

**STATEMENT TO BE MADE BY THE CHAIRMAN OF THE CORPORATE SERVICES  
(JERSEY DEVELOPMENT COMPANY SELECTION PROCESS) SUB PANEL  
ON TUESDAY 7th JUNE 2011**

**Statement on the Sub-Panel's Jersey Development Company: Selection Process Review**

Members have received their copy of the Corporate Services Scrutiny Sub-Panel's review *Jersey Development Company: Selection Process*. The report follows our review of States Members' concerns over the selection process for the Non-Executive Chairman and Non-Executive Directors ("NEDs") for the States of Jersey Development Company ("SOJDC") following the referral to Scrutiny during the debate on P32.

I would like to make the point that Senator Ferguson and Deputy De Sousa were both Members of the Transition Advisory Panel, and therefore have not taken part in the proceedings as Members of the main Corporate Services Panel.

I would also like to note that the report should not be construed as bearing any criticism on either the candidates or the Jersey Appointments Commission, the latter of which has co-operated with us in a very open and transparent manner.

The report explains that there were certain shortcomings in the process and in expectations held by States Members concerning their roles. Administrative failures outlined in this report, were, it appears, the responsibility of the States Human Resources Department/Chief Minister's Department and not the Jersey Appointments Commission. To the extent we have been able to conclude on this matter, the Sub-Panel is of the view that whilst these shortcomings would have been perceived as unprofessional, they were not of a magnitude that meant they would have rendered the overall appointments recommendations defective.

It is, however, understandable why some Members of the Transition Advisory Panel felt aggrieved about the process and the way in which their feedback was dealt with by the Recruitment Panel.

The Sub-Panel considers it unfortunate that the Deputy of St John was unwilling to attend a Public Hearing in front of the Sub-Panel (despite being reassured that there would be a later opportunity to go into private session).

Before concluding I would like to give some examples of the key findings identified in the report :

- 1) The successful candidate for Chairman took part in the shortlisting for the NED's and also chaired the second set of interviews for the NEDs on the Recruitment Panel. Procedurally, the Sub-Panel is of the view that the States Assembly should have been given the opportunity to approve the successful candidate as Chairman before allowing that individual to engage in the shortlisting and interviewing process for NEDs.
- 2) Personal information was not collected at the end of the process, and we were surprised that every witness who attended before us was able to bring with them, hard copy folders containing all of the information they had gathered.
- 3) There was an administrative error resulting in the first advert being placed locally before the recruitment consultants were ready. This resulted in a formal complaint being made. Although a minor error, the Sub-Panel is of the view that this was unprofessional

- 4) Members of the Transition Advisory Panel were not provided with written Terms of Reference as to what their role actually entailed. Indeed, this seemed confused from the outset.
- 5) It appears that declarations of interest were known about by the individual Panels to which they were made, but not to any other Panels involved in the selection. Therefore, this could have given rise to the perception (to any party interested in the process) that such issues were not properly dealt with, when in fact they had been.

As I think we will all agree, the States of Jersey Development Company has been a contentious issue. We therefore consider that any significant matter concerning WEB or SoJDC should be dealt with in as open and transparent manner as possible. We were therefore disappointed that, having made a request to the Treasury and Resources Department for access to general correspondence, this was not forthcoming.

We were tasked to look into concerns expressed during the start of the P32 debate. Based on the limited evidence available, there have been some shortcomings identified and we have been able to make some evidenced based key-findings and recommendations. However it must remain very clear that we have not received all of the information or explanations we have requested, which has proved to be of significant frustration to the Sub-Panel, and restricted the review from an early stage.

We commend our report to the Assembly and encourage Members to read it.

## **6. Statement by the Chairman of the Corporate Services Scrutiny Sub-Panel regarding the States of Jersey Development Company selection process**

### **The Deputy Bailiff:**

Very well, the time for questions to the Chairman has now expired and we come on to the next statement, which is to be made by the Chairman of the Corporate Services Scrutiny Sub-Panel on the Jersey Development Company selection process. Deputy Le Fondré will make the statement.

### **6.1 Deputy J.A.N. Le Fondré of St. Lawrence (Chairman of the Corporate Services Scrutiny Sub-Panel):**

As Members will be aware, it is the procedure these days to do a statement when a report is issued from scrutiny and the statement is in front of them. Members have received their copy of the Corporate Services Scrutiny Sub-Panel's review of the Jersey Development Company selection process. The report follows our review of States Members' concerns over the selection process for the non-executive chairman and non-executive directors, who I shall refer to as N.E.D.s (non-executive directors), for the States of Jersey Development Company, S.o.J.D.C., following referral to scrutiny during the debate on P.32. I would like to make the point that Senator Ferguson and Deputy De Sousa were both members of the Transition Advisory Panel and, therefore, have not taken part in the proceedings as members of the main Corporate Services Scrutiny Panel. I would also like to note that the report should not be construed as bearing any criticism on either the candidates or the Jersey Appointments Commission, the latter of which has co-operated with us in a very open and transparent manner. The report explains that there were certain shortcomings in the process and in expectations held by States Members concerning their roles. Administrative failures outlined in this report were, it appears, the responsibility of the States Human Resources Department and/or the Chief Minister's Department and not the Jersey Appointments Commission. To the extent we have been able to conclude on this matter, the sub-panel is of the view that while these shortcomings would have been perceived as unprofessional, they were not of a magnitude that meant they would have rendered the overall appointments recommendations defective. It is, however, understandable why some members of the transition advisory panel felt aggrieved about the process and the way in which their feedback was dealt with by the recruitment panel. The sub-panel considered it unfortunate that the Deputy of St. John was unwilling to attend a public hearing in front of the sub-panel despite being reassured that there would be a later opportunity to go into private session. Before concluding, I would like to give some examples of the key findings identified in the report. The first one, the successful candidate for chairman took part in the short-listing for the N.E.D.s and also chaired the second set of interviews for the N.E.D.s on the recruitment panel. Procedurally, the sub-panel is of the view that the States Assembly should have been given the opportunity to approve the successful candidate for chairman before allowing that individual to engage in the short-listing and interviewing process for N.E.D.s. Personal information was not collected at the end of the process and we were surprised that every witness who attended before us was able to bring with them hard copy folders containing all of the information they had gathered. There was an administrative error resulting in the first advert being placed locally before the recruitment consultants were ready. This resulted in a formal complaint being made. Again, although a minor error, the sub-panel is of the view that this was unprofessional. Members of the transition advisory panel were not provided with written terms of reference as to what their role entailed. Indeed, this seemed confused from the outset. It appears that declarations of interest were known about by the individual panels to which they were made but not to any other panels involved in the selection. Therefore, this could have given rise to the perception to any party interested in the process that such issues were not properly dealt with, when in fact they had been. As I think we will all agree, the States of Jersey Development Company has been a contentious issue. We

therefore consider that any significant matter concerning W.E.B. (Waterfront Enterprise Board) or S.o.J.D.C. should be dealt with in as open and transparent manner as possible. We were, therefore, disappointed that having made a request to the Treasury and Resources Department for access to general correspondence, this was not forthcoming. We were tasked to look into the concerns expressed during the start of the P.32 debate. Based on the limited evidence available there have been some shortcomings identified and we have been able to make some evidence-based key findings and recommendations. However, it must remain very clear that we have not received all of the information or explanations we have requested, which has proved to be of significant frustration to the sub-panel and restricted the review from an early stage. We therefore commend our report to the Assembly and encourage Members to read it.

**The Deputy Bailiff:**

The statement has been made. It is now open for questions. I call on the Connétable of St. John.

**6.1.1 Connétable G.F. Butcher of St. John:**

I have had time to have a quick scan through the document and there has been mention in the document around planning powers. I would like the Chairman of the panel to expand on that if he may.

**Deputy J.A.N. Le Fondré:**

To an extent, it was something that arose during some of our interviews - and I am just looking for some notes - in that on possibly 3 occasions in public submissions it was alluded to. Essentially, the reason we thought it of merit mentioning it and bringing it to Members' attention is obviously it was very clear in the debate on P.73, which instigated S.o.J.D.C., the clear role and clear definition of the role between S.o.J.D.C. and, for example, the Regeneration Steering Group and, if you like, the States Assembly, i.e. the States have primacy and the company was basically a developer. There were some indications within some of our early hearings that that had possibly become slightly less clear, which is why we felt it was worth mentioning it to Members. In fact, there is a public quote from a member of the technical panel, I believe, in relation to some comments made by one of the candidates, which I will just go to in case I misquote. What I would say is, in saying that, this was obviously raised with the Minister for Treasury and Resources later on who was very clear in the responsibilities. The quote is on page 39 of the report and essentially what it was saying is the candidate they preferred in terms of advising the main panel would have adopted what they called a more collaborative approach.

**6.1.2 Deputy M.R. Higgins:**

I have 2 questions. First, will the Chairman explain further the problems he experienced in obtaining information from the Minister for Treasury and Resources and the reasons that were given for not complying with his request? Secondly, why did the sub-panel not hear the evidence of the Deputy of St. John in private, even though it could not use what he said in the written report, as it could have at least directed their questioning of other parties?

**Deputy J.A.N. Le Fondré:**

Thank you for that. I will deal with the last part first, if that is okay. The issue about the Deputy of St. John did cause a slight divide on the panel, and that is detailed in our report. But in the end we did have a private briefing, or I should say I had a private briefing with the Deputy with the scrutiny officer present, so we were able to use some of the information he gave us to inform some of our decisions. There was obviously a concern on the panel that they felt that it would have been far more appropriate for the Deputy to come to us in public. I will say that was a majority view of the panel. To deal with the issue about information from the Treasury Department, again it is detailed in the report in section 6. The reason I just want to quote is

because there have been some exchanges of emails more recently. We want to make it very clear that P.73... again the proposals that were put to the States and approved, actually identifies the role of the Assembly. The role of the Assembly is, among other things, to appoint the non-executive directors of the States of Jersey and also, 2 bullet points further down, is to ensure that all elements of the process are open and responsive to scrutiny. There were various exchanges of emails going on, but the key one is one on 8th April when we quote that there did not seem to be any reason to delay the release of any general information, any general documentation or correspondence. That is what Treasury was not forthcoming on. To elaborate slightly further, because I want to make it very clear, we are not interested in curriculum vitae - C.V.s - not interested at all. There may be some information, we have said in the email, that might have required redacting, but general correspondence was the key thing we were after. To give you some examples, we have been provided from other sources with a letter from the Chief Minister to the panel members inviting them to come on. That is general correspondence. That is not private information. We have been given an email from the Appointments Commission which is clarifying the role of the members. Again, that is general correspondence. That is not private data. Finally, we have also been given an email, I think by an officer in the Chief Minister's Department, that gives evidence of, firstly, the very short notice of the exact dates of scheduling for the second lot of interviews, which obviously has a knock-on effect in terms of people able to attend, and also the fact that the reason given in that email was because it was due to half-term. That obviously is something that has been in the diaries for a long time.

**The Deputy Bailiff:**

Can I say to Members that the report is in the public domain and, therefore, there is no purpose in questions which are seeking information which is already in the public domain. The purpose of question time is to put questions in relation to matters which are not in the public domain.

**6.1.3 Senator P.F. Routier:**

Does the Chairman agree with me that the most important sentence in the statement and the report is: "To the extent we have been able to conclude on this matter, the sub-panel is of the view that while these shortcomings would have been perceived as unprofessional, they were not of a magnitude that meant they would have rendered the overall appointments recommendations defective"?

**Deputy J.A.N. Le Fondré:**

I think it is an important statement. The difficulty is the first bit: "To the extent we have been able to conclude." It should not outweigh the rest of that sentence.

**6.1.4 Senator P.F.C. Ozouf:**

Will the Chairman accept that the Treasury acted in accordance with advice from Data Protection and that handing the information that he requested would have broken the Data Protection Law? While welcoming the report and welcoming the fact that the Appointments Commission and the candidates have been cleared from any wrongdoing, as a member of the recruitment panel, for the avoidance of doubt will he confirm that the panel has no evidence of anything improper or wrongdoing on my part as a member of the recruitment panel and the Constable of St. Peter, who was also part of the recruitment panel? It is important that he does confirm no wrongdoing and he clears the name that has been cast over us as a result of this review.

**Deputy J.A.N. Le Fondré:**

Some Members will be aware there has been an exchange of emails more recently. I think the best point to answer the second part of that question, which I appreciate is a matter of frustration for the Minister, I am just going to quote from an email that we sent him late yesterday, and this

can be applied to any member of the recruitment panel: “This in no way should be seen as impugning the integrity of the individuals mentioned. What we are saying is we found no evidence of bias but, because we have not received all information that has been requested, we cannot conclude fully and finally on this.” I am sorry, that is the problem. It is that if we have not ... we do not know what we do not know. If we are aware that there is a significant chunk of general correspondence out there that we have not been given access to, then we cannot conclude. We believe on what we have seen that there is not an issue, but I cannot say 100 per cent that it is all fine because I am not in a position to conclude because I have not had all the information. Do not infer anything in that of maligning anybody or anything along those lines. It is a position that we are in that we have not had all the information. To lead us into the issue about data protection, I am sorry, I think we have to go back to my original response.

[12:45]

We also took advice from the Data Protection Commissioner, so obviously I cannot comment on the advice that the Minister for Treasury and Resources will have because that will be specific to them. But the email that is in the report was agreed with her before it was sent. So, as far as we are concerned, the request for general correspondence of the type of that I have asked for, which obviously assists in putting that report together, was not unreasonable.

**The Deputy Bailiff:**

As I understood your answer, you said that there was no evidence whatever of any lack of integrity on the part of any members of the panel. Now, you do not wish to leave hanging the question that there might be some issue of integrity, do you?

**Deputy J.A.N. Le Fondré:**

No, Sir. I would not wish to leave hanging any question of integrity but, Sir, I am saying we cannot complete what ...

**The Deputy Bailiff:**

You either leave it hanging or you do not and that is why I asked you that question. If I may say so, your first answer left it hanging and that is why I followed it up. You either leave it hanging that there is a question over the integrity or you do not.

**Deputy J.A.N. Le Fondré:**

Sir, we have not had the information. The information we have seen leaves us satisfied.

**The Deputy Bailiff:**

Very well. So you do not leave it hanging; that is correct. Thank you.

**Deputy M. Tadier:**

Would I make an observation, Sir, and ask that the Chair be so zealous when Ministers do not give answers and seek equal clarification. I do not have a question, Sir, because it has been answered already.

**6.1.5 The Deputy of St. John:**

Would the chairman agree that it would have been inappropriate for the Deputy of St. John to attend an interview where details of individuals who had been interviewed could have been identified in the public interview and will he give reasons or the names of his panel members who refused to meet the Deputy of St. John in private session and does he agree that the whole issue would have been better dealt with in an in-camera debate as was requested by the Deputy of St. John in the first instance?

**Deputy J.A.N. Le Fondré:**

I think I have lost track of all the questions in there.

**The Deputy Bailiff:**

They are about the Deputy of St. John. [Laughter]

**Deputy J.A.N. Le Fondré:**

I got that part. The issue of whether the Deputy of St. John should give evidence in public or private did split the panel and I will give the panel's view, which is that they were of the view that, particularly as a scrutiny chairman, he should have been aware - this is the majority view - that a witness cannot set the terms under which they come to a scrutiny panel. However, I will also give my personal view, which is why it split the panel, which is that my understanding of Members in the debate on P.32 was that they expected the Deputy of St. John to come to us in confidence. As it was, we managed to eventually marry-up the two conflicting views by having a private briefing to me with a scrutiny officer present. However, yes, there are diverging views within the panel and I hope I managed to express that.

**The Deputy Bailiff:**

Very well, time for questions to the chairman has now expired.