

STATES OF JERSEY

OFFICIAL REPORT

TUESDAY, 31st JANUARY 2017

PUBLIC BUSINESS	3
1. Future Hospital Funding Strategy (as amended) (P.130/2016).....	3
1.1 Deputy S.M. Brée of St. Clement (Vice-Chairman, Corporate Services Scrutiny Panel):	3
2. Vote of No Confidence: States Employment Board (P.137/2016).....	4
2.1 Deputy M.R. Higgins of St. Helier:.....	4
2.1.1 Deputy A.E. Pryke of Trinity:.....	12
2.1.2 Connétable C.H. Taylor of St. John:	15
2.1.3 Senator P.M. Bailhache:	16
2.1.4 Connétable M.P.S. Le Troquer of St. Martin:.....	17
2.1.5 Deputy M. Tadier:	20
2.1.6 Senator S.C. Ferguson:	23
2.1.7 Deputy K.C. Lewis of St. Saviour:.....	27
2.1.8 Deputy E.J. Noel of St. Lawrence:.....	28
2.1.9 Deputy S.M. Brée:.....	31
2.1.10 Deputy G.P. Southern of St. Helier:.....	33
2.1.11 Deputy T.A. Vallois of St. John:	35
LUNCHEON ADJOURNMENT PROPOSED.....	37
LUNCHEON ADJOURNMENT.....	37
2.1.12 Deputy J.M. Maçon:.....	38
2.1.13 Deputy R.J. Renouf of St. Ouen:	41
2.1.14 Deputy S.Y. Mézec of St. Helier:	42
2.1.15 Senator A.K.F. Green:.....	43
2.1.16 Deputy D. Johnson of St. Mary:	48
2.1.17 Deputy J.A. Martin:	48
2.1.18 The Connétable of St. Peter:.....	50
2.1.19 Deputy C.F. Labey of Grouville:.....	57
2.1.20 Connétable D.W. Mezbourian of St. Lawrence:.....	58
2.1.21 Connétable J. Gallichan of St. Mary:	61
2.1.22 Senator I.J. Gorst:	37
2.1.23 Deputy M.R. Higgins:	68
ADJOURNMENT.....	77

[9:31]

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

PUBLIC BUSINESS

1. Future Hospital Funding Strategy (as amended) (P.130/2016)

The Deputy Bailiff:

We now come on to Public Business. The first item of Public Business is the Future Hospital Funding Strategy, P.130/2016, as amended. At the last meeting the Assembly agreed under Standing Order 79 to request that Corporate Services Scrutiny Panel consider having the proposition referred to it. So, vice-chairman, can you advise whether your panel wishes to review the proposition?

1.1 Deputy S.M. Brée of St. Clement (Vice-Chairman, Corporate Services Scrutiny Panel):

Thank you very much. Yes, the Corporate Services Scrutiny Panel does wish to review the proposition. A number of things came up at the debate, which increased the workload that the panel believes needs to be done for this review. This is a review covering a very important area and a lot of other things were brought up during the debate and I would particularly like to thank the Deputy of St. John for raising the issue of the Public Finances Law question, which directed the panel in a certain direction to look at as well. As such, bearing in mind the magnitude of the work that we have to do and the importance of this review, the panel would like to propose that the proposition is brought back for debate on Tuesday, 18th April.

The Deputy Bailiff:

Is that proposition seconded? **[Seconded]** Does any Member wish to speak on the proposition? Those in favour of adopting the proposition to bring it back on 18th April kindly show.

Deputy M. Tadier of St. Brelade:

Can we have the appel please?

The Deputy Bailiff:

The appel is called for and I invite Members to return to their seats if they have left them. I ask the Greffier to open the voting. The vote is on whether or not to agree that this matter comes back before the Assembly on 18th April.

POUR: 34		CONTRE: 4		ABSTAIN: 2
Senator P.F. Routier		Senator L.J. Farnham		Senator A.J.H. Maclean
Senator I.J. Gorst		Deputy S.J. Pinel (C)		Connétable of St. Peter
Senator P.M. Bailhache		Deputy of St. Peter		
Senator A.K.F. Green		Deputy A.D. Lewis (H)		
Senator S.C. Ferguson				
Connétable of St. Clement				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				

Deputy J.A. Hilton (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy S.Y. Mézec (H)				
Deputy of St. Ouen				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

2. Vote of No Confidence: States Employment Board (P.137/2016)

The Deputy Bailiff:

The next item is the Vote of No Confidence: States Employment Board lodged by Deputy Higgins and I ask the Greffier to read the proposition.

The Greffier of the States:

The States are asked to decide whether they are of the opinion that they have no confidence in the States Employment Board.

The Deputy Bailiff:

Before I ask the Deputy to move the proposition could I advise Members that Standing Orders allow subjects of a proposition of no confidence to speak a second time, should they wish, before the conclusion of the debate. I understand the Chief Minister proposes to speak only once during the debate but in light of the provisions of the Standing Order I will call upon him to speak last. Once every other Member who wishes to has spoken I will call the Chief Minister to speak and once the Chief Minister has spoken then Deputy Higgins will be in a position to reply. That is in accordance with Standing Orders. Members will be aware that the Bailiff provided guidance to Members which was circulated by email about the conduct of this debate and the application of the *sub judice* rules under Standing Orders. Consequently, while I am not minded to direct Members not to refer to the case involving Mr. Alwitry nevertheless of course this Assembly is not an appropriate venue to decide questions of law or indeed liability, and Members should not refer directly to the contents of any pleading put forward by Mr. Alwitry to the court or put arguments as to whether his case should or should not be successful. But it is fair to comment on the case in the context of the proposition before the Assembly at the moment. Deputy Higgins.

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

Just a few comments to say first. Just to point out to Members that I have not had any communication with Mr. Alwitry. I have no knowledge of what his orders of justice claim so I will not be referring to anything I believe that is in his pleadings. I am doing it basically on the information that we have received. I hope Members have been reading their homework. Now we have had 531 pages of information in 3 documents, plus we have had probably about another 200

pages in others. It is tremendously detailed, lots of counterarguments and so on, but I am not planning on going through it all. The number of Members who when they saw the lectern thought it is going to be a very long speech, it will not be because essentially at the root of this thing it is quite simple. However, I will apologise to Members in advance that I do not have a written speech because I have been spending my time going through all this and reading it in detail. As Members are aware, votes of no confidence are very rare occurrences and they are not brought lightly. I brought this vote of no confidence to the States Employment Board and the Health Department for a number of reasons. Firstly, the findings of the States of Jersey Complaints Board. Now their report is very thorough ...

The Deputy Bailiff:

I am sorry, I do hesitate to interrupt you but did you say you have brought a vote of no confidence against the Health Board?

Deputy M.R. Higgins:

It is implied in the Health Department because although the States ... sorry, the States Employment Board oversee employment in the Island, the faults that have been perpetuated in the Health Department have been endorsed pretty well by the States Employment Board. So it is the States Employment Board that I am attacking, in particular.

The Deputy Bailiff:

To the extent of course that any criticism of the States Employment Board is founded upon a criticism of the Health Board over which they supervise then that seems to be a legitimate point of view to raise, but I would not wish to see this conflated into an attack on the Health Board of itself as opposed to the States Employment Board, which this clearly is.

Deputy M.R. Higgins:

I shall be addressing the deficiencies of the Health Department and the fact that the States Employment Board have done nothing about it. So going back then, the first reason I brought the vote of no confidence was because of the findings of the States of Jersey Complaints Board. Now they stated that the States Employment Board deliberately and unlawfully chose to breach Mr. Alwitary's contract of employment by summarily dismissing him in what can only be described as remarkable circumstances. At almost every stage of the process, before and after the decision summarily to dismiss Mr. Alwitary, was flawed. It also stated that the board agreed with contemporaneous descriptions of the procedure or lack of it, that was followed in Mr. Alwitary's case, as "appallingly shabby". In the detail of the report they talk about the actions of the small number of clinicians and managers at the hospital who basically were responsible for his dismissal, that they acted as if they were a kangaroo court. These are very, very serious statements made by the States Complaints Board, and I believe they needed to be aired. In the States in the past we have had questions and answers on this case and we do not even scratch the surface. I felt that it is important, win or lose, that this matter is put out there in the public so the people can get the facts of what has been going on. My second reason for bringing the proposition is the fact that the States Employment Board and the hospital are in denial that they have done anything substantially wrong.

[9:45]

The third reason: because they have smeared Mr. Alwitary's name in an attempt to justify their actions against him. Fourthly, because they have attempted to denigrate the work of the States Complaints Board in the same way that the Council of Ministers try to rubbish or call into question Scrutiny Panel reports and recommendations. In other words, it is easier to attack than address the issues. Fifthly, because if the States Employment Board are not held to account for their actions no existing or future public sector employee can be certain that their contractual rights will be upheld

by the States Employment Board, and that I think is a major consideration in this. I might add, I am going to say this now before I forget it, I would like each Member of the States Employment Board, and they have been listed in the proposition at the back of it, those who are members of the original States Employment Board when the Alwitary case was dealt with, and those currently, to explain their role in the actions that they have taken. I think it is absolutely essential that they should because there is confusion as to how they were consulted. Was it by email? What information they had and whether they received all the letters that had been sent, for example, to the Chief Minister or the Minister for Health. Let me address first of all the denial aspect of a reason for bringing it forward. Now the States Employment Board, as far as I am concerned, are in total denial that they have done anything wrong at all. The reason I say this: if we look at their terminology they have said in the evidence they have given to the Complaints Board, and every other document I have seen, that they withdrew the offer that had been made through Mr. Alwitary. Any G.C.S.E. (General Certificate of Secondary Education) student or any student of law, who studied law of contract, knows that if you have an offer made to a person, which they accept unconditionally and they have the capacity to enter into the contract, and there is consideration, then you have a binding contract. What existed at the time that the board consented to the hospital terminating his contract was that they broke it. That is what it is. Not a withdrawal of an offer. That is just words. It is just terminology. It is just trying to confuse people. There was a valid contract in existence, which was reneged upon by the States. They have tried to hide it in all the documents they have. They have never really come out and said: "We broke his contract." Not only did they break it, they broke it deliberately. They knew what they were doing. In all these documents you will find references here and there about law officers or compensation. They knew what they were doing but they tried to hide it from the public that they were deliberating breaking a contract that had been validly entered into. The second reason they are in denial is they keep on mentioning that there was some procedural problem. Slight one-liners. Procedures were not all that good or there were errors in procedure and so on. The truth of the matter is there was no procedure at all. Mr. Alwitary was basically given absolutely no chance to answer any of the criticisms that had been put. In fact, he did not even know about the criticism. This is the most scandalous thing of all. A small group of doctors and clinicians got together and discussed the matter and, in fact, they were saying that he was a troublemaker, that he was asking too many questions, he was raising patient safety issues. All sorts of things. But the most damning one of all, was the fact that they thought he had made a complaint against Mr. Downes, the clinical director, to the B.M.A. (British Medication Association) and they had not. They had no reason to believe it other than through their own stupidity of not asking the B.M.A., as I will come to later. So far as this is concerned then, what I am saying is: that Mr. Alwitary was denied natural justice. He did not know what reasons they were using for rescinding his contract. He was given no chance to explain his part of the issue and he was given no right of appeal. I might add, and this is one of my major criticisms of the S.E.B. (States Employment Board), the S.E.B. are the people who are responsible for all public sector workers. They will probably claim that: "Oh no, we delegated authority to the chief officer of the hospital." The truth of the matter is they may have delegated these powers but they still have a supervisory role. In other words, the Ministers are responsible for making sure that these departments and chief officers, follow the codes of practice, follow the law, and so on. We have an Employment Law from 2003 which gives rights to people. We put out codes of practice which should be followed. My criticism of the States Employment Board is a decision was made to terminate his employment but they did not ask or look at the process by which his employment was terminated. They have a responsibility to make sure that every single employee of the States is treated fairly and appropriately and they totally failed to carry out that duty. So let me also mention too that in terms of process. So they broke his contract, he had no right of hearings, he had no right of appeal. All these things I put at the door of the S.E.B. They should have been making sure that everything was done properly. Now my third reason for bringing forward this proposition is the

fact that they have smeared Mr. Alwitry's name in the attempt to justify their actions against him. In evidence of this, I would like to say that what we have had here was the situation, if we look at some of the things that went on in the hospital. I am going to quote from 2 statements that have been made. These are emails that Mr. Tony Riley, who was the Health and Social Services H.R. (Human Resources) director. His first one was on 13th November to Miss. Julie Garbutt, the C.E.O. (Chief Executive Officer).

Connétable J.M. Refault of St. Peter:

Excuse me, Sir, a point of order. I am just wondering whether we should be referring to actual people's names.

The Deputy Bailiff:

Deputy, if you could refer to, when you wish to refer to people by their titles, their job descriptions that would surely be quite sufficient for Members to understand who they are and not be named in the Assembly when they have no right of reply is obviously something we should avoid as possible.

Deputy M.R. Higgins:

With respect, Sir, these are already included in all these documents. There are a few of them that vets them out but they are named and these are public documents so they are within the public realm. Besides that, I cannot remember their titles anyway. I have got the names but not the title.

The Connétable of St. Peter:

I could assist, it is the Head of Human Resources at the hospital.

The Deputy Bailiff:

Deputy, you were able to say ... you mentioned the gentleman's name and then you gave his title.

Deputy M.R. Higgins:

In this particular case but I do not in every case.

The Deputy Bailiff:

Those where you can would you please do so.

Deputy M.R. Higgins:

I will try to apply it that way. In his letter to the chief executive officer of Health and Social Services, he said: "We have offered Mr. Alwitry the post of consultant in [I cannot pronounce it, I am going to have trouble with this. I am going to say as an eye specialist. I am sorry, I just cannot pronounce the thing] with a December start date. His behaviour and attitude since accepting the post have been atrocious and the medical directors, clinical director, Andrew, Angela and me and my team are agreed to withdraw job offer." That is 13th November. The States Complaints Board stated that this email was grossly misleading and they stated: "On the evidence before us there is no basis, and we mean no basis, for the allegation that Mr. Alwitry's behaviour had been atrocious. The email should not have been sent in the terms that it was." On 15th November the H.R. Director from the Health Department sent an email to the H.R. Director for the States of Jersey asking the States Employment Board to clear the way for the decision to be enacted. He wrote: "Although an excellent candidate with a strong C.V. (curriculum vitae), excellent references and an impressive interview performance his behaviour and attitude since receiving the offer have been consistently adversarial, aggressive, inappropriate, duplicitous, unco-operative and frankly unacceptable. This behaviour has been directed at senior managers and senior doctors, H.R. staff and other clinical professionals in other services. He has now engaged the B.M.A. to support a formal complaint about the clinical director. Even before he started in his post. The clinical

director, not altogether unreasonably, has indicated that he would feel obliged to resign as clinical director if the offer is not withdrawn. We are content that his behaviour constitutes a loss of trust and confidence so fundamental as to undermine a contract of employment. The proposed course of action has some risks and consequences.” He mentions they are outlined below. “But these would have to be managed and in reality would have a relatively short shelf life.” Considering we are 4 years later they were mistaken on that. “Following a discussion with the Law Office the litigation risk is deemed to be acceptable. The maximum legal remedy would be 3 months’ notice and any incurred costs associated with a move to Jersey. We believe these to be nil or *de minimis* at this point. When he came before this Complaints Board, Mr. Riley declined to answer questions about the inclusion of such comments in the letter and the reasonable inference was taken that the alleged complainant and potential resignation was to smear Dr. Alwitary’s character and to add weight to the cause that he should be dismissed summarily.” With regard to matters of patient safety, which are part of Mr. Alwitary’s case, Mr. Riley stated that: “Dr. Alwitary’s concerns regarding patient safety were exaggerated and were merely a smokescreen.” The board said: “The board referred to various letters from medical professionals which appear to support Mr. Alwitary’s views.” Mr. Riley dismisses these alleging that they had been written by Mr. Alwitary’s mates. These are some of the most respected eye surgeons in some of the hospitals in the U.K. The States Complaints Board also stated: “It is also aggravating that the hospital took the steps it did after he had raised legitimate patient safety concerns, which is his duty as a doctor and beneficial for the hospital as a whole.” Basically what they are coming to is, there was no investigation of the patient safety concern. Mr. Riley said: “There was a discussion with his clinical colleagues”, the ones who made the decision to get rid of him and they determined that there was no patient safety concern, and that is totally unacceptable. If one thinks that allegations are made by a consultant surgeon about patient safety they should be investigated and the B.M.A. and the other authorities would expect them to be investigated. They have not.

Senator I.J. Gorst:

I am loath to interrupt the Deputy but ...

Deputy M.R. Higgins:

I am not giving way. You can make your point later.

The Deputy Bailiff:

Is it a point of order or a point of ...?

Senator I.J. Gorst:

It is quite difficult because the Deputy is saying no investigation of patient safety has been carried out.

Deputy M.R. Higgins:

Well, you can correct me later.

The Deputy Bailiff:

That is not a point of order, that is a point for you to make in speeches.

Senator A.K.F. Green:

While we do have a break, could I ask that the Deputy refrain from using staff members’ names all the time. Those staff members cannot answer. **[Approbation]**

Deputy G.P. Southern:

The individuals are named in public documents. They are all over the documentation that we have got and it is all public so to mention a name in this particular case is not vital to anybody's reputation because they are named in these documents, all over the place.

The Deputy Bailiff:

The Standing Order is 104(2)(i) and it says: "A Member of the States must not refer to any individual who is not a Member of the States by name, unless use of the individual's name is unavoidable and of direct relevance to the business being discussed." In my view, given that the proposition is put in part on the S.E.B.'s failure to oversee the Health Department and the actions of the Health Department in and about this, then it is, I construe, that an individual's name, the use of it is unavoidable and is of direct relevance and accordingly if the Deputy is unable to use a title then he can use a name in order to explain the position.

Deputy G.P. Southern:

Will the Chair give us 10 minutes to go and find out what everybody's role is so we do not fall into this trap of naming them?

The Deputy Bailiff:

No, Deputy, I have agreed with you. I have said that names can be used in the circumstances because in my view they are unavoidable and of direct relevance to the business in question and are within Standing Orders.

Deputy G.P. Southern:

My apologies.

The Deputy Bailiff:

But, Deputy, that is not to say if you know the title you should not use it in preference to the name.

Deputy M.R. Higgins:

I shall try and use the title, if I can.

The Deputy Bailiff:

Thank you very much indeed.

[10:00]

Deputy M.R. Higgins:

What I am trying to say is part of the reason for bringing this is the smear on Mr. Alwitary. He was doing his duty as a doctor to bring forward concerns and although I know that probably the S.E.B. will say: "Oh, we commissioned a paper by the former Solicitor General and he dismissed it", well, I am sorry, the former Solicitor General, his report is not that brilliant either. He makes statements somewhere where he says there were patient concerns but he came to a different conclusion. However, the point is, they should have been investigated. Now what I will say though, and this is you could argue in favour of the S.E.B., the Complaints Board felt that the letters that the human relations director of the hospital put forward were misleading and may have misled senior management and the States Employment Board. To be perfectly honest, I would have expected, and this is one of the criticisms I have of the S.E.B. is when they were told of what was going on they should have looked at the process and what was being said and satisfied themselves that they knew what was going on. In fact, within a very short period of time they knew that there were counterarguments coming in. Shortly I will be circulating a letter from one of the consultants in the hospital where he raised issues about the way that Mr. Alwitary was being dealt with and also the fact that he had not been given a proper hearing, and also many of his concerns were correct. So I

think to sum up that particular section is I happen to believe that, as in many things, these particular clinicians and managers decided to get rid of him. I will make an interesting comment as well. There were about 5 of them involved, only 2 of them were ever involved in communications with Mr. Alwitry, written communications. Basically a lot of the information was coming from 2 sources. One was the clinical director, and I have to name him, it is Mr. Downes, because he plays a central role in this, and also Mr. McLaughlin who is the managing director of the hospital. They were the ones who had the main dealings with Mr. Alwitry. It is their comments that are being fed back into what was basically a gossiping type thing. There were no facts supporting them, it is just them talking. Only 2 people were involved in the major discussions. My fourth reason for bringing the vote of no confidence is the fact that the S.E.B. through their responses is trying to denigrate and rubbish, I would argue, the work of the States Complaints Board. The argument that has been levelled against them is that they did not follow their own terms of reference and that they did not allow the S.E.B. to introduce new evidence. Well, first of all there is a lot of conversation in the documents stating that the secretary to the States Complaints Board sent out what the terms of reference were and how they would be dealing with them. But the bottom line of the role is to determine whether the procedure that was followed was fair. They primarily are not concerned with the merits of the case. They are concerned with what was the procedure that was followed and was it fair, and in fact if I just mention some of the other complaints we had. The Deputy of St. Ouen can verify the role of the Complaints Board if he wishes to. I will set it out: "During hearings the board of 3 panel members assess cases and determine whether in accordance with the Administrative Decisions Review (Jersey) Board 1982 a decision or action of a States body is contrary to law: was it unjust? Oppressive? Or improperly discriminatory? Was it based wholly or partly on a mistake of law or fact? Could what they have done not have been made by a reasonable body of persons after proper consideration of all the facts, or was it contrary to the generally accepted principles of natural justice." Now, although there are complaints from the States Employment Board that they moved away from the terms just bear in mind that is their role to implement the procedure and make sure things have been done fairly. In other words, people have the right to natural justice. If someone has made a complaint against them they should know what the complaint was. They should be given the opportunity to answer the charge that is against them and explain their side, and they should have an appeal. The States Employment Board, in their case, put forward no justification of the procedure that was followed. Why? Because there was not a procedure. He was not given any of those rights, it was determined by the 5 doctors and clinicians. They were the ones who decided to get rid of him and then they gave these exaggerated or misleading justifications to the S.E.B. and the end result was Mr. Alwitry was ... so they reneged on his contract. What the S.E.B. did, however, was to put forward what they argued were the merits of the case. We have all these reasons why this guy was a troublemaker, that basically he was giving us a hard time because he was writing lots of memos, he was doing this and that, and so on. The point is the States Complaints Board is not a tribunal, they are not there to determine the facts and determine whether the hospital is right or the S.E.B. are right, or Mr. Alwitry is right. Their role is to look at the procedure and they did that. However, where they are being criticised is the fact that the States Employment Board spent so much time on the merits and they were making certain allegations, and the States Complaints Board pointed out that on the basis of the evidence that they saw they did not think the merit stood up. That is what they did not like because someone was challenging them. They were relying essentially on the Solicitor General's report and some other things which came after the fact. So, as I say, they have been criticising the Complaints Board for their own failures essentially. They could have brought an argument that they followed a procedure but as they had not they could not argue it. So therefore there was no evidence that they had done anything correctly. All they tried to do is keep on saying the ends justify the means. We think this guy is a bad actor, we have all these reasons for getting rid of him and that is good enough. They also state at various times: "We would succeed in a court or some tribunal because

we have all these facts.” The truth of the matter was there was no testing of anything they put forward. No one had heard the evidence they put forward and had a chance to cross-examine or to question it. The whole thing was a charade. In addition to this just look at the tactics of the Minister for Health who, I assume, was working directly for the S.E.B. because it is put out together. The report of the Complaints Board was put to the States on 4th July 2016. You have seen the size of the documents and so on. The Minister put out, on 11th July, a week later, a press release criticising what the States Complaints Board had done. Basically there was criticising and it gave the impression to the States Complaints Board that they were not taking any of the matters seriously, they were not looking at their findings, they were not looking at their recommendations. All they were trying to do again was to justify the unjustifiable. We know this well because if anybody criticises the Council of Ministers or comes up with a negative report, including Scrutiny, we find they immediately start attacking back. It is part of the process. Just remember who these people are. The States Complaints Board is made up of individuals who have volunteered their time, they are not paid. The 3 members of the panel include 2 advocates, one who is a Queen’s Counsel, and they are very professional people. They have gone about their work in the most diligent way and yet they are trying to criticise these people in the same way they tried to criticise States Members who bring up something they do not like or a Scrutiny Panel who brings up something they do not like or recommendations they do not like. I think that is totally unacceptable. Why would anybody want to volunteer to play a role in assisting the States and do this particular role - which is trying to look at the facts and try to point out where they failed the people who have come forward. So my view here is that the attacks on the States Complaints Board are unwarranted and wrong. Now, my fifth argument in bringing the vote of no confidence was because if the States Employment Board are not held to account for their actions then no existing or future employee of the States, or anybody for that matter who is dealing with the States ... I am dealing with people at the present time who have been badly wronged by a States department. What happens? They have to fight them. Not matter the strength of their argument or the justice on it, we end up having a system where individuals have to act as litigants in person because they cannot afford the legal charges and yet we use the Solicitor General or the Attorney General or Crown Advocates paid for out of taxpayers’ money to rubbish these people and their arguments. Now, that is not acceptable. I think we need bodies like the States Complaints Board who will be fearless and are prepared to put forward the arguments without bias. They are not biased people, they have looked at the evidence and they have come to the conclusions they have. They should not be being attacked by this States Employment Board. As I said, who in the States at the present time can believe that they will be treated properly by the States Employment Board. If Mr. Alwitry did not even know the charges that were against him, was not given a hearing and was not given an appeal, and bearing in mind the law states ... we have codes of practice for disciplinary and other proceedings, which the States are supposed to be overseeing, the law says that they should have a right to be heard and yet we have totally ignored that. The States are supposed to be, as I see it anyway, the best of employers, it should be setting the example that we expect all others in the private sector follow and they have not. They have basically ignored all their own rules, all their own guidance and allowed this guy to be effectively stitched up. That, I think, is totally unforgiveable. I am going to stop at this point because I have made these criticisms of them and I will be interested to hear what they say and I will obviously use some more of the details I have.

The Deputy Bailiff:

Is that a point of order? I am sorry.

Deputy M.R. Higgins:

I might add that I am pleased that Deputy Pryke is going to speak first. She was the Minister for Health at the time and I would very much like her to tell us what she was told by the human relations director from the hospital, what information she had from the other consultants who were at the hospital, what information she received from B.M.A. and what information she received from the other people who are supporting Mr. Alwitry's claim. Then I would like to know, why was it that they appear to have caved in from, first of all, Mr. Downes the clinical director threatening to resign and later on 14th January, 4 of the clinicians threatening to resign if Mr. Alwitry was reinstated. I look forward to hearing each member of States Employment Board explaining their role in this whole sorry saga.

Senator A.K.F. Green:

Sir, can I seek a point of clarification from Deputy Higgins? The Deputy made references to several patient safety concerns, could he please be specific so we know what we are dealing with?

Deputy M.R. Higgins:

I will mention just one in particular, I can dig out the others for later if necessary. Mr. Alwitry mentioned about operations on a Friday. Certain serious operations affecting eye patients which he wanted to make sure there was a back-up on the Saturday to deal with any complications that may arise, that the person might have to go back into theatre. That is just one. The point about that is we keep on getting from the States Employment Board different versions of what goes on. They have mentioned in their own report how glaucoma patients could be dealt with on a Tuesday and also that there were not many of them. None of this information was put to Mr. Alwitry at the time. So he was making his concerns based on the timetable that they were putting forward. Anyway, we will address these things later on.

[10:15]

The Deputy Bailiff:

Is the proposition seconded? [**Seconded**] The Deputy of Trinity.

2.1.1 Deputy A.E. Pryke of Trinity:

I had the privilege of being elected by this Assembly as Minister for Health and Social Services in April 2009, where I became the third Minister in 2 years following Senator Ben Shenton and Senator Jimmy Perchard. I was Minister for Health and Social Services until the election in 2014. In my first period as Minister for Health and Social Services I was supported by Deputy Noel and Deputy Judy Martin. In a second term as Minister I was again supported by Deputy Martin and also by the Constable of St. Peter, Constable John Refault, who took a particular role, Assistant Minister for Hospital Services. I have set this out in some detail as it is important to realise that I took on the role of Minister during a very challenging and difficult time for the department and in particular the hospital. Between 2006 and 2009 not only had there been considerable instability in the political leadership of Health and Social Services but our hospital had endured a very difficult, indeed, tragic period with 2 patients having died while undergoing surgical procedures. So I make no apology here for majoring on the theme of patient safety in this debate. Many in this Chamber today will recall that Verita had been commissioned in 2009 to report on the circumstances surrounding the tragic death of a staff nurse in theatre in 2006. During 2011 Professor Aitkenhead was commissioned by the Health and Safety Inspectorate to report on clinical governance issues in relation to the death of a gentleman in 2008. As a result of the political instability and the tragic deaths and subsequent review by Verita, I inherited a department and a hospital where morale was very low and all the staff, both clinical and non-clinical, were having to acknowledge some significant failings and address some key challenges if confidence in the quality and safety of our hospital was to be restored in the eyes of the public who relied upon it. Verita, in its report of

January 2010, found longstanding organisational weakness that made for an unsafe patient environment in the hospital on the day that that lady died. Verita also found that at the time of her death hospital systems of risk assessment and risk management were inadequate. Verita found that despite the dedication and skill of many of its staff in 2006 the hospital had an undeveloped culture of patient safety and governance. They evidenced a lack of policies and procedures and unwillingness to report serious incidents and a blame-orientated environment. Verita also found that distant senior management did not engage well with senior medical staff or provide sufficient leadership of the organisation. Verita found that medical management structures were relatively unsophisticated. Verita also found a longstanding culture in the Department of Obstetrics and Gynaecology of individual rather than team working. Their strong impression was of senior practitioners working in relative isolation. This did not allow for regular and timely communication between the 3 consultants. In general, communications between individual and hospital departments were poor and Verita stressed the importance of medical and non-medical managers working together to develop a shared sense of purpose. What a report. The Verita was published in early 2010, it contained 30 recommendations. Of particular note in relation to the debate today they proposed the appointment of a hospital director - there had not been one before - to concentrate on the running of the hospital enabling the chief officer to concentrate on corporate and strategic matters. The appointment of a medical director to review roles, responsibilities and authority of clinical directors in order to strengthen their parts, the clinical parts, in running the hospital. That the chief officer and consultant body should continue to encourage openness about matters to do with patient safety. That the chief officer should ensure that organisational arrangements are in place to support good corporate and clinical governance. I am pleased to say that all the recommendations were put in place. Towards the end of 2010 I commissioned Verita again to return to undertake a review as I wanted to be sure and indeed reassure this Assembly and the public that good progress had been made. I was pleased to report then and now that they found good evidence of progress against all the recommendations. However, it was particularly relevant to note, given our consideration today of the decisions in relation to Mr. Alwtry, that Verita has stated they were mindful of the scale of change they had recommended and that some aspects, particularly those involving behaviours and cultures, would be achieved over a much longer period. In July 2011 to March 2012 Professor Aitkenhead reflected in his report on medical staffing issues, risk management, clinical management and leadership. He concluded that the importance of clinical governance had been recognised by the hospital and many steps had been taken to manage it more effectively. He considered that safety in clinical areas in the hospital was improving and commended the plans and structures that management had developed would improve safety significantly over the coming years. However, this was in 2012 very much work in progress. Professor Aitkenhead also reported that some staff felt there was pressure by some politicians and the press not to exclude a doctor following a serious untoward incident, although he was reassured by the hospital director and the H.R. that all appropriate options are utilised in such cases. He also reflected on the General Medical Council's documents, good medical practice, which, among a number of duties of all doctors, includes working with colleagues in a way that best serves patients, patient's interests and a duty to be honest and open and act with integrity. Furthermore, Professor Aitkenhead noted that there was a States of Jersey whistle-blowing policy in existence and at that time in 2011 the department was working on specific guidelines for its own staff. He also confirmed that when the clinical appraisal process was implemented during 2012 and 2013 an assessment of probity and behaviour would be part of the process. States Members, I feel I have laboured in my reflections on Verita and the Aitkenhead report, and the dreadful circumstances that led to them being commissioned. But my point is that all the department staff, but particularly the senior clinicians who had stepped up to clinical leadership roles, and the expert senior managers who had been recruited to lead the organisation forward and restore confidence in the safety of clinical services in the hospital, are part way through but by no means at the end of the journey. It

is relatively easy to write policies and procedures, it is relatively straightforward to devise structures and set up committees, however it takes far longer for staff to develop the confidence to speak up, to adapt to new ways of working consistently, to communicate and work well in teams. This is about culture and culture can and does take years to establish and even longer to change. So by the time the department started the recruitment process for the third consultant ophthalmologist in mid-2012 good progress had been made in strengthening clinical and corporate governance policies and procedures, clinical leadership was in place and beginning to flourish, communication throughout the organisation was also improving. However, it was still relatively early days, this recovery was fragile and the senior clinical and non-clinical leaders needed time and consistency of involvement and behaviours to ensure the change was embedded. Let me make it quite clear, there was no doubt the recruitment process that led to the selection of Mr. Alwitary for the post of consultant ophthalmologist was not as robust as it should be. These issues were highlighted in both the Beal and the Solicitor General's report which was commissioned by the S.E.B. and have been acted upon. Since 2012 Health and Social Services have very successfully recruited over 20 new consultants, including 3 ophthalmologists. Let me also be very clear that the reason for rescinding the offer of employment was no reflection on Mr. Alwitary's clinical skills. Contrary to the belief of some people, this decision was not taken because a couple of senior doctors had fallen out over private practice. Neither was it because Mr. Alwitary had tried to negotiate aspects of his job plan. Negotiation is part of the process before a new consultant takes up the post. No, it was the way Mr. Alwitary went about this negotiation. The behaviour he displayed, the lack of consideration for any interest other than his own, that was the heart of the problem. His were not actions of a good team player. The decision was certainly not linked to any claims by Mr. Alwitary in relation to patient safety. Paul Beal and the Solicitor General in the basis of their interviews stated clearly that there was no patient safety issue. The British Medical Association and the General Medical Council have both indicated that the dispute between the hospital and Mr. Alwitary related to employment matters and not patient safety. Members may have noticed in the papers provided by the States Employment Board to States Members that there is a briefing note from the current hospital managing director that clearly explains the potential safety issue raised by Mr. Alwitary and explains the operating schedule offered by the hospital enabled the potential risk to be successfully managed. Interestingly, this was confirmed in an email exchange between Mr. Alwitary and the hospital in which he set out the potential problem and the variety of different options for managing the potential risk, 2 of which were options provided by the job plan offered by the hospital. As Members know, I was a practising nurse for over 30 years and patient safety and patient care has led me to accept the challenge of leading the department forward in those very dark days leading to the publication of the Verita report. To put it plainly, I would never ever compromise patient safety or knowingly allow others to do so.

[10:30]

For example, when a well-regarded local G.P. (general practitioner) raised potential safety concerns I immediately met with him to seek details so that an urgent investigation could be undertaken. I also asked the managing director and the medical director of the hospital to meet urgently with the G.P. This took place within 24 hours. However, the G.P. concerned was unable to furnish evidence or details of any specific issues to enable an investigation to take place. So when the senior clinical and management leaders in the hospital approached me to highlight their concerns about the behaviour and approach of Mr. Alwitary I sought an urgent briefing for myself and my Assistant Ministers. But I needed to be sure myself. I followed this up, I spent at least a full afternoon reading the copious email correspondence and other evidence to understand for myself the issues raised and I was continued to be fully briefed. It was clear that Mr. Alwitary's actions and behaviour fell well outside the spectrum displayed by most doctors. This has been captured clearly by both the Beal and the Solicitor General's report. During that process I still continued to

challenge both the clinical directors and the management directors. Perhaps in a larger hospital with a very large body of consultants and also a much larger team of established and experienced ophthalmologists the type of behaviour could possibly have been successfully managed without detriment to the efficient and smooth operation of the hospital, but this was not the case in this instance. Jersey General was still in the early days of a journey to embed strong culture of clinical governance and leadership. There was and still is a small consultant body and a team of only 3 ophthalmologists, 2 of whom at the time were likely to be relatively new and inexperienced after both longstanding consultants retired, one imminently and one within 3 years. With such small teams, good team working, the interests of the patients and not self-interest is paramount. Remember the key findings of Verita: patient safety is directly affected by poor team working, poor communication, consultants working as individuals or in isolation, distance or strained relationships between clinicians and management. Indeed, these were some of the factors among key findings in Robert Francis Q.C. (Queen's Counsel) in the Mid-Staffordshire investigation. This was not a decision that was taken lightly. The ministerial team asked for and received much evidence, questioned rigorously the senior managers and the doctors involved. Nonetheless, I believe then, and I still do today, that the right decision had been taken in the best interests of the hospital and the safety of patients using the services of our hospital. The hospital is fortunate to have a dedicated and professional team of senior doctors, nurses and managers and other professionals who lead their colleagues with integrity and absolute focus on safety and the well-being of patients. I need to thank them for that service. Lastly, as the Minister then and as a nurse, my every instinct, and indeed it was my professional duty, was to prioritise and promote patient safety. This is precisely what I did in this instance, based on evidence, and would do so again to ensure that the learning from Verita and others were not wasted and patients potentially put at risk. I have no hesitation in supporting the States Employment Board and that the vote of no confidence should be thrown out. The right decision was made for the interests of the hospital and most importantly the safety of all patients that walk into it.

2.1.2 Connétable C.H. Taylor of St. John:

I think the Alwitry case is more a case of the straw breaking the camel's back. My concern is firstly towards the States Complaints Board. This is a highly proficient, highly recognised, eminent board who make detailed reports, study the position in depth and report to, eventually, this Assembly. The manner in which the S.E.B. rubbished their report I found deeply disturbing. It is vital that we have a States Complaints Board. We do not always get it right and therefore there needs to be a recourse for any member of the public to go and raise their complaints to a complaints board. If we just ignore their work then in all likelihood these eminent individuals will resign and no individual worthy of the post will come forward in the future knowing that their work and the hard efforts they make will not be taken seriously. I have stood in this very spot on a number of occasions when boards have made reports to this Assembly and I have said we should support those boards, they have done the in-depth inquiries. The Chief Minister has nodded in agreement with me that, yes, they are invaluable and, yes, we should listen to their advice. Yet on this occasion, despite all their hard work, despite their in-depth report it, in effect, was thrown out and rubbished. That is what concerns me a very great deal. The second issue is the fact that the States have not yet resolved the 2015 wage negotiations with States employees. Picture yourself as a States employee queuing up to pay your tax just before Christmas, a couple of months ago, because that is what you have to do, is you pay the difference between the I.T.I.S. (Income Tax Instalment System) when you get a tax demand and your Christmas savings have been spent paying the tax man not being spent on festivities. So you queue up to pay your tax but you do so in the knowledge that the wage increases that are probably due to you from 2015, 2 years ago, is equal to or greater than the amount of tax you are being asked to pay, because the States Employment Board have not done their duty and made the necessary pay awards for 2015. I am embarrassed, seriously embarrassed,

to think that some of our employees get a tax demand demanding that this tax is paid and if they do not they will be surcharged, when in all likelihood it is because the S.E.B. have failed to make the wage increases of 2015 necessary and the money owed to them paid to them. I daresay the Chief Minister will stand up and say: "These are awkward people, we have tried very hard." I am afraid I am somebody who measures success taking into account effort. But for this to go on for 2 years I think is not acceptable and it is for that reason, again, that I have very, very great concern. I ask Members of this Assembly to think very deeply and not to be led astray with just one case, that of the Alwitary case, but instead to look at the broader implications: the States Complaints Board; the wage rises that have not been paid for 2015, not been paid for 2016; and the uncertainty working at the present moment of not knowing what your wages are. This does not happen in the private sector and we should be setting the example because we create the employment laws and we have a duty to set that example, and I am very sad to say that example is not being set. I think we need a fresh S.E.B. and I will be supporting this proposition. Thank you.

2.1.3 Senator P.M. Bailhache:

This is a curious proposition. It is ostensibly founded upon 4 different complaints against S.E.B. but the reality is that it seems to be founded only upon the complaint of Mr. Alwitary. The other 3 complaints, do not, to my mind, add up to a row of beans and it is quite interesting that the proposer - unless I missed it - did not refer to them once at all. So we are talking about the Alwitary case. The curiosity is that the Chief Minister's position as chairman of the S.E.B. is a matter of law. The Chief Minister cannot resign as chairman of S.E.B. The only thing he could possibly do would be to resign as the Chief Minister. It is true that he could appoint a delegate to chair the S.E.B. but that, I think, would not really do. So the reality and the stamping of feet from the other side of the Chamber seems to underline this. The reality is that this is an attack upon the Chief Minister himself. Members, I think, should be very careful before considering casting a vote for such a proposition and requiring Deputy Higgins to be extremely clear in his accusations first of all. I have a sense of being taken by Deputy Higgins down into the weeds at the bottom of a murky and muddy pond and I would like to surface in order to breathe and to reflect upon what the Assembly can fairly require of the S.E.B. I would start with the functions of the States Employment Board which are set out in the comments of S.E.B., at page 6 if Members would like to refer to it. Article 8 of the relevant law provides at paragraph 1(b) of the function of the S.E.B. ... and this seems to me to be the only one which is in any way relevant to Deputy Higgins's proposition. "The function of the S.E.B. is to ensure that the public service conducts itself with economy, efficiency, probity and effectiveness."

[10:45]

So the S.E.B. can be held politically accountable for the actions of public servants who do not conduct themselves with probity and effectiveness. We have a very recent example in a different context of a Minister or Assistant Minister taking political responsibility for serious errors on the part of others in relation to the Innovation Fund. It is not obvious to me that any of those errors were mistakes of the Minister or Assistant Minister personally, but he took political responsibility for them. Political accountability works in our Assembly but in that instance it was crystal clear - crystal - that something in the public administration had gone seriously wrong. We had the report of the Comptroller and Auditor General, which laid out the errors in graphic form. So what is the position here? We have a tangle of accusation and counter-accusation coming from Mr. Alwitary, from Deputy Higgins and from others. The Deputy has accepted one side of the argument and I must say that I am inclined to accept the other side, but the truth is that the Assembly cannot know for certain whether or to what extent there were errors on the part of public officials in the case of Mr. Alwitary until the facts have been examined dispassionately and objectively. Fortunately, this is going to happen. Mr. Alwitary, having failed to take his complaint to the Employment Tribunal

some time ago, where he could have received a resolution of his complaints, has taken an action before the Royal Court. The court will hear evidence from all the interested parties, will hear them cross-examined, will examine the facts and will decide whether Mr. Alwitary was in fact treated unlawfully, as the Deputy alleges, by public officials. So we are being asked this morning to second-guess the decision of the Royal Court without any of the advantages which the court will have to ensure that the truth comes out. The underlying issue of whether something has gone seriously wrong in the public administration has not been established. We have conflicting reports from, as the Constable said, some distinguished individuals, but none of those individuals or boards were acting judicially. We need a decision of a court. My question for the Assembly is how can the S.E.B. reasonably be held politically accountable for the actions or errors or alleged errors of public officials when those errors may not in fact be errors at all? The preliminary basis for political accountability on the part of the S.E.B. has simply not been established, it is not there. How can one say that the S.E.B. has not, and I quote: “Ensured that the public service conducts itself with probity and effectiveness” when the facts have not been examined and the truth established? The Assembly is not a court. It should not go into the murky weeds of these different allegations and counter-allegations. The fact of the matter is that the basis for political accountability on the part of the S.E.B. is not there and I ask Members to reject the proposition.

2.1.4 Connétable M.P.S. Le Troquer of St. Martin:

As a member of the current S.E.B., it is difficult to bring something new and not to repeat issues, although I thought more Members would have spoken by this time to try to offer a new or different view to Members of this Assembly, this especially after some colleague participants in the situation have already spoken and explained their various roles in the decisions that were made at the time, why they made those decisions: the Minister, the Health and Social Services Department back in 2012, or if they were members of the S.E.B., again back in 2012, a time when the crucially important decisions were made. I thought I might also be speaking after the Constable of St. Mary had spoken, who often brings much sense and valuable, thoughtful contributions as another member of the S.E.B. and I look forward to it if she will be speaking later in the debate. Members will recall that it was this Assembly that elected the Constable of St. Mary and myself, through an election of Members of this Assembly, back in November 2014 to be the 2 non-ministerial members of the new S.E.B. I make no apology for giving that date, November 2014, a date that is long after the important decisions had taken place. However, I wish to stress I accept that if the motion is supported today and this Assembly supports Deputy Higgins and a no confidence vote with the S.E.B., then so be it. It is a vote of no confidence against this S.E.B. and not the previous one. I will accept that decision and I know what steps I will be taking. I cannot speak for other members of the board, but I believe the current S.E.B. members stand together on this issue and firmly believe that we have no case to answer. As I have said before, I am not sure how to bring something new to this debate today, but I hope my few words will assist the Assembly, to those Members who have already expressed their views. Unlike the Deputy, Deputy Higgins, I have written notes, because there are many times we sit down after a debate or after we have given a speech somewhere and think: “I wish I would have said ... it is too late now” and I am sure even tonight I will think of something that maybe I should have said. I believe Deputy Higgins finds himself in a difficult situation, not knowing who he is bringing the vote of no confidence against. I think Senator Bailhache raised it, and we had not discussed this before, about the same thing. I have thought about the Deputy’s predicament in recent weeks, after receiving the proposition P.137. Who should be subject to this no confidence vote? The Deputy could not bring a vote of no confidence in the previous S.E.B. That just would not work. Had the Deputy lost confidence in the management of the Health and Social Services Department, either back in 2012 or maybe he has grave concerns about the department now? Was this a vote of no confidence from the Deputy against the States Human Resources Department, again in 2012 or now? Could this be a vote of no

confidence against the 3 ministerial members of the current S.E.B., and a step back, maybe the current 2 non-ministerial members too, as we are one board? Could this be a no confidence vote in the Chief Minister himself and therefore the Council of Ministers? I cannot speak for the Deputy, but I am sure he means it to be the current S.E.B. membership. Reading the first paragraph of the Deputy's report, I started to get confused again, and I think it has been highlighted by a couple of Members who have spoken this morning. Deputy Higgins cites the S.C.B.'s (States Complaints Board) findings to justify: "What was grossly unfair and a shabby act, to denigrate and question the work of States of Jersey Complaints Board, who have investigated the matter thoroughly and with integrity through attempts by the States Employment Board ...". Then he goes further with the Chief Minister, and further again, the Minister for Health and Social Services. The Deputy then appears to aim the entire argument of the report prepared by the States Complaints Board and then goes on to discuss the situation in his paper regarding other individuals, 3 other individuals, in the previous 8 years, one of them which had no connection or involvement with S.E.B., and another related to something that occurred with the S.E.B. prior to the previous S.E.B. That brings me back to whether or not the Deputy is attacking this board as a board or maybe the actual system that we have as to how the S.E.B. runs and operates. If that is the case, then maybe a proposition should have been brought by the Deputy to remove and disband the S.E.B. completely from their defined role and have different control over States employees. A Member of this Assembly, not in this debate, because she could not use the word, had called it "a something muddle." I think Members might know, it was "a something muddle." I will not repeat that comment because it is not parliamentary, but I am not sure if it is an actual muddle. I think Members will agree that they all know more about this case now than they ever did and I certainly hope they do. The detailed explanation surrounding the decisions that were made in 2012 will and are being fully explained today, facts that Members had the opportunity to gather yesterday at a briefing held for States Members. Unfortunately, at that briefing, only half the States Members were able to attend, probably because of other commitments. Anorak as I may be, I keep cuttings and notes, files and minutes, and I located my first involvement with this, in this situation, on 9th April 2015, nearly 2 and a half years down the line from when the decisions had been made. I was briefed as a new S.E.B. member some 4 and a half months into my term as an S.E.B. member on the background of a pending case involving a Mr. Alwitry, and it was likely to be heard by the courts, panels or tribunals in due course. Up until that date, I had no knowledge, to my recollection, of this matter. Since that time - and the Deputy has spoken about the amount of paperwork he has - I have 2 and a half arch-lever files full in my office back in the Parish. I do not give that as an excuse. I have already explained as to where I stand, how I should go forward if the Deputy's vote of no confidence succeeds today and I stand with my colleagues in S.E.B. There is no point in repeating the subsequent timeline of events now because that has been well-rehearsed this week, and in response we, S.E.B., have submitted and by the various speeches that we have heard already today. The S.E.B. of today, and I am sure every board before ours, do not attend S.E.B. meetings and make decisions lightly. I will not boast about the number of meetings that I have attended on S.E.B. or the work we have worked on on the subpanel that has been formed following Deputy Southern's proposition on redundancy. I know the Constable of St. John has now brought up a different aspect of today's debate, but I am sure the Chief Minister later on will be explaining the amount of work that has been done in relation to wage negotiations with the unions. There have been a number of occasions when I have openly stated to my colleagues on S.E.B. that I can only put forward ideas and suggestions and that I do have to rely on the advice from professionals, from the officers or from consultants that do this, as they are trained professionals. Why have them otherwise? It is easy to try to become a Jack of all trades, and I am not implying the Deputy is a Jack of all trades at all, but I like to listen, to learn, to ask and sometimes it is just common sense, the answers that come forward. A little knowledge can be dangerous, so do not read a medical book if you have got a headache or a pain in your kidneys, go to a doctor. I have asked for advice

from the S.E.B. members, and from our experts and officers employed in the H.R. Department. What on earth are they there for otherwise and why have they been recruited to the most senior positions if they are going to give us incorrect advice so often that maybe the Deputy might suggest or suspect happens? For the further advice we receive from trained negotiators in wage disputes, from the States Reward Team, Pensions Department, the Treasury, recruitment and H.R., and if Members are unaware, the advice we received and continue to receive is from the Island's most senior legal advisers, in particular in this matter from the learned S.G. (Solicitor General) and the previous S.E.B., who received advice from the S.G.'s predecessor, who in turn has sought advice from senior legal advisers on this type of situation from barristers and others in London, who specialise in such disputes. The decisions are not made on a raffle, by looking at tea leaves or tossing a coin. They are not made in haste. I hope Members are not thinking that I am trying to make light of the situation, a very serious situation. I remind Members that we all, each Member, rely on advice daily.

[11:00]

The Ministers and the Assistant Ministers do, from their expert advisers; the Connétables. We even have to seek advice in our Parish, would you believe? The Scrutiny Panels, how often do we hear how important our Scrutiny Panels are, because they go to experts for advice? Members who sit on all the other forums, working parties, committees, panels that form part of this Government, the Planning Committee and their officers, who know the laws inside out, and Members must also remember - I will just stress this point - that apart from the 3 ministerial positions on the board and the 2 non-ministerial positions, we have a totally independent member, an expert in her field, who brings sound reasoning and advice on every topic we discuss, an independent, non-executive director and whose considerable range of experience was explained to Members yesterday at the briefing. I could go on. I will not. I just hope my comments assist Members to understand some further background and other aspects of S.E.B. work. Although I have to accept the decision was made that this matter could be debated in the Assembly today, I must say, for no other reason and not a delaying tactic on my part, I really believe the matter should not have taken place following the serving of proceedings on the S.E.B., but I bow to the decision of the Bailiff and his reasons behind it. We could seek to hold this in-camera. That was an even worse option. Why consider in-camera just because the case is pending? But we know that the public and Members of this Assembly do not like in-camera debates and history tells us that such debates get out in the public within hours maybe and the Assembly can vote to release the transcripts of any in-camera debate anyway. I suggested at a recent S.E.B. meeting prior to this debate an alternative reaction from S.E.B. members, the current members, could be that we not speak in this debate, that we make no comment because of the situations we find ourselves in with the Royal Court hearing to follow. But we speak and we are where we are today. I look forward to the next time we sit in this Assembly and a Minister refuses to answer a question because the matter is pending legal proceedings or is *sub judice* because legal proceedings are pending. I have kept my comments as best I could away from the pending case. I ask Members who are considering supporting Deputy Higgins' vote of no confidence today how they would have dealt with the matter in 2012 or how they would have dealt with the matter if they had taken up a position in the S.E.B. in November 2014 or April 2015, when the Constable of St. Mary and myself were briefed on the matter, or more importantly, how they would have dealt with it after the publishing of the report of the Complaints Board last summer. We could concede, offer Mr. Alwitary full and final settlement of a considerable figure and putting the Innovation Fund in the shade, that is the fact of it, or change the S.E.B. position, a decision of 2012, and decide to employ Mr. Alwitary after all, write to him offering him the job. No, I suggest they would not, and certainly not on the advice we had continually received, provided by the S.E.B. I suggest they would listen, take on the advice, attempt to reach a fair settlement and hold firm, as we have done. I go back to what the former

Minister for Health and Social Services said, the Haste Report, the Beal Report, the former S.G.'s review and advice from senior lawyers that deal with such matters in the U.K., advice from the H.R. employment relations officer and his team. Votes of no confidence are not nice, and especially when they are called by colleagues that we work with during our term. In my short time in this Assembly, I have seen just a few, not against committees or ministries, but individuals, and 2 censure attempts were withdrawn, one before debate and the other failing to find a seconder, one no confidence proposal withdrawn before a debate and another heavily defeated in this Assembly. There are a few because they are so important to those that are involved. It must not be taken lightly and the no confidence being at the extreme. They are not nice to have to defend, and worse still for the individuals concerned. Six years ago, I never for one minute thought I would be speaking in an Assembly in a no confidence debate, especially one involving me, accepting that we are a group and not as an individual. You have to toughen up in the States and in the Parish in the role. I have said many times since becoming a Member, my hair may have thinned in recent years, but my skin has thickened. It has had to. You cannot please everybody. However, when your decisions are questioned, then you worry, maybe you have got it wrong. If Members support the Deputy today, then so be it. However, I stand by my decisions, whatever they may be, mistakenly or not, but assure Members none have been taken on a whim. I like Deputy Higgins, his tenacity to reach out, ask questions, delve, dig. Maybe sometimes a phone call would suffice, but the Deputy, he does what he is there for and I do admire him for that. However, Deputy Higgins is accepting the result of the Jersey Complaints Board as being correct, final and without question. In effect, he is saying the Complaints Board must be right in every aspect of their comments held in their report, some of which should have been accepted and changed prior to the report being published. Before the Complaints Board had commenced, some of the issues had been resolved before their report had even been completed. I am disappointed he did not accept the invitation extended to him I think some time ago to discuss the matter with members or a member of the S.E.B. several months ago. I take issue when the Deputy talks about "badly treating people, appallingly treated, denied natural justice", all those in his report. I cannot think of one Member in this Assembly, not just the S.E.B., who wishes to or treats people badly. People may not get what they want, in this case maybe what they wanted, but is that treating people badly? I do not think so. If doing something that you think is right at the time is made following that expert advice from numerous sources, further supported by senior legal advisers, it was only made after that careful consideration and with a board that comprises of an independent member. If that is found to be grounds for a no confidence vote succeeding, then I just do not know where we go, where the States go from here. I do not know how this will result today, but if the no confidence position fails, I do not want to read in the media or hear on the radio that the S.E.B. survived a no confidence vote, as recently happened in Guernsey. I do not want to be on a board that is known for surviving. I want to be on a board that has the backing of Members. I know that Members have heard and read the facts in such detail over recent weeks leading up to today. I hope the decisions that have been made by the S.E.B. are now fully supported, even by the Deputy and his 3 Members, who in accordance with Standing Orders signed the proposition. That would be a sign of support not just to S.E.B., but to senior clinicians, supporting hospital staff and our senior legal advisers.

2.1.5 Deputy M. Tadier:

It has been said recently that we live in an era of post-truth. That is a word, a neologism, which has been coined quite recently and we will hear statements to the effect that you are entitled to your own opinions, but you are not entitled to your own facts. We live in a world increasingly where elsewhere politicians and spin doctors can tell effectively what are bare-faced untruths on camera to the public in the full knowledge that when they are saying these untruths, they know that the public know that what they are saying is untrue, yet they still do it with a wry smile on their face. This is what we have seen elsewhere in the world. I say that to preface this part of the debate, because I

think that we cannot have it both ways. We cannot have this double-think. We cannot have on the one hand, which has been alluded to by the Constable of St. John, that you can have confidence in the S.C.B. and in the S.E.B. when there has been such a scathing criticism and a comprehensive report published by the S.C.B. I will read a section of that in a moment, just to put that on the public record, because this does boil down to whether we have confidence in the S.C.B. If we reject this today, that we reject their findings and that their findings are not valid, then that must mean that a vote of no confidence follows in the S.C.B. But their report has been on the table since July and nobody, the Chief Minister, Ministers, nobody else has said: "Hang on a minute, we think that this board, these people who constitute it are not fit for purpose, they just do not have the correct intellectual tools to arrive at proper conclusions." It has got to be one or the other. It is possible, of course, to have a lack of confidence in both the S.E.B. and the S.C.B., but it is not possible to have confidence in both of them. Today we have to make a stark choice and that is why we are in politics, to make the right choice for the people who put us here. I would like to read from the conclusions of the report to put these on public record, because I think they do crystallise the nature of the complaints and also the severity of the criticism which is levelled against the S.E.B. and hospital staff at the top. This is from the conclusion in R.75/2006 on the final pages, 158 and 159: "We agree that this case is a paradigm example of introspective and poor decision-making by a small group of senior public officials. While we are only concerned with the procedure that was adopted rather than the substantive merits of the decision itself, the only conclusion that one can reach is that the process was manifestly unfair, was based on incorrect information and advice. It took account of irrelevant considerations and failed to take into account all of the relevant ones, precisely because the process was not designed to ensure that relevant information was confirmed and considered impartially by an independent body. It follows that we also agree that the description by Mr. McNeela of the procedure and lack of it" and I know a letter has been circulated by Deputy Higgins recently with further information from Mr. McNeela: "... that was followed in the present case was 'appalling shabby' and that is completely apt. It is hoped that this decision and the firm criticisms of the procedures adopted by the hospital and the S.E.B. in the present case will serve as a wider lesson to public officials that such archaic practices will not be tolerated. In a small community such as Jersey, there is a particular need for proper, fair, transparent, balanced and independent decisions to be made in order to avoid the strong suspicion that senior officials believe they can implement subjective decisions without proper scrutiny. The respondent's closing submission said: 'The respondent did not act contrary to the law, rather upon legal advice. It did not act contrary to the generally-accepted principles of natural justice. The decision to terminate the complainant's contract was deliberated by senior officers at the hospital, the Director of the Human Resources Department of the hospital, the S.E.B. and Law Officers' Department. On any analysis, this extraordinary level of scrutiny is unique and reflective of the difficult decision presented to the respondent. This is a higher level of process than the usual dismissal decision process.' That is of course the response from S.E.B. That submission, they say, invites us to accept that none of the senior officers at the hospital, the Director, the Human Resources Department, the members of the S.E.B. or the law officers thought there was anything wrong with the procedure that had followed. If that is correct, it is a damning indictment on the practices and competence of all those involved. At the most simple level, it is almost inconceivable that it could ever be fair or appropriate to summarily dismiss somebody on the grounds that there had been a breakdown in trust and confidence, grounds which at least in part were demonstrably incorrect, without informing the person concerned of the details of the case against him or allowing him to make representations and then to deny him his contractual right of appeal of the wholly untenable basis that although he had a binding contract, he had not physically started work. The truly extraordinary feature of the present case is that despite the ostensible level of scrutiny, none of those involved on the States side appreciate the blatant unfairness of the decision-making process. Scrutiny must be robust, diligent and independent, none of which describes how this decision was

reached, nor the way in which the consequences of the decision were subsequently handled.” The final paragraph: “We have summarised our conclusions and recommendations in the decision. For the reasons set out above, we find that the complaint made by Dr. Alwitry is well-founded.” That is scathing. I mean, I suspect that the S.E.B. - I do not think I have met the current incumbents; if I have, I have not been aware of it - I do not think they would use that kind of language lightly, which I think is strong language, but no doubt appropriate in this circumstance. They focus on the key words, and I have got 3 things written down, 3 words here. They are the same word: it is process, process, process.

[11:15]

In these kind of situations, when we do not know what all the facts are at the time, when we are in a process of determining, it is important that process is stuck to and also for the sense of natural justice. In fact, the word “Kafkaesque” has not been mentioned yet, but I think there is an element of Kafkaesque in this and I am sure Mr. Alwitry would have felt that himself. But at least in Kafka’s “The Trial”, there was a trial, albeit that the individual did not know why he was put on trial or what the charges were that he was facing. This is even worse than that, I would suggest. The difference is of course that is not fiction or fantasy, this is reality. This is something that has happened. Now, for the S.E.B. to say that: “It is important that such archaic practices will not be tolerated” what should our response be as responsible, publicly-elected parliamentarians when we are faced with these consequences? There has been some, I think, indirect criticisms of Deputy Higgins for even having the audacity to bring this. I think you can see there is much wringing of hands, people do not like the uncomfortable nature of what is being brought up here but unfortunately this is what happens when mistakes are made. I think this Government, more than any, has got it wrong. Not in the fact that they make mistakes, because the public accept that we are all human, that we all do make mistakes, but the biggest problem with this Government and with this Chief Minister, and in this context as head of the States Employment Board - and he was head of the previous States Employment Board incidentally - is that they cannot hold their hands up when they make a mistake. That is the biggest issue faced with this damning indictment from this independent body which we have instructed and put in place. They cannot say: “Well, we do agree that there are processes that we did not stick to. We do agree that we could have done it better. There were reasons, we believe, for not giving Mr. Alwitry the job.” Obviously, that is still moot but let us presume in their favour that objectively the ends were correct and the means were not. They could have held their hands up and said: “Yes, we have taken on board what this board have said and we will learn lessons for the future.” But of course they always tell us that they learn lessons for the future but they never do and I think this is the problem. So there are 2 reasons obviously Deputy Higgins had to bring this. Who is he going to bring it in? I think he has to bring it in the States Employment Board. He has to bring it in the current States Employment Board, he cannot re-wind the clock but we know, as I have said, that at least 2 of the senior members of that board are the same ones and I think that is what it does. The idea that there might be consequences if we choose to endorse this vote of no confidence, well that is of course the case, there are always consequences in life. It is always the case that there are innocent people on committees or panels or boards who have to go down with the ship, but I think that is recognised, and then we can have a new States Employment Board. But the key thing is not just to rearrange the deck chairs on the Titanic when we get the next Titanic. It is important that we make structural changes, that we do not just put new people on there, new faces and keep the same practices that were there before but that we look at the practices and the processes and that we make genuine lessons and learn for the future. So I am quite happy to support this. It is not by any means a nuclear option, I think it is simply the fact of being accountable. We cannot have a report on the one hand which is some 159 pages of strong criticism and valid criticism being made and then simply say that we are going to brush it under the carpet because the consequences are too great and we are not willing to accept

those. I think we owe it to the public of Jersey to listen to what has been said and make a tough but correct call, in this case to support the vote of no confidence.

2.1.6 Senator S.C. Ferguson:

You will hear a lot this morning, we have already heard some, to the effect that the correct decision was made even though the procedure was “a bit shaky”, or words to that effect. This is on a par with the end justifying the means and verges on the: “I was just following orders, Guv” in the same way officials involved with the whole process expressed an intention to prevent any Scrutiny Panel attempting to conduct a review. You will also be told that the Complaints Board agreed with the decision to break the contract. This is patently untrue. The Complaints Board are quite emphatic that their terms of reference were to examine the procedures. In fact, to quote: “What we can say with certainty is that, on the evidence before us, Mr. Alwitary had very strong arguments that his dismissal was not justified on the merits and that these ought to have been considered by the original decision-makers and an independent appellate body.” The Complaints Board also expressed great concerns that the S.E.B., the hospital, and certain senior States employees and politicians did not understand the strength of the criticisms in the report. The States Employment Board is a recent innovation; it was set up in 2005, as was said yesterday at the briefing. Under the law, the Employment of States of Jersey Employees (Jersey) Law 2005, the board is identified as the employer of States employees with Article 8(1)(c) of the law placing specific responsibility on S.E.B. for “the health, safety and well-being of States employees”. The States Employment Board therefore has the legal identity of an employer for the purposes of the Health and Safety at Work (Jersey) Law and the law also allows the States Employment Board to delegate its function under the law which, in the case of its responsibility for ensuring the health and safety and well-being of employees, has been delegated to the member of the Corporate Management Board in respect of their department or, in the case of a non-executive department, the head of administration of that department. Now while the S.E.B. is able to delegate its function under the law, it is not able to delegate its legal responsibility as an employer. Now, some people in this Assembly have been employers and they know what is involved. Those that have not been fortunate enough, or unfortunate enough, to be in that position yet, I hope one day you are because it really is a responsibility. One of the important things is to treat people as you would be treated. There are occasions when you have to be tough, there are occasions when you have to sack people, and it is not very pleasant, I can tell you. But you have to be balanced, apply natural justice, and be reasonable. So if I have understood the position of the States Employment Board, it has a legal responsibility as an employer. There are procedures that employers follow when dealing with employees and the Complaints Board has identified that the States Employment Board seems oblivious of these correct procedures. A typical example is the relationship between Prospect, the union, and the Civil Service Union. J.C.S.A. (Jersey Civil Service Association) Prospect work together with Civil Service Unite through a representative body called Staff Side as the recognised negotiation body for all civil service contracted members of staff within the public sector. A significant proportion of the public sector are employed on civil service contracts, something like 50 per cent of the staff. Historically, the civil service has been the least militant and most reasonable group of employees when dealing with their employer. But this has unfortunately significantly changed in recent times in response to the actions of the States Employment Board via their chosen representatives, Employee Relations, I will refer to them in future as E.R., with whom all discussions and negotiations are carried out. This change has occurred over the last 5 to 6 years and started with the round of pay negotiations for the period 2011 to 2014 which saw imposed awards being made by the employer due to failure of appropriate and successful negotiations. An undertaking was given by the employers’ side that no future pay award impositions would be made in lieu of proper negotiations taking place. The date of pay awards taking effect and a new timetable was also agreed at that time. The main areas where the union has issues is the S.E.B.

have not ensured that the agreed policy and procedure on the 2015 pay negotiations were followed and imposed a pay freeze without any negotiation taking place. The S.E.B. have failed to meet with J.C.S.A./Prospect to discuss pay and E.R. have met J.C.S.A./Prospect apparently without a proper mandate to negotiate, which has resulted in wasted meetings. There does not appear to be a clear communication route between E.R. and the S.E.B. and thus to recognise negotiating groups. The comment has been made: "We begin to wonder if some matters raised with E.R. have not been presented to the S.E.B." Perhaps the Chief Minister would like to confirm that. There has been no proactive move by the S.E.B. to resolve the ongoing stage 4's failure to agree on 2015 pay that was lodged by J.C.S.A./Prospect and accepted by the employer in 2015. The only action has been a meeting between Staff Side representatives and E.R. which appears to have been un-mandated and a settlement discussed between both sides was not sanctioned or approved by the S.E.B. Then there was an unsuccessful mediation after pressure from Staff Side at J.A.C.S. (Jersey Advisory and Conciliatory Service) and the failure to agree remains ongoing at this time. E.R. have failed to respond in a timely manner to important requests from the union. Despite numerous requests and a visit by the Prospect general secretary, the S.E.B. have refused to meet with leaders of the Prospect Union which is in sharp contrast to relationships with the U.K. Government. In other words, they may have had a lot of jolly good advice from highly-paid advisers, the S.E.B., but they are not using common sense. The U.K. union has vast experience in reform of public sector services and have offered to work with the employer on this project but the employer has still refused to accept these offers. More importantly, or as importantly, because pay negotiations are always important as we all know, there have been complaints to the Minister because of the bullying and harassment in Health and Social Services but there is little, if no, evidence of any attempt by senior officials, management, or whoever, to deal with this. I would be pleased to hear whether this has been conveyed to the States Employment Board. Where does all this fit in with the vote of no confidence? I am returning to the topic, you will be pleased to hear. Where does it fit in with the vote of no confidence? It appears that since 2011 matters have progressively deteriorated and there are a number of factors in common over the period. There has been the same chairman, deputy chairman and chief executive officer operating the States Employment Board. Now, if we turn to the cases mentioned in the vote of no confidence proposition, the various submissions by S.E.B. claim that these are not relevant since none of the existing members of the S.E.B. were involved. I would contend that they are entirely relevant since they reflect a culture which seems to have become endemic in the States. The approach appears to have been: "You have a condemnatory campaign and actions without properly considering the facts." According to our legal framework, and I may be corrected here, but an individual is innocent until proven guilty.

[11:30]

Wrong. The evidence of the activities of the S.E.B. supports the "guilty until proven innocent" syndrome. This may be valid in continental Europe but I did not think it was valid under our system. Two of the other cases mentioned by Deputy Higgins, John Day and Simon Bellwood, were also victims of the system. Mr. Day was used as a scapegoat and Mr. Bellwood was a whistle blower. Where was the enlightened employer then? As a matter of interest under natural justice, Mr. Day has never received in writing the reasons for his suspension. It is not just Kafka, as Deputy Tadier said, it is more like that series with Patrick McGoohan, "The Prisoner": "Come in, Number 1." I became involved when, in common with other States Members, I received a *cri de coeur* from Mr. Alwitry. In my universe, surgeons are always "Mister", none of this "Doctor" business. I have been aware for some time of the culture of bullying in pockets of the States and particularly in H. and S.S. (Health and Social Services) so this particular approach appalled me. I did not know Mr. Alwitry, I had never heard of him, I had never even dealt with his father, but this particular episode, the unfairness of it, was appalling. There are other Members of the States who were interested and supportive because we try to pool our efforts. They know who they are and I

wonder if they will stand up and be counted. The progress of the application from appointment to breaking of the contract has been well detailed in the Complaint Board's report. We were given the version of the episode by Mr. Alwitry and, frankly, we were absolutely flabbergasted. The bits and pieces which dribbled out from the H. and S.S. side were appalling, although some choice gems escaped us. Why would the department and the S.E.B. be so concerned to keep information about the goings-on from the gaze of Scrutiny and, as the particular email apparently says "especially S.F."? I wonder who they meant, surely not *moi*? It is also interesting to get confirmation of the rumour which was circulating that the clinical lead in ophthalmology spoke to the number 2 candidate who had been interviewed to line him up for the position pretty well immediately after the interviews. Paragraph 98 in the Complaints Board report, Downes to McLaughlin, 14th August 2012: "On a more positive note, Matt is still available and wants to work here with no obvious strings attached." But the interviews had only just taken place at the end of July, beginning of August and already they were lining up another candidate. A political group raised concerns about the behaviour of H. and S.S. because it is incomprehensible that a doctor should be sacked before he arrives in the Island. The frightening thing is that S.E.B. appeared to take all the comments made by H. and S.S. as gospel and did not appear to question them. What is even worse, they bowed down to blackmail. Appendix 2 of the comments on the proposition which the S.E.B. have helpfully given us, it is a letter from the chief officer of H. and S.S. to Senator Gorst on 14th January 2013 which intimates that various luminaries would resign if they were overruled. But you need to note that there had already been a meeting on 18th December to which the senior hospital staff, clinicians and chief officer had gone "mob-handed" as McLaughlin had suggested. Both the Chief Minister and the Minister for Health and Social Services had seen the email from the B.M.A. of 30th November saying no complaint had been made and yet this was used as one of the excuses to sack Mr. Alwitry. There were also overt threats to resign to which the only correct answer is to call their bluff. Instead, the S.E.B. were supine and wavered and gave in. An employer caring for their staff? I think not. Then there are the comments by the Complaints Board, I will just quote a few: "The S.E.B. seemed concerned only that the decision should not attract the attention of the H. and S.S. Scrutiny Panel and [as I say] S.F. as well. The Minister and the S.E.B. should have done more than merely rubberstamp the decision of the hospital management. At the meeting at which the S.E.B. ratified the decision of the hospital management, there was a large delegation of the senior staff responsible for the allegations in order to put pressure on the S.E.B." As a matter of fact, the fact that those who condemned Mr. Alwitry were also those who judged him, never struck anybody as a conflict of interest. That fact does not reflect well on the hospital office or the S.E.B. Back to the Complaints Board report: "No evidence was produced to the S.E.B. which could reasonably justify the summary termination of Mr. Alwitry's contract. The treatment of Mr. Alwitry is appallingly shabby and has damaged the reputation of Jersey as an employer of medical staff." I can confirm that. I have had that from doctors who might have considered coming to work here: "Mr. Alwitry was blamed for the confusion over start dates when it was the fault of the hospital." The medical director's comment: "I think we should sack this bloke now before he even gets here." The records that support Mr. Alwitry's version of events, the hospital was not keeping proper records of any meetings or phone calls: "The issues are a result of a systemic problem, namely the lack of proper procedures, guidance and training. It is likely that the unfortunate events are illustrations of a more widespread failure in the management system at the hospital and the lack of scrutiny of the Minister and the S.E.B. of relevant decisions. The Complaints Board recommends extensive retraining on employment and other management matters, apart from clinical matters, for all those in the hospital involved in the affair." The S.E.B. minutes referring to references say "sketchy at best". If you have read any of the documents that we have seen, you will see that the references provided for Mr. Alwitry are brilliant. Why did no one speak with any of the referees? I would have expected the H.R. director at the hospital to have done that at the least. Going back to the report, the probability that: "The problem lay not with Mr. Alwitry but with the

senior managers and clinicians at the hospital”. As Deputy Higgins has already said, the H.R. director attempted to represent the references as being from “mates” of Mr. Alwitry. Nowadays, people do not put things in references that could lay themselves open to legal action. I mean, that is a fatuous statement. Back to the report: “We strongly suspect that there is an unhealthy style of management at the hospital where senior staff expect to be obeyed unquestioningly” and so on. Mr. McNeela, whose letters are here: “One of the senior ophthalmology consultants told me that he had conducted his own enquiry in the U.K., including representatives of the Royal College of Ophthalmologists and the B.M.A. No one had heard of any precedent for the blocking of a consultant’s appointment after the contract has been signed, other than poor references, registration issues, or non-disclosure of criminal records. No appointment has ever been rescinded because some members of the management team decide the appointee is too argumentative. The Complaints Board recommends that the Chief Minister and the current Minister for Health and Social Services give an unqualified and absolute acknowledgement that the termination of the contract was unlawful and contrary to natural justice.” That is entirely reasonable but what are the S.E.B. doing? They are scrambling ferociously to justify themselves: “Yes, our procedures were a bit sloppy but the decision was correct” hence the Complaints Board comment about a kangaroo court or with regard to the comment about the decision being correct, the fact that a lynch mob may get the actual wrongdoer but it is no less a lynch mob for all that. The S.E.B. appear to have supported the proposal that compensation is limited to 3-months’ salary and a few expenses. They have wrecked someone’s career, made him ill, ruined the reputation of Jersey as a good place to work, demonstrated a lack of competence beyond belief, and would offer £25,000 and a few expenses. The Complaints Board recommend that if the hospital and the S.E.B. persist on this level of compensation, then there should be a clear explanation in the various media explaining this rationale to the public of the Island. This is because it would amount to saying, in effect, and I quote from the report again: “The respondent, headed by the Chief Minister, believes it is acceptable for a States department to disregard fundamental principles which should guide proper decision-making and indeed reflect common decency in relation to its employees, irrespective of the consequences to the individual concerned, as long as it pays the minimum compensation to the person whose life is affected by it. If that is the position and policy of the States and the respondent, we would suggest that the public of Jersey has the right and legitimate expectation that its elected officials should say so clearly and equivocally.” The comments in the Complaints Board report also indicate other areas which might need review. Enough has been said about the mechanics of private practice at the General Hospital to support the contention that there is scope for a review by the Auditor General. I am sorry that the chairman of the Public Accounts Committee is not here because otherwise he might take it away with him and take it to the P.A.C. (Public Accounts Committee). What is perhaps not generally known is that at the beginning of 2013 the General Medical Council made an entirely surprise, uninvited visit to Jersey because they had found the level of dysfunction and reporting that they were having to deal with disproportionate to our medical establishment. Frankly, to pick up from Deputy Tadier, I think the most damning comment of the Complaints Board report is the penultimate paragraph which says that the respondent’s closing submission: “Invites us [the Complaints Board] to accept that none of the senior officers at the hospital, the director of the Human Resources Department at the hospital, the members of the States Employment Board or the Law Officers thought there was anything wrong with the procedure that had been followed. If that is correct, then it is a damning indictment of the practices and competence of all those involved.” This has been a particularly sorry episode in States history. There is some excuse for the S.E.B. in that the Human Resources director from Health demonstrated a lack of judgment and conveyed fallacious information to the chief executive and the S.E.B. He of all people should have been adhering to the rules of natural justice. But why did nobody follow the rules of natural justice or at least the rules in the States Employment literature? There is a States Employment Procedures Manual for every possible situation.

[11:45]

I have read it; it is very clear. Why did anybody not ask for corroborative evidence? If you had spent any time on Scrutiny, you would certainly do that. Earlier, I mentioned bullying at H. and S.S. and the complaint that has been lodged by the union with the Minister, the deputy chairman of the S.E.B. since 2011. This episode demonstrates bullying at large supported by senior clinicians and the Health and Social Services management. It starts at the top. I would remind Members ... no, I would not, I cross that out, sorry. **[Laughter]** I ask the Chief Minister, as chairman of the States Employment Board, to accept the ruling of the Complaints Board with regard to the procedures employed, acknowledge the shortcomings of the board. There is no shame in making mistakes. The real shame is covering them up and refusing to acknowledge them and making no proper redress. I ask fellow Members to support this vote of no confidence and to support best practice as the employer of something in the region of 7,000 employees. Thank you.

Connétable J. Gallichan of St. Mary:

Might I raise a point of order at this point?

The Deputy Bailiff:

Yes, certainly.

The Connétable of St. Mary:

It is just really for my own clarification, I would welcome your opinion. I was not planning to speak but I think I will probably now speak later on and I am just wondering how wide I should range. I am referring to Standing Order 22(b), I believe, about the special requirements for the lodging of a motion of no confidence and the fact that it should be accompanied by a report setting out the reasons why it should be supported. Obviously, Members are adding in other information apart from that that was submitted by the proposer, and I can understand obviously why they would want to do that and I do not deny their right to do that, but I am just wondering how much focus there should be on those proposition elements in the report because of that Standing Order and in fact why it is there.

The Deputy Bailiff:

Well the Standing Order there is so that at least the recipient of the vote of no confidence understands the basis on which the proposer is putting it. But, as you rightly say, Connétable, it is open to any Member to range wider than that if they have their own concerns and complaints. Ultimately when the vote is taken, we will never know the reasons why any individual voted in any particular way that they did. So I think if you think that there are things that need to be addressed that range wider, then it is simply a prudent course for you to address those as well, in my view, if that assists you.

The Connétable of St. Mary:

I am grateful.

2.1.7 Deputy K.C. Lewis of St. Saviour:

I have not prepared a speech today but I will just refer to my notes. Basically, what this all boils down to is a senior consultant ophthalmologist position was advertised, an application form was filled out, interviews took place, a job offer was made and the job offer was accepted, contracts signed by both parties before things obviously fell apart in some way. Before a review could take place, a contract was signed with another consultant which seems very rushed to my way of thinking. Also, in my humble opinion, I am not a lawyer, but the only way that a contract can be torn up is if the applicant had deliberately lied on an application form, which is absolutely not the

case, as the gentlemen concerned has an exemplary record. So, reluctantly, I will be supporting the proposition because we need to send a message out to the U.K. and the rest of the world that Jersey is open for business and we do obey the laws. Thank you.

2.1.8 Deputy E.J. Noel of St. Lawrence:

It is good to follow Senator Ferguson, although not quite directly, you did not quite see my light. Senator Ferguson's arguments remind me of a famous Pears picture entitled Bubbles. The painting depicts a young child with curly hair blowing bubbles and gazing up at them, perhaps Senator Ferguson in her youth. The Senator's arguments have such a child-like simplicity about them, they have that attractive rainbow of an oily, shiny surface of each bubble and of each point being made. But when the bubbles are popped by hard facts, all of the hot air inside is released and all you are left with is a soggy mess. Perhaps it is just another case of not letting the facts get in the way of the Senator's opinions. As Members will know, I, together with the Constable of St. Lawrence and the former Deputy of St. Mary, were members of S.E.B. when the Alwitry matter was first raised. With this in mind, I did originally seek to amend the vote of no confidence to include the previous S.E.B. but I was advised that it was not practical to do so. As the Chief Minister advised at yesterday's States Members' briefing, Health and Social Services Department and the S.E.B. did knowingly, upon advice, terminate the employment contract of Mr. Alwitry and offered a settlement some 2 and a half times the maximum that the Employment Tribunal would have awarded in such a case. Had the appropriate recruitment processes been in place, then I am sure that Mr. Alwitry would not have been a successful applicant. His official reference from his N.H.S. (National Health Service) line manager would have triggered at the very least a more probing questioning prior to the offer being made. Members will be aware that the official reference from the N.H.S. was a one-line reference, I believe just confirming the dates of his employment. His circumnavigating of what would have been his line management in Jersey resulted in a junior member of Health and Social Services H.R. staff sending out a signed employment contract to him. Again, if the correct procedures would have been in place, this would not have happened, and some may say that the underhand manoeuvring of Mr. Alwitry would have been detected. These ...

Deputy G.P. Southern:

May I raise a point of order?

The Deputy Bailiff:

Yes. Deputy, I think it is quite difficult to refer to **[Interruption]** ... I beg your pardon? I think it is perfectly understandable you are referring to Mr. Alwitry, he is an important subject of this vote of no confidence, but to characterise his actions as "underhand" when he has no ability to respond to them, it strikes me as wrong, and I would ask you to withdraw that comment.

Deputy E.J. Noel:

I do withdraw that and I apologise to Members and Mr. Alwitry. What I was trying to indicate that it is unusual for someone to entice a contract from a junior member of staff as opposed to have gone through the correct channels which would have been their future line management.

Deputy J.A. Martin of St. Helier:

Sorry, could I ask for another point of order? Firstly, just prior to Deputy Southern, Deputy Noel said about a letter. I cannot find anything and it was even mentioned about if we had seen the letter from a line manager. Can he point out where I will find this? It is not even in the Solicitor General's report. He has just come back and made a worse statement about this person and this person will not have right to reply, so I ask him to be cautious.

The Deputy Bailiff:

Is the letter you refer to in the documentation? I had assumed that it was. I must say, Deputy, I have not seen it myself.

Deputy E.J. Noel:

It is in the documentation that was originally brought forward while I was on the board of S.E.B. I do not know if it is in the bundle.

Deputy J.A. Martin:

Is it in the public domain?

The Deputy Bailiff:

I think that is the question. The question is, is it in the papers before the Assembly at the moment?

Deputy E.J. Noel:

I am not aware of it. I have not really read the full bundle.

The Deputy Bailiff:

Then it is reference to a document not within the public domain that you are making.

Deputy E.J. Noel:

I accept that.

The Deputy Bailiff:

Well perhaps we will withdraw reference to that as well. Thank you very much.

Deputy E.J. Noel:

However, these weaknesses in the H.R. procedures have subsequently been addressed and the risks of such defects occurring again have been mitigated. None of this means that the correct decision was not taken in this case. The correct decision was definitely made by H. and S.S. and subsequently by S.E.B. I was satisfied at the time that it was the correct decision and I am still satisfied today. However, S.E.B. did not just take the word of Health and Social Services Department at face value. Many Members, and indeed the public, may not be aware that following my suggestion an independent member was recruited and appointed early in my tenure on S.E.B. This independent H.R. expert, which States Members met yesterday at the briefing, provides a useful check and balance between the political S.E.B. members and the officers. She too concluded that the correct decision was taken and she has not again changed that position throughout this whole affair. S.E.B. took further independent advice to see if mediation could be utilised, much to the annoyance of the Health and Social Services Department at the time. I must add that the independent concluded and advised that mediation was not possible due to Mr. Alwitary's stance and Members, for their benefit, I am of course referring to the Haste report which is in the bundle provided to Members. S.E.B. then commissioned another independent report, the Beal report, which again is in the bundle, to review the H.R. recruitment process and the decision to rescind the contract. Again, S.E.B. received confirmation that although at the time there were some weaknesses, and some pretty fundamental weaknesses, in the recruitment process which ironically benefited Mr. Alwitary, the correct decision was made to cancel his contract before he started work at our General Hospital. S.E.B. also took some comfort that during this period, the interim hospital director was replaced by the current permanent hospital director who also reviewed all of the papers and correspondence, emails, *et cetera*, and she also came to the same conclusion. S.E.B. also received an unprecedented letter from a number of senior hospital consultants who voiced strong opposition to the idea of a rescindment of the decision to terminate Mr. Alwitary's contract. S.E.B. was minded that this matter would continue to be politically driven and also therefore requested the

then Solicitor General to carry out a further independent review to include recorded interviews with the individuals involved, including Mr. Alwitry himself. In fact, the former S.G.'s work and subsequent report was the only one to date that interviewed at length Mr. Alwitry to my knowledge. The former S.G. report again confirmed that the decision was the correct one and even he admitted that before carrying out his work he was sceptical but he was very firm in his findings. Indeed, as States Members heard yesterday lunchtime from the current Solicitor General, who again has read and reviewed all of the material in this matter, and he too came to it with a sceptical mind and certainly had read all of the documents, now he is also of the opinion that the correct decision was made. These are highly-qualified individuals. I do not believe that they could all be wrong in this case. Some Members may be concerned that Mr. Alwitry has raised the issue of patient safety but I believe that this is simply a red herring and an unproven allegation. I believe that the evidence from the email exchanges indicate that the reason why Mr. Alwitry did not want to work on the Fridays and Mondays was to be able to spend more time with his family in the period prior to their moving to Jersey.

Senator S.C. Ferguson:

Sorry, he is making aspersions.

The Deputy Bailiff:

Yes, Deputy, the nature of the way that the motion of no confidence is put insofar as it relates to Mr. Alwitry, is that the process was wrong and should have been overseen by the States Employment Board. The Assembly cannot possibly judge whether the dismissal of Mr. Alwitry was justified on its facts or not; that is well within the purview of the decision of the Royal Court in the *sub judice* matter and it is from our perspective impossible for the Assembly to judge. It seems to me that an argument that simply says it was the correct decision does not address the argument that is being put. As I understand, it was, in the course of this debate, as to the process, and I wonder if ...

Senator I.J. Gorst:

Sir ...?

The Deputy Bailiff:

Yes, by all means.

Senator I.J. Gorst:

With respect, Senator Ferguson and the opening mover of the motion made all sorts of comments with regard to the reasons for actions being taken. Deputy Noel is simply giving the other side of the argument and the reasons, as in the public domain and the reports that States Employment Board have put before Members, which make a different case. Therefore, I am not sure how it can be ...

The Deputy Bailiff:

Yes, Chief Minister, there is a ...

Senator I.J. Gorst:

... that he cannot make that case.

Deputy G.P. Southern:

He is impugning.

The Deputy Bailiff:

That is not the case. An element of latitude has been allowed by me in this debate as to various allegations from a number of sides and, indeed, the Deputy has already deployed a number of allegations. Where I believe it crosses the line is when it casts direct aspersions on the character of the individuals concerned as opposed to their competence and general behaviour and that was the line I felt was being crossed on this occasion.

[12:00]

That is not to say the Deputy cannot stop making his submissions but it should not, in my view, trespass into the area which makes personal criticisms of an individual's character, as opposed to generally a statement as to what was happening. I hope that clarifies the position.

Deputy E.J. Noel:

Obviously I accept that. In this instance, I was not suggesting anything about Mr. Alwitry's character, I was just outlining an alternative reason why he may wish to not work Fridays and Mondays because his family was in the U.K. and that was the arrangement he wished to implement prior to them moving to Jersey for the start of the following school year. Those are the facts and there are email exchanges to that in the work plan that he tried to have put in place prior to his arrival. Mr. Alwitry did have some choices to make. He has chosen to go down a civil law route for this matter with some political support in this Assembly with today's vote of no confidence. Deputy Tadier mentioned 3 words: "Process, process and process" and the correct process would have been to use Employment Law and the Employment Tribunal but Mr. Alwitry, for whatever reasons he has, has decided not to go down that route. One of the report authors of the Beal report indicated that he appeared to lack a self-awareness of his own part in the culpability in the withdrawal of his contract because the hospital clinician staff and senior management had lost trust and confidence in him. I have listened with interest to my colleagues here today and I would like to take the opportunity to remind Members that in a debate of this kind, the facts of the case, as you quite rightly say, are not necessarily what is being reported in the media. We know that the S.E.B. has received independent advice from an off-Island non-executive board member. We know, for example, that 3 separate reports were commissioned by S.E.B. and that these reports were all based on extensive interviews with key decision-makers, including Mr. Alwitry. Conversely, we know that the Complaints Board did not have the benefit of detailed interviews before it reached its conclusions. In fact, Mr. Alwitry himself was not even questioned by the Complaints Board, as he did not attend the public hearing to be questioned. It is also worth remembering that the former Solicitor General undertook a full and thorough independent enquiry into this matter. In addition, the conclusions of his report are clear and explicit and highlighted in the S.E.B.'s comment to this proposition. These are the facts, they are not the alternative facts, and they should speak for themselves. Both S.E.B. boards have discharged their duties diligently and in good conscience. Yes, the way that the decision which was taken could have been improved and the processes have subsequently been improved by the H. and S.S. H.R. Department but there is no doubt that it was the correct one. I would like to remind Members of the good work, as indeed the Constable of St. Martin did, that S.E.B. does across all areas of its responsibility. S.E.B. members put in considerable effort to ensure that officers receive good quality strategic and policy direction for the benefit of both the workforce and Islanders and it is for the officers to carry out those directions and to liaise with the staff. I believe there are simply no valid grounds to support a vote of no confidence in this or the previous S.E.B., unless one is perhaps a conspiracy theory junkie or one has a sack of potatoes on one's shoulder. Members will have gathered that I will not be supporting this proposition.

2.1.9 Deputy S.M. Brée:

I entered into this debate with a completely open mind and was hoping to be swayed by sensible arguments one way or the other. I have to say that I am both saddened and concerned by the direction this debate has been taken by certain speakers, especially Deputy Noel. This is not about was the correct decision taken, it is about the actions of the S.E.B. in reaching that decision and how they delivered that decision. Unfortunately, the Alwitry case, and I do not believe we should be talking about that in detail, but it goes to illustrating an attitude and a mindset of the S.E.B. in dealing with employment matters. Perhaps it is correct that it is the straw that broke the camel's back in a way but I do not think that we here today should be discussing Mr. Alwitry's decisions, actions or anything else. What we are discussing here is the actions of the S.E.B. in dealing with that particular case, not the merits or otherwise of decisions, of actions, but concentrating on the S.E.B. The relationship that we are really looking at is that between this Assembly, the States Employment Board who, let us not forget, are the employers of all States employees who have a particular contract. Therefore, we, the States Assembly, are ultimately responsible for the actions of the States Employment Board because we all belong to the same Assembly. We have the right, nay I would say, sometimes the duty, to call to account bodies that we are not happy with the way in which they are acting. It should not be said that somehow a vote of no confidence is divisive, is personal. It is the right of this Assembly to have these debates and discussions and whichever way this Assembly votes, hopefully, we will move forwards, having learnt from our mistakes and our lessons. But essentially are we happy with the actions of the States Employment Board? That is the question. Are we confident in the way in which they are acting towards employees? Do we approve of their actions? The Alwitry case, as I said, illustrates, in my opinion, some fundamental problems of the way in which the S.E.B. act towards employees. The other thing that it also does is to illustrate, certainly to myself, a refusal, while accepting that faults have occurred, but a refusal by the Chief Minister to accept responsibility for anything that happens under his watch and there is responsibility here because errors have occurred. Now, nobody goes through life without making mistakes. I am sure all of us have done things that we would sooner have done another way but it is all about accepting responsibility, showing leadership, showing that the States Employment Board are a shining beacon to all employers on this Island and that the States Employment Board will adhere to well-established employment practices on this Island. If you offer somebody a job and you provide them with a contract which they sign, you have an obligation under the law to act towards that person in a certain way. To go back to what I was saying earlier on, this is not about was the right decision reached. For many people, I think, they are getting lost in this argument. It is not that. It is: are we happy with the way in which the States Employment Board acted? The States Complaints Board have quite clearly condemned the actions of the States Employment Board in this matter. These are very well-educated, knowledgeable, experienced people who are looking at, once again, the process which was gone through. Not the rights or wrongs of the decision but the process that was gone through. For the Complaints Board to issue such a damning statement of our States Employment Board, I found extremely concerning and I was very, very saddened to read it. But the thing that saddened me even more was the immediate attack offensive that the States Employment Board went on to try and rubbish everything that the Complaints Board may have said. Now, remember, the Complaints Board is open to any member of the public who feels that they have been unfairly treated because of the process that any States department may go through. I was very shocked and concerned that the States Employment Board chose that course of action. Now to me that displayed a high degree of arrogance: we know best; we are the States Employment Board; who are you to criticise us? So, the question in front of us today is not the rights or wrongs of the Alwitry case, it is not whether the right decision was made but it illustrates a mindset and a thought process which I, frankly, cannot agree with. Because if you extend that to all the employees that the States Employment Board are responsible for, then where does that leave us? That is my worry. Not this one isolated case but every other employee. We are, as an Assembly, responsible to ensure that they are dealt with fairly, honourably, in accordance with the law and

according to natural justice. That is the question we have got to ask ourselves: are we confident that the current States Employment Board will deliver that? Thank you.

The Deputy Bailiff:

Does any other Member wish to speak on the proposition? When I call upon the Chief Minister, the debate will ... Deputy Southern.

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

It is a pleasure to follow on from Deputy Brée, who made some of the points that I wish to make, and to remind Members of what we are deciding today. We are not deciding anything about the character of Dr. Alwitry. We are not deciding whether the appointment or non-appointment of Dr. Alwitry was the correct one. We are examining the findings of the Complaints Board which found against the S.E.B., the States Employment Board, in serious terms. I remind Members what the States of Jersey Complaints Board is for. It is established under the Administrative Decisions (Review) (Jersey) Law 1982 to look into complaints by members of the public, into any matter of administration by any Minister or department of the States or by any person acting on their behalf. That is very comprehensive in holding the administration to account at all levels.

[12:15]

It goes on to say in this simple guide of how to complain about the States: “This does not mean that the board can overturn a decision made by a particular Minister, but they can determine whether that decision, act or omission which was the subject of the complaint ...” listen to this: “(a) was contrary to law”; pretty significant decision-making: “(b) was unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive, or improperly discriminatory.” Again, serious matters: “(c) was based wholly or partly on a mistake of law or fact; (d) could not have been made by a reasonable body of persons after proper consideration of all the facts; or (e) was contrary to the generally accepted principles of natural justice” and the board itself in examining the behaviour of S.E.B. in the case of Mr. Alwitry found that (b), (c), (d) and (e) were all proven. That is the actions were unjust, oppressive or discriminatory based wholly or partly on a mistake of law or fact, could not have been made by a reasonable body of persons after proper consideration of all the facts and was contrary to the generally accepted principles of natural justice. In its response to the response of the S.E.B. the board says: “The board remains firmly of the view that a right decision follows from a fair and defined process. The process adopted by S.E.B., the hospital and H.R. can never be considered acceptable, reasonable, just or fair.” Never considered acceptable, reasonable, just or fair. This is outright condemnation of the acts of the S.E.B. in this particular case. Now, we have heard, particularly from Deputy Noel, but we have seen, if we have read the documentation, that the S.E.B. keeps referring back to these 3 - I will put the quotes round there - “independent reviews” that it commissioned into this affair. They say that each of those “independent investigations” supports their action and supports that the right decision was made but let us examine what they say and we find something very different. We find that the interpretation placed on the words or conclusions of these reports can be made, if you so wish, with one eye open and one eye closed by S.E.B. to support their argument. Let us listen to the first one then, the Haste Report, which talked about would - what is the phrase - mediation, could that be used to help resolve the problem? At the bottom of page 9 of that report it says: “It is notable that at no time prior to the decision to withdraw the appointment was there any effort to meet with Mr. Alwitry and identify the concerns that had emerged and the potential consequences such as a risk that the appointment would be withdrawn and to discuss these with him. At that stage it is likely that mediation would have been most valuable either to resolve the conflict or at the very least for Mr. Alwitry to have a clear understanding of what the issues are. Mr. Alwitry speculates as to the

reason for withdrawal but he states that he does not know what these reasons are.” My colleague alongside me mentioned Kafka and that is exactly the situation. “I do not know what I am accused of.” Where is the evidence? Fundamental. How can you defend yourself against something you do not know what you have done wrong? She then says: “On that basis I believe it would be useful for the parties to meet in joint session and explore the reasons for the conflict and also explore whether resolution is feasible.” But by the time of this report that was unlikely to be successful. If mediation had been used early and the applicant had been told about what the problem was then we might have been able to do something about it but he certainly could not after the fact. Then we look at the second “independent report”, the Beal Report, and we look at page 6 of that and on 55.1 conclusions. Listen carefully. “There was no evidence of a robust testing of the person specification. A 30-minute interview with a panel of 6 for a consultant post is not sufficient to test the applicant’s suitability for the role.” Again, outright condemnation of the way in which the interview was conducted but it gets worse. “There was no evidence of competency-based questions or testing out of wider issues such as clinical engagement, leadership and team working for a senior role in a clinical setting.” They did not bother to test whether he was a good team worker and lo and behold within a month they are saying: “We do not think you are a good team member. We cannot trust you so we are withdrawing the contract that you have signed.” This is glaring errors. This is not: “Oh, we have mitigated them.” This is fundamental to any process of appointing senior officials that you have got to get right. It is not the icing on the cake. It is the whole cake. It then goes on: “This demonstrates a poor recruitment and selection process on this appointment. This is supported by the audit of the paperwork. The chair has responsibility to ensure the process is carried out in line with best H.R. practice which should include picking up any issues around references, listen to Deputy Noel, and ensuring any issues on the application form are followed up, e.g. notice period and start date, i.e. the negotiation of what the job is going to involve. Completely condemnatory. Not supported at all that the right decision was made. Then we move on to the then Solicitor General’s report which I have got on page 15 here, and again I quote what the board says, and this is on page 14 of the reiteration of these findings: “As will be apparent from what we have already said the only reason the former Solicitor General’s report was considered in such detail in the hearing before us was because, for whatever reason, S.E.B. set such great store by it at that hearing. One of the principle planks of the S.E.B.’s case is that the former Solicitor General had reached certain conclusions and that the board ought to place great weight on his report because he had interviewed more witnesses than had been called to give evidence before us, ought, in effect, to accept the former Solicitor General’s conclusions as correct. As we explained in our report, the board emphatically disagreed with that suggestion. Our task is and was to conduct an independent review of the matters relevant to the complaint that has been brought before us assessing the primary evidence for ourselves. Further, the former Solicitor General’s report sought to focus on whether the decision to termination was the correct one whereas the board’s findings concentrated on the fact that there was no independent review of the allegations against Mr. Alwitary before the decision was taken to terminate his contract and the failure to allow him an appeal against that decision.” So fundamental basic flaws not confirmed before they took a decision behind closed doors to withdraw the contract. But let us just look further at one of the criticisms of this approach. The board goes on to say: “If it was the intention to conduct an independent after the event review appointing a suitably qualified person other than one of the officers of the Crown which would have been more likely to have been seen by the public generally to be genuinely independent in the circumstances of this particular case.” So by all means if you want independence do not go to your S.G. and use him, appoint somebody from outside who can be seen to be truly independent. They continue: “The foregoing is underlined by the fact that the former Solicitor General was provided with an embargoed copy of our report”, i.e. the report was released to him during the period when its circulation to people other than the parties and their representatives was expressly forbidden. “When the board raised this apparent breach of the embargo it was informed that the former

Solicitor General was now acting as legal adviser to the States Employment Board in relation to our report.” At some point, therefore, the S.E.B.’s independent reviewer ceased to be independent and became its legal adviser. That, as they say, is a remarkable state of affairs. “Oh, we have got an independent review from somebody who is working for us.” I defy anybody in this room to find out what the independence in that is. It does not exist. So these 3 reports, fully backing up the stance of S.E.B. do not and they are also flawed with the same errors or similar errors to the main case. Now, what I enjoyed particularly about this particular report and this particular board’s finding is the way in which they have not taken prisoners. Often you get a report and you wade through it and you think: “But what is it trying to say? We have got a bit on this side, a bit on that side. Oh, where is the balance? Do not know.” This is magnificently clear and hard hitting. Let us just take us through what this board found. “We will therefore try to explain the position in simple terms. A decision which was taken in flagrant breach of the basic procedural safeguards to which Mr. Alwity was entitled, such as the right to know the complaints against the accused, the right to a fair hearing, to investigate those complaints and the right to a fair and independent appeal against any adverse decision cannot, by definition, be the correct decision. The present case is one of the worst examples of a public authority disregarding fundamental principles of fairness and contract law that this board has seen in the long collected experience of the 3 members. The fact that the S.E.B. and the hospital apparently cannot grasp this basic point is deeply worrying.” Listen: “It is a matter for which they ought to be censured.” Wow. That is telling it like it is. It continues: “It does not matter how many times the States Employment Board, the hospital or the key witnesses repeat their version of just how dreadful or difficult they thought Mr. Alwity to be since the repetition of such views does not make the process that was adopted and thus the decision any more correct or indeed any less egregious.”

[12:30]

“Similarly, the repetition of such views and arguments does not mean they are correct nor does it mean that they would have prevailed if the decision had only been taken after proper and fair procedure had been followed in accordance with the requirements of the contract and the basic principles of fairness and natural justice in which it is enshrined.” That is the point, the assertions and opinions of the hospital and its senior staff, many of which appeared on the evidence before us to be exaggerated based on incomplete or erroneous understanding of the true facts or simply wrong and a general antipathy to Mr. Alwity personally were never subject to the rigorous independent scrutiny and testing that a fair and proper procedure would have allowed and indeed required; that is precisely why the decision was procedurally improper and any decision spawned by it could never be described as correct. I will briefly finish with the comments on page 18 of the reiterated report. “In other words either way there were fundamental flaws in the process adopted by the hospital. Again, the States Employment Board can and does repeat extracts from certain witnesses on whose evidence it relies to justify the substantive merits of the decision that was made but that cannot alter the conclusion that the decision was procedurally flawed at almost every stage in the process. Further, we doubt very much that we are alone in being genuinely stunned that the S.E.B. would continue to seek to rely on the unrecorded anecdotal evidence of people about telephone calls as justifying the summary dismissal.” I believe that in the light of what this independent and highly legally qualified board says about the process leads us to only one conclusion. We cannot have faith in this particular employment board and its behaviours. Absolutely.

2.1.11 Deputy T.A. Vallois of St. John:

The reason I am standing is following Deputy Brée’s speech. I have looked back over this, what I can only describe as a book of comments provided by the States Employment Board, which I thank them for, although on 27th January it could have been a little bit earlier with all the information to

be able to create a more appropriate way to deal with this debate I believe. Notwithstanding the comments that have been made with regards to this particular case what I find difficult is ... when I read the law which constitutes the States Employment Board I see on there under Article 8: “That the States Employment Board shall employ persons on behalf of the States and in administration of the States” so therefore I then ask the question, well, as a Member of the States what is my role in terms of holding this board to account? So when I look at, in particular, one report within this bundle which is referred to as the Beal Report there are significant concerns that I have over how accountability and how structure and how the States Employment Board have a responsibility to report back to us with concerns and issues. There is nothing within this whole book of comments provided by the States Employment Board that says what they are doing about all the things that have been shown to be a problem within this particular case. There is nothing in here. There is an update action plan, which is shown somewhere at the back I think but that refers to medical staffing updates of 2018 and then it numbers them 1 and 2 but on page 21 of that Beal Report there is for the States Employment Board key learning points and they are numbered 19 to 24. Now, there is nothing directly within this that responds to those key learning points of the States Employment Board that says that they have learnt anything. This is not the only case that I am aware of that there have been issues with regards to human resources within the States. The chairman of the States Employment Board is fully aware of the cases that I have come across because I have spoken to him on occasions when it is required to do so. So I think all I need ... well, I especially need and I think it is probably an appropriate time to ask for it because the Chief Minister will be speaking, is why should I have confidence in the State Employment Board because it is 8 years now I have been in the States and this is the same States Employment Board chairman that there was the last term and I have no evidence, no proof, that things are at a level of professionalism and trust that is needed in what is and should be a robust H.R. process and practice. I go back to the legislation and I ask myself: “Well, what is the responsibility of the States Employment Board? What is their responsibility?” To be honest, it is quite wide and varied and in fact their powers are open to anything that we could suggest. I mean there are so many things here which are also within their ability to delegate to officers, and rightly so because they cannot be doing absolutely everything especially when you have got to employ over 7,000 to 8,000 employees. So when I stand here and I read the legislation and I ask myself: “Well, what should I be holding them to account for?” Well, there is, in Article 8 paragraph 1, they employ persons on behalf of the States in administration of the States. I need to hold them to account to ensure that that is being carried out in the best manner, in the best practice. “Ensure that the public service conducts itself with economy, efficiency, probity and effectiveness.” I think that that is in every single piece of legislation anyway in terms of what they like to class as value for money. So I need to hold them to account for that. “Ensure the health, safety and wellbeing of States employees.” I need to hold to account for that. So then when you look at all these codes of practices and guidance and everything that is produced and it just reminds me of the Public Finances Law with the financial directions issue. These are all these codes, there is all this guidance, there are all these processes so my question is: are they working and whose responsibility is it to make sure that they are working? If it is the States Employment Board that produced the codes of practice, if it is the States Employment Board that produced the policies that the administration is required to abide by, then what is the States Employment Board’s job in holding the administration to account to ensure that we get the right professionalism and the right conduct within our public service? So, therefore, I go back to the question, why should I have confidence in the States Employment Board? If the Chief Minister or the chairman of the States Employment Board can sufficiently give me an answer then I will consider my position on my vote.

Deputy J.M. Maçon of St. Saviour:

I think I will probably be speaking for more than 5 minutes. Would it be appropriate to adjourn now?

The Deputy Bailiff:

Well, the adjournment can be proposed at this stage

LUNCHEON ADJOURNMENT PROPOSED

[12:39]

LUNCHEON ADJOURNMENT

[14:17]

Deputy J.A. Martin:

Before we start, I would like to seek your guidance on a procedural matter. I did not realise that the Chief Minister - because I was on the phone to a constituent earlier this morning – I only realised when you said: “If no one else wants to speak, the Chief Minister will sum up.” Well, I have looked at Standing Order 103(e) and (f) and it says: “If the vote of no confidence is in their name they may speak a second time.” There is no Standing Order I can find where it gives you the opportunity to sit back and speak when you elect. I mean, if I am wrong ...

The Deputy Bailiff:

This is a vote of no confidence against the States Employment Board and the Chief Minister is *ex-officio* chairman of the States Employment Board. Someone who is on the States Employment Board spoke first and the Bailiff took the view, and I agree with him, that the Chief Minister could speak last before Deputy Higgins sums up the position because, effectively, they are different manifestations of the States Employment Board.

Deputy J.A. Martin:

Yes, I understand, but to me that is Standing Order 103(e) and (f). Am I reading the wrong Standing Order because I do not interpret ... sorry, I understand how you have interpreted it. I do not interpret it the same, but if there is a different Standing Order ...

The Deputy Bailiff:

Which Standing Order? Which Standing Order are we speaking about?

Deputy J.A. Martin:

Standing Order 103 and part (e) and part (f); it talks about the Council, it talks about ... (e) is probably where this is the States Employment Board; (f) is the Chief Minister, or a chair, or a president.

The Deputy Bailiff:

Sorry, just let me find it. Yes, Standing Orders does not expressly provide for a vote of no confidence against the States Employment Board, as opposed to individual Members of the States; therefore, the Bailiff and I - applying the Standing Order which enables us to fill in gaps in the Standing Orders, where none are specifically provided for - have decided to treat it as something in respect of which, as a vote of no confidence, someone speaking for the Board should be the last to speak prior to the proposer summing up and that is the basis on which the decision was taken.

Deputy J.A. Martin:

It is an area P.P.C. (Privileges and Procedures Committee) needs to look into then.

The Deputy Bailiff:

You are entitled to say that, Deputy, but that is the ruling from the Chair.

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

Excuse me, I am being difficult.

The Deputy Bailiff:

No, not at all.

The Connétable of St. Saviour:

I am listening to what everybody is saying and a certain gentleman's name keeps getting mentioned because it is his case. Now, I understand that there is a case coming up in the Royal Court; whatever we decide here, is that going to affect the result, or could it be used in the Royal Court either way whether we agree, or whether we disagree?

The Deputy Bailiff:

No, Connétable, it cannot be.

The Connétable of St. Saviour:

It cannot.

The Deputy Bailiff:

It cannot be. The *sub judice* rule entitles the president to direct that certain things cannot be mentioned within a debate if it is *sub judice*, as this matter is, but it also means that it is only if it would adversely affect the court case. The view that the Bailiff has taken, with which I agree, is that this is a matter where the court case will come sufficiently further down the line that anything said in the debate here would not have an effect. It will be tried before a judge and professionals, semi-professionals, in the form of the Jurats, at court, which is entirely used to putting aside any extraneous considerations. Under the law anything said within the States Assembly cannot be used in evidence before a civil set of proceedings without the permission of the Assembly itself. So, for those reasons, amongst others, the Bailiff gave an explanation and in fact that was circulated to Members by email prior to the debate. Very well, we now continue with the debate on P.137. The last person who indicated a desire to speak was Deputy Maçon.

2.1.12 Deputy J.M. Maçon:

Regardless of who wins today, who wins in the courts, I think what we can all agree is that the public and the taxpayer loses. I have got a question for the Chief Minister when he speaks: how much has been spent on this saga already? Now, for those Members who were not here during the time when we had the beginning and creation of the Verita report, the issues that were swirling around in Health and Social Services at the time, because there has been some criticism of Deputy Higgins for referring to previous cases and the context in which we find ourselves. For those Members, who were not there at the time, one of the key findings of the Verita report, that was reported in the media at the time, was that there was a culture of fear within Health and Social Services; that members of staff, who had legitimate concerns about patient safety, felt unable to be able to criticise, perhaps, or bring to attention of those individuals higher up in the ranks within the Health and Social Services Department to highlight their fears. The point about that is that that culture is still here and whenever someone tries to highlight these issues, it immediately gets everyone's backs up. You could see the defence positions going up. You could see the approach that was being taken by the management, by the Council of Ministers at the time. I remember putting that point to the Chief Minister at the time about what faith States employees could have that if they had legitimate concerns that they would be protected. Now, of course, we had arising from there around that time also the Serious Concerns Policy. Now, that has not been looked at in quite some time, putting the Comptroller and Auditor General as backstop when there was a

whistleblowing issue. We know the arrangements on that we are not particularly happy with and where is the review of the Serious Concerns Policy? Because, what we did hear from the presentation yesterday, was that when Mr. Alwitry raised concerns about patient safety initially they were accepted and agreed that, yes, there were issues which were legitimate to raise and were being managed. That is, certainly, what I heard at the presentation yesterday. Therefore, the whole point about this debate is to give confidence to those in the public sector that when there are concerns they have the confidence to be able to speak up and to highlight issues of patient safety, as were highlighted, because we are going around in circles, because even if you go as far back as the Bellwood case, again these issues about being able to raise things and the way that the management structures clamp down on someone because instantly they get defensive and, therefore, what happens to that individual? Well, more often than not they are - and this is a metaphor - they are taken quietly into a corner and choked.

The Deputy Bailiff:

I am extremely glad that was a metaphor, Deputy.

Deputy J.M. Maçon:

One way or another these concerns are removed and the organisation and the people, who are there running the organisation, continue. I am struggling to understand kind of the way things go here because, again, we heard that it is perfectly normal for when someone applies, in these types of positions, it is normal and understood that there is a negotiation process that happens for hours about terms and conditions, but then we have a criticism of the individual saying: "Well, he was trying to negotiate a provision around his family circumstances", but the States Human Resources Department, the Hospital Department, took this individual on, knowing that that negotiation was going to happen. This individual is damned if he does and damned if he does not, because he was taken on knowing that a negotiation process was going to happen and then, when he tries to negotiate the best deal for himself, he is then criticised and painted to be the villain, because he is then doing that. I am sorry - for me that is not a logical argument that stacks up. What I cannot understand either is how this issue about working hours, which to me seems to be quite a straightforward matter, when we know that their negotiation process was going to happen, how this issue was not raised in the interview process at the very beginning. Well, of course we now know why, as Deputy Southern has pointed out, because it was only a half an hour process. So, if there are insufficient processes, which the employer has gone through and are deficient which then works in the employee's benefit; well, that is the employer's problem, not the employee's problem, except in this case. Also, I am very concerned about this term that is being used, this vague term of: "Well, he is not a good team player." Not a good team player. Now, again, coming from the private sector previously for a short time and then into the States Assembly I know what the management speak to be of "not a good team player" can be and it also can be a person who knows their rights and is willing to stand up for themselves and perhaps cause the management a little bit of a problem, but they are "not a good team player". I am sorry, this term is far too vague and we need to get to the bottom of it and no one has explained that yet, because there are many ways in which that phrase can be used and is used. Usually, when they are not a good team player it is usually again a way to get rid of someone. We have already talked about how the States Employment Board, as kind of being part of this legislative body, is here to set the employment example for businesses within the Island. I think we all agree this is not a shining example. This is not something which we are going to hold up as a model for any business which we would give them to replicate, so nothing is being shrouded in glory here. Political accountability. So, we have had this issue of, well, these individuals were not necessarily there at the time and batting it about but, of course, the people under them, who are making these decisions, many of them still are there. Of course, at the end of the day where does the buck stop? Well, the buck stops with the States

Employment Board. May I remind Members: the whole point of moving to a ministerial system, when we had the Clothier report, was quite clear that we would have accountability; that we would know where the lines of responsibility lay and, therefore, you could hold individuals to account? Well, of course, that can happen when something positive happens, but whenever anything negative happens, ah, well, that is a totally different kettle of fish now, is it not, which is exactly what we are seeing here today? "Oh, it was not me, gov." It does not matter. The point is: those individuals are politically responsible to this Assembly, in order to carry out the decisions made on our behalf and in our names, as Deputy Brée pointed out, with regards to the administration of this Island. It is a position that all the members on the States Employment Board chose to be on. No one forced them to be in those positions. Slight argument around the role of the Chief Minister, because he gets that automatically, but he took on that role knowing that when he went for Chief Minister, so let us not be under an illusion that any of the members of the States Employment Board did not know what they were getting embroiled with: their terms of reference and what they would be responsible for. Now, when we heard Senator Bailhache speak previously, he did inform us what a court would do but, of course, he did not tell us what a court would not do and, again, the court cannot tell this Assembly that the States Employment Board should resign. He cannot tell the States Assembly, who perhaps, members of the Civil Service should be held responsible and sacked and things like that. That is not the role of the court, because these are political decisions - unless I am wrong, in which I am happy to be corrected - where it is quite right that this Assembly is here to make those decisions because, as I say, the court cannot direct that.

[14:30]

Another point which I do have to correct what Senator Bailhache said previously - because, once again, although it is not entirely to do with this, because if it is not corrected and left to live, it is never challenged, and that is how the record goes - when he was told previously: "We know how to do political accountability within the Assembly." We had an example of that 2 weeks ago. We were here at 9.30 a.m. with questions without notice after the States and everything, 4.00 p.m. we still did not know whether someone was resigning, or stepping aside. I would put the counterargument that someone jumped before they were pushed and even then, not so that, because someone was trying to step aside, but it was through the intervention of the Chair, who quite clearly laid things out that not someone was waiting until they were pushed for technical reasons, they were pushed. Therefore, I would ask that we do not spin history here because, for the record, for Members of this Assembly, for Ministers, the way to resign is quite simply to say: "These events happened, I am politically accountable for it and, therefore, I shall resign." Full stop. Just so we all know how it works. Thank you. Now, as you have seen in the correspondence, because again with the whole issue of: "This is a difficult individual. This is someone who we really cannot work with." Well, as I point out in one of the letters that Deputy Higgins circulated on 7th January by one of the consultant ophthalmologists, he reports: "This individual has been made out to be a severely disruptive individual with which it would be impossible to have a good working relationship. I and many other people who have worked with this individual, or know him personally, do not recognise this image. He has worked as a locum in the Eye Department on 3 occasions. This individual was not new to Jersey. This individual was not someone who we did not know. He performed well and there are no concerns about his conduct or probity." So, again, you know, it is interesting how we are being told: "Oh, we should listen to the specialist. We should listen to those who know greater than us." Yet, here we go, here is someone who does, here is someone who has worked with the individual and therefore: "Oh, but we should disregard them." I think both sides are picking and choosing their sources here. I mean it is nothing new and Deputy Higgins has talked about it. I mean the power that the consultants at the hospital have and have had for a long time in our Health and Social Services Department, a lot of the time when demands are made from the consultants, that is where the funding goes and that is why, previously, other

services have suffered, in particular Social Services, because the demand has been there. The issue is, in Jersey, because of the way that Health and Social Services goes, it can be particularly difficult to attract consultants to the Island and, therefore, when demands are made, the service is almost blackmailed into placating in order to giving in to the demands that are made and this is nothing new. This is the concern that Deputy Higgins has raised, and he has got documentation to prove, is the issue of: were bullyboy tactics employed? Members will come to a decision about that based upon the evidence and the letters that they have in front of them. One way in which I do want to conclude, which you must not forget: this is about an individual. This is about a human being. This is about a person. This is about a person that under no ... we currently believe that has not been treated properly. Has not been treated in the way that we would want to be treated. It is not the way in which anyone else would want to be treated. We had at the presentation yesterday the States Employment Board admitting that the process that was followed was not good enough. The way that this individual was just given a contract and then that was taken back. Was just told by letter, was not given a fair hearing, *et cetera*. This is a person, who had wanted to come back and work in Jersey. This is a person, who was going to change their life, bring their family to Jersey in order to give back to the community with the skills that they had developed. I am sorry, but it is not good enough for States Members here to stand up and say: "Oh, well, despite all of that, despite getting everything wrong in the way that we process things, we still made the right decision and, therefore, the rest of it does not matter." Well, it does because the stress and the strain that must have been put on that individual and that individual's family is not good enough. It is not something that any Islander would expect from this States Assembly and is not something which I, as an individual, can support and, therefore, I find myself, unless given particularly good reason, which I have not been given, to support this, because it is simply not what any of us would expect. I appreciate the individual politicians may not be directly responsible, because I think it is the people under them that probably are, but at the end of the day the buck stops there and that is what we, as States Members, have to do.

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

I find myself with so many thoughts and I want to stand and support the work of the States Complaints Board, as a previous chairman of that board. I am most concerned at the way its findings have been treated by the States Employment Board. These are people, who sit on the States Complaints Board and comprise that panel, who have been carefully selected by the Appointments Commission, have gone through that process, as people who can be relied upon to provide independent and impartial consideration of issues that come before it and are drawn from a wide range of experiences and skills, in order to be able to form a board to come together and make that sort of finding, without fear or favour, or partiality. It concerns me that using the might of their positions as Chief Minister, or Minister for Health and Social Services, that the members of the States Employment Board should seek to rubbish the carefully considered findings of that board. Because, it seems to me that the decision to withdraw an offer of employment to Mr. Alwitary was fundamentally flawed from the beginning in the process that was adopted and that is what the Complaints Board was saying. It was looking at the process. There was always a need to inform the person concerned of the allegations against him, to give him an opportunity to be heard and, after a decision, to give him a route for an appeal. That could just not have been overlooked perchance by all those involved in the decision, experienced persons and professionally trained persons. So, I have to ask myself: was it a deliberate decision to act in that manner, which was then endorsed by the States Employment Board? Was it a deliberate decision to bear the consequences and one of the consequences must be the sort of findings that had been made by the States Complaints Board, because I would have thought it is only to be expected when you adopt that sort of process. It seems to me there was a failure, a very clear failure, to follow good practice of employment law and to observe the principles of natural justice, but against that I have to say the

States Complaints Board is not supreme. Ministers are quite free to disagree with findings of a complaints board, because it is Ministers who are politically accountable. The board does not wish, and never seeks, to be a body that would impose a decision. So, Ministers can argue against the board and in this case they, or the States Employment Board, still maintain that their decision was correct. So, they are now being held to account by this Assembly. I am trying to work through in my mind, are the States Employment Board telling us that we can continue still to have confidence in it because the decision at the end of the day was a right one, but I would like to hear how the board can show us that decision was made correctly when there was such an absence of proper process. Why are you asking us to accept that about your decision? Other factors I am trying to weigh up is that this is an issue over one employment decision made 4 years ago. Should we be discussing a vote of no confidence in a board that was not even sitting 4 years ago? But this board has to be accountable and this current board has still sought to defend the decision, vehemently, against the findings of the Complaints Board, so does that matter? What value, though, would a vote of no confidence achieve against this current board, because it is not the board with the members who were involved in that decision, particularly when we know that the board will still come bouncing back with the Chief Minister at its head. So, if a vote of no confidence is of little effect, little use, to us, how can we, as a States Assembly, seek to hold the States Employment Board accountable? I hope the Chief Minister will answer that, because the board is acting in our names in matters of employment, of public service and employees and public officials. They have to account to this Assembly. If the Chief Minister wishes to say that there is no need for a vote of no confidence, we can continue to have that confidence, then what responsibility are the Employment Board accepting for what happened here and what evidence can we see is now in place to show us that there are measures that this will never happen again? Because what has happened is clearly grossly unsatisfactory, in my opinion. So, I am still struggling, I must say, with all of these issues. I am deeply concerned over what happened and the reaction to the States Complaints Board findings and I look forward to hearing from the Chief Minister as to how my fears and my concerns can be allayed.

2.1.14 Deputy S.Y. Mézec of St. Helier:

Obviously, the main focus of this debate so far has been on Mr. Alwitry and I think that that is absolutely right, given how appallingly he has been treated all throughout this saga. I think that the report, that the Complaints Board put out, was so clearly scathing and damning and I think that, frankly, the stubbornness from the S.E.B. and Council of Ministers since then has been pretty embarrassing to behold. I, personally, have no confidence in the States Employment Board and the issues with the Dr. Alwitry case for me are a relatively minor part of that, although I do accept they are incredibly serious. The reason that I have no confidence in them is because I have yet to meet anybody, who sits on the other side of the table to them, that thinks that the negotiations, which are going on, particularly to do with workforce modernisation, are anything other than a sham and being conducted in bad faith. That is why I can say that I have been given permission from the Joint Unions Council to say in this Assembly - and I have given Members advance notice by emailing them before - that they have today decided that all unions, bar one, will be pulling out of the workforce modernisation negotiations, because of the disputes that have been going on for several years now, which have not been dealt with appropriately. I have been given a list of 7 outstanding issues just from one union, dating back to 2015, that still have not been resolved and the pay dispute from 2015 and where there have been offers made and then offers withdrawn irrespective of whether there was an intention to accept that.

[14:45]

Where workers were invited to take part in workshops, which all of a sudden then got rebranded negotiations, when they were not negotiations, and when the workers involved were not happy to

be co-operating on that level, but were simply told “tough luck”. I think that the way the Government and the States Employment Board has been treating its workers over the past few years has been utterly disgusting and, as a Member of this Assembly, I am ashamed that our public servants, those people, be they teachers, be they manual workers, be they our civil servants, I think have been treated thoroughly badly and I think that we need to take a stand on this occasion with the Dr. Alwitary case being a very important part of that but, more generally, I think the attitudes that the Employment Board and the Council of Ministers have taken towards workforce modernisation, towards working with workers to get a decent deal on things like pay, terms and conditions, and what jobs they do to provide good value for the public I think has been handled utterly appallingly. I think we are on the road to something really damaging for our Island, depending on what action those workers decide to take now and I think, frankly, the States needs to get its act together and get round a table with these people and some meaningful negotiations, not the sham negotiations that have happened up until now, and I think the one thing we can do to help push them in that direction is to vote in favour of this vote of no confidence, because if they continue on business as usual, the public will get absolutely nothing out of it. They must change direction and I have no confidence in their current ability to do that, so I will be supporting this motion.

2.1.15 Senator A.K.F. Green:

I have been a member of the States Employment Board, along with the Chief Minister, since I think 2012. I am proud to be a member of the S.E.B., as well as its Deputy Chairman. It is hard work, but it is rewarding. As a board we have achieved a lot. You would not think so from some of the comments made today, but we have achieved a lot in the most difficult of circumstances and I know that the Chief Minister, as Chairman, and others will discuss many of those achievements later. The report supporting the vote of no confidence, as indeed Senator Ferguson made reference to, the former Chief of Police; the former surgeon, Mr. Day; the former social worker, Mr. Bellwood; and finally Mr. Alwitary. Mr. Power was not subject to S.E.B.: it was a matter for the Minister for Home Affairs, and I do not want to open that up again but, in any case, that was in 2009, before either S.E.B. boards were in place and before many of us, including myself, were elected. Mr. Bellwood’s case goes back even further, to 2007, again before the boards were in place. Mr. Day’s case goes back even further, to 2006, and it was the last S.E.B. that took a grip of the Mr. Day situation and resolved the outstanding issue, so that Mr. Day could get on with his life in pretty short order. The scattergun approach adopted by Deputy Higgins does not support his vote of no confidence; 3 of the 4 cases, as I have already demonstrated, are irrelevant to the last S.E.B. We have nearly 8,000 employees, they are hardworking, they are professional, and in many cases long-serving. If there are issues, for the most part they are rightly resolved at the lowest level. We rarely hear of disputes involving individuals. When the issue of Mr. Alwitary first came to the S.E.B., I have to say that, on the face of it, I had some sympathy for him. I thought that he may have been treated badly. However, once I became aware of the full details of the case, through 3 independent reports, and let us just look at those independent reports briefly. First of all the Haste report was an attempt at mediation to try and resolve the issues and it failed. Then there was the Beal report and then the former Solicitor General’s report and, just to be clear for Members, when that report was done, the former Solicitor General was the Solicitor General. I think it was Deputy Brée that asked the question: “Well how come he was employed by the S.E.B. afterwards?” Once he left States employment, once he gave up his role as a Crown officer, because he had full knowledge of this and the new Solicitor General, with all due respect, had no knowledge of it at that time, he was engaged by S.E.B. to continue to advise us. Members have implied that we have just accepted every report put on our desk, without challenge, without reference to asking about some of the findings. No such case. The reports were considered in depth, discussed with the authors, the authors cross-examined before we came to our decisions. The former Solicitor

General's report particularly demonstrated Mr. Alwitry's manoeuvring in the weeks after being offered his job. So, the sympathy I had for him had ebbed away at this stage. I would like to refer to the Beal report, because when the Minister for Infrastructure was speaking you said that any comment he made had to be in reference to documents already in the public domain. So, I have done that over the lunch time and referenced, wherever I could, comments I am making to the documents that are, in the main, in the comments that States Members have had. The first one I would like to draw States Members' attention to is the Beal Report, at paragraph 5.9, and directly quote from it where Mr. Beal says: "The interactions on this matter became inappropriate and not within the norm of behaviour and communication expected from a consultant before starting a new post." It goes on to say: "Mr. Alwitry started to feel uncomfortable about the email correspondence on the matter and it was inappropriate whilst the managing director was on leave. It appeared that if Mr. Alwitry did not get what he wanted, then he would bypass and go to others in the hospital, clinicians and medical staffing team." 5.9.1, the conclusions there: "Communication and approach was highly inappropriate and undermining. Mr. Alwitry's communication and approach was challenging and inappropriate to senior management, in advance of commencing employment in Jersey." Such undermining of senior management and antagonising senior colleagues was inappropriate and this is even before he had arrived on the Island. I ask Members to consider, if they were making recruitment decisions, whether they, knowing that information, would employ someone with that behaviour. Job interviews only tell you so much and, if it becomes clear before someone takes up a job, that the issues emerging around the person's personality and fit within the organisation and their prospective colleagues is not going to work, would not Members feel duty bound to act? Indeed, I would suggest it would be remiss not to do so, if ultimately following one bad recruitment decision other staff left and recruitment problems would be multiplied and wider reputational risk would ensue. I would like to pick up on reputational risk here, because it has been implied time and time again that Jersey's reputation is such that consultants would not wish to come and work here. We have successfully appointed 20 new consultants and disappointed quite a few that were not successful since Mr. Alwitry's problem, if I can put it that way. So, Jersey does not have a problem recruiting and, in fact, we have now 3 outstanding surgeons in the Eye Department, one of which recently carried out a cornea transplant. Quite outstanding. So reputation is something that we consider but reputation is a 2-way thing and we both have obligations, both the employer and the employee. I would like to refer to - and it is referenced in paragraph 52 of the Solicitor General's report - and I am not going to read every bit of that, but I would like to talk about Mr. Alwitry seeking to delay his start date. The hospital managing director wrote to Mr. Alwitry on 10th August 2012 following discussions with the clinical director. The letter was firm: it informed Mr. Alwitry that unless he agreed a start date on 1st December, part-time, with a view to working full-time from 1st February, then the job offer would be withdrawn. Justification for that was that the department was under considerable pressure and it was imperative that the third consultant started work as soon as possible: "While we understand your present circumstances and the reason why you would like to delay your start, I have met with the Clinical Director of Surgery and am unable to accommodate your request, due to service pressures." There was an attempt here to meet Mr. Alwitry halfway, offering him part-time work until such time as he could come full-time. The procedures had been mentioned and I, as a member of S.E.B., had some unease about procedures and processes involved in this case. Indeed, the Solicitor General expressed such concerns in his report. One of the problems was that there was no procedure for someone, who was not yet in employment. He had been offered employment, but there was at the time no procedure for someone who was not in employment. However, lessons have been learnt and my department has revised this and the recruitment process for consultants. This has been completely revamped since the appointment of the new hospital managing director. Can I refer Members, and the Deputy of St. John in particular, to appendix 46 to P.137, which is in the comments. There is a whole list there of things that needed to be done and it is stated there that

they have been done and I have seen the evidence that they have been achieved. That has robustly changed our recruitment procedure. As I said before, over 20 consultants have been appointed in this time, in line with an extremely robust procedure, and it has attracted positive comment from both the successful and the unsuccessful applicants, as well as from the Royal Colleges and other professional bodies. Deputy Lewis of St. Saviour made reference when he was speaking that a contract had been issued to another surgeon who was interviewed at the time of Mr. Alwity. That is not the case. There was some discussion as to whether a surgeon could be appointed on an interim basis at S.E.B.; Health and Social Services wanted to do that and S.E.B. said: "No, we need to sort this problem out." So, it was not the case that a contract was issued in the interim. I would like now to just quote from the Solicitor General's report again. This is paragraph 178: "The hospital should be aware that procedure adopted in this case has the potential to damage its reputation as an employer." That was accepted, and then it goes on to say: "In employment law cases, procedure can be as important as the merits of the decision. If the procedure is non-existent - which is what I referred to before - then these failings will cause observers to worry about the merits of the decision, even if ultimately those worries are proved to be unfounded. The inevitable consequences are investigations that cost money and result in delay." As I said, there was no procedure, at this stage, for potential members of staff that had not actually started work. There now is. Because I am trying to cross-reference, Members will just have to bear with me a little bit if they can. I believe that this confusion is what has happened here. The right decision has been lost, or overlaid, by the manner in which that decision was reached and communicated. This was also in the former Solicitor General's report and concluded in paragraph 7. What he says: "In the circumstances, it was reasonable for the hospital management to terminate the employment contract."

[15:00]

Much reference has been made in the Complaints Board to the Solicitor General not being independent. The Solicitor General is a Crown appointment and is utterly independent, which is why the S.E.B., having still had the Haste report to try and get mediation, having still had the Beal report which said that the processes were poor, but the outcome was the correct one, still went to get further expert advice from an independent Crown officer. I do not know how anybody could say that the Solicitor General was not independent at that stage. The Solicitor General's report made it quite clear that once Mr. Alwity had been offered the job, he sought the views of other senior figures in the hospital to generate support for an alternative starting date. This is covered in paragraphs 23 to 81 of the Solicitor General's report, and I am sure Members will not want me to read all those pages out. But the Solicitor General went on and reported that so far as raising the prospect of involving his union, the B.M.A., and other Jersey lawyers, this increased the temperature, and all this on the sole issue of a start date. So Mr. Alwity - and I think the Minister for Infrastructure tried to refer to this but I have found the reference in the public documents - made it clear that he wanted a timetable that would enable him to return to the U.K. for family reasons. Paragraph 83 in the Solicitor General's report. The timetable proposed by the Clinical Director was unacceptable to him. Mr. Alwity, knowing that the Clinical Director was on leave, contacted a theatre nurse with a view to swapping theatre slots without the Clinical Director's knowledge or agreement. In fact, and we were talking about patient safety, Mr. Alwity's proposed changes - if they had been allowed to happen without management knowing - would have created a significant clinical risk for another speciality. What he was suggesting to the theatre nurse is that they move some gynaecological procedures to a Friday, to allow him to have the slot created as a vacancy. Mr. Alwity also requested a copy of his employment contract. Not an unreasonable request, but he requested it from a junior member of the H.R. Department, giving the impression that the managing director, who was on leave, had authorised such a request. In summary, Mr. Alwity did not hesitate to seek out more junior hospital management and staff, in order to help secure a change of

decisions that best suited him and his family circumstances. That is subversive. That is not negotiation. I ask Members - and I look at Deputy Maçon - are these the actions of a team player? No, they are not. The previous Minister for Health and Social Services said the way that Mr. Alwitary went about this negotiation and behaviour that he displayed, and his lack of consideration of any interest other than his own, were at the root of the problem. These are not the actions of a team player. The Deputy of Trinity also reminded the Assembly of the key findings of ... I am not giving way.

Senator S.C. Ferguson:

Character assassination here.

Senator A.K.F. Green:

I am answering factually and cross-referencing, wherever I can, the comments that I am making. I have to defend the position that the S.E.B. found themselves in and why they made the decisions that they made. The Deputy of Trinity, former Minister for Health and Social Services, reminded the Assembly of the key findings of Verita and I do not intend to repeat them all, but in summary to say that patient safety is directly affected by poor team working; poor communication; consultants working as individuals or in isolation; distant or strained relationships between clinician and management. That was another one that Deputy Maçon picked up on. We now have clinicians in clinical posts of management; they are not distant as they were. That is a big change that the former Minister for Health and Social Services brought in and that I have continued to work on, to improve the management and the safety and the accountability within the hospital. Mr. Alwitary was prepared to be openly critical of management to obtain what he wanted. I am now going to make reference to a planned visit in the hospital in October and that is covered in paragraph 142 of the Solicitor General's report, which Members have, when he came to visit the hospital, but made no attempt to visit and talk to, despite the difficulties, with the clinical director or other senior management to resolve issues or concerns. The managing director - and it is referenced in the report which Members have - the managing director of the hospital at the time observed: "He does not accept anything that he does not like without an argument and, when he does not get the answer that he wants, he tries somebody else for a different result and so on." This is in the report: "Whenever we do call his bluff he backs down and starts to debate all over again." The former Solicitor General agreed with hospital management's comment at the time that the relationship between Mr. Alwitary and the senior management staff was utterly dysfunctional. This is in the first page of the Solicitor General's report if anyone wants to see it: "The apparent loss of trust this entailed and the breakdown in relationships would be serious in any employment context, but in a relatively small hospital with a particular requirement for effective team working and close working relationships with significantly smaller teams than you see in U.K. hospitals, this would be especially so." Therefore, Members have to ask themselves whether, in the light of the behaviour unbecoming of this position, and showing the general lack of respect to potential colleagues, why they would be comfortable with continuing with the offer of employment. Would Members be comfortable with employing a man who, as the Solicitor General observed, does not appear to accept, or appears to have no insight, that his behaviour is a real cause for concern? I would like to talk briefly, now, about patient safety. The former Minister for Health and Social Services covered this in depth. Members are aware that, as the Minister for Health and Social Services, this is one of my top priorities. This case was not about patient safety, as it has been claimed, and it is disingenuous to claim that it is. The Solicitor General points out in his report that Mr. Alwitary did not seek a single meeting with clinical directors, or any of the management at the hospital, to discuss safety concerns. Indeed, he did not raise any concerns with hospital management until his email to the Clinical Director of 7th October 2012; the last email he ever sent to hospital management. Mr. Alwitary wanted not to operate on a Friday, claiming that it put patients at risk.

Eight to 10 patients a year have the particular operation that he was concerned about. He also operated on a Tuesday and he operated on a Thursday every other week, so he had every other Friday off, or would have. It is quite possible for those difficulties to have been resolved by operating on a Tuesday, or on a Thursday, for the small numbers involved and, in fact, that is what happens now. Health and Social Services gains assurance about patient safety via many routes. Staff at the hospital are openly encouraged - despite what Members say - to raise any issues and report any problems where actual issues or, just as importantly, near misses have occurred, so that they can learn from it and they can be addressed. We now have an associate medical director with specific responsibility for the governance and safety, plus issues that are regularly discussed at our mortality and morbidity meetings, so that all staff learn from all incidents and they are all discussed openly, candidly, within a blame-free environment. The States of Jersey has the whistle blowing policy. Complementing this, Health and Social Services has a raising serious concern guidance note intended for all H.S.S.D. (Health and Social Services Department) staff who are governed by different - or additional perhaps is a better expression - additional regulatory of statutory definitions for raising concerns. So, just to be clear, some professions have a legal requirement, within their profession, to raise any concerns that they may have and it is an offence under their code of practice not to do so. In January 2016 Health and Social Services introduced its duty of candour, being open, a policy and procedure that reflects our commitment to promote that culture that encourages openness, transparency and candour at all levels. Let me be very clear: the reason for rescinding the offer of employment was entirely due to the unacceptable behaviour of Mr. Alwitary. The relationship with the managing director of the day, the clinical director, joint medical directors, the director of hospital operations, and the chief executive and other staff in H.R. and theatres had irretrievably broken down, and all this without even starting work in Jersey. If there was a threat to patient safety, this would have been created by Mr. Alwitary himself. His actions have soured and fractured important relationships. This could not be allowed to happen without our hospital and, therefore, the job offer was withdrawn. There is lots of evidence in the Solicitor General's report, the Beal report and the Haste report. On that basis, I urge Members not to support this vote of no confidence. Thank you.

Deputy K.C. Lewis:

A point of order. There was mention earlier on about Mr. Alwitary possibly being devious and obtaining a contract. We have no way of knowing, whatsoever, his motivations or what he was thinking or what ...

The Deputy Bailiff:

I am afraid I did not hear the use of that expression, I am afraid.

Senator A.K.F. Green:

It is a factual happening and it is recorded in the Solicitor General's report.

Senator S.C. Ferguson:

May I make a ...

The Deputy Bailiff:

No, if you would give me a moment please, Senator. What I was going to say, Senator Green, was that you used the expression "disingenuous" when you were speaking. I did not interrupt at the time, because you were in full flow, but disingenuous, of course, carries with it an implication of insincerity.

Senator A.K.F. Green:

In that case I apologise and I withdraw that comment.

Senator S.C. Ferguson:

I wonder if I could just make a slight correction. The first ...

The Deputy Bailiff:

No, you can ask for a point of order, or you can ask for a point of clarification.

Senator S.C. Ferguson:

Can I ask for a point of clarification?

The Deputy Bailiff:

From the previous speaker?

Senator S.C. Ferguson:

Yes. Would he like to confirm that, in fact, the first problem that occurred with the job plan arose from an email from the clinical sister, it was not raised by Mr. Alwitry.

The Deputy Bailiff:

Are you able to clarify, Senator?

Senator A.K.F. Green:

Not at this stage.

2.1.16 Deputy D. Johnson of St. Mary:

Thank you, I shall be brief. To my mind, the issues seem to be far simpler than some have suggested this afternoon. There are essentially 2 issues, one relates to the terms of the contract and its precision, and the other is the application, or applicability, of the present proposition of the vote of no confidence. As to the contract, I submit that is of no concern to this Assembly. Proceedings are being taken in the Royal Court, that will be hammered out there, any question of compensation will be dealt with there with the backing and on evidence of various witnesses and I am not sure why this Assembly needs to go into that in any detail. My greater concern, therefore, as to whether the conduct of the board at the time is such as to warrant a vote of no confidence. As the Deputy of St. Ouen has rightly said, certain members there today were not there then, and to that extent I see little merit in passing such a vote of no confidence. Attention, therefore, turns as to whether the present members of the board should have such a sanction. Again, I share the Deputy of St. Ouen's concern; my principal concern is the attitude it took to the version of events as from the Complaints Board. Again, I would like to hear what the Chief Minister says in relation to that as to how that is justified and how their response is justified.

[15:15]

2.1.17 Deputy J.A. Martin:

We would all like to hear what the Chief Minister has to say because he would have had a right to reply, but we have all held back and we have heard from the other major player, which is Senator Green. So, I feel now it is time that I should speak. I was Assistant Minister at the time and from memory I can inform this House, with hand on heart, I can only remember this being brought up after a ministerial meeting. It was myself, the Deputy of Trinity, the Constable of St. Peter, who was the other Assistant Minister, and the Minister and a couple of officers. It was not minuted, but we were informed that this person had gone, from memory, because, as I say, it was not minuted. There is a letter in here, the other Assistant Minister met with doctors and the Minister in January. So, let us fast forward. Did I know all the facts at the time? No. The individual, as far as I was concerned, I was basically told there had been problems with the employment contract and, from

memory, problems in working with other people and it would not be good for Jersey bringing him after Verita and everything else. You believe what you are told. Hand on heart, I believed what I was told. Hindsight is a good thing. I just listened there to Senator Green and it is very good how you can paraphrase the Solicitor General. At 5 at the beginning the Solicitor General says: "On 13th November 2012, hospital management concluded that the relationship with Mr. Alwitry had broken down and was dysfunctional. I agree the relationship was dysfunctional by 13th November." Well, how did it get there? We interviewed the man, we did not ask the right questions, we even ask him - he is offered the job in August - will he be bringing his children to start school in the September term, 3 young children you have got to move from the U.K. He was probably wondering what he had begun to deal with. Then he has absolutely clearly said he would need at least 6 months' notice. We, at the time, at the hospital, and all of us, were under pressure, we had some really strict oral questions from people like Deputy Hilton, and rightly so: "What about the length of our waiting list?" Now, who did make the procedural mistake? I think it was the management and the person who offered this man the job in the first place and then they backpedalled so fast that this poor individual was driven to having a dysfunctional relationship. Nobody is saying it was not by the time he got the letter, it was totally dysfunctional and, yes, I am waiting for the Constable of St. Peter to go behind me, because he will have a different memory to me. But they will not find one minute of this written down. After what I said and what was told to me, all this I am saying now is what I have read since and read in the last year and read up today on all these 3 independent reports that were all done after this relationship became dysfunctional. All looking back, all agreeing that he may not have been a team player. Like Deputy Maçon said: "What is a team player?" Well, I was told by Senator Bailhache I could not be the Minister of Social Security: it would be like having a vixen in a hen house, because I would not be a team player. No, I would not be on their team, maybe, and I said at the time I would have to resign after the collective and some things I could not politically live with. I agreed to that. But, do not tell me about team players. As Deputy Maçon says, you are okay if you are on your team and you are saying: "Yes, yes, yes" and: "How high shall I jump?" There has been a catalogue of errors of the way we treated this person. Is it right that it is the wrong S.E.B.? Is it right that it has taken this long? Is it right that they have also done counter to the independent Complaints Board which, I totally agree, does not have to be upheld by the Minister. I think some of Planning's things are a dispute under the law and it has never been upheld by the Minister for Planning; maybe not this Minister for Planning, maybe the Minister for Planning before. But there will be knock-ons, they will resign, and I do not blame them. They give up their time free, they spend a lot of time trawling through these papers. We will have to employ an independent ombudsman, which I have always advocated for years we should have anyway. I am not saying they are better, it is not the Jersey way, we have to go the proper way and have one. So Senator Ferguson said, when they started to feel that something was going wrong, very early after that this man had got his letter to say: "Yes, we have offered you a job." They did not say: "Well, we did not conduct the interview." To go back when Deputy Noel said if the interview would have been conducted properly, even the Solicitor General says: "However, the procedural aspects of the case are unsatisfactory. There was a failure to investigate and properly understand an email. There was no legal obligation, the hospital management should have provided Mr. Alwitry with an opportunity to respond. Mr. Alwitry was notified of the decision to terminate extremely late in the day." It was a week before and he is given notice. You do not treat people like this. We made lots of mistakes. Whoever was in the interview missed the: "I need 6 months' minimum to relocate and give notice." Then there was the: "Hurry up, no, we want you here, we have got to get our waiting list down and we want you here." He is trying to negotiate and, as Deputy Maçon said, he is wrong to try and negotiate his job. He is now: "Absolutely cannot work as a team, he has worked here before, he has been interviewed supposedly, we think" with all these things in sync. You really have to read the then Solicitor General's words when he says: "You are sort of basically where you are." But who did he

meet? He met a confused man somewhere a year down the line who has had his life ruined and his family completely upset. So would you be a bit annoyed, and probably not the same person that was interviewed 12, 13, 14 months before? You start reading the mediation, it does not have to be in confidence: "You can tell anyone what I say." Ms. Haste – "done very hastily" to me - says: "Well there is no point in even discussing mediation, because you are not going to get your job back, you are not going to be made another offer. It is quite clear: job is gone, moved on, so why would we?" We have had so many independent reports, we are this far down the line, and it is about how often the States Employment Board are the people, you can only do it on one case, can you do it on other cases? I would not agree with Deputy Higgins on some of the other cases that have a role. There was a fear around the time of Verita; was this patient safety brought to the attention? But they are turning it around now and saying: "Well it was not the patient safety that they were not looking after; he wanted to raise other patient safety issues." But, no, he did not. We do not know. We have got experts here who know exactly what he was thinking, exactly why we had Deputy Noel absolutely - and you stopped him, Sir - intimating that if we had asked a different person he would never have got the job. Well, who would you go back to ask, his first primary school teacher? Because I would never get the job if you asked my first ... well, no, I was pretty good at primary school and I had a great attendance mark. But, as I say, would I go to Senator Bailhache for an interview when I am the vixen in the hen house? I am just not in his team. He has no problem with me, personally, and I have no problem with him, personally, but politically we do not bat for the same team; we just do not do it. If anyone can guess who is agreeing from this side to that side of the House it will always be me and Senator Bailhache. I know this was an aside, it came up, as I say, and after thought, the other Assistant Minister seems to know more about it than me, because he was in a meeting, so he is going to speak very shortly and tell you why and what happened. When I read that letter in cold light of day, what a letter. Who runs the hospital? Who runs the hospital? Because, after the thought, when they absolutely thought there might even be a review they might be looking into, where are they going? Down to the Jobcentre. They might leave, resign early, leave early, *6 en bloc*, the hospital will be brought to its knees. Well, today, we have a chance; there have been loads of other things, but I will stick to this point because, like Deputy Maçon ... what is clear in this, when is the resignation? It normally has the word "resignation" in it, but there you go. So, I am sticking to this. I, as the Assistant Minister at the time, stand up here and absolutely will apologise. I do not think it was handled properly and if I was any part of that I take the full consequences. But, from my memory, find me a minute when we were told where we were. You will not find one, because none were kept. Thank you.

2.1.18 The Connétable of St. Peter:

This is rather a long saga; one which I have been very closely involved in for some 8 years now - not quite 8 years, a little bit less than that - since it started in 2012. I joined Health and Social Services in 2011 as Assistant Minister to the Deputy of Trinity, along with Deputy Martin as well. Just looking at the issues that we are debating here today, I reflect back to my working life before I was a politician when I was chief fire officer at the airport, and I am really picking up on Deputy Maçon's comments about team player. Unless you have worked in a very functional and tight team, you will not understand what it does mean, and in small teams a cohesive team is essential, where you need to work together and work cohesively with each other. If we just look at the hospital for the moment and the operating theatre times; they each have their segments, but they must be able to negotiate with each other to change whenever possible, particularly if there are emergencies that come in which disturb the theatre timetables, and when visiting consultants come in. You want somebody that is prepared to be flexible, not somebody that is saying: "I am not going to work on Friday, because I do not want to be here on Saturday." Or: "I am not going to come in on Monday, because I am flying back from the U.K." That is what we cannot have, that is what "not a team player" is. Just moving on now, there has been a lot of - I am trying to be

politically correct here - unfortunate comments about the way officers have dealt with this and the verbal briefings that we have received, and we are just listening to what they are telling us. Well, we did and we did not. I did not. I went to see the evidence. I listened, as did Deputy Martin, although to be fair to Deputy Martin she was not as closely aligned to this issue as the Minister at the time and I was - we worked very closely together on this - and Deputy Martin was slightly to the outside of that, because she was looking after Children's Services at the time. But certainly the briefings we had were quite ranging in some ways, I felt at the time, slightly extravagant in the comments that we were getting, from my personal point of view. So, when it came to the point where we were being told a decision had to be made, the officers were getting significant problems and a decision needed to be made to withdraw the job offer, I wanted to understand what was going on because - if I can just go back slightly - on 8th August the officers came in to brief the Minister and I on this great success they had just had appointing a Jersey-grown man to the position of ophthalmic surgeon at Jersey General Hospital. We said: "Great, we need to celebrate that as a great thing for Jersey, albeit not born in Jersey but brought up and went to Victoria College in Jersey, we need to celebrate that." So we embraced that very, very quickly, because we thought that was what we should be doing, to be honest, not that that gave him the edge in the interview process, but it was good to show that we do try our best to keep our Jersey people in Jersey. But, moving on to the point where the decision was made, because of the briefings we got from the officers that they needed to make the decision. I said then I was not prepared to accept just the verbal reports. I wanted to see the evidence. I went down to the hospital's general manager's office, along with the assistant general manager at the time, and I went through lever arch files of evidence, hard evidence: actual emails - not extracts - actual emails, read them all, to understand what had been going on. So, I knew for myself what I was being told was either I needed to temper some of the comments, which perhaps somebody used a little bit more colourful language than was there, but that the fundamental principles on why the job offer should be withdrawn were very clear and demonstrable.

[15:30]

In doing that, I take responsibility to an extent here in encouraging the Deputy of Trinity - the Minister at the time - to take the matter to S.E.B. The reason for that, in going through those emails were emails about his lawyer friends, about his close associates, when he will take it up the ladder and he will do whatever he can to make sure he creates as much noise around this as he possibly could. At that point, I sat down with the Minister and with the chief executive of the hospital and said: "We need to send this to S.E.B." Not because they needed to make a decision, but because they needed to be aware there will be a public outcome from this: there will be disturbance in the media about this. The portend was there in the emails that I had gone through. It was sent to S.E.B., from our point of view at that time, from a point of view so S.E.B. were aware of what was going on. I have to say, at that time, the chief executive of the hospital was quite horrified at the idea we were asking the S.E.B. to approve our decision. It was not to do that; it was just to make them aware, they needed to know what was going on. I could go through a lot more things, I think I will run down a few more other ones. One of the things that Deputy Martin raised was about the start date. It was quite clear on the application form he was due to start in winter 2012. Well, by my calendar, winter 2012 runs out on 31st December 2012, not in spring 2013, which is when he wanted to start. That was a fundamental problem straight away. That was flagged up, initially he had an interview and appointment; the job offer was made on 8th August. On 9th August an email came in from him saying: "Well, that is a bit difficult for me, the wife and kids cannot come over until June. Can you not just get the second guy on the list - who was equally appointable - to come in and be a locum for that time until I can be free to come over?" If I can just go back a little bit to a question of the Minister for Health and Social Services from Deputy Higgins of St. Helier for Tuesday, 1st April 2014, and this is one of the drivers that we were looking for an ophthalmic

surgeon at that time. In 2010 the number of patients being seen was 397 and the average waiting time was 27 weeks. That was why Deputy Higgins, the ex-Constable of St. John, and many other Members in this Assembly were raising issues about the waiting time in ophthalmology, particularly as it affects people with diabetes, it affects their eyes and they needed to be able to get to see the specialist much quicker. In 2014 when we eventually got past the issue and were able to employ 2, now 3, brand new ophthalmic surgeons, certainly by that time our clients went up from 397 to 554 and the waiting time went down from 27 weeks to 7 with a far increased case load. That is why we required him to start in winter 2012, not spring 2013, or some other time that might be deemed suitable to him. Even talking about spring 2013, he only wanted to effectively work a 3 or 4-day week, flying in on the Monday morning, not doing the first part of his on-call shift, wanted to leave on the Thursday night so he could be back with his wife and kids for the Friday, because he had to look after his 2 youngest ones on Fridays. That was the whole issue was about him and his family requirements came before a 27-week waiting list of patients here in Jersey. Very quickly it was noted that there was this issue with regard to moving on to 2013 to start, rather than 2012. That was just the following day after his offer of the job and he says in the last comment in his email: "I know it is not what you wanted." He acknowledges it there the following day after he is offered the job: "Could you not get M.H. to do the job as a locum for 6 months?" In the questions in here, before that, we were being criticised for having too many locums and people seeing different doctors each time they went in, and here he is advocating locums even yet again. Personal interest over patient safety again. Bear with me, I am just seeing where I am going next. Two days later, another email went out, 2 days after his appointment, or the offer of a job. It was made quite clear to him there that his requirement was not acceptable to us, and I will read you the very short passage from it: "I hope you can understand the position we are in, given the above mentioned services pressures. It is with regret that we will have to withdraw our offer of employment unless you are in a position to confirm that you will be able to be in post here in Jersey by 1st December 2012." That is when it all kicked off. I have got 75 email extracts here and I am not going to bore the Members with all of those ... sorry, not "bore" but I do not think they are really germane where we are in the process of time now. Let me just move now to another item here ...

Deputy M.R. Higgins:

I know I am interrupting, but before he goes too far, can you give us a date of the email? You are saying the day after he was appointed that he was making these statements, please, because I have not seen that.

The Deputy Bailiff:

Well, that is an interruption for a point of clarification from your speech.

The Connétable of St Peter:

Yes, that will be on hand. He was interviewed and appointed on the 8th, and on the 9th he said: can we not wait for 6 months and just bring another locum in, and on 10th August was when he had the note that it was unacceptable to us to expect us to wait until after some time into the new year.

Deputy M.R. Higgins:

He was actually appointed on the ...

The Deputy Bailiff:

No, through the Chair please, Deputy. Deputy Southern, you have your light on; is there a reason?

The Connétable of St. Peter:

Just for clarification for Members, I am reading from the emails with the dates on them here in my file. These are actual emails; this is actual evidence, which is in the bundle that was passed on to

all the relevant parties. I think, if I can come back to the mover of this proposition's opening speech, he majored quite a lot about the B.M.A., the British Medical Association. Just to inform Members, the British Medical Association is the union for all sorts of medical people. Let me just get you the date for this one. Interview and offered the job on 8th August. The 13th August, 5 days later, this is from Mr. Alwitry to Mr. Downes, the clinical lead in the department: "I have spoken to the B.M.A. and one of my old school mates, who is an employment lawyer at Benests. They cannot understand, or believe, Mr. A. Mc's stance." Now, part of the pleadings going forward from the proposer is that it was an error, he never did speak to the B.M.A. He did, 5 days after he was appointed. It took some time but the B.M.A. did respond on 12th November - at 16.42 the email was timed: "Dr. A.A. has run into a few problems with the consultant lead and I would like to apprise you of the situation for the purposes of avoiding a future conflict." Further proof again: he did contact the B.M.A. about these issues. Furthermore, he also later contacted the General Medical Council, which is the regulatory body that sets the standards for clinicians. I will need to read part of these out for you, these are in the bundle as well, document 21 in the bundle, this particular one. If Members have read it they will recall it. This is to the General Medical Council, case number C1136221512. I do not expect you to remember that. This is a complaint about misconduct, and the background and reasons for decision. Dr. Amar Alwitry has submitted the following complaint to the G.M.C.: "I was dismissed from the post as consultant ophthalmologist in Jersey because I raised patient safety concerns." I am not going to read the whole paragraph, I will come to the outcome. The decision: "In particular we have seen no evidence to support the allegation that the decision to withdraw the offer of employment for Dr. Alwitry was made by Mr. Downes." That is the wrong one, sorry, but I will read that one anyway: "It appears to be a decision of the States of Jersey Health and Social Services and the States Employment Board." Let me move down to the one about safety.

Senator S.C. Ferguson:

Can I ask which document this is in, please?

The Connétable of St. Peter:

Document 21, in the report back to the Complaints Board, S.E.B.'s report, document 21. I had rather hoped that the mover of this proposition would have been fully versed with these facts which we are now seeming to dribble out now onto the floor of this Chamber. The point it makes here, Mr. Alwitry's pleading: "It seems that he is not happy with my joining him and he has started deliberately making changes to my timetable to compromise the safety of my patients and actively put them at visual loss." "We have found no evidence to support those allegations." Mr. Alwitry again: "He moved my theatre session from Thursday to the Friday and then refused to allow the on-call doctor to care for my patients at the weekend because he did not want to be here." That is my words, apologies. "This would have left them cast adrift without any specialist care. He also refused me a clinic on the day following my main operating list, further risking my patients' sight, even though a clinical sister suggested it. No reason or explanation was ever given for this action, which I highlighted in the letter my solicitor sent out in April of this year." This year being 2015, August 2015. In the decision making: "No evidence to support the allegation that imposing a job plan on Dr. Alwitry that Mr. Downes put patients at risk." I think I have said enough, there are 4 pages of this, I am not going to labour it all with Members, I think they can look it up for themselves, if they have got the information there with them.

The Deputy Bailiff:

I have to say, Connétable, I cannot immediately find the documentation you have been referring to. Do you mean it is in the comments?

The Connétable of St. Peter:

The States Employment Board's response to the Complaints Board.

The Deputy Bailiff:

To the Complaints Board?

The Connétable of St. Peter:

Yes.

The Deputy Bailiff:

That is not in the comments lodged in connection with this debate?

The Connétable of St. Peter:

It is in the public domain.

The Deputy Bailiff:

I am just trying to identify exactly where ...

The Connétable of St. Peter:

Yes, sure, sorry, it is in the public domain.

The Deputy Bailiff:

I think, in any event, you were going to move on from there, were you not, Connétable?

The Connétable of St. Peter:

Certainly. If Members are concerned, I can have the report circulated for them to read for themselves if they need that, or I can pass it around the Chamber. This is actual evidence, which we have received from the General Medical Council. This is a photocopy of their letter, which I have read out to you this afternoon. Right, where was I going with the next one? I think I will just quickly now jump to another one, because it is the next one on my pile. I was just picking up the letters that we received, just recently, from one of the now retired ophthalmic surgeons at Jersey General Hospital, a Mr. Bartley McNeela. He spoke quite glowingly about Mr. Alwitry. Bartley was with us for 10 years before his retirement, Mr. Downes has been there for significantly more years. In the periods of time that Mr. Alwitry worked in Jersey General Hospital were times when he was coming in as a locum, filling in gaps where he had spare time to come and work for us. As a locum he works the hours he was prepared to work, that is acceptable for a locum, they are fitting into our gaps. He is not there to work to a fixed work pattern as a permanent employee would be; it is a different arrangement altogether. So, he chose his days of work and he chose his hours of work as a locum: that is what he is able to do, in agreement with the management, of course, at that time. But he was not required, not set out in fixed times when he had to be there as he would on a permanent contract. I think there were a couple of other items I picked up from the mover of this proposition's speech. He referred to a kangaroo court, with managers telling the Minister what they should be doing. No, they are not. Yes, we listen to them and, yes, we check their evidence and, yes, we proved it for them. We did not just listen to them, they were not a kangaroo court. They recommended, we decided based on evidence, factual evidence which can be demonstrated and made available. Hospital admin in denial that they were in fault? No, they are not.

[15:45]

They have offered a settlement on day one. They acknowledged there was an error in the way that the H.R. Department had handled the whole issue of contracts. He was offered £25,000, I think it went up slightly more than that for some other costs he might have had, but he rejected that. He was offered to go to an Employment Tribunal, but the maximum he could get from an Employment

Tribunal, I believe, is £10,000 and he withdrew from that. I will cover this one: dismissal based on erroneous belief that he had reported to the B.M.A. Evidence suggests he did. Reported patient safety to the B.M.A.: that was after he was told he did not have a job at all. He never raised it all during the time he was negotiating his timetable. In fact, the timetable he wanted would have produced patient safety issues for his own patients. I think I will not make much comment about Deputy Mézec's blunderbuss approach, which is about everything that was wrong in the world was the fault of S.E.B. One thing I did want to pick up: I found it quite irritating to suggest that the Crown appointments we have in Jersey are in some way substandard, compared to people sitting on different boards. Yes, they may well be lawyers as well, but we have some of the finest lawyers appointed by the Crown leading this Government forward on our behalf, both here in Jersey and around the world, in dealing with international matters. So, I find those sort of comments quite offensive personally. I am not trying to ingratiate myself with you this time. I mentioned those. Senator Ferguson made a comment about his work and timetable issues were raised by the theatre sister. I could not quite understand that one. What he did, he went behind the back of the clinical director to negotiate a favourable theatre time with him and the theatre sister tried to accommodate him wherever possible; she is like that, Judith, but she was not able to complete what he wanted at that time and, therefore, that became another issue for him. With regard to the issues that drove us to the decision that we could not appoint him was largely on the back of our really deep concern - that is the Deputy of Trinity, the Minister at the time and my deep concern - about the outcome of Verita. I think Members here need to really reflect on what Verita was. Verita was the death of a colleague on an operating table in the General Hospital, which should not have happened. It was because the sort of clinical governance and the issues that were necessary were weak at that time. The management structure was rightly criticised by the Verita report and it required us to put in more robust management and administration of the hospital and the staff and the operations that go on in there. There has been a great shift of movement under the interim managing director of the hospital, where control of the way the hospital worked and was run was being wrestled away from the senior clinicians and brought back where it should be in the control of management. Even the senior clinicians, recognising that they were losing some of their previous powers, but unable to focus more on their clinical lists, even they acknowledge that this was the proper way forward. That is why they stood alongside the Deputy of Trinity and myself in approving the fact that he should not be employed. That is why not 4, not 5, not 6, but 7 of them signed a letter to the Chief Minister explaining why they were so concerned about the issues with Mr. Alwitry. They saw the potential of him going behind the scenes, behind the back of senior management and criticising the management with junior staff as undermining the work that had been done. Certainly, the Deputy of Trinity and myself at that time, we could not and were not prepared to see the hospital regress back to where it was which caused the death of Elizabeth Rourke on the hospital operating table. Deputy Martin is not here, unfortunately. I am speaking very critically about her comment about the Haste report and all done in haste. I know it was meant to be a tongue in cheek joke, but she did not offer him the opportunity to go to mediation. He did not acknowledge - when she met with him - he had any failings, whatsoever, on his part and was not prepared to move from his stance. That is why she said there was no room for mediation and I think I could carry on quite a long way, but I am not, apart from one very quick one if I can find it. Just a little piece here; it is quite important, I think. This is about consultant recruitment overview: "When a new, or replacement, appointment is being considered, a job description is drawn up, drawn up collectively by the relevant clinical director, manager and medical staffing. This job description will include an indicative job plan, or timetable. The job description is sent out to the appropriate speciality Royal College [i.e. in this case the Royal College of Surgeons] for comment and approval. The job plan is most frequently the element of the job description commented upon. The Royal College of Ophthalmologists approved this job description submitted for the post that Mr. Alwitry applied for, without amendments, and the comment issued was: 'Looks like a nice job.' Advertisements were

placed usually within the British Medical Journal. A short list is arranged with a normal resignation time from one job to another being the 3 months, not 6 as he was requiring.” One final little piece here before I forget it. A lot of comments have been made about the glowing reports, references. Here is one of them. I do not suppose the camera can pick it up from that far: 2 sides of a single sheet of printed paper; just a tick box effectively; that is all it is. That is a glowing reference, according to Mr. Alwitry. That is the worst one. Does not come out top score for ability to work as a member of a team; professional relationship with colleagues; clinical ability; knowledge of and commitment to adapt; guidance in physical practice.

The Deputy Bailiff:

Can I just interrupt and ask: are these references that were done at the time of employment and the time of open recruitment?

The Connétable of St. Peter:

These were taken up immediately after the job offer was made. So, they were not available to the Employment Panel, no. They are probably not. Thank you very much for pointing that out. Having said that, yes, we did get appointments ...

Deputy G.P. Southern:

May I ask for a point of clarification?

The Deputy Bailiff:

If the Connétable is prepared to answer a point of clarification.

Deputy G.P. Southern:

When was Mr. Alwitry shown those references?

The Connétable of St. Peter:

Whether he was shown them, or not, I do not know. He put forward who his referees were going to be. They are then sent out these forms to fill in for him on his behalf. This particular one came in on the 14th August; that was 6 days after the interview.

The Deputy Bailiff:

I think if these are not ...

Deputy G.P. Southern:

Was he made aware that there were reservations on those references?

The Connétable of St. Peter:

Not at the time of the interview, no. Because ...

Deputy G.P. Southern:

Then should it be, because then he would know how to defend himself?

The Deputy Bailiff:

No, Deputy Southern, please. You cannot make that observation directly to the Connétable, or indeed to the Chair, at this point. That was simply a point of clarification he was seeking, which has been provided.

The Connétable of St. Peter:

Unfortunately, I know Deputy Southern; I take his point. Unfortunately normal H.R. practices, you get your references after the interview if the person is deemed employable. Mr. Alwitry also talked

about himself as being the outstanding candidate, but there were 2 outstanding candidates: the other one being the one he wanted to do his job as a locum and then relinquish that job when he was ready to come over. I think, rather than labouring any more points, I do not think there is anything else I want to really bring up again any further, other than to say that I stand fully behind the decisions made on the withdrawal of the offer of a job to Mr. Alwitry at Jersey General Hospital. It is often said that 10 per cent of your employees give you 90 per cent of your problems. In a large organisation, like the hospital in Derby where he came from, he was probably one of 10, or 12, people in there and he might well have been able to get lost in there and do some negotiation among his peers if he wanted some flexibility. In Jersey - sorry, no, I will not give way - in Jersey General Hospital that 10 per cent is one-third of our employees; there are only 3 of them and to have one-third of your employees giving you staff problems on day one is one step you will not take if you know that is the way it is going to be. I think the last and very final point that I will make is: if he was the outstanding candidate, with glowing references, why, when the B.M.A. suggested he contacted his lawyer and withdraw his resignation from the Derby Hospital, he refused to allow them to take his references back.

2.1.19 Deputy R. Labey of St. Helier:

I was not going to speak, but what is clear is what is happening here is they put the former fireman - with the greatest of respect - in charge of the smoke screen. I would just like to record that I thought we were not going to try Dr. Alwitry in this debate and yet we have heard from the Minister for Health and Social Services, and I do apologise, Senator, for heckling you - it was not intentional - I had a problem with volume control as you know. But we have heard - I do not know which officer has been writing stuff for the Minister for Health and Social Services and his Assistant Minister - but what we have had is selective accusations against Mr. Alwitry and the irony of this is that, as Deputy Higgins says, certain charges were made against Mr. Alwitry, concerning his professional suitability, which he was never able to defend or counter. Can anybody make sense of what we have just heard from the Minister and the Assistant Minister of various little bits of information anti Dr. Alwitry? He might have a very good counter for those. We do not know. He has never been given the opportunity to do that. Sorry, but there are all sorts of arguments on the other side too. I thought we were not going to do the trial today. I think that has not done them any favours. The more we hear from this thing the more it stinks, I would say. It is like a farmyard in here today. I remember when the Complaints Board report first came out. I was one of the people asking the Chief Minister various questions about this, and I remember him saying to me that it was the clinicians, it was the consultants, who were complaining; it was people within the department who were unhappy with the appointment. Is that not the truth? Because the more we learn of this, the more we realise who was running, and probably still is running, the show here at Health and Social Services. The consultants. I am not alone, I am sure, in this Chamber of hearing the stories of arrogant consultants, who change shift patterns, so that they do not have to work with the person they cannot stand, who have to have secretaries and administrators working directly to them. They will not share administration in the department. One of them is recorded, apparently, as saying: "I had the misfortune to work for Dr. Alwitry's father; there is no way I am going to endure working alongside his son." So, there are all sorts of counterarguments here. We are spending all day on this vote of no confidence and what I am finding difficult to have confidence in is the management of this hospital and who is really running the show. Do not forget that some of the people in Health and Social Services are the most highly paid positions in the history of the States of Jersey and a lot of them, I am sure, are worth it and do a very, very good job. But a picture is emerging of trouble at the mill; trouble at the General Hospital. I did not know if I could go the whole hog with voting for this proposition from Deputy Higgins before I arrived here this morning, but the more I have heard, the more I feel I do have to register a vote to say that I am not happy with what has occurred. I know some of the personnel have changed, but I

cannot vote against Deputy Higgins on this one, because I do not want a vote of confidence. Apologies to those concerned, nothing personal.

[16:00]

I cannot register a vote of confidence, because I think a man, whatever the accusations are against him, however true some of them are, or not, we could have found out his real address was 10 Rillington Place. That does not matter. It is the process; it is the process that has happened. They will say they were acting on advice and have we not all just found out 2 weeks ago the trouble with the Innovation Fund - Senator Ozouf - fiasco. I do not want to pick at that scab. But that is what happens when they say: "Well, we are acting on advice" and not challenging the advice, perhaps. So I cannot see that given, coming back to the basics here, and I have heard it said: "Well, the detractors of the S.E.B. are relying on one report from the States Complaints Board." You can bet your bottom dollar that if that report came out in favour of them, one report would be enough. Let us go back to basics. Just because I am going to vote, I think, now with Deputy Higgins, it does not diminish my enormous respect for the Constable of St. Mary, whom I work with, and have huge respect for and the Constable of St. Martin and some of the Ministers - all of the Ministers. We like them as people. It is a difficult, horrible thing to have to do. But, I have to lodge my fear that something has gone badly wrong. I cannot give confidence in this matter, I am afraid. The sky is not going to fall in. If it went through I think the numbers do not work for the Deputy, but there we go. Even if they did, we would change some personnel. It would not be calamitous if we had to change the S.E.B. a little bit. They might even all have to go and some of them would stand again. The Chief Minister would put a delegate in, or what have you. So, it is more important, I think, to register as the States that we do not like the little man coming up against the authority and being badly treated. As I keep saying, I was not going to speak; that is why this is so incoherent. But with the States Complaints Board findings it seems to me that the position of the States Employment Board is simply untenable.

2.1.20 Connétable D.W. Mezbourian of St. Lawrence:

I am not sure that I can follow Deputy Labey in volume, but I hope that I can add to the discussion that has been taking place today. I rise, as a member of the former States Employment Board elected by this Assembly, to represent all Back-Bench Members on the States Employment Board. We must remind ourselves that, before the amendment to Regulations in 2010, the States Employment Board consisted of executive members only. Those Regulations, from 2010, ensured that there was and there remains Back-Bench oversight of the corporate employer. All said members, be they executive or Back-Benchers, put in considerable effort across all areas of their responsibility and I am not sure that the breadth of work is often fully understood by our employees within this Chamber. But members' efforts ensure that officers receive high quality strategic and policy direction for the benefit of both the workforce and ultimately of Islanders. Deliberations are considered on matters such as Health and Safety, employee relations and negotiations, organisational change, pensions, reward policy and codes of practice and they are given due and full consideration. Those deliberations and considerations benefit from the impartial and independent advice of a non-executive adviser to the Board, who has already been mentioned today. What we have not heard today are the credentials that she has, which speak for themselves. She is a Chartered Fellow of the C.I.P.D. (Chartered Institute of Personnel Development); she is a former Director General within the H.R. area for the Ministry of Justice. She was also the Customer Service Transport Delivery executive for London 2012, as well as sitting on a number of N.H.S. boards and on the board of the British Transport Fleet. I think, in short, she knows her stuff. She advises the board and as do the political members of the board, she holds officers to account. This vote of no confidence, led by Deputy Higgins, has centred on the case of Mr. Alwitary, albeit that we have heard of other references made both in his report and referenced today. So, I want to

focus on that. I want to focus on not a little man who has come up against the employer, but on a consultant. Just remember: Mr. Alwitry is a consultant. So, I was a member of the States Employment Board when a decision to rescind a job offer made to Mr. Alwitry was carried out by the Health and Social Services Department. So, let us be clear, this was not a rescindment from the States Employment Board: the decision was made by the Health and Social Services Department, as we have heard from the Constable of St. Peter. Indeed, they believed they could see that potentially there was going to be political upset at the decision that they had made. Indeed, they wanted to have the support and the endorsement of the States Employment Board for the decision that they had made. So, when they came to the S.E.B., what happened? We immediately questioned the decision; we questioned whether you can rescind an offer of employment and we questioned the process of recruitment because, clearly, if you offer somebody a job and then you decide to take that offer away, something has gone wrong. So we questioned the recruitment process, as well as the decision to rescind. Had we not questioned we would not have been doing our jobs properly. So, subsequently, as we have heard, 3 separate reports were commissioned, all of which were based on extensive interviews, including interviews with Mr. Alwitry himself. I was surprised at the opening comments of Deputy Higgins when he said that he had not prepared a written speech today, because he had taken so long to read all of the reports and the information that had been put in the comments from the current States Employment Board. But I was surprised at his comments, because I have sat and read all of those comments, all the reports, all the supporting documents, as I read them in 2012, 2013, and I do not think we were reading the same reports, frankly. It seems to me that alternative views beget alternative facts and we must remember to focus on the facts and we must remain focused on the facts that are supported by evidence. So, let me do that now; let me refer to the reports that were immediately commissioned by the States Employment Board, because they were not happy with the recruitment process and the decision to rescind an offer of employment to a consultant. The Haste report was the first one that was commissioned and, as the Constable of St. Peter has said, contrary to Deputy Martin's understanding of it that she said that mediation was not going to work, the quote from the report is: "I have concerns about the feasibility of mediation as a dispute resolution mechanism *per se* given Mr. Alwitry's reluctance to explore the issues, except as a means to the end of achieving the reinstatement of the appointment. Mediation was never going to work." The Beal report of 2013 reviews the process of recruitment and, again, the decision to rescind the offer of employment; 19 interviews were undertaken for that report, including again Mr. Alwitry, and the conclusion was that - as S.E.B. had suspected, indeed as S.E.B. had known - the recruitment process had not been robust and lacked objectivity and integrity. That has never been disputed by either the former States Employment Board, or the current board. We also learn from that report, with reference to the rescindment, that the team took a reasoned and well-thought-through approach, taking soundings from the Law Officers, informing the S.E.B. and taking the appropriate action based on clinical need and service delivery. We have heard that senior clinicians and officers at Health and Social Services had - and I believe the word used was - "colluded" to rescind the employment ultimatum of Mr. Alwitry and, as Members will have seen in the letter that was dated 14th January 2013, appendix 2 in the S.E.B. comments, we were reminded that had employment commenced, the risks to service provisions, clinical governance, engagement and indeed the future relationship between doctors, managers and politicians would be most serious and should not be underestimated. Now, we have been told that those comments held the then States Employment Board to ransom. Quite clearly that comment was wrong. The board was never held to ransom. Those comments merely reinforced the view that the board had and the view that was subsequently confirmed by all 3 reports. We have heard criticism today that the S.E.B. members, who were speaking, both the current members and the former members, are concentrating on the decision to rescind the job offer. But that, I believe, is crucial to this vote of no confidence. So, I ask: was the decision made by Health and Social Services to rescind the offer the right one? This

brings me neatly to the third report, commissioned by the S.E.B. from the then Solicitor General, Advocate Howard Sharp. It was independent and I have heard Deputy Higgins today refer to bias. The Solicitor General's report was independent and it was unbiased. As we have heard, commissioned when he was, indeed, Solicitor General, but following his subsequent resignation he was retained by the then board to act as their legal adviser. So, no conflict there, because when he had completed the report he then became the adviser, because he knew of all the information.

[16:15]

Now, he concluded that in the circumstances it was reasonable for the hospital management to terminate the employment contract. I come now to answer the question posed by Deputy Higgins when he asked current members and particularly former members of S.E.B. to stand up and talk about the role that they had played when they were members of S.E.B. and when we were advised by Health and Social Services of their decision to rescind the offer of employment. Through the Chair, I tell the Deputy that my role was quite straightforward: I endorsed the decision, made by the S.E.B., to question the processes followed by Health and Social Services. There was nothing else that we could do. They had to be questioned; they had to be challenged and they were. They were challenged face-to-face directly when the officers came to speak to the S.E.B. At that time the officers were accompanied by the Minister for Health and Social Services and the Assistant Minister for Health and Social Services. They too were challenged. I think, frankly, we probably said: "Why on earth ... how on earth has this happened? How could you allow this to happen?" Deputy Martin posed the question earlier: "Who was running the hospital? Who was running the hospital?" My recollection is that it was Deputy Pryke, the Constable of St. Peter and Deputy Martin. The Constable of St. Peter and Deputy Pryke were challenged. There was nothing else that could be done. So, coming back, Deputy Higgins, to the role that I played, apart from the many meetings held with the Health and Social Services Department to question their actions and their decisions, we commissioned independent reviews to question and to challenge those procedures and those decisions. Following all the meetings and the presentation of all the reports, my conclusion was that the decision to rescind had been the right one, while acknowledging there had been faults in the process. Having re-read all of the documentation, in preparation for this debate, my conclusion has not changed. The Sharp report was absolutely clear and explicit, as only such forensic detail could be. It addressed the issue of patient safety, raised again by, particularly, Deputy Higgins and by others, and I make no apology for doing as others have done by quoting from the report, section 186: "This case is not about patient safety as has been claimed. Mr. Alwitry did not seek a single meeting with the clinical director or any of the management of the hospital to discuss any safety issues. Indeed, he did not raise those concerns with hospital management at all until his email to the clinical director dated 7th October 2012, the last email he ever sent to the hospital management." Mr. Alwitry's trade union, the B.M.A., did not advise him to raise safety concerns as an issue and instead suggested that the dispute should be capable of resolution without their involvement. I believe that everyone concerned truly believed that it was capable of resolution. However, that was not to be. Also, to quote the words of the then Solicitor General and Deputy Higgins and others may not like this, but these are the facts: "This case was all about Mr. Alwitry's overwhelming desire to obtain the timetable that suited his family. Ultimately, Mr. Alwitry's family needs were incompatible with the job he applied for." Not my words, but those of the Solicitor General. I believe that the facts speak for themselves. In preparing for this debate I have been reassured that in the case of Mr. Alwitry, the case that Deputy Higgins and others have chosen to focus on, the then S.E.B. discharged its duties diligently and in good conscience. I have confidence in this S.E.B., because I have been a former member. Had I thought then that it did not, or was not, discharging its responsibilities properly when I was an independent member elected by this Assembly to represent Back-Benchers I would have held the S.E.B. to account in public in the correct forum, which is this Assembly. If the current S.E.B. does not

discharge its duties properly, the current independent members would do the same. I notice the Connétable of St. Mary nodding her head, being one of those current independent members. I was chatting yesterday with Senator Ferguson and we have worked together on a number of issues over the years and we sat on the Chairmen's Committee together many years ago and also on the Corporate Services Scrutiny Panel. I like Senator Ferguson and when she told me yesterday that this is nothing personal I believed her, because it is nothing personal. It is not directed at me, personally. However, I can comment only from a personal perspective and that perspective is clear to me. I am satisfied that during my tenure on the States Employment Board, I was prepared for all S.E.B. meetings. I had read the papers, I questioned officers and I held them to account and I hope, with reference again to Senator Ferguson, that she will agree that those things are the norm for me. But more importantly I believe, in fact I know, that all the members of the then S.E.B. did the same. They discharged their responsibilities properly, collectively. I have confidence in the former States Employment Board and I have no reason to not have confidence in the current States Employment Board. In concluding, I urge Members to share my confidence in the current States Employment Board, in whom this vote of no confidence has been lodged and I urge Members to reject the proposition. It has no base and cannot be supported.

2.1.21 Connétable J. Gallichan of St. Mary:

May I just start by saying what a privilege it is to follow an amazing speech from the Constable of St. Lawrence? I think she articulated in many ways what I would like to have said myself. I often just focus on one particular part of a proposition and think about that carefully and I have to say that I was not going to speak at any length. I am still not going to, Members will be relieved to hear. But this has been a very tricky proposition to get to the nuts and bolts of the matter. I think a bit of clarity and a refocusing on the matter at hand will be helpful. This Assembly is being asked to consider whether it has confidence in the States Employment Board. You have stated that the nub of the motion, as it relates to the matter of Mr. Alwitry, is concerned with the process followed in arriving at the decision in the case in point and not the reasons why the decision was taken and felt to be the right one. As that is the approach we are to take, then let me remind Members that the States Employment Board has, on numerous occasions, acknowledged deficiencies in the process and has confirmed that changes have been made. Any earlier deficiencies, if they have been rectified and are no longer relevant, surely cannot be a sound basis for which to originate a challenge on the current actions and effectiveness of the States Employment Board at this point in time. The procedural shortcomings that have been acknowledged took place in 2012, more than 4 years ago, at a time when the current S.E.B. had not yet been established. It is important to note that the other cases the proposer cited in his opening speech and in his report occurred prior to that time also. The mover of the proposition said he had trouble, in fact, in knowing how to target his concerns and indeed, in his opening sentences he tried to draw the Health and Social Services Department into the ambit of the proposition. It seems to me that, even now, the motion is targeted, perhaps, incorrectly. If the States Assembly was being asked to show that it has no confidence that the processes in place in 2012 were soundly followed, or perhaps even that there were no processes in place, the States Employment Board of the day could, and should, have devised them, but that is a matter that might demand very weighty consideration. But the vote of no confidence is directed, of necessity, at the current S.E.B. and therefore at the way it is working now. I heard no evidence, so far, that the revised processes put in place have fallen over. No one has cited any cases where this can be demonstrated. I say again, the Assembly is being asked to consider whether it has confidence in the States Employment Board. In effect it must be the board, as it is currently constituted, and as it is currently operating that should be under scrutiny here. Deputy Brée says that the S.E.B.'s response to the S.C.B. (States Complaints Board) illustrates a certain mindset. I take it that he meant we were inflexible, reluctant to accept change or responsibility, perhaps, and I will challenge him on that later. But he also said that he had to be sure that all States employees

could rely on being treated honourably and he gave no indication that this was not the case and no examples of any cases, either currently ongoing or that have arisen since 2012, where this has been an issue. With a workforce numbered in the thousands there are bound to be employment issues, but, to the best of my knowledge, where these do arise and cannot be resolved internally, they are handled with efficiency through the Employment Tribunal and that is exactly how it should be. I am one of the 2 States-appointed non-executive members of the S.E.B. and I was appointed in a ballot in November 2014. In other words, I did not walk into this position unchallenged. The Assembly put me there. Once I had been elected, of course, the work could really begin. The responsibilities of the S.E.B. are numerous and in many cases relate to areas of which I had little, or no, prior experience. Accordingly, there was a series of briefings and meetings over several months, in order to bring me and the other newly-appointed member, the Constable of St. Martin, up to speed. These encompassed all relevant matters including pay, pensions, workforce modernisation and, of course, the legacy items of which the Alwitry case was one. I have been a member of many committees and also on groups, but I can advise Members that I have never had such in-depth and comprehensive briefings as those I have received as a member of the S.E.B.

[16:30]

I will say now that when I first became aware of the Alwitry matter I was, indeed, very concerned about the decisions that had been taken. I think many people would share that concern upon an initial reading of everything that is in the public domain and it appears to me, from what I have heard today, that perhaps some Members have rested their inquiries at that point. However, I feel that the States Assembly entrusted me to represent them on the S.E.B. and, in return for that trust, I owe it to the Assembly to probe further, to go the extra mile in researching and in asking questions. Members can be assured and indeed I do raise questions at the S.E.B. meetings until my own curiosity is satisfied. To cut to the chase, after an in-depth look at the facts of the situation and a review of all the reports, my appreciation of the matter changed completely and I have to advise the Assembly today that, on the evidence, I would support the decisions taken back in 2012. I reiterate that I acknowledge, as has been acknowledged by numerous statements previously, that there were errors in process but I am compelled, by the evidence, to accept that, ultimately, the correct decision was reached. But, of course, my work on the S.E.B. is much broader than that one matter and there is much work going on of which the Assembly should be aware. I have been struck, particularly, by the work undertaken right across the employee base on workforce modernisation. In my opinion, and this is something I have voiced numerous times at board meetings, this is an absolutely crucial piece of work. It is absolutely necessary to ensure that, ultimately, our workers are rewarded appropriately and equitably for the work they do. This work is vital and our employees need to know that their work is valued and rewarded right across the whole spectrum of the States of Jersey and that any historic inequalities are being eroded. There is no doubt that it is a difficult project, requiring skilful and gradual change in some cases, but I am confident that the goal is worthy of the journey. The situation is complicated but not derailed by the fact that not all groups have settled the 2015/16 pay round and this is a complex matter. Negotiations are ongoing. Indeed the S.E.B. met with representatives only a few days ago and very useful information was exchanged. This is not the time, or place, to go into these matters, but suffice it to say that a further meeting will surely be set up and we will discuss how the pay review may be resolved and allow all parties to progress the workforce modernisation programme. So far I have not really mentioned the States Complaints Board report. When I was chairman of the P.P.C. I had a fair amount of contact with the board and developed a great respect for their work. However, as has already been pointed out by the Deputy of St. Ouen, the reports can inform but, ultimately, they make recommendations. Their findings are not always accepted and this is simply a reflection of that status. However, I would like to say something that, perhaps, addresses one of the points Deputy Higgins made when he launched the proposition. He referred to the lack of

evidence put forward by the S.E.B., to support its actions. Has the Deputy not considered that this is simply because the terms of reference of the proceedings had been changed? The Deputy and others talked about natural justice, but this applied as much to the S.E.B as to anyone else. There has been an awful lot said recently in States debates about the importance of Scrutiny. In the last sitting we had the really unfortunate and, as I described it at the time, unsatisfactory discussion as to whether the future hospital funding should be referred to Scrutiny. We heard, quite clearly, from Scrutiny that they could not be expected to define terms of reference for a report until the final detail of the proposals was known to them. From that it can only be deduced that Scrutiny itself understands the vital importance of terms of reference in any report. I ask Members to apply their understanding to the circumstances in which the S.E.B. report was conceived and appreciate that had this change been anticipated, the case presented by the S.E.B., the witnesses called and the submissions made might have been very different. Contrary to the set in stone mindset alluded to by Deputy Brée and others, the S.E.B. is resilient and adaptable to changing requirements and indeed to addressing concerns raised directly from the States Assembly and I will give some examples. Much concern has been made in the past of the handling of suspensions and the Assembly might care to note that I have a special responsibility, and incidentally this was shared in the previous S.E.B. by the Constable of St. Lawrence. I have a special responsibility on the S.E.B. to monitor the matter of suspensions. I received regular officer briefings and am able to follow the number and nature of suspensions. I have the opportunity to ask questions on a case-by-case basis. I would regard it as a matter of my duty to the Assembly to raise any deficiencies that I found in the processes currently in place in handling suspensions. Similarly, during the past year, concerns were voiced in the Assembly about elements of organisational change, including outsourcing and compulsory redundancy. Arising out of the S.E.B. comments to P.63 of 2016, launched by Deputy Southern, a sub-committee of the S.E.B. has been established to examine in detail cases in which a certain number of employees are concerned. I chair that sub-committee and sit, with the other States-appointed S.E.B. member, the Constable of St. Martin, and 2 other States Members: Deputy Labey and the Deputy of St. John. As Members might imagine, we do not submit meekly. I am sure Members would not expect that from any of these Members. They can rest assured that we analyse and scrutinise matters on their behalf. To conclude, Members should look at the effect of this motion of no confidence and what it achieves, or does not achieve. Following on from the proposer's current confusion in his very opening sentences, this is not a motion to challenge the Health and Social Services Department. Members should not see this as a device to attack the Council of Ministers or even, perhaps, to unseat the Chief Minister himself. If they want to achieve those aims, they should focus on those targets and have the courage to make their challenges in a direct manner. I am grateful for the beacon of reason that the Deputy of St. Mary shone on this matter. Members need to consider this motion for what it is and what it is not. They should consider whether, in looking back 4 years for the substance of the proposition, the proposer is right to call for an expression of no confidence in the S.E.B. of today, working in an environment where procedures have been changed as a result of valid criticisms previously made and previously acknowledged. I remind Members of the words of our independent member when she was asked in the briefing held for Members earlier this week as to whether the chain of events leading to the Alwitary matter could happen again. She stated that, as she preferred to speak in terms of risk, rather than certainty, she was satisfied that the risk of it happening again was significantly reduced. The Connétable of St. Lawrence has already recounted the credentials of this member and I, therefore, hope the Assembly will take comfort from this comment. I have invested a great deal of time and energy in coming to fully understand my role as the States-appointed member of the S.E.B. The work is challenging, but ultimately extremely important to the way in which the public services of this Island are delivered. The work does not always progress as smoothly as I might like but, contrary to what some have said, progress certainly is being made. I am committed to

fulfilling my responsibilities to this Assembly and also to our employees and I ask this Assembly to reject this proposition so that I can continue with the tasks it has assigned to me.

The Deputy Bailiff:

Does any other Member wish to speak on the proposition? Very well, then I call on the Chief Minister who will speak last before Deputy Higgins.

2.1.22 Senator I.J. Gorst:

After those 2 barnstorming speeches I am not sure I really have anything further to add but as chairman of the last States Employment Board and the current States Employment Board I think it is important that I add to what has been said. It is fair to say that I start from the position of being uncomfortable standing here today, just as I was uncomfortable when the decision to rescind the contract was made and was relayed to the States Employment Board. But Members have to ask themselves what is the role this Assembly wants the States Employment Board to play. I ask that because some Members' speeches and, even to be fair, the mover of the proposition and some of those who supported it seem to indicate that they believe the role of the States Employment Board is to politically interfere with operational appointments. It is not and it cannot be. The Appointments Commission is in place to ensure that very thing does not take place and yet the insinuation is that we should have stepped in and said to the operational management of Health and Social Services that contract should not have been rescinded. The States Employment Board is not the easiest place to be. It is in effect an old-fashioned committee because there are, as the 2 previous speakers have said, Back-Bench Members elected on to the States Employment Board and that was a positive decision of this Assembly to ensure, in the words of the mover of the original amendment, that Ministers did not have it all their own way and there was some openness, there was some transparency and there was some accountability built into what is an extremely important job. What is it that Members in supporting this version of no confidence would have wanted S.E.B. to do? That is the question this vote of no confidence is asking for. What should we have done in this particular human resource individual case issue? What should we have done? Should we have intervened? Should we have politicised the appointment of consultants at the General Hospital? I do not think that even the mover and the other signatories to the proposition believe that is what we should have done. Nor do they believe that is what the States Employment Board should do today. The mover said that he was concerned that the way this particular case had been handled meant that no future employee could have confidence in the contracts they signed. Yet we have heard from the Minister for Health and Social Services that since this particular issue arose 21 other consultants have been employed. They had confidence in the contracts they signed. Would it have been right for the States Employment Board to have been approached by other people who were applying for a job and made the decision over the heads of the operational management and the clinicians and the appointing board to say they were wrong?

[16:45]

It would not. I do believe that would not be the right approach. Let us remember the context within which the then Minister for Health and Social Services was operating, together with the 2 Assistant Ministers. They were operating in the context of an extremely difficult and sad occurrence that involved someone losing their life, a situation that none of us would want to return to. Arising out of that tragedy external advice, an external report, was produced. There were many questions in this Assembly about that tragedy and subsequently about that Verita report. We have heard some of the recommendations of that report today during this debate and perhaps some of those have been trivialised with the term that this particular individual was not a good team player, but working together, ensuring that there were functioning trusting relationships at the hospital, it is not about whether somebody is in a negative way a team player, it is fundamental to ensuring that

there is patient safety in that General Hospital that we, each one of us, may not know from this day to the next whether we are going to require care there. Fundamental. It is one of the heaviest duties of any Member of this Assembly to take upon their shoulders the political, the ministerial, the government responsibility for overseeing health and social services. Some Members of this Assembly I think, particularly the Member that spoke not quite at the start of the debate, still lives with that responsibility today and still finds it a heavy burden. Because, getting that right, creating an environment where management and clinicians work together in the best interests of the health outcomes of this community, as that report said, was fundamental and she had to make difficult decisions in order to move the hospital on from where she found it when she arrived. We will not know just how difficult some of those decisions were but we thank her on behalf of this community for having the courage to make those decisions. I labour on that because more recently in the debate Deputy Labey said: "Who is running the hospital, seems like the consultants are running it?" No, Verita were quite clear it needed to be run in partnership, management and clinicians, and that is how it is being run today. Verita said we needed a manager - I think the term was managing director of the hospital - so we now have a permanent managing director of the hospital. Initially that had to be, I am not sure if we would use the word "trouble-shooter" or we would use the word "locum", but we secured a first-class interim managing director of the hospital who helped to turn it around, who helped to transform those relationships. That was the right thing to do. The hospital today is being run by a partnership and that partnership is management and consultants. I go back to the question: what exactly is it that the States Employment Board have not done that the Deputy in his vote of no confidence thinks we should have done? Surely it is not politicisation of the appointment of consultants and yet that is the thrust of his entire opening speech. Surely it is one of challenge; it is one of appointing appropriate independent investigative individuals to understand if things have gone wrong in any department and, when new evidence comes to light, to consider that as well. In this case, so concerned were the States Employment Board that they did not just start with an independent reviewer that would review what had happened, we started with an independent reviewer with a very clear remit to mediate between the parties in order that the consultant could take up his position, so concerned were we with what we initially heard. Members now have a copy of that report as part of their comments. There are not, unlike the suggestion that Deputy Labey made, new facts coming to light during this debate, with one small exception, they are facts that the States Employment Board, the States Complaints Board, has put before Members, some of them, and this is another point, for many months. States Complaints Board, which the Deputy seems to be using again as the reason for his proposition, I think was initially published in July. The Deputy has so much confidence in the States Employment Board that he waited until December. I think that what Members expect of the States Employment Board, their States Employment Board, is to challenge, as we heard from the Constable of St. Lawrence and the Constable of St. Mary and the Constable of St. Martin, and they have challenged. I was going to say they have been challenging, but they have not been challenging in the negative sense of the word, it has been for me a pleasure to work with them and to share that table with them where they have rightly challenged. So I praise the former Minister for Health and Social Services because I know that during these years that the States Employment Board and States Employment Board members challenged the actions of her department. She was not always best pleased with me and that is difficult in itself. But that is the tension that should be between the States Employment Board and an individual Minister and their department to make sure that they are acting appropriately. I want to also remind Members that some have suggested that the States Employment Board have in some way acted in a way that said we have not got anything wrong, who have not held our hands up, who have not learned, have just gone behind closed doors that have closed down. That is not correct. That is absolutely not correct and any Member that has read the States Employment Board comments and their response to the States Complaints Board initial findings will know that we accept that we got things wrong. We have accepted that from the start.

That is why it is not a binary choice between the position of the States Employment Board and the States Complaints Board, because the States Complaints Board found that S.E.B. had got things wrong and we have accepted that. But, in that acceptance, when one looks at the then Solicitor General's report, it is quite clear that, after his forensic interviewing of all those concerned, a different approach from any of the other reports, so it is not a matter of finding a report that agrees with the States Employment Board's position, because not all of the reports say that mistakes were made, the States Employment Board accept that, we have never tried to say anything other than that. But those reports also say that in the first instance mediation would not work. Mediation requires, let us be clear, 2 sides to participate. That report is quite clear, quite even-handed, neither side, it says, were prepared to sit down and mediate this position. That in itself led to other concerns for the States Employment Board. Why did we find ourselves in such a position where members in a particular department were not prepared to sit down and mediate such a position, which is why we then went to our second independent report to try and understand how it could be that we had arrived at a position where that was not possible. Then we started to understand, because of other evidence that was brought forward, about why that was. I could spend hours talking about the detail. I know that you would not thank me; I do not believe that many Members would thank me; and I am not sure whether the listening public would thank me. But there are 2 or 3 areas that I want to touch on at a very high level because I think that the mover of the proposition will do so when he finally sums up, and that is the patient-safety issue. I could go into the particular paragraphs in the particular reports, I will not. I will simply say that, when the early conversations were had about the timetabling for the new consultant to come to Jersey, the reasons given for not being able to work on a certain day, i.e. Friday and Monday, were for family reasons. I have no problem with that. I try to manage my diary for family reasons. Other Members have said we were not a family-friendly organisation. No. In principle there would be no problem with someone trying to organise their diary for family reasons. My concern is that that is not the reason that is now being given for the changes to the timetable. The reason that is now being given and has been mentioned by a number of Members across this Assembly is that it was because the individual raised patient-safety issues.

[17:00]

Had those patient-safety issues been raised at the start in September, rather than October, maybe we would not be here today. But that was the initial ground for wanting to change so that the individual could go back to the United Kingdom and bring his family here in due course, not the patient safety issue, which is now the rationale that is being used. Patient safety is an extremely important concern. It is the concern at the heart of what the issue that I said as I started speaking. It was at the heart of the concern of the former Minister for Health and Social Services and remains at the heart of the concern of the current Minister for Health and Social Services and States Employment Board. I will not go into details about the emails that were then sent about patient safety and how they could be addressed, the suggested addressing of those patient safety issues arising from the consultant themselves. I will not go into detail, as the Deputy tried to do yesterday, about the conversations with the B.M.A. and whether it was a formal complaint about the then clinical director, I think it was, or not, other than to say in the then Solicitor General's report it is absolutely clear that a number, quite a few, conversations were had between the consultant and the B.M.A. and it was unclear to the hospital at that time whether it was a formal complaint or not. But, let us be clear, those conversations were had with the B.M.A., requests and agreement were granted by the consultant to the B.M.A. because that is what they suggested, that the B.M.A. should approach the hospital and not, as is now being suggested, that was not the case. I think it was the former and current Assistant Minister that talked about the patient safety complaint that was made to the General Medical Council, they are 2 different bodies, I am not a clinician, I am not a medical man, but they are 2 different bodies, it is right, as I understand it, that

the G.M.C. would deal with those formal complaints. They did and they found that it was not a patient safety issue; they found that it was an employment issue, so not a patient safety issue. It has been suggested in the media, in recent days, I think over the last 48 hours, that the G.M.C. are reopening that patient safety complaint. They may be. They may have been requested to. But, as far as hospital management and clinicians are concerned, so far, as I stand here before us today, if that is the case that has not been communicated to those individuals to whom the complaint was initially made. I want to go slightly back to the running of the hospital and who is running the hospital. As I said, the hospital is now being run in partnership, management and consultants, and it was Senator Ferguson that suggested that the States Employment Board, and obviously of course the Minister and Assistant Minister, were being blackmailed. I think that was her term, was being blackmailed, and she is reiterating that assertion, by clinicians, the medical director, the clinical director. Just for those Members that do not know; they are consultants, they are clinicians, and that what we should have done, again Senator Ferguson's word, was call their bluff. Again, I ask what is it that Members really wanted the States Employment Board to do that they did not do? Is the Deputy, like Senator Ferguson, saying that the States Employment Board should have called the bluff of the managing director of the hospital, of the clinical director, of the medical director, of I think, from memory - I do not have the letter in front of me - I think there are possibly at least one other, if not 2 other clinicians taking that position. We were not bullied because we were disappointed that we were put in that position and it was those positions that we were put in that led us then to ask for the forensic analysis that the then Solicitor General undertook. But let us ask ourselves, if we had followed, rather than the reasoned reasonable right approach of carrying out an independent investigation, what Senator Ferguson's advice to us is this afternoon would that be a reasonable approach? Would that be putting patient safety and the interests of Jersey and Islanders at the heart of our decision-making process? No, it would not, with the potential for those people no longer working here in one go. We should have called their bluff? So, is that what this vote of no confidence is based on that we should either have politically interfered with the appointment of a consultant; that we should have called the bluff of the medical director, of the clinical director, of the managing director of the hospital, and of at least one, if not 2, other consultants, daily carrying out operations to improve the health of Islanders? Is that it? If we had done that, I think then every Member should have voted for this vote of no confidence. If we had made decisions, which facilitated those individuals to leave their post and put the health of Islanders at risk, then every Member should have voted for this vote of no confidence. But we did not. We did not. You have heard, as I have, past and present members of the States Employment Board saying they thought the decision was right at the time and, having reviewed hundreds of pages of documentation again in preparation for this debate, they still think that decision was right. We have heard other Members today say they will be supporting this vote because it is these 4 that broke the camel's back and we heard someone else say that they would be voting with a vote of no confidence because they disagreed with the approach that the States Employment Board has taken towards pay and all sorts of other issues. This States Employment Board, and the other, have overseen, and for some this is from a different political perspective, so they do not accept it, it has overseen a reduction in the numbers of States employees, it has overseen a management of pay restraint over a number of years, it has overseen the stopping of the unaffordable final salary pension scheme in order to deliver a new more-affordable pension scheme. I could go on, there are many other things that the past and present States Employment Board have delivered and continue to deliver and I mention, as the Constable of St. Mary did, the workforce modernisation, which is long overdue. That in itself is transforming a pay structure, which has been in place for decades, has been unfit for purpose for probably the last 5, if not 10, years and we are rising to the challenge to transform it and make sure that managers can manage and our workers can know that they have a fair pay right across all of the sectors that we employ. We are getting on with the job, which day to day can be difficult. I think that is what Members would want. I do not want to go into all the legal niceties

about breaking of a contract. I could do, I could involve the Solicitor General and ask him to give his view about whether that was appropriate or not, what it means in legal terms, whether the consultant was considered an employee or not, because he had never started work. What I want to do is to quote from the former Solicitor General's report, because we have heard a lot about process. The States Employment Board has said the process followed had faults, just like the Complaints Board said it had faults. My own Deputy asked whether a vote of confidence was appropriate. A vote of confidence is a perfectly legitimate parliamentary process and any Member has a right, with the support of I think 3 or 4 other Members, to bring forward a vote of no confidence in a board, in an individual Minister, but surely the case has to be answered before Members decide that they are going to vote with it. I ask again, what is it that the mover of the proposition wanted the States Employment Board to do that they have not done? I think he talked about challenge, he wanted us to challenge. We challenged. What we did not do is politicise the appointment process. What we did not do is risk Islanders' health by calling somebody's bluff. The former or then Solicitor General said: "Despite the failings of process", his report says there were failings of process, nobody is trying to shy away, step away, from that, his report said: "It was reasonable for the hospital management to terminate the employment contract." I believe in reasonable decisions based on evidence, based on fact, I think that is what this Assembly wants from its States Employment Board, challenged, yes, independent review, of course, but a reasonable and a reasoned decision in this case in the best interest of Islanders' health. Thank you.

[Approbation]

Deputy G.P. Southern:

A point of clarification, Sir?

The Deputy Bailiff:

Are you asking a point of clarification from the previous speaker?

Deputy G.P. Southern:

From the Chief Minister, yes. Is it the case that he is saying that he believes that Mr. Alwitary only raised patient safety issues after the termination had occurred, is that what he is saying?

The Deputy Bailiff:

Do you wish to answer that, Chief Minister?

Senator I.J. Gorst:

No, what I said was that there was a difference in approach between what was mentioned in September as reasons for wanting to change the timetable and those then that were mentioned in October, later on in the process.

[17:15]

Deputy G.P. Southern:

That has not clarified my question. My question was, in ...

The Deputy Bailiff:

Yes, it was a direct answer to your question. It was a clarification of what the Chief Minister had said on that point. You can only ask for a clarification of what he said; you cannot ask about what he has not said. I call on Deputy Higgins to respond.

2.1.23 Deputy M.R. Higgins:

It has been a very long day and there have been an awful lot of statements made, which means that I am going to have to go through an awful lot of the speeches made by people and point some

things out. If I can just have a moment to try to find a piece of paper on the start of this. I am going to start by going through the speeches that people have made and try to draw some attention to some of the points they made and then I want to come back and deal with things like the Beal report and the Solicitor General's report. Now, if I start with Deputy Pryke as the former Minister for Health and Social Services. Basically she said a lot, she talked about Verita and other things, but the whole time she really did not say that much, it was in terms of the Alwitry affair, she said the right decision was made by the hospital. She made no mention of the process and this is what I find so annoying. First of all they denied ... they said there were some procedural errors. When you have to dig deep and find they admit they broke the contract, when you find that they ... sorry, I am just trying to think. They basically, all the way through, have denied that they did anything wrong. They said the merits outweigh the process. They have, all the way through they are saying: "We found sufficient evidence", which the Complaints Board said was not evidence because it was not backed by fact. So, as far as Deputy Pryke's comments, she is just coming up with the same mantra that everybody else has said, you know: "We had sufficient evidence to make the decision; that is what we did and I am not bothered about process." That is the thing I find most worrying about this whole exercise. The States Employment Board have not insisted the correct processes are followed and they should. We have a responsibility to all our employees that we should treat them fairly and with respect and we have failed and this case illustrates the fact all the way through. The Constable of St. John, I must admit I am thankful for his comments, because he did praise the States Complaints Board and I believe they should be praised, they have been very fearless, they have done a very, very detailed report, which should be read and should be listened to instead of rubbished by the States Employment Board and the Ministers. I find that really unacceptable because, if we lose that States Complaints Board, it will be a very great loss to this Island. We need people who are independently minded, who will go through the detail and have the knowledge and are prepared to stand up for themselves, not be rubbished, and that I find really offensive and I do not think anybody else will want to do it. I happen to agree, I think it was Deputy Martin who said: "We will end up with, we always should have, something I have always wanted, which is a parliamentary ombudsman, who will look at the defects in the system", and we have many defects in the system, as Deputy McDonald and myself know with some of the cases we are trying to deal with at the moment. Deputy Bailhache said that basically it is accusation ... sorry, I am not trying to be offensive. Senator Bailhache, I did not write down your title; that is why. He basically said it is all to do with accusation and counter-accusation. That is true. We are not really here to deliberate on who was right and who was wrong. I accept that point. That will be determined by the court when it gets there. I raised the vote of no confidence largely on what the States Complaints Board said and that was the absence of process and fair treatment. He said that obviously it will all be dealt with in the court and then there will be testing the evidence one way or another. Why do we have to go to court with all the great expense that will bring? Had the States Employment Board followed what was in the contract of employment that was signed with Mr. Alwitry then there would have been a hearing to hear the complaints. He was not told there was a complaint, remember, he had no knowledge of why they rescinded the contract. If they had spoken to him beforehand and they had a discussion, it may never have happened, he would be here now and treating patients in this Island. But they did not, they kept it all to themselves, this little clique of doctors and senior managers and they basically had his appointment terminated and, because they did that, they did not follow the disputes and grievance procedure that was in the contract, nor did they allow him to have an appeal to another body. I feel that is totally unacceptable. They did it to try to avoid a hearing and appeal, where the facts would have been tested and he may well have been vindicated. I do not know, we will not know, until it has gone through the court. Constable Le Troquer, no, I am not getting at you personally; he thought I might be, but certainly not. He is on the States Employment Board and therefore obviously the way that the procedures are, and I have to bring the complaint against the existing one, even though my main grievance is

with the previous one, although some of the members are part of the same body. But what I did note was again he said absolutely nothing about natural justice, about hearings or anything else, and I am disappointed in that because I do believe he is a fair man. Deputy Tadler mentioned that we are in the area of post-truth. I do think we are in Trumpland because we are getting conflicting stories and basically we are getting situations where people are saying: "I am saying this, it is my truth, and I will stand by it", and someone else has an alternative version. But we are moving away from a society where we can rationally look at things and come to a conclusion about what the truth is, and I am afraid I think we are going to see more and more of this. What I did agree especially with him, he pointed out to again what the Complaints Board has found: process and the total absence of the process. Senator Ferguson, basically she has said right at the very beginning what I happen to believe. I believe that the States Employment Board are not bothered about how they get to their objective, the ends justify the means. We got rid of the guy, we have all these reasons, we are not interested in process. The ends justify the means. She also mentioned that we should be treating people as you would like to be treated yourselves. I would like to ask how many people in this Assembly, if they were facing something like Mr. Alwitary was facing, would you not like to have a hearing? First of all, would you not like to know what the charges are against you? Secondly, would you not like a hearing? And, if you lost or they lost, then there is the possibility of an appeal? We would all like to have that, we would expect to receive natural justice, and this was totally lacking in what the States Employment Board and the hospital have done. A play was made by Senator Bailhache early on about the fact that I mentioned the case of Graham Power, Simon Bellwood and Mr. Day. Now I accept all those were not S.E.B. matters, but what they are are matters that we see in this Island and it shows the culture that we have. All of those people were denied natural justice, they did not get a fair hearing, and because of that it was controversial and in fact I still think we are going to see, when the Care Inquiry reports next month or the month after, or whenever it may be, I think we will be highly criticised on that aspect. Senator Ferguson was talking about a cultural failure and I agree with her; I do believe there was blackmail involved here. When you get a letter coming from the human resources manager saying: "We have problems with this consultant and Mr. Downes, the clinical lead [or whatever it is, I do not know his title], he is threatening to resign if this guy does not go." Clinical director, thank you. So the point I am trying to make is here; there were threats that way. Even before we get to the Haste report, which they talked about mediation, when you have a letter from consultants saying they are likely to go if you try and reinstate this person, there is no question I think of mediation, it has gone too far at that stage. So I believe that the blackmail by the doctors should, I think in this case here, because I agree with Deputy Labey, they are far too powerful, some of these people, in what they are doing and we need to bring them to book. Now, Deputy Noel, I must admit, did annoy me. Sorry, he was not the only one. He admitted he was on the original S.E.B. and he wanted to amend the proposition, I know that, but he could not because again of the rules we have to follow. But I felt that he was doing exactly what I said they were doing, the smear and accusations against Mr. Alwitary, which I felt were totally uncalled for. He also said too that the recruitment process was flawed and, had it been a proper recruitment process, he would not have been recruited. Well, it is interesting, if you read Mr. McNeela's letter, they all agreed, all those people who were on the selection panel, that Mr. Alwitary was the most outstanding candidate, it was the unanimous decision of the board to appoint him, and that included by the way Mr. McLaughlin, who was the managing director of the hospital. So they all thought he was the best candidate for all sorts of reasons, but now, because this thing went wrong, the whole thing was flawed, we would never have appointed him anyway, and then there are all these sort of asides, which again I will come on to again from the Constable of St. Peter, which I think were totally uncalled for. He mentions in this thing, I will come to this later, but he was saying that ... he mentioned the S.G.'s report as being independent and so on. Well I will come on to that shortly. He also mentions too that Mr. Alwitary should have carried on with the industrial tribunal, but we also heard from others that the maximum

amount on that tribunal was £10,000, which would not have compensated Mr. Alwitry for his loss, and there were other problems with the tribunal. But the matter will be heard in the Royal Court and then we will get to the truth one hopes. But the point I would make is it should not have to be that, they should have given him his rights under the contract, a proper procedure and appeal route. Now, I agree with Deputy Brée that this Assembly is responsible, we appoint the States Employment Board, and we should hold them to account for their actions, and this basically is what this proposition is doing. If they have not done their job, and I will answer the Chief Minister right at the start here, what should you have done? Well basically what you should have done was make sure that the people who are running these departments for you, the people you have delegated authority to, follow the law, follow the contracts, give fair hearings. They did not do it. It would not be political intervention. The Chief Minister said: "It is political intervention." When he was talking about political intervention it was during the recruitment phase. We should not be anywhere near that, I agree. But when it comes to a dismissal in circumstances where there is blackmail, circumstances where there is no proper procedures being used, yes, they should intervene. I think every employee in this Island has a right to expect a fair hearing and this is why, when I made my statement, and I will repeat it at the very end here, I do not believe there is a single States worker of the 7,000 we have, can have any confidence in the States Employment Board in getting a fair hearing from this body and their senior management because it is demonstrated that they can act with impunity essentially. There is no comeback on these guys, they have done it, they have got away with it, they will get away with it again. I also agree with Deputy Brée when he said the S.E.B. displayed a high degree of arrogance. I think this is the thing that has always comes through. The never, ever, admit they have made a mistake and if you look at the documents and you see the language they have used, they try to obscure, to hide what has gone on. As I say, if it was not for Deputy Noel admitting: "Yes, we broke the contract" and there is one reference in the document as well, only one, all the others are "procedural irregularities". I agree with Deputy Southern, we are not deciding anything about the character of Mr. Alwitry or his recruitment, we are looking at the findings of the S.C.B., they were highly critical, and that is what we should have been focusing on. They have made comments about the various reports and I will read them in a moment, about the S.G. one and Mr. Beal's and so on.

[17:30]

Now, the Deputy of St. Ouen, again he is most concerned about how the States Complaints Board has been treated. He said it is independent, impartial and very skilled, they make findings without fear or favour or bias, and again he states what they have said and I know with experience, withdrawing the contract was fundamentally flawed. Again, talking about it, was it a deliberate action? Failure to follow employment law. No natural justice. He wanted the S.E.B. to explain why we should accept their view and what will the vote of no confidence have on the new board against the current S.E.B. ... sorry, I have lost the thing there. Now, in fact, an interesting one, Deputy Mézec has blown something apart in the Chief Minister's final statement, he was going on about the new modernisation work, about how it is all going ahead. We found out this afternoon from Deputy Mézec that the 7 unions who were involved in this process are not taking part in it anymore. Why? Because of the actions of the States Employment Board. So, just not good enough. Now, Deputy Green, and I must admit I am really surprised at Deputy Green. Sorry, I remember he was a Deputy when he first started. I am really surprised at him because I had had a lot of respect for him. He was a victim of the hospital management and I think the States Employment Board when he first stood for election in the States and he had a battle with them and, unfortunately, he seems to have gone over to the other side.

Senator A.K.F. Green:

Sir, I do not think whether I had a case with States Employment Board or not is relevant to this case.

The Deputy Bailiff:

It does not seem to be relevant to me, Senator.

Deputy M.R. Higgins:

Anyway the point is I am disappointed with him. I do feel that he has denied or the hospital and the S.E.B. and everybody else have been particularly bad to Mr. Alwitry and I will not be changed in that view. In fact there is a lot of talk here about Mr. Alwitry seeking to change the start date. What we must all remember is, and a few other people have mentioned the start date, Mr. Alwitry was the one who was open, he put on his application form that he needed 6 months' notice. The panel that looked at the application, or looking at the candidates and so on, I am told had the application forms in front of them. Not one of them mentioned start date. Not one of them had even discussed it in the pre-interviews, there was no discussion about it at all. It was after he was offered the job and I think almost a week in before questions were being asked: "When could he start?" He has been highly criticised for the fact that he needed 6 months for family reasons. Why did they not pick it up in the first place, it would have saved them an awful lot of trouble and us an awful lot of trouble. He cannot be blamed for the incompetence of the hospital management who were dealing with this side of it. By the way, he has gone through and if you look at the correspondence we have on it, he has put himself forward to come in early, he was going to work part-time, 3 days a week, until the February when he would go full-time. We heard ... I cannot even remember who said it, I think it was the Constable of St. Peter, winter to him ends on 31st December. I still think we are in winter with the weather we have.

The Connétable of St. Peter:

Can I clarify, winter 2012 ends on 31st December.

The Deputy Bailiff:

Yes, the Connétable of St. Peter did add the date of the winter, the year.

Deputy M.R. Higgins:

Well I still think we all think that winter goes from, by the sort of calendar year, whatever it is, I am not sure what the dates are, but Mr. Alwitry looked at the application form and it said: "Winter 2012." Yes, I accept that. But, again, he assumed the winter was the start and the end of winter, which went into ... Now, what I will also say, people were criticising Mr. Alwitry saying he did not want to work Saturdays, he was trying to do it all for his family. He did, and there is correspondence that shows that he agreed to work Saturdays, he even was offering at one point to do some of the stuff for nothing. There was a lot of things that have been made here and sort of emphasis placed on, which is not true. Unless you go through the detail of all these reports, you will not see it. I do believe that members of the States Employment Board have been exceptionally highly selective in some of the things that have gone on. Again, when I mentioned being angry, I was particularly angry with the Constable of St. Peter for raising the application forms, which, to be honest, were not out in the public domain and I would have thought, except we are in the States and he can get away with it, it would have been a breach of data protection by revealing some of the information that he did. Did Mr. Alwitry even know it? Well, I doubt he did. Much play has been made that Mr. Alwitry was going behind the back of Mr. Downes, the clinical director, in trying to sort out a timetable. I have here somewhere, if I can find it, an email that was sent by one of the theatre sisters - yes, here we go - it starts off at the bottom of this chain of things, there is one that has come from Mr. Downes to ... no, Richard Downes to Amar Alwitry and it says: "Timetable now sorted, not all adhering to your wish list, but it is the best I can do at present", and he sets out

what the timetable would be. This, by the way, is 24th September. Now, it is made out that Mr. Alwitary was going behind the back of the director. He was told he could, he could speak to people, he was not going behind the back, he could speak to people. I will not mention the nurse here, but it is copied out to all the people who are involved, the other consultants and so on, and this is from, as I say, one of the theatre people, and it says: "Morning, I have been on A.L. (annual leave) for a week and unfortunately Mr. Downes is on A.L. this week. I cannot see that these alternative sessions", and this is what Mr. Downes is putting forward: "I cannot see these alternative sessions working well and I think they will result in clerical chaos. They also make staffing the clinics a nightmare. I am not sure why, instead of alternative sessions, we could not have all-day clinic Wednesday, take away the Monday morning and alternative Friday's clinic and then, if you are not operating, you will have a long weekend." Basically she was saying the chaos that she had.

Senator A.K.F. Green:

Sir, would the Deputy give way because ...

Deputy M.R. Higgins:

No, I am not going to give way.

Senator A.K.F. Green:

... because he is missing out whole chains of that email, Sir.

The Deputy Bailiff:

I was going to say, Deputy, it is not entirely clear to me how this is focused towards a vote of no confidence in the States Employment Board. **[Approbation]**

Deputy M.R. Higgins:

I am expressing ... I am trying to say, much has been made of Mr. Alwitary's actions of being disingenuous, being shady, doing this behind everyone's back and so on. It is quite obvious there were problems with the timetable and even other members of staff, and if you look at Mr. McNeela's letters he refers that he was in agreement with many of the things that Mr. Alwitary was putting forward to deal with the operation of timetables and theatres.

Senator A.K.F. Green:

Perhaps the Deputy would read out the whole of the chain and then it would be in context.

Deputy M.R. Higgins:

I do not have the whole chain here, Senator. I will not go through everybody's comments but, just going back again to the Constable of St. Peter, he mentioned the G.M.C. misconduct things; he was describing complaints that have been made after he was dismissed, and I am not surprised that he could turn to the G.M.C. and others when his concerns about patient safety had been ignored by the doctors. He also mentioned ... so I am trying to say some of the comments that the Constable of St. Peter I think were taken out of context and therefore misleading, maybe unintentionally. He mentioned that Saturday working, he implied that Mr. Alwitary would not work Saturdays, but in fact he offered to work for free on certain Saturdays and he offered solutions to the problem rather than just trying to get what he wanted. It would have meant that he would not have seen his family in the way that he would have liked to, so he was co-operative and putting forward good decisions. Again, he also mentioned the Haste report and again I felt he was selective in what he said there. There was no room for mediation because he quoted that she said that he would not accept any of it was his fault. He forgot to mention the other doctors were saying they would not work with him, they would resign if he was reinstated, so it is 2 sides to the picture. Again, comments were made about the recruitment and about references, but it was determined by all the people who were there

on the interview panel and everything else, he was the best possible candidate and certainly when you look at his C.V. there is a problem. Now, I thought it was also ... I felt his comments that thought that he was part of the troublesome 10 per cent at Derby. He was inferring that he could not get his job back in Derby because they did not want him back. There has been an awful lot of smears in that way since and there is no proof that I have seen in any document that shows that it is true. I feel that was totally uncalled for. Now, I agree with Deputy Labey, the more we hear and learn of this, it stinks. It is like a farmyard in here today. I agree this is one of the worst examples of people covering up for what they have done, which was totally appalling. Now, it is funny, that is right, the Constable of St. Lawrence was telling us about her role in this and, let me just see, she mentions that she was there as Back Bench oversight of the executive. That is right. She says we deal with high quality and strategic information. Did you ever deal or discuss any of the ...

The Deputy Bailiff:

Through the Chair please.

Deputy M.R. Higgins:

Sorry. Did the Constable and the States Employment Board discuss any of the grievance procedures coming through under the law or the ones that existed there before that affected the employees? If she had, perhaps they would have realised that they were not following procedures that were laid down in those codes of practice. The other thing too is I am still quite puzzled by this and maybe one day we will get the answer to it. She says that she was involved in all the discussions on it and so on. Well, if we remember, Mr. Alwitry was ... his contract was terminated on 22nd November. These are comments that are from different parts of the reports. Mr. Riley: "Over the course of 21st and 22nd November, the full membership of the States Employment Board were briefed and consulted and supported the immediate withdrawal of the job offer." At point 179 in one of the other reports: "At some point on or before 22nd November, there was a consultation about the decision, among others, Mr. Riley, the Minister for Health and Social Services, Deputy Anne Pryke, the Chief Minister, who is chairman of the States Employment Board, and the S.E.B. The States Complaints Board pointed out there were no minutes or records of the discussion that were provided to them. From Mr. Riley's evidence, we understand there was no formal meeting. The only record of the foregoing individuals being involved appears to be a document entitled: 'Briefing to S.E.B.' attached to an email from Mr. Jones to Mr. Stevens on 11th December 2012 and it appears that the various individuals were contacted separately. We infer that the key decision makers were Deputy Pryke and Senator Gorst." That is not the whole board discussing it. Remember, this is just before the decision to rescind the contract and inform Mr. Alwitry. It says here as well: "We also infer that they approved the decision to send to Mr. Alwitry the letter referred to in the next paragraph since that is what Mr. Jones records. Following discussion with the S.E.B., Minister for Health and Social Services and Chief Minister, Mr. Riley writes to Amal Alwitry informing of withdrawal of offer."

[17:45]

So the Chief Minister was involved in discussions with Deputy Pryke as the Minister and not all the States Employment Board were there. The States Employment Board met on 18th December and it was to discuss the decision and it mentions how hospital management attended and the hospital provided a chronology of the events for the meeting, forgetting to mention a key factor, which was the alleged complaint about Mr. Downes that had been made to the B.M.A. and it is not surprising they did not mention it at that point, they had mentioned it earlier, because they knew he had not at that point. Now, when we look at who attended, you have all the doctors and everything else, and Mr. McLaughlin is referenced in an email saying: "We will go mob-handed, we will all go down there", because they thought they were going to be a bit flaky, they may go back on their decision

essentially. Then there is another reference to the director of operations freeing up their theatre time so they could all attend that meeting. As I say, this was the meeting where Mr. Downes' threat of resigning was taken and the first case of blackmail put before the board. Now, at this time, this is something that annoys me, the board should have been aware of concerns. You have seen the letters that came from Mr. McNeela, which were written well before this meeting, there were letters written to the Chief Minister pointing out that things were not as they had been described. He also points out how he was not consulted and how other people who were involved in the interview process were kept in the dark. According to Mr. McNeela, he never did find out from Mr. Downes why they got rid of him and basically they were trying to put forward, as Senator Ferguson was saying earlier, a second candidate. They were trying to get him at the meeting of the 18th. Again, we have another thing that has come up here and that is that no minutes. Is that not nice; they never keep minutes when there are some important decisions being made? I think one of the important things to make here too is, if you have all those people there, why did they not invite Mr. Alwitry himself and then he could have heard the arguments that were being made against him. They did not, they just had the doctors there and took their view. Again, the Constable made comments about the Haste report, Beal, she said the rescindment, the reasons were well researched and they had legal advice. Well, I would like to know about the legal advice, I think it is going to be interesting when the court has assessed it. I will skip some of the others and just come to the Chief Minister. He said he was uncomfortable with the decision to rescind the contract but he was definitely involved before the contract was rescinded so I would hope that he questioned really what was going on. He asked what role that some of us want on this side of the Assembly the S.E.B. to play. As I say, I want oversight. I want to see them use their supervisory powers, not to interfere politically, but make sure the proper processes are followed and the law is followed. He said he thinks that I feel they should have stepped in to stop the rescindment. He does not think so. I believe again that they should have made sure that the proper procedures were followed. That is all I expect of them, not interfere, just insist these people do their job. Now, he goes on too about the Solicitor General's report and the Beal Report. In fact I might as well come to this now. The States Complaints Board made a number of comments about why they did not consider or give much weight to the Beal Report and the Solicitor General's report. One of the first points was the fact that these reports were done after the event, they were not looking at the process up to and leading to the dismissal. They have said that, so far as Mr. Beal's report: "We rejected certain key parts of Mr. Beal's report because, on the evidence that was presented to us, the report contained numerous factual errors, was not particularly penetrating, and contained conclusions with which we disagree, some of which, as we identified, were conclusions that no reasonable person could possibly have reached if they properly understood the relevant facts. As such, we concluded that Mr. Beal's report was effectively of no value to us in resolving the issues before us. The fact that the S.E.B. still relies on such a report is a matter of concern." Now they also say: "Further to the assertion by the S.E.B. that Mr. Beal's review was an independent review, the response is disingenuous in that the S.E.B. intended to suggest that somehow it repaired or mitigated the fundamental procedural flaws in the process that led up to Mr. Alwitry's decision. The investigation by Mr. Beal was conducted after the events and, as the S.E.B. ought to be aware, could never be considered as equivalent to the independent review to which Mr. Alwitry was entitled by way of contemporaneous appeal to an independent body against the decision to dismiss him." So that is what the States Complaints Board thought of Mr. Beal's report. In terms of the Solicitor General, they found fault with the Solicitor General. Sorry, I am just checking to see if the current Solicitor General is behind me and I hope he will not take offence at some of my remarks because I am not aiming them at him. But many people in this Island do not see the Solicitor General or the Attorney General as being independent, they see them as part and parcel of the establishment of this Island. Now, you may agree or you may disagree, but that is the public perception. The point that the States Complaints Board makes is, if they really wanted an

independent report, it would be perceived as such, they should have employed someone from outside the system who was not considered to be part of the establishment. I might add in some of the cases that I and others have been dealing with, there are questions about the role of the Law Officers' Department and the law officers in dealing with complaints by the public. Now, if I can just quote a few of the comments that are contained on, for example, page 15 of the response of the Complaints Board to the S.E.B.'s response and they mentioned: "Further, the former Solicitor General's report sought to focus on whether the decision to terminate was the correct one, whereas the board's findings concentrated on the fact that there was no independent review of the allegations against Mr. Alwitry before the decision was taken to terminate his contract and the failure to allow him an appeal against that decision. The board's consideration of both the circumstances leading up to the decision and the former Solicitor General's findings was not to determine whether the decision was correct or not." As I have stated very early on, it is not the role of the States Complaints Board to determine the merits of the decision, it was the process that should have been followed at the time that he was being dealt with. They acknowledge that there were some procedural failings, well there are plenty of those at the S.E.B., and it says: "But the board regards as a fundamental failure on the part of the employer, and which prompted its findings and recommendations, as the board has now indicated on a number of occasions the procedural flaws in the present case are so fundamental and so stark that they can only be described as outstandingly glaring failures of an employer, any employer, let alone a public authority, to follow due process and do right by its staff. The S.E.B.'s response suggests that the board somehow has misunderstood the role of the Solicitor General as a Crown officer. With respect, we did not. We did not suggest that the former Solicitor General was not a proper law officer or somehow not constitutionally independent. We also did not suggest that he was not in fact trying to bring an independent mind to the task that he was charged with undertaking. We are simply stating that we thought, and still think, it is obvious, namely that it is difficult to see how, in such circumstances if this case, an inquiry by the former Solicitor General into the circumstances of Mr. Alwitry's recruitment could be seen to be independent by the public in general. If it was the intention to conduct an independent after-the-event review, appointing a suitably qualified person, other than one of the officers of the Crown, would have been more likely to be seen by the public generally to be genuinely independent in the circumstances of this case." They also said too, looking at the point, it says: "It reinforces the point we have made above, in this case, regardless of his independence, the former Solicitor General could legitimately be regarded as too close to the senior States officials and politicians involved in this case for his investigation and report to have been seen generally independent." Then they also looked at how the Solicitor General went about his process, he conducted interviews, which they said were inquisitorial. I am sorry for Members who are starting to yawn now, it has been a long day, I accept that, and I will not be long, but please listen to what the States Complaints Board said: "The board maintains its view that the former Solicitor General's report failed to deal adequately for the board's purposes with some of the key parts of the evidential history." It says: "There is nothing in the S.E.B.'s response that alters our conclusions. We are satisfied that, in the respects that we have identified, the former Solicitor General's report is not reliable or soundly based. Indeed, we believe that a detailed review of the relevant evidence as set out in the board's report leads inexorably to that conclusion." Again there are other comments. What I would say one of the points that needs to be made here is the Solicitor General did his report himself, yes, he did interviews, it was a closed thing, Mr. Alwitry was not given the opportunity to question comments that had been made by anyone else, so we have a whole series of basic allegations that have been made, written down, and none of them had been tested, whether it be by the Solicitor General, he came to his own view, but based on some of the comments that had been made, the States Complaints Board did not believe he could have come to the conclusion he did. We will only find out the truth of this matter when it gets to the Royal Court and hopefully we will get to the bottom of it. Anyway, it has been a long day and I think that

Members are probably in 2 camps, those who are going to support the States Employment Board, the Chief Minister and so on, and those who feel that they have been somewhat deficient in keeping proper oversight and supervising the people that they do. So, rather than labour the task, I think I will ask for the appel.

The Deputy Bailiff:

Very well, the proposition is maintained, the appel is called for. I invite Members to return to their seats. I ask the Greffier to open the voting.

POUR: 13	CONTRE: 30	ABSTAIN: 2
Senator S.C. Ferguson	Senator P.F. Routier	Deputy of St. John
Connétable of St. Saviour	Senator P.F.C. Ozouf	Deputy of St. Mary
Connétable of St. John	Senator A.J.H. Maclean	
Deputy J.A. Martin (H)	Senator I.J. Gorst	
Deputy G.P. Southern (H)	Senator L.J. Farnham	
Deputy K.C. Lewis (S)	Senator P.M. Bailhache	
Deputy M. Tadier (B)	Senator A.K.F. Green	
Deputy M.R. Higgins (H)	Connétable of St. Helier	
Deputy J.M. Maçon (S)	Connétable of St. Clement	
Deputy S.Y. Mézec (H)	Connétable of St. Peter	
Deputy R. Labey (H)	Connétable of St. Lawrence	
Deputy S.M. Bree (C)	Connétable of St. Mary	
Deputy T.A. McDonald (S)	Connétable of St. Ouen	
	Connétable of St. Brelade	
	Connétable of St. Martin	
	Connétable of Grouville	
	Connétable of Trinity	
	Deputy of Grouville	
	Deputy J.A. Hilton (H)	
	Deputy of Trinity	
	Deputy E.J. Noel (L)	
	Deputy S.J. Pinel (C)	
	Deputy of St. Martin	
	Deputy R.G. Bryans (H)	
	Deputy of St. Peter	
	Deputy A.D. Lewis (H)	
	Deputy of St. Ouen	
	Deputy S.M. Wickenden (H)	
	Deputy G.J. Truscott (B)	
	Deputy P.D. McLinton (S)	

The Deputy Bailiff:

Before we adjourn, I would like to make the following announcements or items lodged. P.7/2017, Brexit Report: steps taken by the Government of Jersey before Notification by the Government of the United Kingdom under Article 50 of the UK’s intention to withdraw from the EU. The Draft Employment of States of Jersey Employees (Amendment No. 8) (Jersey) Regulations 201-(P.105/2016): second amendment. Draft Referendum (Jersey) Law. Draft Income Support (Amendment No. 2) (Jersey) Law. Minister for Education: vote of censure. The adjournment is proposed. The States stand adjourned until 9.30 tomorrow morning.

ADJOURNMENT

[17:59]