we will spend years contemplating our navel and come up with compromises that suit nobody, and that always worries me. Finally, I think that the funded facilitated professionalism that is needed if you are going to represent people is really important and we are not doing that. We are simply not doing that. Friendship groups are not enough to build proper policy. We need to have those difficult conversations. With any organisation it is not how you agree, it is how you disagree on a topic. If you have a proper party structure, disagreement is developed before you come to the Assembly and becomes much more effective. I hope that people will seriously think and not be fearful of the notion of banding together. There were people who banded together to campaign together and I really hope that they would form a party so we would have more than one, which does seem strange because why are we, as a party, hoping there will be others in competition for us? I think the simple answer is it is good for the Island and it is good for democracy. I see someone has a clarification, do you want to take that now, Sir, because I have not quite finished? I am happy to take clarification, it is obviously always easier when it happened. I know when I bring a clarification, if someone goes on too long I forget what it is.

The Greffier of the States (in the Chair):

Okay, let us not debate clarification.

Senator T.A. Vallois:

I appreciate the words of Deputy Ward with his knowledge and experience to the debate. I just want to clarify what he is saying is that party politics would resolve the governance issues that we face, whether it is a party in place with regards to ministerial government or not. I just want to understand whether that is the ultimate view or whether there are things that need to be amended. I just want to understand that from his speech, please.

Deputy R.J. Ward:

Thank you, Senator. You have helped me to clarify my summing up because you are absolutely right, I was not clear. Party politics is one of the ingredients to get our Government functioning correctly, and the reason I say that is if you come with a party manifesto that is clear to the Council of Ministers from day one, then you have a clear mandate, which must be implemented by civil servants. I think at times when that does not happen then there are spaces that are filled by the non-

Executive that concerns me. The notion that non-elected members may stand in the way of a policy that a Minister wants to implement, even if I agree with that policy or not. If I do not agree well that is something I can deal with in this Assembly. The idea of that being stood in the way of by a non-elected member, I think, is a horrendous idea and not good for our democracy. I hope that helps in some way, so it is a combination of factors.

The Greffier of the States (in the Chair):

Sorry, Deputy, when you say a “non-elected member”, did you mean a non-elected official?

Deputy R.J. Ward:

I can use the general term “civil servants”, if that is the case. It is from what we heard from previous speakers about civil servants forming barriers to policy, I believe that should not happen. I think the strength of clear party membership would help that, personally, yes, so that is where I am coming from. I think that whenever we have this debate people’s individuality feels threatened and I would say, again, that that does not need to happen. But I think that expecting someone to stand alone in this Assembly of 49 and be as effective as if there is a support mechanism around and when you develop those ideas, it also makes the job more difficult. I know it is a difficult job and I know the difficulty of the job for Ministers as a whole. Finally, I would say: is this an issue of accountability? Too often I think that individual Members can say: “This was a Council of Ministers’ decision, so individually I could not get through what I wanted and, therefore, they are not accountable” and that is for all Ministers, party or not. That is one of the problems we have and that is what we need to address. To get back to the Proposition finally, I have a huge amount of respect for Deputy Young. I love the passion in the way he speaks and I know that everything comes from the heart with him and I absolutely respect that, and that is not just flam though because I am about to say I am afraid I cannot support your proposition. I do not think another review is necessary. I think the problems are there and, as somebody else said, and I think it is a very good phrase, got the right disease but the wrong cure. I think the cure is there from us, we just need to get organised.

3.1.15 Connétable J. Le Bailly of St. Mary:

It is always mentioned by previous Members of this Assembly, especially those who have served in both the committee system and the ministerial system, that the committee system was far better than what we have now. However, the whole of Jersey Government is undergoing a massive review in order to make extensive savings in administration. Until that is done we are probably not seeing the benefit of the ministerial system and we are all unsure where COVID will take us and the uncertainty of this is also having a dramatic effect on the way we govern at the moment. I believe that this Island is too small to have party politics. We have many interesting views aired in our debates. We will lose that if we have party politics, as we will have to follow the party whip, which cannot be right for representation. We do need a massive shakeup in this Assembly but party politics will not achieve that. Going back to committee systems will not achieve that either. Party politics will only work if everyone in this Assembly becomes a Minister of the States, i.e. no Deputies, no Senators and no Constables. Reform is something that keeps returning to this Assembly and we keep wasting far too much time on the issue. Is it for us in this Assembly to decide that? No, it is not; that is our electorate’s decision, which means total reform of the States. If that is what the people want, that is what they should have. They should have the choice. It should be their choice, not ours. Many years ago a review was undertaken, the Clothier report, which resulted in the recommendations from that review to be thrown out. Would a further review at this time, when we are all not achieving very much, help? I doubt it very much. We need to get on with the job we were elected to do and leave the review to the people at the next election. I will not be voting for this Proposition. I applaud Deputy Young for attempting this review but should this be the public’s choice? It should be and we should fully accept their choice. If they really want party politics, then we should accept that also.

The Greffier of the States (in the Chair):

Senator Mézec, you had a point to clarify with the previous speaker?

Senator S.Y. Mézec:

It is to ask the Deputy of St. Mary if he could just clarify what he means by Jersey being too small for party politics when there are, by my count, 28 jurisdictions, most of them islands which are smaller than Jersey, which have thriving party politics. Can he clarify what he means by that?

The Greffier of the States (in the Chair):

I am not sure he needs to, Senator. That is a debate in point and you have made your point but the Constable has expressed his point of view and I think we should move on.

3.1.16 Connétable M.K. Jackson of St. Brelade:

I was minded at the outset to support this Proposition. However, upon listening to the debate I am wavering. I am well aware that Deputy Young has been uncomfortable with the P.1 structure for some time and I commend him for putting pen to paper and presenting this Proposition. The proposed review, however, worries me and one can almost predict that U.K. appointees will fail to absorb our way of life and local structures. I do not have a problem with learned input from those qualified to do so but it does seem to me that the existing Appointments Commission are not sufficiently connected with our needs in the Island, and we have seen a number of senior appointees just not staying. I would support an in-house review, that I have often been told at business that the best people for a review are those in the business themselves. It is us who should be doing this. We know more about it than anyone else and we are well aware of the present shortfalls. I disagree with Deputy Ash, history dictates that party politics does not work here and trying to ram it down people's throats is not, I believe, the way. It is unpalatable in Jersey and ineffective. I will say I cast no aspersions towards those party Members in the States today. They have my absolute respect as politicians. I suspect that the committee system may have been more inclusive but a lot depends on the individuals involved as to whether or not our systems work. The ministerial systems that we have now can work but I do not think distancing an Executive from the Ministers in the way that appears to be happening is ideal. I do not think anyone thinks what we have is ideal and it needs to evolve. Let us stimulate that by doing it ourselves and not appoint an independent panel and risk turning our existing structures completely upside down, as I can assure Members lots of unintended consequences and cost.

The Greffier of the States (in the Chair):

Does any other Member wish to speak in the debate? If no other Member wishes to speak ...

Senator L.J. Farnham:

Yes, please, Sir. I am having ...

The Greffier of the States (in the Chair):

We need to use the chats. Is this Senator Farnham?

Senator L.J. Farnham:

It is, Sir. My laptop was being a bit slow but I think it has appeared in the chat now. But Deputy Higgins might have beaten me to it, so I will give way, Sir, if he did.

The Greffier of the States (in the Chair):

No, you have been speaking for the last minute, Senator, I think you should carry on.

3.1.17 Senator L.J. Farnham:

Full respect to Deputy Young who is showing an example of how our system works. He has presented a proposition based on an electoral promise, based on a strong belief. As a Minister, he is

able to exercise that right, and I think that is one of the good things in our system. It is not necessarily a ministerial system but the States system, which gives every Member equal rights and the opportunity and the right to bring a proposition on any issue, something we would probably lose with party politics.

[16:00]

It is an unusual debate because there is going to be an unusual voting pattern here where usually some votes will be similar from different ends of the political spectrum and for very different reasons. But, again, I think that shows a strength in the current system. Many of us have worked with the committee system and the ministerial system and for my money the ministerial system is ...

The Greffier of the States (in the Chair):

I wonder if whoever is on the phone could mute their microphone.

Senator L.J. Farnham:

I think it is Bruce, Sir, by the sounds of things.

The Greffier of the States (in the Chair):

Thank you, Senator, carry on.

Senator L.J. Farnham:

The committee system and ministerial system, different Members will have different views but from those of us who worked in the committee system will know its strength and its weaknesses. The ministerial system has both strengths and weaknesses. But while many of us have condemned the committee system, I think we forget its successes as well. Because following the post-war reforms of 1948 Jersey has enjoyed an unprecedented time of prosperity, not without its challenges of course, but from the weakened position emerged from the Second World War to where it is today is an example of how our political system has in many ways, despite its constraints, succeeded for the people of Jersey. I just want to turn quickly to the party system, there has not been traction in that. I think it was Senator Mézec who said there was no evidence that party politics were unwanted. But I think there is evidence because with the exception of Reform Jersey there is no real traction. With respect to Reform Jersey they have done it the right way; parties should not be formed in a Parliament by Members of the Parliament who are wanting to further their own influence within the Parliament; they should be done from within the country or within our situation the Island and that is what Reform Jersey has done. They formed the party and they have worked hard to get Members elected, and I wish them a lot of luck in the future but not too much luck of course. I think the real problem with our governance and our parliamentary process is often the people, and I do not mean disrespect to any sitting Member or party Member, but it is often people that are at fault, not the systems. Good people will make any system work and we can continue to improve the system. We see a lot of Members get frustrated because they do not often succeed or they do not win debates. But instead of raising our voices when we lose, we should improve our arguments. We need sometimes to work harder to win the debate. We need to be assertive, more assertive at times. Also in the system over the years and decades there have been some examples of States Members carrying far more influence than others. That is not because of the system; that is because of the engagements. It is not strong civil servants we should worry about, it is weak or disengaged or ineffective politicians. Again, I mean no disrespect to anyone past or present but that is how we must make this system work. If we look at the public sector I think we are seeing a change in the culture; the culture of the past under the previous systems of Government. It could be argued that in a committee system the various departments reported to that committee, there was definitely some silo thinking; that has been challenged. It has sometimes been a good thing because it has allowed departments to focus on the particular areas they are interested for but it has also often led to cover-ups. That was because of the culture of the public sector and the structure of the public sector. I believe what is happening now

with the complete change in structure, the new target operating model is a reduction from 30 departments down to 7 or 6, or even 8. I am not sure where we are going to end up. There is a demonstration of the culture that is changing in the public sector. But it is down to the States Assembly and the Government to continue to monitor and pursue and force a change in culture and they must exert their authority at every opportunity to do that. Every 4 years this Assembly is mandated by the public to reflect the Island's unity, and that is what we often fail to do as Members. Let us focus on making this system work, the system we have now, let us focus on making it work. Let us fine-tune it, let us continue to improve it, let us allow it to evolve because if we fail to do that we will not make progress. The public do not want us to have another review, another review that we are unlikely to listen to and even if we did it would be amended probably out of recognition by the time it came to the Assembly. I will not be supporting it and I will be continuing to follow the mantras, which I have tried to do and many other Members have tried to do, of continuing to work together in making the system we have more effective.

3.1.18 Deputy M.R. Higgins:

Can I just say, first of all, that I agree with everything that Deputy Young has said about how bad our system of government is? I could even give other examples, I will not do so; I think we are well aware of what they are. Unfortunately, I cannot support his solution. I cannot support another review which can, by past experience, be manipulated and, in my view, corrupted and I do not believe it is the way forward. I agree, for example, with Senator Mézec with his comments about the former Bailiff and Senator Philip Bailhache, who I believe has set back government reform in this Island for almost 2 decades. First, when he was Bailiff by encouraging Members to cherry-pick the Clothier recommendations, something Sir Cecil Clothier recommended against, as he knew we would never get anywhere and how right he was. Secondly, when standing for election as Senator he argued that politicians should not chair or be on the Electoral Commission, which had been agreed just before the election. After being elected he reversed his position and ended up chairing the panel and recruited another politician on to the panel with his same views and other people who either shared his decades-long views on Island Government or who were outnumbered by those who did. The end result was a referendum, where 2 out of the 3 options put to people led to what he wanted. Voters were given 3 options; one was the status quo, which meant no change at all; one was calling for larger boundaries; one was calling for keeping the Constables. I cannot remember the exact details. But those who disagreed with keeping the Constables or the status quo only had one option they could go for and their second vote under the preference system meant that they could not put it forward; there was not another option they could accept. As it happened, Senator Bailhache's view was successful and very narrowly, considering, so that is one example. We have already had an Electoral Commission which failed us and involved politicians. I also agree with Senator Mézec that party politics is probably the only way forward, certainly in the long term. It certainly has the advantage of saving States time by having a ready-made Government coming into power after the election with potential Ministers in waiting and draft policies, which can be quickly transferred into a Government Plan, which at the next election they can collectively be held to account for. Also, if that system came in the civil servants before the election would speak to the party leaders, find out what their policies are and make provision for them, so whichever party wins the election they have got some idea what they are about and will have done some preliminary work. It also means that people will know what Members stand for. I agree that the public have no idea what individual candidates really stand for, unless they have already served in the States and they can see how they have voted on important issues. Even then, unless they are avid listeners and readers with what goes on in the States, they may not even know that. The electorate, unfortunately, also have a short memory, otherwise some of my fellow Members may not have been re-elected and the same goes for myself. I have, however, kept my principles and my beliefs throughout my 12 years and not been seduced by Government office, which seems to lead to amnesia when it comes to principles and consistent beliefs. I am, however, not a party animal. I am not a member of Reform or any of the other de facto

parties in this Assembly. I think it is dishonest for Members to say they are independents when their voting record and comments in debates reflects their loyalty to a particular political grouping. At least if we had parties, the hidden parties would be outed. I do, however, think that the best way to deal with our current problem are those suggested by Deputy Tadier and Senator Vallois. This is direct action. It is for Members to bring forward propositions that will deal with the system's problems, weaknesses and failures. I have already 2 propositions approved by the Bailiff, which I think will lead in this direction. We will see when they come forward to the States over the next few weeks and months, once I have finalised the reports. One goes to the heart of the culture of government and relates to the civil service/political relationship and the other deals with compromise agreements and non-disclosure agreements, both of which, I believe, have cost the Island millions and have been detrimental to good governance. I shall be bringing forward other propositions to attend change and we should all be analysing the system, rather than getting someone else to come in and analyse it for us; we know where the faults are and we should all come up with propositions to change what we can. It could be that there will be quite a number of different ones. We cannot have an overarching plan put forward to change from one Member. What we can do though is chip away at the system and if we all analyse and chip away we will probably have a better system by the time the next election comes. Unfortunately, Deputy Young, although I agree with your analysis, I cannot agree with your solution and I shall be voting against the Proposition.

The Greffier of the States (in the Chair):

Thank you. Does any other Member wish to speak on the Proposition? If no other Member wishes to speak, I will close the debate and I will call Deputy Young.

3.1.19 Deputy J.H. Young:

That was a humdinger of a debate. I must admit when I lodged the Proposition some 2 months ago I recognised that I was getting into very controversial areas but I needed to meet my pre-election commitment and, I think, generate some discussion and debate about our current system of working, and I certainly think we have achieved that. But I am disappointed in the run-up to the debate, which is why I gave it a longer time for debate, I would get some contributions and amendments that might help shape this into something which Members can go with. I want to thank those Members who have said that my analysis is generally right but the solution is the wrong one. I think, and what I have listened to carefully, is a lot of alternative solutions, which maybe if this debate has again, will lead to a route to addressing those. There might be one or 2 contributions I need to pick on but I would prefer to look at the big picture. I think that what I have heard is a number of general positions being taken. First of all, our ministerial system is excellent and what we need is party politics to make it work. Much as I like the idea of party politics, and I absolutely recognise the points that ... I think Deputy Ward came closest to it, trying to have loose political alliances and so on without discipline and structure will ultimately fail.

[16:15]

Also, I agree that needs to be done prior to elections. But of course the problem is having a debate like that today will not deliver party politics. Why not? Because it only can come from the grassroots of our community. Certainly, I have only been in Jersey 40 years but I do not think at the present time there is a view that Jersey is ready for it; it may come. That is not me being negative about the Reform Party members; I think they have demonstrated organisation and sharing resources and supporting each other works. But obviously I did hear is what matters is at the moment it is not delivering. That is one view, the other is that the system is broken and of course let us not have an external independent review, which is what I proposed, but let us fix it ourselves. I think, because we have been there before, and I am sure Members looked through the list of - I cannot remember how many there were - 13 different propositions and reports over the last 3 or 4 Council of Ministers where similar questions have been subject to a Member review. Various suggestions, I said in my

speech, have come up but none of them - none of them - have been agreed by the Assembly and so I wish those Members luck in taking forward the energy of this debate on how to ... either the system was broken or not ideal, I heard those ways. I heard tweaks, change it. Okay, but I wish those Members luck, and Deputy Morel, I think we got a few volunteers today. My expectancy is there is energy there and they would work with P.P.C. and Members who have volunteered and if they can take it to the point where a proposition can be got through the States that will be a real plus point. The work is there done before. We have also got a line that says the system is fine. We need to change our behaviours as individuals. We need to play by the rules, let us stop being personal, that is co-operate better. I think that is a valid point of view and I think what I cannot say is which of all those alternative positions in this debate is prevalent. I think Senator Farnham was correct. Obviously it is very, very clear from the vote that my Proposition carries very little support. I want to thank those Members that have expressed their support and ask other Members ... the majority view from the speeches is very clear but I think what I certainly would not want to see is a whitewash vote where people interpret it all is well and we need not do any work. I think it is really important that the energy in this debate is captured, which is why I thought I am going to let the debate go to an end, even though it is uncomfortable listening to a debate where you know, frankly, the result pretty well early into the debate. But I think it is important to let it run and have those views. It has been instructive to me. I think the issue of party politics is of course the big one. I hope it might stimulate those that are in the community and those Members that are minded to do that to come out in the open and do that so that we can end up ... it takes our politics after the next election into a much more mature place. I hope also that we send signals to our Executive and civil service that this Assembly is number one, is king or queen. That means that democratic principles matter. There is, I believe, a passion in Members to ensure not only that pertains but it is enhanced. I am 100 per cent behind that. I look forward, I think Deputy Higgins said so, and maybe there are other Members that have proposals that they can bring forward, specific proposals that they think pick up on some of these points and issues, and the points I made, and turn them into a proposition that can get through the States. I think that is my kind of big picture that I want to say. We have been here a long time and I do not want to take up all the time. There are lots of points that I agreed with and some that I did not but I appreciate Members kindness in acknowledging my wish to fix the problems and perhaps say this. What I tried to do is find a compromise. Find a middle route knowing that these tensions and differences of view exist in the Chamber and to try and find a way with an independent body based on evidence, and I agree the selection of that panel is difficult but ultimately the Assembly would have to decide. I have just seen a note. I apologise if I upset anybody by king and queen, it is my old-fashioned way. I am trying to achieve equality in my language and not doing very well, so sorry. But I try to find compromise, I am a natural compromiser and on this occasion plainly it has not worked. So please, in asking it to go the appel, I ask as many Members that can to go with the Proposition as drafted, and in the event of it not going forward I would ask those Members that have pointed to alternative directions to be actively following those up. Because I myself feel I have done my duty by bringing this debate today. Thank you and I ask for the appel.

The Greffier of the States (in the Chair):

The Greffier will put a link in the channel in the now familiar way. There it is. So Members, if you can, please vote using the link, which will be open for a while. Members who are having difficulties with the link please indicate your vote in the chat. If all Members have had the opportunity to cast their votes, by whichever means they have been able to use, I will ask the Greffier to close the voting. The Constable of St. Ouen has just got in there in time. We will put the result in the chat very shortly. The Proposition has been rejected:

POUR: 7		CONTRE: 37		ABSTAIN: 2
Connétable of St. Peter		Senator I.J. Gorst		Deputy L.M.C. Doublet (S)
Connétable of St. Martin		Senator L.J. Farnham		Deputy G.C.U. Guida (L)
Deputy J.M. Maçon (S)		Senator T.A. Vallois		

Deputy J.H. Young (B)		Senator K.L. Moore		
Deputy of St. John		Senator S.W. Pallett		
Deputy J.H. Perchard (S)		Senator S.Y. Mézec		
Deputy I. Gardiner (H)		Connétable of St. Helier		
		Connétable of St. Clement		
		Connétable of St. Lawrence		
		Connétable of St. Saviour		
		Connétable of St. Brelade		
		Connétable of Grouville		
		Connétable of St. John		
		Connétable of Trinity		
		Connétable of St. Mary		
		Deputy J.A. Martin (H)		
		Deputy G.P. Southern (H)		
		Deputy of Grouville		
		Deputy K.C. Lewis (S)		
		Deputy M. Tadier (B)		
		Deputy M.R. Higgins (H)		
		Deputy S.J. Pinel (C)		
		Deputy of St. Martin		
		Deputy of St. Ouen		
		Deputy R. Labey (H)		
		Deputy S.M. Wickenden (H)		
		Deputy of St. Mary		
		Deputy G.J. Truscott (B)		
		Deputy L.B.E. Ash (C)		
		Deputy K.F. Morel (L)		
		Deputy of St. Peter		
		Deputy of Trinity		
		Deputy M.R. Le Hegarat (H)		
		Deputy S.M. Ahier (H)		
		Deputy R.J. Ward (H)		
		Deputy C.S. Alves (H)		
		Deputy K.G. Pamplin (S)		

The Assistant Greffier of the States:

Those Members voting pour: the Constable of St. Martin, Deputy Gardiner, Deputy Young, Deputy Maçon, Deputy Perchard, and Deputy of St. John. Those Members abstaining: Deputy Guida and Deputy Doublet.

The Greffier of the States (in the Chair):

And we had the Constable of St. Peter in the chat who voted pour as well, so that is a 6th for you, Deputy Young. Thank you very much.

4. Foreshore: policy for alleged encroachment payments (P.101/2020):

The Greffier of the States (in the Chair):

We now move on to the next proposition, which is entitled Foreshore: policy for alleged encroachment payments, lodged by the Deputy of Grouville, P.101, and I will ask the Greffier to read the Proposition.

The Assistant Greffier of the States:

The States are asked to decide whether they are of opinion - (a) that Jersey Property Holdings should, with immediate effect, cease charging Islanders a consideration for alleged encroachments on to the Foreshore until a revised policy has been approved by the Assembly; (b) that such policy should be brought forward for debate by the Assembly by January 2021 and should confirm the date from which the deemed encroachments will be determined and be accompanied by a map clearly showing the boundaries used to establish land ownership; (c) that until such time as a clear revised policy is agreed by the Assembly, the Minister for Infrastructure should be asked to return any monies so far received from people whose grievances have been upheld by a States of Jersey Complaints Board in relation to this matter; and (d) to request that the Department for Infrastructure publishes by the end of 2020, a map of all public accesses, footpaths and rights of way to the foreshore.

The Greffier of the States (in the Chair):

Before I ask the Deputy of Grouville to speak, there are a couple of Members who have indicated a wish to declare an interest. I start with Senator Gorst.

Senator I.J. Gorst:

I reside in a property that goes to the foreshore. Under the Minister's latest policy I think there is a small fence, which would be classed as an encroachment, and therefore on this occasion I will not be taking part in the debate or voting.

Deputy S.J. Pinel of St. Clement:

I have a property on the beach on the southeast coast, which was bought 25 years ago, but has steps that lead down to the foreshore. It is debatable whether the steps encroach on the foreshore because they end above the high tide, so I will take advice on whether that is a declaration of interest as well please.

The Greffier of the States (in the Chair):

I have not been asked for advice before on this, but on the hoof my view would be that the number of properties on the foreshore is likely to be relatively small, so I would lean towards Members who have properties that are likely to be caught by the policies and the debates that are going to be debated to withdraw from the debate. That would be my sense. But it is very hard to tell without knowing the full details, but that would be my feeling because there will be quite a limited number of people who are affected in this way and therefore my feeling would be that this would count as potentially a direct financial interest.

Deputy S.J. Pinel:

Thank you for your advice.

The Greffier of the States (in the Chair):

Does any other Member wish to declare any interests at this point? In that case, I will ask the Deputy of Grouville to present a proposition.

4.1 Deputy C.F. Labey of Grouville:

The seabed and foreshore issue is a complex one. It involves ancient feudal rights. It involves land, which is described as being between *le niveau de la basse de mer*, the low water mark, and *le niveau du plein de Mars*, which is the mark of the full spring tide. It involves the leaseholds by the States of Jersey and it involves Her Majesty's gift of the seabed and parts of the foreshore to the public of Jersey. This debate also involves the 2018 findings of the Jersey Complaints Panel who concluded the actions of the previous Minister to have been unjust, oppressive and improperly discriminatory towards members of the public in dealing with parts of the foreshore and alleged encroachments. It is that which I would like to address today and for the future. Complications had arisen in determining the high tide mark because, with the sand dunes, the cliffs of the north coast, the sea

defences built by slave workers in World War II, the harbours and reclaimed land around the Island, and more recently La Collette and the waterfront, the position of the high tide mark has changed over time. To demonstrate that point a bit more clearly I included 50 pages of archive photos and maps in my report.

[16:30]

As you can see from them, the sea at the foot of the sand dunes in St. Brelade's Bay, Gorey, before land was reclaimed to build the railway, and the ship building in Havre des Pas, and even water lapping up in front of the Royal Yacht Hotel before any land south of St. Helier was reclaimed, this clearly illustrates that what we consider to be the mark of the high spring tide today may not have been the same mark as was considered previously. That was before global warming and rising sea levels, which is why we need a date we are determining these encroachments from, accompanied by a map to illustrate the boundary or default position. This point is key to determine what is deemed as an encroachment on public land. The Minister for Infrastructure has dismissed this fundamental request to establish the boundary, which he is using to extract money from people, as irrelevant and unworkable. Another consideration is that the area of the foreshore was defined by the 1894 law by reference to the boundaries of the fiefs, not the other way around. I should not need to remind Members that we have no definitive judgment on the law governing foreshore titles as the claim to the foreshore of the Fief de la Fosse went unanswered. Notwithstanding this, private titles to this land continue to be appropriated. I invite Members to read appendix 4 in my report if they wish to have a greater insight into just how complex an issue this is. I note with considerable astonishment that the Minister does not feel in a position to comment on the legal points of my report. Yet, as a consequence of his actions, he could be leading us down a very dangerous and costly legal path. A similar route last cost the public £10 million. So, as an aside, one of the most ludicrous arguments I have had in the run-up to this debate is a comparison to that if somebody extended their garden on to F.B. Fields and increased the value of their house, would the States be expected to stop it? Yes, of course they would. The difference being there are clearly defined boundaries on the area that makes up F.B. Fields. The States, I would at least hope, would not give planning permission for such encroachments and sit back and do nothing for years and years. They would act immediately. They would act as guardians of the land for the people of Jersey. That is not what they have done with the foreshore. I believe there are 2 mutually exclusive positions which form the background of the current situation and the chosen approach taken by the Minister when dealing with members of the public. First, we need to understand the spirit of the gift. The gift was made to us after the Island had expressed an interest in exploring renewable energy projects, which may require ownership of the seabed. The Lieutenant Governor of the day, General Sir John McColl, stated when handing over the foreshore that ownership would assist effective management and economic development, particularly in the area of renewable energy projects and Her Majesty's wishes to support the interests and aspirations of the public of Jersey as expressed through their elected representatives. A contract was entered into to receive the gift and signed 12th June 2015. It contained the following clause: "Any right of access or other exploitation exercised as a matter of longstanding habitual and recognised custom by the general public of the Island or by any member thereof shall be and remain unaffected by this contract of gift, secession and transfer. In 2016, the Law Society wrote to the then Chief Minister with their concerns at the manner in which his Minister, through Property Holdings, was administering the gift as they did not feel it was in keeping with the spirit of the contract with the Crown and that the issue of the foreshore was not being dealt with fairly. An opinion that was echoed by the Jersey Complaints Panel 2 years later. Then, on the other hand, we have the Minister rubbing his hands together with glee at the receipt of this gift but with no policy in place to deal with it. So officers were left with no alternative other than to diligently follow a Ministerial Decision made almost 10 years earlier in 2006, which set out the aims of the Department of Infrastructure, which included to extract optimum benefit from property assets. Even the way it reads does not sit easy with me but that, Members, is the circle we have to square. A gift from Her Majesty to enable

us to explore renewable energy for the benefit of the Island versus a department trying to maximise returns on its assets. I recognise the need for encroachments to be acknowledged and title to be upheld, especially now the 40-year rule of ownership has started to tick. I wish some, if not most, of the buildings on the foreshore had not happened and I would especially like unsightly encroachments to stop receiving permissions. But what has really stuck in the craw with this episode is this: the States of Jersey, as leaseholder of the Crown land, has stood by while people sought permissions, built structures, probably none so bad as the States themselves and the reclamation site, collected stamp duties, basically sat back and did nothing to protect the foreshore from encroachments. One could almost claim encouraged them with planning permissions. Yet 63 days after the Crown gifted the seabed and the foreshore to the public they have thought to demand monies from people for claimed encroachments, in some cases happening decades earlier, followed by a cobbled together policy with no boundary map and no date from which the encroachments were to be determined. The Crown's gift was not given as a cash cow to reward the incompetencies and neglect of our duty as leaseholder of the foreshore. The gift was not bestowed to us so we could go after people in a random inconsistent manner. But I would suggest, if monies are indeed extracted for encroachments prior to 12th June 2015 surely they belong to Her Majesty's purse and not ours. If the Minister is concerned with keeping control of the sea defences and securing their adequate protection, why does he not bring a proposition to the States, which enables him to properly maintain the wall for the public's benefit? In the meantime, can we have a policy which upholds the spirit of the gift? Can we have a policy that is fair, open and transparent with dates and a boundary map? Can the recommendations of the Jersey Complaints Panel be upheld, whose conclusions in 2018, over 2½ years ago, were that 2 members of our public had been treated in an unjust, oppressive and improperly discriminatory manner by our Government? I ask this, not only for them, but for members of the public going forward who simply wish to know where they stand. I make my Proposition.

The Greffier of the States (in the Chair):

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

4.2 Foreshore: policy for alleged encroachment payments (P.101/2020): amendment (P.101/2020 amd.)

The Greffier of the States (in the Chair):

There is an amendment to the Proposition in the name of the Minister for Infrastructure and I ask the Greffier to read the Amendment.

The Assistant Greffier of the States:

Page 2, paragraph (a), for paragraph (a) substitute the following paragraph - "(a) that no further land transactions should take place between the public and third parties in respect of strips or parcels of reclaimed foreshore until a revised foreshore encroachment policy has been debated." Page 2, paragraph (b) - delete the words "and should confirm the date from which the deemed encroachments will be determined and be accompanied by a map clearly showing the boundaries used to establish land ownership." Page 2, paragraph (c) - for paragraph (c) substitute the following paragraph - "(c) that upon a revised policy being agreed by the Assembly, the Minister for Infrastructure should reconsider Finding 8.15 of the States of Jersey Complaints Board's report (R.71/2018) in respect of refunding the difference (if any) between the considerations paid under the 2 respective land transactions and the considerations that would have been paid had the new policy been in place at the time." Page 2, paragraph (d) - for the word "2020" substitute the words "Quarter 1 of 2021".

4.2.1 Deputy K.C. Lewis of St. Saviour (The Minister for Infrastructure):

Firstly, I must make it clear that I intend to vote against the Proposition whether it is amended or not and I encourage other Members to do the same. I brought my amendment to correct or amend certain points. The Deputy of Grouville states clearly in the first paragraph of her report her motivation is

the interest of 2 parties who resented paying for their encroachments. My motivation is in the interest of the public as a whole. They were not alleged encroachments, they were encroachments. The value of the property they owned was enhanced to the detriment of the public. In my amendment to part (a) of the Proposition I omit the word “alleged”. Also in part (a) the Deputy calls for us to cease charging Islanders a consideration for alleged encroachments. This could be interpreted that we would allow encroachments and no charge would be made. This is obviously neither fair nor desirable. For reasons of clarity, my amendment says that no further land transactions should take place between the public and third parties in respect of strips or parcels of reclaimed foreshore until a revised foreshore encroachment policy has been debated. Yes, there have been delays in completing the foreshore reports and revised policy, but there have been good reasons for those delays. I would have liked to have completed last year; yes, of course I would. It was a very complex and specialist piece of work and there were no feasible ways to expedite the project. I am pleased to say we have now lodged the revised policy and it is due for debate on 3rd November. Indeed, that is the time to really debate the subject, when we can look at the policy as a whole and not the piecemeal approach of this Proposition. Perhaps I should invite the Deputy to withdraw her proposition and save the Assembly time and put forward any cases she may have when they can be seen in the context of the policy as a whole. Maybe she will take this on board.

[16:45]

Anyhow, moving to part (b), we are of course happy with the Deputy’s call for the policy to be debated by January 2021 but the rest of the point is unworkable. We cannot be that prescriptive. Where a foreshore encroachment is claimed that claim will have a basis, but the third party can submit a counterclaim and if the matter remains disputed the 2 parties can follow established courses of action to seek a resolution. Encroachments of the foreshore vary from very recent to historic and trying to set a single date as proposed by the Deputy of Grouville will not help to resolve foreshore encroachments. The Deputy’s part (c) really does give the wrong impression and my amendment seeks to redress it. The complaints panel did not suggest we should refund the full payment made by 2 complainants for their encroachments, what they did recommend was, if there was a difference between the payment they made and the payment advocated by the new policy, then this difference should be refunded. It is therefore illogical that we should refund the full amount at this stage. My amendment to part (d) is quite simple, just proposing a more realistic timescale. I ask Members to agree my amendment because it makes more sense of the Proposition but it does not mean there is merit in the Proposition. As I said before, I will be voting against it but I will save my explaining why Members should reject the Proposition for the main debate. I make the Amendment.

The Greffier of the States (in the Chair):

Is the Amendment seconded? [**Seconded**] There has been a request for advice from the Attorney General from the Constable of Grouville. Constable, do you want to explain your point?

Connétable J.E. Le Maistre of Grouville:

The main feature of this debate will be about the high-water mark. What will happen in the future if, as expected, we have sea level rises and the high-water mark will be higher than it is now? What will be the position then?

Mr. M.H. Temple Q.C., H.M. Attorney General:

If the high-water mark rises then that raises interesting questions. The fact is that foreshore is a movable concept; there are various cases from England, which confirm that. So those cases have not yet been considered in Jersey, but if a Jersey court were to follow those principles then it would potentially find that the high-water mark has moved and therefore possession has moved to the public of the Island. However, obviously there are plenty of counterarguments because people’s property, they have built their properties on areas of what was previously the foreshore or what was never the

foreshore up until the date of future movement. So that sort of situation raises interesting questions. In terms of the legal answer to them, following the established principles from English courts, but that have not been considered in this jurisdiction, then the limit of the foreshore would also have moved. But clearly practically the court is going to give very sympathetic consideration to the position of private owners who have built their houses there and where their homes are and those English cases would have to be considered, for example, in relation to the Human Rights Law, which includes Article 8, the right to a family life. So the Deputy raises an interesting question but I am afraid the answer to that in legal terms is quite a complex one because certainly it has not been considered in this jurisdiction and I am not aware that it has been considered in an English case where, for example, someone has built their home on something that was previously not an area of the foreshore, but has subsequently become one by reason of, for example, climate change. That is the limit of my advice to the Constable.

Deputy M. Tadier:

Would the Attorney General inform us what legal responsibility or liability there might be on conveyancers of the lawyers who were responsible for dealing with the deeds when houses were sold with encroachments?

The Attorney General:

Clearly in those circumstances there was a contract between the party who instructed the conveyancer and the conveyancer who provided the conveyancing services. It may be that rights of action would arise as between the person who instructed the conveyancer and the conveyancing firm and obviously the legal firm concerned would have insurance, which would, in ordinary course, cover those sorts of claims. There may also be a claim in tort as well, but the most obvious one would be a claim in contract. So, yes, there would potentially be rights of action as against the relevant conveyancer or the legal firm that the conveyancer worked for.

Deputy M. Tadier:

May I have another question? Is there any likelihood that the Government would want to take an action against those conveyancers who presumably were negligent or for whatever reason did not pick up the fact that there were encroachments, which they should have known about arguably when it was transferred to new ownership?

The Attorney General:

My preliminary view to that question is that is most unlikely because the conveyancing firm did not owe a duty of care either in contract or probably in tort to the Government.

Connétable C.H. Taylor of St. John:

From what I have read, some of the seawalls built by the States were below the highwater mark and therefore were an encroachment on Crown land. Can you confirm that this would be the case that the States encroached on to Crown land?

The Attorney General:

No, I cannot give that confirmation. The seawalls were clearly built as a public defence work against flooding and they are likely to have been built with the Crown's full knowledge and acceptance of the construction of the seawalls, so I think it would be wrong to say they were an encroachment. In any event, there were a series of contracts that were passed by the Crown from I think around 1895 onwards between the Crown and the public of the Island, which provided for transfers of land from the Crown to the public of the Island, on which some of those seawalls may have been constructed.

The Connétable of St. John:

Do you have confirmation that the land was passed from the Crown to the States, in which case the land behind the seawall on the landward side would belong to the States and therefore should be in public record and would have been picked up by normal conveyancing methods?

The Attorney General:

The contracts of conveyance between the Crown and the public of the Island from 1895 onwards, yes, they are a matter of public record. They are recorded in the property registry held by the Royal Court, so those are matters of record and they can be checked by conveyancers in the normal way. In the same way, conveyancers would be expected to check title to the property that is being transferred and conveyancers would be aware that when they are dealing with a property that borders the foreshore that there is the Crown's ownership that has to be dealt with. To the extent that conveyancers may have somewhat overreached and purported to transfer land, which was in fact the Crown's, and they have not bound the Crown to that agreement expressly in contract, then that is not a valid transfer of the land because the Crown has not agreed to it. I hope that answers the Constable's question.

Deputy M.R. Higgins:

I have 2 questions for Attorney General. The first one is the legal position, if we decided to repay the people who have already paid money to the States for encroachment and the States new policy finds that they should pay a similar amount or even a slightly lesser amount, what is the position on the repayment if (1) they still own the property or (2) they sold it to a third party? That is the first one. Would you like to answer that first, Attorney General, or do you want my second question straight on?

The Attorney General:

That was a very long question, if I may, and would you mind repeating it?

Deputy M.R. Higgins:

I am just asking the question, obviously part of the Proposition is that we will repay the people who have already been found to infringe the foreshore and they have already paid money across. The proposal is that we repay them and then, if we have a new policy, once we decide what the new policy is, it could be that those people would still be liable for a payment, maybe the same, maybe less. But what is their liability if they still have the property, I can see that being straightforward. If they have sold it to a third party, what is the position then?

The Attorney General:

That raises quite a lot of questions all wrapped into one. As I understand it, the Deputy's proposition is seeking a mandate from the States that the 2 people who were subject to the complaints board proceedings be repaid. There is a concern, as I understand it, on the part of the Minister that, if those 2 people were repaid, then that raises presumptions as to whether the Government should also repay people who have in good faith agreed to make payments for encroachments in respect of their properties in the past. In terms of claims of those other property owners, for my part I would find it difficult to see a legal obligation on the part of the Government to repay other property owners apart from the 2 people who were subject to the complaints board proceedings. But again that is somewhat hypothetical because I have not seen any articulated claim that might be advanced by such other people. I am not sure I fully understood the Deputy's question in relation to the 2 people who were the subject of the complaints board's proceedings. I am not sure what he was quite asking. So was the question that if we repaid those 2 people and then they sell on the property there is some sort of constructive liability as regards a third-party purchaser? In fact this question I do not think there would be.

[17:00]

Deputy M.R. Higgins:

I may have conflated the Proposition and the Minister's amendment. I will leave it for the moment on that particular one and reread it and then come back to you perhaps later. If I could ask the second question then. Can I ask, the Minister is proposing that we have basically a moratorium on preventing sales of strips of land and properties until the States makes a decision on the matter and he is putting forward that we have a debate on it going forward, which I cannot remember the date he has suggested. What is the human rights implication of that because if people are buying and selling properties and they are denied the right to sell the property until a decision is made, what is the situation there?

The Attorney General:

The most obvious human rights implication is Article 1, Protocol 1, a right to property. But that is a qualified right and what the Minister is proposing is a limited delay to allow the Island's legislature to collectively approve a policy in respect of properties all around the Island. So my preliminary view is that is proportionate, it fulfils a legitimate objective, which is for the Government of the Island and Members of the States Assembly to come up with and approve a policy, which affects properties all around the Island. So, for my part, although it is a limited delay, I do not think it is a breach of the Article 1, Protocol 1, right.

Deputy G.J. Truscott of St. Brelade:

It was something that the Deputy of Grouville mentioned in her speech and it was the fact that the land was gifted on 12th June and obviously prior to that it belonged to the Crown. Could the Crown legitimately put in a claim for any monies gained from compensation at any point?

The Attorney General:

No, I do not believe so.

Deputy J.H. Young:

I just wanted to clarify the Attorney General's answer to Deputy Higgins. Obviously, looking at the Amendment in (a) that puts this moratorium on transactions, in respect it says of strips and/or parcels of reclaimed foreshore, would his answer be different if that particular strip of land being referred to was disputed? In other words that somebody was proposing to sell a property to another party and they did not accept that they had made an encroachment; that is was their property. If that was the case, would his opinion allowing the Amendment to be valid change?

The Attorney General:

My answer to that is, no, my opinion would not change.

The Greffier of the States (in the Chair):

We now come to the debate on the Amendment and I call the Deputy of Grouville.

4.2.2 The Deputy of Grouville:

Just to answer the Minister's 3 points that I took down that he made. Firstly, he suggested that I should withdraw my Proposition. Absolutely not. The Minister has had 2½ years to bring forward a revised policy, I have certainly been asking for 3 years, and it arrives through our letterboxes last Friday. So, no, I will not be withdrawing any of this. The second point he made was to suggest I am just doing this on behalf of 2 constituents. No, I am not. This issue was brought to my attention by the 2 constituents and I advised them to take their complaints to the Jersey Complaints Panel, who made a ruling on it. But I am doing this for many, many people and many people who have contacted me who are thinking about selling their homes, who are thinking about downsizing, who are thinking of purchasing a home along the foreshore. It has created a lot of uncertainty in the marketplace.

People who want to downsize from a property along the foreshore are nervous to do so. They do not want to have to encounter a battle with the States of Jersey. So it is incorrect of the Minister to suggest that I am only doing this for 2 people; I am doing this to get some clarity into the situation for everyone. The third point he raised was I am suggesting that nobody makes a contribution towards this issue if indeed they have encroached. Again, no, that is not what I am suggesting. All I am suggesting is that we have a date to determine when the encroachments are going to be determined from: is it from the date of the gift or is it decades ago? I also want a map so that people can access the map and see where the boundaries are. Then the policy and a Ministerial Decision will no doubt decide on a charge, whatever is appropriate. So those are the first things of what he said. But, if I can take his Amendments in the order that he raises them. In my clause (a) I have asked that the Minister's department stop charging Islanders for alleged encroachments until a revised policy has been approved by this Assembly. I have been asking for this for 3 years. I have been asking from the previous Minister and when this current Minister came into office I alerted him to this soon on. So I have been asking for a revised policy for 3½ years. Miraculously, as I said, it arrived on Friday. The Assembly did not approve the last policy, it was signed off by Ministerial Decision. The Minister had put it together after the 2 complainants had been charged, so the only diktat the officers were working from was a 2006 departmental policy, which its aim was to, and I quote: "Extract the optimum benefit from property assets." A blanket policy, clearly not in the spirit of the gift of the foreshore, so my request is to stop charging people until we have an agreed policy. I think that is perfectly reasonable. What is not reasonable, and almost has no bearing on my Proposition, is the Minister's amendment. He is proposing that no further land transaction should take place on reclaimed foreshore until a policy has been debated, not approved, debated in the States. So he is proposing that everybody stops buying and selling homes, land, garden sheds, whatever, all around the Island, as the foreshore is not confined to Grouville and St. Clement, until we have a debate on a revised policy. Really? Like Deputy Higgins, I am not even sure that is human rights compliant and I have to say I disagree with the A.G. (Attorney General), I do not think it is proportionate. So what happens when we have debated this revised policy, what happens if the Assembly do not agree to it? What then? What if Scrutiny wish to call it in? Does this reclaimed foreshore include the waterfront, La Collette, as well as the historic claimed land? Clause (b), it seems the Minister finally agrees that a revised policy is needed and should be brought forward. Hopefully, we can agree to it before January 2021. However, I am asking for a date the encroachment will be deemed to be taken from and a map setting out the boundaries. I have already spoken at length about this and what is at stake and why such items are essential. This is informed by the opinion of the Law Society who stated that it is not right not to take a full audit or inventory of the foreshore at the time of the transfer from the Crown, supported by photographic evidence. The complaints panel also said in their report in 2018 that there should be a policy, which acknowledges that it is in the public interest for the land-side boundary of the foreshore towards private properties to be clarified. The board notes that, since entering into contracts with the complainants, the Minister devised a policy to deal with encroachment, but that policy does not identify what the default location of the land-side boundary and the foreshore should be. So we need a map. But the Minister dismisses my request as irrelevant and unworkable. Every other property boundary in the Island is open to inspection in the public registry. The information about foreshore cannot be private to individual landowners. I brought forward (c) because I felt the 2 complainants were treated badly and were held over a barrel by the States of Jersey. They were given 2 choices when selling their homes in a time-critical situation. They either pay up or face lengthy expensive legal action or they do not sell. They paid up but that was over 3 years ago and now finally the Minister is willing to reconsider and settle the difference if and when the States agree to a revised policy. Surely it could be far more decent to return their money until such time as we have a fair and transparent policy in place. Turning to the other comments he made in his paper, one was about a cycle route. I must confess I do wonder where the Minister imagines the States-owned foreshore to be. At one point he is trying to suggest to me he is having to spend millions of pounds building a cycle network because he cannot gain

access to the Island's foreshore because of encroachments. Put to one side the matter of the fiefs that may or may not define the foreshore ownership, but is he aware that more than 60 property owners from La Rocque to Pontac were given the part of the foreshore in front of their properties, which form south of the old railway, several decades ago? Perhaps the A.G. can confirm this when I am finished. Is he aware that the photo with all the steps to the beach ironically used by the media when reporting on this issue is the piece of foreshore that is owned by the property owners and not the public of Jersey? Is he aware that the high-tide mark does not come to the top of the beach in the cove the east of Green Island? The Minister's notion that a meandering cycle path would run along a stretch of the eastern coast on public land is, I am afraid, a false and misguided one. Finally, I am sorry the Minister found my Proposition and arguments not balanced, but that comment did at least make me smile.

The Greffier of the States (in the Chair):

We have another question for the Attorney General, this time from the Deputy of St. Peter.

The Deputy of St. Peter:

I am looking at, from the main proposition, part (c) and I am picking up on the word "upheld", so my question is, this is obviously past tense, so the monies returned to those people whose grievances have been upheld, what would be the impact, there may be others, I do not know if there are any, bringing grievances to ...

[17:15]

The Attorney General:

I am sorry, Deputy, let me stop you, I did not catch the start of your question, could you please stop and repeat it?

The Deputy of St. Peter:

I was also doing a bit of mumbling. On the main part of the Proposition in part (c) there is the word "upheld", so people whose grievances have been upheld by the States of Jersey Complaints Board would have their monies returned. What I would like to understand, does that leave it open for other grievances to be brought who would then also have their monies returned or is this frozen in time, for want of a better way of describing it?

The Attorney General:

The wording of propositions is normally a matter for the Presiding Officer. But, insofar as it is a legal question, and I am not sure that it is, it seems to me that on the wording of the Proposition that there is perhaps a narrow window for people to bring further grievances to the complaints board but that, as a matter of practicality, I have to somewhat doubt that the complaints board would manage to convene and look at all the relevant documentation and hear any witnesses they might wish to see and then come to a decision in sufficient time before a clear revised policy is agreed by the Assembly. Obviously, there is some lack of definition as regards when that agreed policy will be agreed by the Assembly so I suppose that may extend into the future potentially, but I think it is a pretty narrow window.

The Deputy of St. Peter:

Highly unlikely opening up Pandora's Box or anything like that. I am happy; thank you very much.

Senator T.A. Vallois:

It is a question to the Attorney General. The Deputy of Grouville referred to historic access ways in terms of using the foreshore, access to the public, and I want to ask the Attorney General what the difference is between the ownership of the Crown ...

The Attorney General:

I am sorry, Senator, I am having some hearing problems, could you please repeat the start of your question, I missed a rather crucial word?

Senator T.A. Vallois:

Not a problem. So my question was: the Deputy of Grouville referred to historic access on the foreshore, whether that was a cycle path or a railway path or a specific area in that determination, between the difference of the Crown ownership and then the ownership of the public for that foreshore requirement. I suppose the question is, understanding where within this policy it makes sense that the appropriate advice is given legally for ownership.

The Attorney General:

I am not sure that I fully follow that question I am afraid. As regards ownership, the Crown owned the foreshore up until 2015 unless it, by previous contracts, transferred some of that land to public ownership, and those contracts started in 1895 and there was also a lease of the entirety of the foreshore in 1950 from the Crown to the public. So that is ownership. That is different from rights. So there may have been some very old rights to collect seaweed and things of that nature, but that is different from ownership. It may be said that there is a right obviously of the public to walk on the beach and most people would agree with that. But that is different from ownership. Perhaps the Deputy would want to reflect on that and perhaps ask the question, if one arises, in a different way.

Deputy M. Tadier:

Just for those of us who are not practised lawyers and to try to perhaps simplify this in an analogous way: is there any comparison to be made legally with what has happened on the foreshore and the law surrounding receiving stolen goods so that if, for example, somebody has inadvertently been sold something that there was no right to be sold to them, that while they might be in ignorance of that, they still have to deal with the legal consequences of that?

The Attorney General:

I am afraid cannot agree that there is such an analogy, no. Because receiving stolen goods is a criminal offence and there is no suggestion whatsoever of any criminality on the part of people who may have inadvertently, or deliberately even, encroached on the foreshore. So I am afraid I would not agree with that analogy, no. But what I would say is that someone cannot gain ownership of land, which the true owner of that land does not agree to, save only in 2 ways: by agreement with the owner of the land, express agreement, or the other way is by adverse possession, which is known as *possession quadragénaire*, which is a right that is enshrined in the 1771 Code. So if someone is able to demonstrate possession, real practical possession of the land, for 40 years then they are able to gain possession of the land or ownership of the land. But that prescriptive right does not run against the Crown, as I hope is clear from the Propositions that are before the Assembly.

Deputy M.R. Higgins:

The question I have is why did the States concede and pay Les Pas Holdings regarding the foreshore of the reclaimed land and are there any issues regarding this case that have implications for this debate, as both are regarding the right to the foreshore? As I say, we paid our £10 million to Les Pas Holdings who are claiming a fief over the foreshore. The States did not take it to court, conceded it after a long period of time, and are there any other fiefs or anything else that can impact our debate today? I would certainly like to know if there are any issues that affect us in this debate.

The Attorney General:

In relation to the payment to Les Pas Holdings, I am not sure it is a legal question to me. Insofar as it is, I think it is simply a commercial bargain that was struck between the States at the time and the

claimant, Les Pas Holdings, and Advocate Falle. So the reasons for that, I am sure, will be recorded somewhere and the Deputy should refer to them. It was simply a bargain that was struck and that frequently happens with civil litigation, as this claim was. The parties decide for practical reasons that they do not want to incur the costs, expense and risk, of court proceedings and they arrive at a mutually acceptable bargain struck. As regards to the Deputy's wider question in relation to the foreshore, I think perhaps he is referring to the risk of further claims. There has only been one and that was the one that was brought by Les Pas Holdings and Advocate Falle. One can never predict whether someone will bring another claim in the same way as Les Pas Holdings. But, if they were to do so, my view is that claim would fail. I am not sure it is necessary for me to go into all the legal reasons for why that is my view, but the important ones are the arguments that were put forward on behalf of the States as regards the nature of the Crown's ownership will still all be available in any future such claim. But, in addition, there are further arguments that now have much more force, which concern the de facto control by the public in those series of contracts from 1895 onwards. Importantly, also, the lease of the foreshore in 1950 such that basically any Seigneur whose property adjoins the foreshore will now face far greater obstacles in showing that they had in fact ownership of the foreshore than they did in relation to the Les Pas Holdings claim back in the late-1990s. It may be that, for instance, Les Pas Holdings brought their claim shortly before the expiry of the 40-year period from the date of the public's lease of the entirety of the foreshore back in 1950. So, in my view, while I can never predict or rule out further claims in relation to the foreshore by Seigneurs, in my view those claims would fail.

Deputy M.R. Higgins:

Could I ask the Attorney General, I do not want to ruin your evening, but could you please have a look at anything you have on Les Pas Holdings and just see if there are any other implications other than the Seigneurs, which could affect this debate?

The Attorney General:

The answer to that is no, Deputy. I have already done that.

Deputy M.R. Higgins:

I will come back probably tomorrow with some other points. Thank you for your answer.

The Greffier of the States (in the Chair):

It is 5.28 p.m. so we need to decide what to do at this point. I have ...

The Deputy of St. Ouen:

Could I propose the adjournment please?

The Greffier of the States (in the Chair):

I need to do a couple of things first. No one has indicated a definite wish to speak at this stage. The Deputy of St. Ouen has called for the adjournment and I ask whether we might hear from the chairman of P.P.C. about tomorrow's business and the Deputy of Grouville has asked about continuing the debate. I do not know whether, Deputy Labey, the chairman of P.P.C., whether you wish to say anything at this point?

Deputy R. Labey:

Only that tomorrow's business is to complete this debate on the foreshore. Deputy Ash has deferred his drinks promotion but P.106, moving to a 3-week sitting, is still on the Order Paper and the Assembly will be asked if it will take that also tomorrow.

The Greffier of the States (in the Chair):

Deputy of St. Ouen, you have moved to adjourn?

The Deputy of St. Ouen:

Yes, I think this debate will go into tomorrow. I would probably wish to speak. I think, from the number of questions that have been asked of the A.G., other Members will wish to speak and I think now is the appropriate time to adjourn.

The Greffier of the States (in the Chair):

Thank you. **[Seconded]** The adjournment is seconded. Does anybody wish to speak?

Deputy M.R. Higgins:

May I just ask whether, on the Order Paper tomorrow, it has Draft Shops (Regulations), if that has been removed, just to confirm that?

[17:30]

The Greffier of the States (in the Chair):

That was deferred many days ago. I do not think anybody wishes to speak and ...

Senator T.A. Vallois:

Sir.

The Greffier of the States (in the Chair):

I am not sure who this is. Is it the Deputy of Grouville?

Senator T.A. Vallois:

Senator Vallois. There are a couple of things on the chat about questions for the A.G. Maybe if those questions are represented now before adjournment this evening then it gives time for the Attorney General to come back with a response tomorrow.

The Greffier of the States (in the Chair):

That is probably a good idea, as long as we do not have too many. So, Chief Minister, you had a question?

Senator J.A.N. Le Fondré:

So we will destroy his evening. I am happy to reflect on that question overnight and if I need to I will email the Attorney General separately.

The Greffier of the States (in the Chair):

I sense a general consensus that the States should now adjourn and therefore we will do that and return tomorrow at 9.30 a.m.

ADJOURNMENT

[17:31]