

STATES OF JERSEY

Public Accounts Committee Meeting with the Minister for Treasury and Resources - Comptroller & Auditor General's Reports

MONDAY, 16th APRIL 2012

Panel:

Deputy T.A. Vallois of St. Saviour (Chairman)

Senator S.C. Ferguson (Vice Chairman)

Deputy R.J. Rondel of St. Helier

Mr A. Fearn

Witnesses:

Senator P.F.C. Ozouf (The Minister for Treasury and Resources)

Deputy E.J. Noel of St. Lawrence (Assistant Minister for Treasury and Resources)

Comptroller & Auditor General

Treasurer of the States

Also present:

Mr. M. Robbins, Scrutiny Officer

[15:32]

Deputy T.A. Vallois of St. Saviour (Chairman):

Could I just make the public aware of the code of behaviour for members of the public which is situated behind them and just outside the doors? Firstly, I would like to say thank you to the Minister for Treasury and Resources, the Assistant Minister for Treasury and Resources and the Treasurer for attending the Public Accounts Committee today. For reasons of recording could I ask everybody around the table to please tell who they are?

Comptroller & Auditor General:

Chris Swinson, Comptroller & Auditor General.

Deputy R.J. Rondel of St. Helier:

Deputy Richard Rondel, St. Helier, 3 and 4 Districts.

Senator S.C. Ferguson:

Senator Sarah Ferguson.

Deputy T.A. Vallois of St. Saviour:

Deputy Tracey Vallois.

Mr. M. Robbins:

Mick Robbins, Scrutiny Officer.

Mr. A. Fearn:

Alex Fearn, independent scrutiny member.

Assistant Minister for Treasury and Resources:

Eddie Noel, Assistant Minister for Treasury and Resources.

The Minister for Treasury and Resources:

Philip Ozouf, Minister for Treasury and Resources.

Treasurer of the States:

Laura Rowley, Treasurer of the States.

Deputy T.A. Vallois:

Like I say, thank you very much for attending upon the P.A.C. (Public Accounts Committee) today. As you are aware, it is not usual for the Public Accounts Committee to have Ministers before them. However, the recommendations placed in the C. & A.G. (Comptroller & Auditor General) reports require us to establish areas around those recommendations. Could I just also state that the actual C. & A.G. reports were done based on documentation held in the possession of the States of Jersey and that no person had input on to those reports. First and foremost, I would just like to understand from your particular memory, Senator Ozouf, what do you see the political environment was like back in 2005?

The Minister for Treasury and Resources:

In 2005? Goodness. Certainly we were at a fundamental change in terms of the mood from committee to ministerial government. I was part, I think, of a number of different working parties that was making that transition. I think I was responsible for indeed setting up parts of the Public Accounts Committee and the establishment of the role of Comptroller & Auditor General and the overall massive change that we underwent. I was not only part of some of the decision-making as a States Member but I was a member of Policy and Resources, but I was a committee president at the time. So I was deeply involved in this massive change in the machinery of government. I think in some ways it was the start but we had not reached some of the further difficulties that then arose in subsequent years of the difficult political climate that we were facing. The economy was still reasonably robust. So that was not a problem but it became a very serious problem. The political environment itself was difficult and there were concerns about how difficult it could become and indeed it did.

Deputy T.A. Vallois:

Would you say the political environment then was better or worse than what it has been in the last 3 years?

The Minister for Treasury and Resources:

I think the political environment in the last 3 years, if I may say, was worse than it was in 2005. I have been in the States for over 12 years now and the last 3 years have certainly been characterised as the most difficult on a number of different respects.

Deputy T.A. Vallois:

In particular with relationships between Members and officers in the States?

The Minister for Treasury and Resources:

I think the difficulty is that some Members have found it difficult to transition to the new form of Government. Those that were part of the committee system and that were used to collective decision-making found it probably difficult to see where they fitted into the new role of ministerial government. Clearly there have been issues with scrutiny and issues with ministerial government itself, but I think also associated with that we have had the acrimony. The States itself has not been a happy place. It has not been a happy place for people who work for the public sector. I have always tried to, I hope, in the departments I have led, lead departments that are cohesive, working well and have a sense that my job is to defend the departments that I am politically responsible for. In the public domain that is important. Of course, you need to hold departments to account but there has been a “blame” culture. There have been very many unfair attacks on individuals for all sorts of different reasons and, indeed, in that “blame” culture you have ended up in a world in which perhaps officials themselves have not been able to take the decision because they have wanted to keep their heads down, because if they make a mistake, as we all make mistakes all the time ... I make mistakes all the time and you have got to learn from your mistakes and move on and that is not the world in which we operated, for all sorts of different reasons.

Deputy R.J. Rondel:

But going back to 2005, what were the specific problems rather than the last 3 years?

The Minister for Treasury and Resources:

I would need to think through the dynamics. If you recall, we had the debates about Clothier. Clothier was published in 1999 or in early 2000. It then took 3 or 4 years of discussion about the implementation of Clothier.

[15:45]

There were amendments made to the form of government that was recommended by the Clothier panel in the absence of collective responsibility; the fact that the relationship between Ministers and their chief officers was, I think, different from that that was originally conceived. There were amendments brought by Members that changed the way ministerial government operated and things were clearly different and indeed, with the benefit of hindsight, I think we have all learned all organisations evolve. All systems of government are improved by way of experience, but we certainly entered ministerial government with great hope. I maintain that ministerial government is still the best way to govern the Island, but there do need to be some changes made and I think some decisions that were made back in 2005 were imperfect in terms of the system that we ended up with.

Deputy R.J. Rondel:

Can I just confirm that you were a member of the Policy and Resources Committee and you have been a member of the States Employment Board?

The Minister for Treasury and Resources:

You are testing my memory but I will do my best to confirm. If there is anything I am going to say that is inaccurate then ... but, yes, I was. In 2002-2003, I was Vice President of Finance and Economics. After the 2002 elections I was a member of the Policy and Resources Committee and I was Vice President of Finance and Economics. When former Deputy Dubras resigned as Minister for Planning and Environment I was asked to stand for the position of President for Environment and Public Services, known as the double poison chalice of politics at the time, and I stood down from Policy and Resources to concentrate on my 2 roles as Vice President supporting the former President of Finance and Economics, Senator Le Sueur. I had only been on the States Employment Board for a relatively short period of time, until the Treasury slot, if there is such a thing, on the States Employment board was filled by my former Assistant, the Constable of St. Peter, and currently my Assistant Minister Deputy Noel.

Deputy T.A. Vallois:

You have had some areas of knowledge on these committees. What experience have you had with regards to compromise agreements with contracts, any compromise agreements that may have been made, contracts in the P. and R. (Policy and Resources) Committee or whether it was the States Employment Board? Are you aware of them?

The Minister for Treasury and Resources:

I have sat on many committees throughout the years of service to the States but I have never sat on the H.R. (Human Resources) Sub-Committee and I did not sit on the old Establishment Committee or Personnel. So that is one bit of political experience that I have not had. I have been involved in the arrangements for the resignation on the grounds of ill health from the previous Treasurer of the States. That was in discharging my ministerial function of Treasury and Resources. I have been in the centre of politics for some years, so I will have been aware at the margins of some but I have not been a decision-maker.

Deputy T.A. Vallois:

Before the change of contract for the former Chief Executive were you made aware at all of his concerns with regards to the political environment and the effect it was having on the ability for the public service to provide the change that was needed?

The Minister for Treasury and Resources:

I hope to have had good relations with all the Chief Ministers, the current, the immediate previous Chief Minister and former Senator Walker, and good communication is a function of good government. I will have been aware and certainly do recall the concern that was expressed by former Senator Walker when he was Policy and Resources President. I was not on Policy and Resources because I had stood down, but I would have been aware and I certainly was aware, as I think anybody serving in Government was, about the importance of getting the, albeit imperfect, system of ministerial government that the States had decided upon to make that work. I was concerned and that was, in many ways, some of our worst fears of

the difficult acrimonious world in which the States had performed in the last 3 years. There was concern that it could become like that and indeed it did become like that.

Deputy T.A. Vallois:

I know for a short stint you were responsible for H.R., for example. I know it was only for a short period, but there seems to be no documentation with regards to how the risk assessment took place.

The Minister for Treasury and Resources:

The responsibility for H.R. was always very odd. If one goes back, the original Clothier recommendation was that there was a separate Resources Department and I think Clothier specifically recommended that it was not in the Chief Minister's Department and that it was separate. I suppose there is a clue in the title, that the Treasury and Resources Minister was responsible for resources, but resources was never brought together in any one department until 1st January 2011. Even then the Minister for Treasury and Resources was not responsible for human resources decision-making because the Chief Minister continued as the employer and chairman of S.E.B. (States Employment Board). So there has never been any sense that the Minister for Treasury and Resources has been responsible for H.R. matters, even though the responsibility of the departmental function of that came to the Treasury. Indeed one of the things that I was concerned about when I became Minister for Treasury and Resources was that there would be a much more joined up and unified approach in relation to the Resources Department and we can go on to explore the difficulties that Resources and the Treasury had.

Senator S.C. Ferguson:

But surely H.R. is not part of the Treasury function. Why would you think that it was?

The Minister for Treasury and Resources:

Well, it was not part of the Treasury function. There is a clue, I think, in the title. It is Treasury and Resources. Resources is not Treasury. It is 2 separate functions of which the Resources Department, as recommended by Clothier, was going to be not within the responsibility of the Chief Minister's Department. But that was one of those things that was odd and there is still an issue that needs to be resolved. Of course, Senator Ferguson, you were sponsoring, and I supported, the putting back of the budget for Resources and the H.R. function to the Chief Minister's Department, but we have ended up still with a disconnected Resources Department which we somehow need to make work.

Senator S.C. Ferguson:

I would make a correction there. In fact I was responsible for putting H.R. and I.T. (Information Technology) back with the Chief Minister's Department because they are strategic matters.

Deputy R.J. Rondel:

How did you view the Chief Executive's importance to the States and the Island as a whole, in your own view?

The Minister for Treasury and Resources:

In my own personal view, extremely. I mean every organisation needs a leader. Every organisation needs a chief executive with a clear set of responsibilities, clear accountability; that leads performance management and indeed is performance-managed themselves. The chief executive is key. Leadership is everything as far as leading an organisation is concerned. The Chief Minister is the political leader, albeit without collective responsibility. The Chief Executive is the leader of the public sector.

Deputy R.J. Rondel:

As you are aware, obviously, we now have an Acting Chief Executive. Do you think, in your view, that may well have been possible then rather than having ...

The Minister for Treasury and Resources:

The difficulty was that the amendments to the States of Jersey Law put a lack of clarity in relation to the Chief Executive's actual abilities to oversee colleagues on the Corporate Management Board because - I cannot recall exactly which Article it is - there was a key amendment that was changed which gave the policy oversight and responsibility to the Minister. Of course, the States of Jersey Law that we ended up with was a bit like a camel. It was not quite what was envisaged in a number of different respects and so, of course, it follows and that has been the subject of ongoing discussion, particularly in the first few months of 2011, with Ministers about exactly what to do to resolve the issue of how to get a proper structure that works and can be made to work. I mean there is good functioning of communication lines between people but at the end of the day you do need something written that is clear. It is not only force of personality that can deliver things.

Deputy T.A. Vallois:

You were Deputy Chief Minister the last 3 years. We found it rather shocking that there was no evidential documentation with regards to performance appraisals for the former Chief Executive. In terms of risk assessments, whether they had or had not been done when change of contract came around, this is a concern; that there is nothing of the sort in the file. You have stated publicly that there was disagreement between yourself and the former Chief Executive. Why is that not documented?

The Minister for Treasury and Resources:

Well, let us be clear about what the responsibilities of the Deputy Chief Minister are. The Deputy Chief Minister is only standing in for the Chief Minister in his absence and discharging functions when he or she is ill or out of the Island. So the Deputy Chief Minister is not almost an Assistant Chief Minister. They do not share the responsibilities and I would not have been involved, and neither would it be appropriate to be involved, in the performance appraisal of the Chief Executive. That would be a matter for the Chief Minister.

Deputy T.A. Vallois:

No, but you had concerns about his performance. Is that not right?

The Minister for Treasury and Resources:

Well, I think it is important for me to be clear to you. The first that I knew of matters of the nature that the former Chief Executive noted in the report was when I had my

copy of the Comptroller & Auditor General's report, like everybody else. I have not been consulted on it, as you said yourself.

Deputy T.A. Vallois:

No, nobody would be.

The Minister for Treasury and Resources:

I mean that is important for you to know. I have not been asked to give my view.

Deputy T.A. Vallois:

No, but can I just make it clear that the C. & A.G.'s report was based on documentation held in the possession of the States of Jersey. Nobody has had input on this document. I made that very clear at the beginning, I will make it clear now and what I am asking you is that there is no documentation to state your concerns with the performance of the Chief Executive Officer.

The Minister for Treasury and Resources:

Well, I have not been asked to give any documentation.

Deputy T.A. Vallois:

But would you not see that normal practice?

The Minister for Treasury and Resources:

Well, nobody has asked me.

Deputy T.A. Vallois:

But if you had concerns about performance of an officer you would not report that to either the direct Minister who was involved or the States Employment Board or anybody in that nature?

The Minister for Treasury and Resources:

Well, of course, I did and if I am asked to give information in relation to it ... I mean these are not issues which I think it is appropriate ... I am not criticising but I just express surprise that information on personnel files had been published in the way that they have been because, of course, they are from the Chief Executive's point of view. It will not surprise you, I am sure, to know that I have got my own notes of the meeting that is rehearsed and recorded and published and my own perspective of that meeting is somewhat different to that as reported by the Chief Executive. As far as performance is concerned, I want to be clear that I think it is important to note that I was the Minister for Treasury and Resources and I had responsibility for dealing with the Comprehensive Spending Review. Throughout 2010-2011 we went through probably some of the most difficult periods of adjustment of decision-making that the States has been through in decades. Immediately on taking office as Minister for Treasury and Resources, I was advised of a different situation in relation to forward projections of accounts and seeing the deficit which arose I then had the very difficult job, as we all did, those of us that were in the Assembly, to convince the public of the need for making changes of our tax-raising measures.

Senator S.C. Ferguson:

If you will excuse me, I am sorry, I cannot let this run on any more. Leaving aside the economic stuff which has already been raised by the Corporate Services Panel, would you not have expected any complaints about the performance of a member of staff, be it the Chief Executive or the lady who cleans the loos, to be in their personnel file alongside an explanation of what was done?

[16:00]

The Minister for Treasury and Resources:

Senator, I have not been part of the H.R. function. We took budgetary responsibility for H.R. but did not have responsibility for the Corporate Management Board. All personnel matters were dealt with by the Corporate Management Board. So while I sat on the Corporate Management Board for a period of time, I cannot answer that because I have never been responsible for that.

Deputy R.J. Rondel:

Are you surprised that there is no information in those files from the ministerial side of this?

The Minister for Treasury and Resources:

Both former Chief Ministers indicated to me that, of course, performance appraisals had been done and obviously your own investigations of files need to be concluded. I know that former Senator Walker certainly did performance appraisals and indeed I have done performance appraisals of those officials that I was responsible for as well. I have done performance appraisals in relation to senior personnel.

Deputy R.J. Rondel:

But there does not appear to be any information in these particular files.

The Minister for Treasury and Resources:

Of whom?

Deputy R.J. Rondel:

Of the Chief Executive.

The Minister for Treasury and Resources:

For what period?

Senator S.C. Ferguson:

The former Chief Executive.

Deputy R.J. Rondel:

The former Chief Executive.

The Minister for Treasury and Resources:

For what period?

Senator S.C. Ferguson:

If we take it from the report, at paragraph 25, page 13 there are notes by the Chief Minister and the H.R. Director of their conversations with the Chief Executive. There

was an oral complaint made by the former Chief Executive about the behaviour of yourself, Minister, and then this was confirmed in writing. Again, it is documentary evidence. What is your reply to it?

The Minister for Treasury and Resources:

Well, first of all, I cannot comment on what is in the H.R. files because that is not my area of responsibility.

Senator S.C. Ferguson:

Well, there is a letter quoted here. What is your comment?

The Minister for Treasury and Resources:

Senator, let me be clear. I am not responsible for and never have been responsible, to the best of my knowledge and belief, for the maintenance of personnel files, full stop. That is the first thing.

Senator S.C. Ferguson:

No, I am asking for your comments about the report, Minister.

The Minister for Treasury and Resources:

Now, the next point is that I was not aware of those remarks that have been attributed in that report to the Chief Executive, to the best of my knowledge and belief. Clearly there was a close working relationship between myself and the former Chief Minister and indeed there was a close working relationship between myself and the Chief Executive in a number of different capacities. I expressed surprise at reading what I did in the C. & A.G.'s report. I certainly am not aware that those matters were drawn, in those terms, to my attention. Now, on the other side - and I think it is important to say - I did have an important relationship with the former Chief Executive and I do agree with remarks of other people about the fact that he was under a great deal of stress in relation to a number of matters, about child abuse investigations, et cetera. Indeed there were some emails that I can provide to you expressing my support to the Chief Executive and indeed urging colleagues and the Chief Minister of the day to deal with what I considered to be unfair remarks made about the Chief Executive.

Senator S.C. Ferguson:

Yes, but were you not aware of the trigger clause in the contract from your time on P. and R.?

The Minister for Treasury and Resources:

I was not a decision-maker.

Senator S.C. Ferguson:

No, you were not a decision-making, but were you not aware of that particular clause in the contract?

The Minister for Treasury and Resources:

As I recall ...

Senator S.C. Ferguson:

The amendment.

The Minister for Treasury and Resources:

I recall the Chief Minister alerting all Ministers - or we would have been presidents then, I assume - to his grave concern about the potential departure of the Chief Executive and changes being made to the contract, but I have not been involved in any of those decisions. I was not a decision-maker about that. I knew that it was a concern and I knew that some changes, in terms of the contract, were made. I was subsequently, much later on, made aware of them, but, again, I do not know ...

Senator S.C. Ferguson:

When were you made aware of them?

The Minister for Treasury and Resources:

When?

Senator S.C. Ferguson:

Yes.

The Minister for Treasury and Resources:

Well, of the fact that there was concern and changes, probably around the time in 2005, but the nature of them and the precise wording of them and the trigger clauses and what it means, I do not know. I know that there was generally a protection for the Chief Executive, a protection for a breakdown in the relationship between himself and the States. It was the States which was the focus of attention.

Senator S.C. Ferguson:

I am just a little bit confused as to ...

The Minister for Treasury and Resources:

Of course this is from memory.

Senator S.C. Ferguson:

Yes. I am confused as to why you would be leaning on him, metaphorically speaking, when you were aware that there were niceties with regard to the contract which presumably, if you had asked, you would have been given the details of. If you are, as I say, leaning on him, then you could well trigger whatever the details of the contract were. Did this not occur to you?

The Minister for Treasury and Resources:

Well, I certainly was not made aware of it.

Senator S.C. Ferguson:

Did you not ask?

The Minister for Treasury and Resources:

Why would you ask if you do not know about something?

Senator S.C. Ferguson:

Well, you were aware that changes had been made. You have just said so.

The Minister for Treasury and Resources:

But they are personnel matters. I would not be involved in the Chief Executive's matters and I also must, at the same time, be overall aware of my own responsibilities under the Public Finances Law. My obligations in the law are clearly spelled out in terms of my own responsibilities. I am, number one, the Minister for Treasury and Resources. I am, number one ...

Senator S.C. Ferguson:

I am a little confused then as to why you were complaining about the former Chief Executive.

The Minister for Treasury and Resources:

I think the ...

Senator S.C. Ferguson:

Did you feel that he was not performing well?

The Minister for Treasury and Resources:

I think it is fair to say that there was a difference of style in the way that I would have approached matters concerning the Comprehensive Spending Review. You will recall that the original target for savings was £50 million. We agreed to extend the savings target to £65 million. That is 10 per cent of spending cuts. While I certainly think that spending cuts are possible and efficiencies are possible to deliver, you only can do that when you have a significant cultural change in the way the organisation worked. I have got, of course, some corporate memory of the difficulty of the Fundamental Spending Review that happened earlier and I was acutely concerned about the experience and not to repeat the experience of the previous Fundamental Spending Review, which, to my interpretation, was problematic. I had been informed by analysis by the C. & A.G. in relation to those earlier savings proposals. For my own part, I arrived with a Treasury Department that was significantly depleted of its ability to run public finances appropriately and to control and regulate them and, you know, the analysis ...

Senator S.C. Ferguson:

I think we have got a bit away from the point here. What I was asking was: what are the significant differences that you found with the Chief Executive? I do not understand why your complaints were not made to the Chief Minister and why you were sort of having a go at the former Chief Executive.

The Minister for Treasury and Resources:

I certainly do have my own note regarding the meeting with the Chief Executive on 11th January, but I do not think it is appropriate to discuss that in public forum unless you decide subsequently to release some information. I am happy to brief the panel and I am happy to give you the file note that I have and to explain it, but I think that, under the Ministerial Code, personnel is private and I think I have to abide by the Ministerial Code in terms of confidentiality. But I am more than happy to discuss that with the panel.

Deputy T.A. Vallois:

Coming to the point of the Code of Conduct, can I just clarify a few areas here, because we have gone off slightly on a tangent, of C.S.R. (Comprehensive Spending Review), et cetera. In my understanding, if you can confirm, C.S.R. was under the Chief Minister's Department. The actual group that was controlling C.S.R. was under the Chief Minister's Department and that would have led to you having a close working connection with the Chief Executive. Yes or no?

The Minister for Treasury and Resources:

Yes. But, again, that is one of those sorts of odd things. The Minister for Treasury and Resources is responsible for public finances under the law but it is the Chief Minister that presents the business plan, which obviously we have now changed in relation to amendments that we have made. It just meant that things had to work together and in all organisations, when you are having to make difficult decisions and when you are having to make really difficult decisions, there is going to be some tension among the key players and there is going to be some differences of opinion. That is normal. Creative tension ...

Deputy T.A. Vallois:

That is life.

The Minister for Treasury and Resources:

Absolutely. So there was tension and tension is one of those things where you identify problems and you resolve them.

Deputy T.A. Vallois:

Understandably so, but you have stated publicly that you had concerns over the performance of the former Chief Executive. Now, going back to the Code of Conduct again, if you had had concerns over the performance of the Chief Executive you would have stated that to the Chief Minister and I would have expected to see that formally documented in that file because then, if you did not agree with the outcome of that, it was then to go to the Council of Ministers, as I understand the appendix that was changed in 2005.

The Minister for Treasury and Resources:

Which appendix?

Deputy T.A. Vallois:

To the Code of Conduct which still is *in situ* today. I do not understand why that has not happened.

The Minister for Treasury and Resources:

I think it is important to be clear about the difference between performance and concern about the delivery of C.S.R. I was always concerned, and I remain concerned, about our ability to deliver upon undertakings given by the States or instructions given to us by the States on delivery of C.S.R. I think it is fair to say that I have and I had a difference of approach in dealing with some matters compared to the Chief Executive, which was well known and was discussed on a number of different occasions, which is documented in various different email exchanges between myself and the Chief Minister and it is not for me to follow. It is for me to alert and alert I did.

Deputy R.J. Rondel:
You did at the time?

The Minister for Treasury and Resources:
Yes.

Deputy R.J. Rondel:
But that is not documented.

The Minister for Treasury and Resources:
Well, I have got emails that show that it is documented, but these are sensitive personnel matters. I think it is important to point out that I had significant sympathy with the former Chief Executive about the manner in which he had been treated and his inability to be able to do the job as well. So there is a whole set of issues here.

Deputy R.J. Rondel:
Well, he was issued with a new contract which was 2½ times salary.

The Minister for Treasury and Resources:
That was not my decision. Let me be clear, I was not party to that decision ...

Deputy T.A. Vallois:
No, we are aware the decision ...

The Minister for Treasury and Resources:
... and I was not party to the decision to invoke it.

Senator S.C. Ferguson:
But you were aware of the fact that it existed. If I can just get this straight, you did not query the terms and conditions of the former Chief Executive's ...

The Minister for Treasury and Resources:
No, because that was a matter for S.E.B.

Senator S.C. Ferguson:
When you started having disagreements with him, as are documented in his file ...

The Minister for Treasury and Resources:
Well, that is his interpretation. I have not been asked to give my interpretation and natural justice would indicate that I need to give my side of any story. I certainly have not got any records of any complaints. I mean when a complaint is made about somebody it needs to be investigated and it needs to be properly adjudicated. I am not aware of any complaints by the former Chief Executive about matters that I have read in that C. & A.G. report. Certainly that goes far further than the normal discussions that you have on a day-to-day basis. I have lived and worked in Cyril Le Marquand House and I have met with the Chief Minister and had interchanges with the former Chief Executive on a daily basis, but that goes a lot further than anything that I was made aware of.

[16:15]

Senator S.C. Ferguson:

Well, it does seem a little odd that anyone quite so balanced would make comments like this without some sort of evidence.

The Minister for Treasury and Resources:

Senator Ferguson, they are his notes and his remarks. There is no independence in that. They are his observations and his remarks.

Deputy T.A. Vallois:

Minister, if your information was within the documentation ... That is what we are trying to establish. If you had made the complaint or formally notified the Chief Minister of your concerns, whether it be performance or delivery or anything of the Chief Executive, then why is there nothing documented so that when such a thing like this has happened it would be recorded and reviewed upon ...

The Minister for Treasury and Resources:

I agree and performance management is absolutely vital and good communication is vital, but I am not one of the actors in that environment. Those responsibilities were for the H.R. function, for the Corporate Management Board, et cetera. So I find myself as being sort of piggy-in-the-middle in relation to these suggestions.

Deputy R.J. Rondel:

Are you saying it is the Chief Minister's responsibility?

The Minister for Treasury and Resources:

Yes. I do not think that there ever was a ...

Deputy R.J. Rondel:

So he should have known or has there been a failure in his ...

The Minister for Treasury and Resources:

No, I had a strong and good relationship with the former Chief Minister. I do not think there was a cigarette paper between us in relation to any matters, and the one before that.

Deputy R.J. Rondel:

What I am asking you is would you accept there must have been some failure somewhere if there are no recordings of things that went on?

The Minister for Treasury and Resources:

I cannot conclude that because I do not know. I know that at the end of the day the Chief Minister, with his S.E.B. which I was not part of, concluded that it was in the best interests of the Island to agree for the former Chief Executive to leave.

Deputy R.J. Rondel:

If there are no documents ...

The Minister for Treasury and Resources:

The trigger arrangements of all those matters are nothing to do with me.

Deputy R.J. Rondel:

Would you be surprised if there were documents on those files that it would be their responsibility?

The Minister for Treasury and Resources:

It is not fair to draw me on that because I do not know enough about it to do that.

Deputy R.J. Rondel:

If that was a fact.

The Minister for Treasury and Resources:

Well, I would prefer not to be drawn on something that I have not seen the facts of. Those are matters for other people.

Deputy T.A. Vallois:

I think it is quite clear that there needs to be some form of independent oversight anyway in terms of issues such as this. It is one person saying one thing and then what is in documents. I mean there is nothing to substantiate exactly what you are stating, Minister, in terms of documentation.

The Minister for Treasury and Resources:

Well, I have got my own notes.

Deputy T.A. Vallois:

You have only got your own notes and there is nothing in the file.

The Minister for Treasury and Resources:

No, I know that.

Deputy T.A. Vallois:

So we are not aware whether there was any actual formal complaint in relation to this.

The Minister for Treasury and Resources:

Well, I have never received a formal complaint.

Deputy T.A. Vallois:

But the Chief Executive enjoys the rights of Employment Law which is the reason why chief officers and States employees received a change in all their contracts back in 2005. We, at States Members, do not have those rights because we are States Members.

The Minister for Treasury and Resources:

Yes, but I have not had a complaint put against me about ...

Deputy T.A. Vallois:

But would you not expect in normal employment practice, as an employer, if you have a concern about performance ...

The Minister for Treasury and Resources:

That is a different question.

Deputy T.A. Vallois:

How is it a different question?

The Minister for Treasury and Resources:

I have not received a complaint about me. I did not receive a complaint about me.

Deputy T.A. Vallois:

The Chief Minister has not made you aware, seeing as you were working closely together ...

The Minister for Treasury and Resources:

Now, that is a separate issue about ongoing tensions between individuals about that and I am happy to address individual things, but it is not appropriate to do so in open session.

Senator S.C. Ferguson:

You have said that there was not a cigarette paper between you and the Chief Minister and, following this exchange of letters, the Chief Minister took advice from a number of sources and, as you were working so closely with him, you must have discussed it with him. There is no file note in the file. So what is going on?

The Minister for Treasury and Resources:

There are file notes. You are asking me about files that are held elsewhere. That is not my responsibility. I am more than happy to go into private session, after which you decide yourselves whether or not then you subsequently release information, but, under the Ministerial Code of Conduct, I am not going to discuss in public matters concerning performance. I want to state in public that on many matters I had a good and strong relationship with the former Chief Executive and we worked well together in a number of different respects. I supported him and I urged colleagues to support him in relation to the matters which he was being accused of, which was unfair and I hope that I, for my part, in a small way, supported him in relation to that. I have not said in public and I will not say in public that there was a performance issue. There was certainly a difference of approach and different style in relation to how to deal with the C.S.R. I am happy to deal with any other matters to you in private session, but it would be inappropriate to engage in a condemning of the Chief Executive and anybody that wished to interpret my condemning of the former Chief Executive would be wrong. There certainly needed to be a difference in style and approach and that is something quite different. I am happy to discuss that sort of area of ... because it could transgress into personnel matters. I am happy to brief the panel and happy to talk to the panel, but not in public.

Deputy T.A. Vallois:

Can I go on to a more general point ...

The Minister for Treasury and Resources:

But I would like to go on to that with you because I think my note ...

Deputy T.A. Vallois:

Yes, but we are still in public session.

The Minister for Treasury and Resources:

Yes. No, that is fine.

Deputy T.A. Vallois:

In a more general area, with regards to compromise agreements, the situation of risk assessments, whether Treasury or Treasury officials would have any say, in terms of the financial implications, of compromise agreements?

The Minister for Treasury and Resources:

I think I am going to call on the Treasurer to assist me with that, if I may.

Treasurer of the States:

In relation to this, the former Chief Executive, Deputy Vallois, there was nothing for me to be asked about insofar as the ...

Deputy T.A. Vallois:

No, we are aware the decision has been made, but I am talking about the compromise agreements that may be made in future or part of H.R. procedure. We are aware of how the last decision was made from the P. and R. Committee.

Treasurer of the States:

Yes. In relation to the former Chief Executive, I read the relevant clauses. I did not read all of his contract. I did not think that was appropriate for me. I asked Chris Stevenson, my colleague in H.R., to show me the appropriate clauses so that I could be sure that the payment that was being made was in accordance with the appropriate clauses in the contract. I also was shown appropriate parts of the legal advice in relation to it so that I was satisfied that the payment that was being made was in accordance with the contract and was in accordance with the legal advice that had been given to H.R. It was on that basis that the payment was then made.

Deputy T.A. Vallois:

Going back to the point you made earlier about the H.R. resources and Treasury and Resources, the fact that H.R. should probably be sitting under the Resources area, the general area. That tried to happen but did not succeed and is still under the Chief Minister's Department. Obviously it has financial implications and we look at value for money. I think it is, to a certain extent, understandable about the compromise agreements, understanding why and where they come about. However, in terms of risk assessment, what is Treasury's involvement in risk assessment? Do they have any involvement?

The Minister for Treasury and Resources:

Are you talking about the Minister for Treasury and Resources?

Deputy T.A. Vallois:

Treasury in general. It is a financial implication, is it not, at the end of the day, and a manpower resource. The Treasury is the central allocation for budgetary constraints.

The Minister for Treasury and Resources:

You say that, but in a previous role we have also discussed the role with the Chief Minister's Department in setting budgets, where the Treasury does all the work.

Deputy T.A. Vallois:

Yes, but getting back to the point ...

The Minister for Treasury and Resources:

I hope we have amended the States of Jersey Law to give clarity on the issue of who is responsible for presenting budgets to the States. Now, you know that under the previous arrangement the Chief Minister presented the allocations for departments. That was not Clothier-compliant. The idea was that the Chief Minister was almost the mediator between the Minister for Treasury and Resources on one side and other Ministers. So we have been faced with a very difficult situation, a very odd situation where ...

Deputy T.A. Vallois:

Yes, but Treasury have the responsibility for the budget, when the budget comes, of identifying the income to the States.

The Minister for Treasury and Resources:

Yes, but under the former arrangements the Chief Minister ...

Deputy T.A. Vallois:

Yes, absolutely. I am not disputing that at all. What I am trying to get to, in terms of the actual risk assessments of compromise agreements and their financial implications and manpower requirements on the States of Jersey, this is taxpayer's money in terms of value for money. In terms of value for money what area does Treasury play in risk assessing, if at all?

Treasurer of the States:

Well, I have just explained the one experience that I have had, Deputy Vallois, and the steps that I took were to check the terms of the compromise agreement, that they were consistent with the contract of the former Chief Executive, and they were. So had they been outside the terms of the former Chief Executive's contract then it would have been appropriate for me to raise concerns about it. But the settlement that was reached by the former Chief Minister, with legal and H.R. advice, was consistent with the relevant clauses in the former Chief Executive's contract.

Senator S.C. Ferguson:

I thought you generally did risk assessments before ... forgive me if I am getting the wrong end of the stick here. I thought we were talking about doing the risk assessments on any of these compromise agreements before they happen. Would Treasury not be involved with that?

Treasurer of the States:

Not necessarily. I accept it is a reasonable point. You know, it may be a sensible thing for you to raise, that there should be a formal role for Treasury in reviewing and signing off any future compromise agreements. The Chief Executive and H.R. would have to have regard to the policies in place for the States and should be working

within those agreed States policies. If they needed advice on going outside those then they would be wise to get some advice about it, not just financial but common law officers as well.

The Minister for Treasury and Resources:

The Treasurer of the States does not sit on S.E.B. and the decision-maker of compromise agreements is S.E.B. Now, I had discussion with ministerial colleagues this morning about sticking to the role that you have. You cannot be held responsible and accountable for something that you are not the decision-maker for. The Minister for Treasury and Resources is not the decision-maker in relation to the compromise agreements. It is S.E.B. So it follows that while the membership of S.E.B. is a matter for the Chief Minister, it is S.E.B. Now, I was perfectly happy when I was on S.E.B. to be accountable for the decisions that S.E.B. took, but I was a member of S.E.B. that happened to be the Minister for Treasury and Resources. Now, obviously good communication would mean that you have a range of Ministers on S.E.B. Currently that is discharged by my Assistant Minister and I think it is important to say that I understand from Deputy Noel now tells me that there are new proceedings in place on compromise agreements being finalised and how, when they are approved, advised to S.E.B. with maximum levels of payments. It seems very sensible to me. There clearly seems to be some improvement in relation to these matters and S.E.B.'s role needs to be clarified for the avoidance of any doubt and Treasury's role, if Treasury has got a responsibility, needs to be clarified, documented and agreed. Just because we have got the word "Treasury" in our name, we cannot be held accountable for everything to do with money. We need to have the ability to do it.

Deputy T.A. Vallois:

No, but you also have "Resources" in your name and you stated earlier about H.R. being in Resources, hence the reason for my question.

The Minister for Treasury and Resources:

But it is not in Resources.

Deputy T.A. Vallois:

No, but I was asking you the question because it is all about the financial areas. If that money ...

The Minister for Treasury and Resources:

Yes, but if the States wants to give Treasury and Resources - underline Resources, the responsibility of H.R. matters - then we will do it, but you have to give us all the responsibility. I do not think we should have it, but you either have it or you do not and we have not got it. We have never had it. We have never been responsible for H.R. in all its functions. We are responsible for the budget of H.R. but the decision-making is with S.E.B. You could say that is completely bonkers.

Deputy T.A. Vallois:

If I may go back and make the point - not responsibility, not decision-making - the initial question was about the involvement in Treasury in terms of risk assessing. Not making the decision on compromise agreements or anything like that.

The Minister for Treasury and Resources:

Well, if we are asked we will do it.

[16:30]

Deputy T.A. Vallois:

If you are asked, all I am asking you is you would do that then.

The Minister for Treasury and Resources:

If we are asked we will do it.

Deputy T.A. Vallois:

Okay. So there is no actual standard procedure for you to be asked to do it or be involved in any form?

The Minister for Treasury and Resources:

You have to be asked in order to give advice and if you are not asked you cannot give advice and I was not asked.

Mr. A. Fearn:

If I may, the point that I think we are trying to investigate was from what we heard this morning, which was analyse of whether it was worthwhile trying to pursue the payment of the compromise agreement versus the other side of not pursuing it. So some sort of business-case analysis compared to whether one should agree to a compromise agreement or not agree to a compromise agreement. That was the discussion this morning. It was made very clear to us that the compromise agreement was something that the former Chief Minister felt was worthwhile pursuing. So we are hoping that the new procedures that were mentioned should include some analysis if new compromise agreements are going to be adhered to or agreed to.

Assistant Minister for Treasury and Resources:

I cannot comment on previous compromise agreements but future compromise agreements are split into 2 levels depending on the grade of officer concerned, one of which automatically has to come to S.E.B. for approval. One of them at the moment is a discussion whether the other automatically has to come because you may have a compromise agreement for a relatively small sum of work, a grade at low level. There is discussion whether or not all the compromise agreements should come to S.E.B. or not, but certainly those of a significant value have to come to S.E.B. prior to approval.

Mr. A. Fearn:

Thank you. If I may, is there analysis or thoughts on how those amounts would be possibly benchmarked in any way?

Assistant Minister for Treasury and Resources:

They are capped under the policy. You need to ask S.E.B. formally if you want a copy of those 2 policies. I think they are almost finalised. I am not sure if they have been formally minuted. I think it needs to be a formal item on the agenda.

Deputy T.A. Vallois:

Any further questions? No, okay. Thank you very much. We will close the public session in that respect and ask that the public leave if they may. We are just going to break for a couple of minutes.

[16:33]