

# STATES OF JERSEY

## COMMITTEE OF INQUIRY INTO TENDER PROCESS AND AWARD OF BUS SERVICE CONTRACT

BLAMPIED ROOM, STATES BUILDING

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**Committee:**            **Mr Huw Shephard (President)**  
                                 **Mr Christopher Blackstone (Member)**  
                                 **Mr Trevor Garrett (Member)**

**In attendance**        **Mr Mac Spence (Committee Clerk)**

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### EVIDENCE FROM:

**MR R. MACKLIN**  
**(Halcrow Group)**

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on

**Wednesday, 26th January 2005**

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*Reviewed 15/03/05 Committee Clerk*

MR SHEPHEARD: Mr Macklin, good afternoon to you.

MR MACKLIN: Good afternoon.

MR SHEPHEARD: Mr Macklin, the Committee of Inquiry is taking evidence on oath and will immediately proceed to swear you in.

**The witness was sworn**

MR SHEPHEARD: Thank you, Mr Macklin. At the time of the matters that concern this Committee, we understand that you were a sort of subcontractor to Halcrow, although you are now a full-time employee; is that correct?

MR MACKLIN: That is correct.

MR SHEPHEARD: And you were involved in the administration or the developing of the tendering process under which the bus service in Jersey was up for grabs between a number of operators.

MR MACKLIN: Indeed, yes.

MR SHEPHEARD: Well, my colleagues, Mr Blackstone and Mr Garrett, will be asking you most of the questions, although I may have one or two of my own, but I will hand over to Mr Blackstone, I think.

MR BLACKSTONE: We have had a lot of answers from Mr Childs this morning and covered a lot of the areas, but we would particularly like to address with you the meeting of 28 February '02, when you met with Jersey Bus and others for clarification of their bid. Can you tell me, please, who attended that meeting?

MR MACKLIN: There was myself representing Halcrow; there was Mike Cotillard for Jersey Bus present throughout the meeting; um, and I'm not sure whether Carl Pickering was there throughout the whole meeting. We were subsequently joined by Chris Lewis and by Alan Muir from the PSD.

MR BLACKSTONE: So Alan Muir, you say, was not there at the beginning of the meeting?

MR MACKLIN: No, he was not.

MR BLACKSTONE: How long into the meeting was it before he came in?

MR MACKLIN: It ... the meeting, um, was certainly well advanced. I've got a ... in fact I've

got an email from Alan to me saying that, as it was agenda day, he had a pressing commitment and wouldn't be able to join, so we knew when we started the meeting that he would not be with us until well on into it.

MR BLACKSTONE: And he stayed to the end?

MR MACKLIN: And then he stayed to the end.

MR BLACKSTONE: Have you seen a copy of Chris Lewis's notes of the meeting?

MR MACKLIN: I have seen a copy in recent times. We didn't exchange our notes at the time.

MR BLACKSTONE: Hmm.

MR MACKLIN: But I have the disadvantage of not having a copy in front of me.

MR BLACKSTONE: I did have a spare copy, but I gave it to Mr Childs this morning.

MR GARRETT: If I can hand that copy to you. (**Same handed**)

MR BLACKSTONE: Looking at page 1, Alan Muir seems to have come in two-thirds of the way down to talk about the Weighbridge.

MR MACKLIN: Yes, I am quite happy to accept that. He was certainly not there at the beginning of the meeting, yes, I can confirm that.

MR BLACKSTONE: The shift allowance was discussed specifically at the meeting?

MR MACKLIN: Almost in passing. Because the meeting was to seek clarification, the fact that the wage award was on the table and had not been agreed, um, there was nothing more really to say about it.

MR BLACKSTONE: You were fully aware of the claim?

MR MACKLIN: Yes, indeed.

MR BLACKSTONE: And the shift allowance and everything else?

MR MACKLIN: Yes, indeed.

MR BLACKSTONE: Was Mr Muir there when this was discussed?

MR MACKLIN: No, he would not have been, no, because it was the first item of the ... I had a checklist of questions and it was the first of my questions in fact.

MR BLACKSTONE: Right at the beginning of the meeting you stated that this was for clarification, not negotiation.

MR MACKLIN: Indeed. We were not involved in any way with any of the tenderers on post contract negotiation. It was purely to ensure that they had interpreted the facts that were presented to them correctly and that we were judging all the bids on a level playing field basis.

MR BLACKSTONE: Right. Hmm hmm. Jersey Bus put in a non-compliant bid ----

MR MACKLIN: Indeed, yes.

MR BLACKSTONE: ---- which was not that I'd put in, with no figures in it. I think they admit now that they should have put figures into it. But you talk in your notes specifically, list in your notes, which were rather shorter than Mr Lewis's, that first year savings were something in the order of £330,000 and, in subsequent years, something in the order of £430,000.

MR MACKLIN: Yes.

MR BLACKSTONE: That is in your notes of the meeting.

MR MACKLIN: Yes, yes.

MR BLACKSTONE: Having that information and taken the effort to record it, why was no further account taken of Jersey Bus' non-compliant bid?

MR MACKLIN: Well, because they had not ... they had made a fresh set of assumptions behind those figures, such that they would not be paying a rent for La Collette depot.

MR BLACKSTONE: Clarification?

MR MACKLIN: Well, yes, we saw ... this is what appeared to be the case, through asking the question, that they were going to continue operating from the Weighbridge and, therefore, not have a rental figure to pay to the States for La Collette.

MR BLACKSTONE: For a limited period, yes.

MR MACKLIN: For the first year that was assumed, yes.

MR BLACKSTONE: Hmm hmm.

MR MACKLIN: And some other costs came to almost wipe out the saving that they claimed to have made through their non-compliant bid.

MR BLACKSTONE: Because, you see, in your notes you do say "*First year savings £330,000.*" I presume that is net?

MR MACKLIN: No, no, because it was ----

MR BLACKSTONE: Why did you not note if there were extra costs, because you didn't? You have only noted the savings in your notes here: "*Total year 1 saving of £332,000. Year 2 and thereafter £108K*", which is La Collette, "*plus 324K = 432K*". **(Pause)** You don't say anything about extra costs anywhere in your notes.

MR MACKLIN: Yes, with respect, I do.

MR BLACKSTONE: Where?

MR MACKLIN: Um, point 3, assuming we're working from the same ----

MR BLACKSTONE: I hope so.

MR MACKLIN: ---- version. I hope so, yes. "*Non-compliant bid. As with compliant bid, take out £50,000 from bus station and reduce La Collette to 186,750 in line with other bids.*"

MR BLACKSTONE: Ah right, yes, okay. Did that apply to the compliant bid as well?

MR MACKLIN: Yes.

MR BLACKSTONE: Yes.

MR MACKLIN: Yes, it was an assumption that had been wrongly applied or differently applied, shall we say.

MR BLACKSTONE: But there were fairly major costs savings involved in their statement as to what their non-compliant bid would have been.

MR MACKLIN: Yes, but, I mean, there ... we were seeking clarification. We were not making a judgment on whether the bid should be recommended, accepted or anything like that. That was for States members later on in the process to do.

MR BLACKSTONE: But you did some mathematical adjustments to some if not all of the bids?

MR MACKLIN: Yes, yes.

MR BLACKSTONE: And you didn't take these into account in reworking the non-compliant bid for Jersey Bus?

MR MACKLIN: Well, they were not the only non-compliant bid that we received.

MR BLACKSTONE: No, I realise that.

MR MACKLIN: We didn't feel that any of the non-compliant bids were really not just worthy, but had serious financial merit for consideration by the States.

MR BLACKSTONE: Hmm hmm. Mr Lewis did note in his own notes of that meeting: "*Roger Macklin said the main interest was in our non-compliant bid*". True or?

MR MACKLIN: That would have been an impression he gained. I'm not saying ... I mean, we were as interested in the non-compliant bid, but we just wanted to get to the bottom of what it actually meant, as we were with the other bidders. He may have gained that impression.

MR BLACKSTONE: It is just that ----

MR MACKLIN: Could I just say that we insisted that all operators put in compliant bids.

MR BLACKSTONE: Yes.

MR MACKLIN: So that we at least had something we could judge them against.

MR BLACKSTONE: It just seems that, you know, if there was certainly interest in the non-compliant bid ----

MR MACKLIN: Oh yes, there was interest, yes, yes.

MR BLACKSTONE: ---- after this meeting it seemed to have sunk without trace and it wasn't even mentioned in the listing of the bids subsequently.

MR MACKLIN: No, it didn't go forward, no.

MR BLACKSTONE: Even though there were considerable savings offered? It wasn't considered worthy of putting it forward for further consideration?

MR MACKLIN: It effectively carried on things without real change and the States were seeking change.

MR BLACKSTONE: Sorry? Do you mean they were seeking change from Jersey Bus?

MR MACKLIN: No. No, no, they were seeking an improvement in whoever was the operator. That was the ... Who was the operator was almost secondary to getting agreed improvements.

MR BLACKSTONE: What particular improvements are you talking about?

MR MACKLIN: Well, getting in some ... getting a newer rolling stock profile.

MR BLACKSTONE: Sorry?

MR MACKLIN: Getting a newer rolling stock profile, newer buses.

MR BLACKSTONE: Well, that was a condition of the bid anyway, wasn't it?

MR MACKLIN: But that was a condition of the bid. They wanted to improve the image of

public transport, which could have been achieved by any of the bidders.

MR BLACKSTONE: Also in Mr Lewis's notes, at the top of page 2: "*RM also said all bids based on 40 seaters and from day one.*"

MR MACKLIN: No, I didn't.

MR BLACKSTONE: "*Mainly new buses, States and consultants accept 40 seaters are a requirement.*"

MR MACKLIN: This was ... when I saw these notes, this was the one thing that really jarred with me.

MR BLACKSTONE: You never made any such statement?

MR MACKLIN: I do not believe I did. What we said in the bid, I am almost certain we said, was that we required adequate capacity.

MR BLACKSTONE: That I have seen, yes.

MR MACKLIN: Yes.

MR BLACKSTONE: That is in the bid documents.

MR MACKLIN: Yes.

MR BLACKSTONE: But this is a specific statement coming out of that meeting.

MR MACKLIN: That would be a ... I cannot imagine myself having said that at all. That's all I can say. I've got no record in my notes of us even mentioning size of vehicles specifically.

MR BLACKSTONE: But your notes only extend to one page.

MR MACKLIN: Yes, they are very brief notes.

MR BLACKSTONE: These notes go on for four pages.

MR MACKLIN: Yes, yes.

MR BLACKSTONE: So there might be rather more detail than what was said.

MR MACKLIN: I still cannot imagine that I would have been as specific as that, because clearly you can achieve adequate capacity by more than one means.

MR BLACKSTONE: Hmm. It is a very specific statement attributed to you.

MR MACKLIN: It is. I agree, it is a very specific statement, yes.

MR BLACKSTONE: And you are maintaining that you said nothing of the sort?

MR MACKLIN: I fear I have to say yes. I don't ----

MR BLACKSTONE: So you are saying basically that the statement was a fabrication?

MR MACKLIN: I am reluctant to say that as well, but if I say one it implies the other, I have to say.

MR BLACKSTONE: It does, yes.

MR MACKLIN: But I can see no reason why I would have said 40 seaters when we were talking just adequate capacity. There may have been discussion about what would constitute adequate capacity, but that is not the only way of achieving adequate capacity.

MR BLACKSTONE: I realise that.

MR MACKLIN: Hmm.

MR BLACKSTONE: It is just that it is so specific.

MR MACKLIN: It is very specific, yes, yes, I agree.

MR BLACKSTONE: *"States and consultants accept 40 seaters are a requirement."*

MR MACKLIN: They are not a requirement. They are a ... I mean, that would be one way of doing it, but ... I'm sorry, I can't really assist you any further on that.

MR BLACKSTONE: Well, we will have to move on from that one.

MR MACKLIN: Hmm.

MR BLACKSTONE: It is a difference of recollection perhaps. I think the opening of the bids in Jersey, were you there?

MR MACKLIN: I was present, yes.

MR BLACKSTONE: You were?

MR MACKLIN: Yes.

MR BLACKSTONE: And various people from the Public Services Committee and Department were also present.

MR MACKLIN: Yes, yes.

MR BLACKSTONE: Was there any discussion of the bids at that time?

MR MACKLIN: No. It was a straight opening and recording of what the bid figures, the bid sums, were.



MR BLACKSTONE: Presumably you were also involved with Mr Childs in the subsequent two assessment documents, the preliminary and the final?

MR MACKLIN: Indeed, yes.

MR BLACKSTONE: And did you have any representations or communications from PSD or PSC concerning the assessment of the bids, or was this all done totally by Halcrow without reference to Jersey?

MR MACKLIN: From recollection, it was entirely Halcrow. We then presented our note of our deliberations.

MR BLACKSTONE: In your assessment of the Jersey Bus bid, there is this statement: "*We are not however convinced that the spirit of co-operation, which is essential for the development of a successful partnership arrangement, exists or is possible between the parties.*"

MR MACKLIN: I don't think that is Halcrow saying that, is it?

MR BLACKSTONE: That is a Halcrow statement. Would you like to look it up? I think I have it here. **(Pause)** It is highlighted?

MR SPENCE: Thank you, Sir. **(Same handed to witness)**

MR MACKLIN: Thank you.

MR SPENCE: **That** is the text.

MR MACKLIN: Thank you. **(Pause)** Yeah, I mean, I think that that reflects the situation that had brought about the whole issue of going out to tender. There was a dissatisfaction that was expressed by States members and by the media that we were certainly aware of. I think there was not a spirit of ... I mean, there was certainly a breakdown in trust possibly, I think one could describe it as.

MR BLACKSTONE: But we were looking at a whole new régime. As you said, there was a beauty contest and I think Jersey Bus said they were very happy.

MR MACKLIN: Yes, but there was an opportunity. There was an opportunity there because we created a process that was sought to be fair and open and transparent and that gave everybody equal opportunity. We were very particular to not in any way either favour or disfavour the existing operator. It was very clear the existing operator had to have every opportunity to be

considered equally with any other tenderer. They wouldn't be favoured and they wouldn't be disfavoured.

MR BLACKSTONE: But surely your assessment of bids was meant to be an assessment of fact, not to include an opinion which didn't come from anywhere in the bids? That is a hugely damning statement, isn't it?

MR MACKLIN: I think it reflects the reality, I have to say ----

MR BLACKSTONE: But it doesn't come from the bids, does it?

MR MACKLIN: It doesn't come from the bid documents, no.

MR BLACKSTONE: You were meant to assess the bids.

MR MACKLIN: Which we did.

MR BLACKSTONE: Right. Was there anything in the bids which gave an opinion like that?

MR MACKLIN: Um ----

MR BLACKSTONE: It's hardly likely, is it? Jersey Bus are not going to say "We think PSD stink", are they?

MR MACKLIN: No, no, no.

MR BLACKSTONE: So that is an extraneous opinion which you derived, you say, from States members and possibly from the media?

MR MACKLIN: Well, yes, but it is ... it is still a reality, if that did exist at the time.

MR BLACKSTONE: But what place does it have in a factual statement about the bids? Surely any opinion like that has to be subjective?

MR MACKLIN: It's not a ... we're commenting on the fact that that spirit, or lack of spirit, of co-operation existed. We're not ----

MR BLACKSTONE: You say you got that opinion from States members? Who specifically?

MR MACKLIN: Well, from ... before we were engaged on the job, there had been lots of comment. We trawl the local media through the Internet and there were all sorts of comments that were expressed by the various ----

MR BLACKSTONE: Did you manage to substantiate them?

MR MACKLIN: No, we did not. No, we didn't investigate them. We were just saying there

was this spirit of ... or lack of spirit.

MR BLACKSTONE: Surely they were all turning over a new leaf? That was the idea of the tendering process.

MR MACKLIN: Yes.

MR BLACKSTONE: Why did you cast prior aspersions on the prior performance which bears absolutely no relation to the tender or the tender bids?

MR MACKLIN: Well, I mean ... **(Pause)** I mean ...

MR BLACKSTONE: That expresses a very strong bias, that statement.

MR MACKLIN: No, no, I would not agree with that. I mean, it is reflecting something of a mood that did exist. It still existed at this time, at the time of this, you know.

MR BLACKSTONE: Which you had gathered from hearsay. **(Pause)**

MR MACKLIN: Well, if you count the expressed views of States members in the media as hearsay, yes, but ...

MR BLACKSTONE: You believe everything you see in the papers?

MR MACKLIN: Of course not, but it was not just one statement. We were talking about a number of statements over a period of time by different people.

MR BLACKSTONE: I just think there is no place for a statement like that in a professional assessment. **(Pause)** Thank you, Mr Macklin. I have no further questions to ask.

MR GARRETT: Fortunately, my colleague has asked most of the questions that I had in mind, but can I just take you back to that meeting in February?

MR MACKLIN: Hmm.

MR GARRETT: There is a fairly sort of interesting set of notes produced by Chris Lewis there, which provide some background to the wage claim. Do you recall that discussion?

MR MACKLIN: I don't recall it in as much as detail as is written in the notes here. We certainly had a ... it was certainly talked about and I probably recorded it as ... I mean, the key thing, my question was, what is the current position with the wage negotiations, because I was trying to find out what was the latest information and whether the claim had been settled. The answer was that it was not finalised as at the date of that meeting. Yes, I mean, it could have

been discussed in that sort of detail, but I didn't record it as such. It wasn't something that I saw as being particularly pertinent to what I was seeking to do that day, which was to seek clarification on the various items in the bid.

MR GARRETT:           However, an understanding of the background to the claim might have given you, Halcrow, an indication as to the probability or possibility that the claim would be met.

MR MACKLIN:           It was a claim at the time. It was not ... there was no indication whether it was ... to what extent it was going to be met.

MR GARRETT:           But understanding the background to it, the basis of it ----

MR MACKLIN:           Oh we did, we did, yes. I had it explained it to me by Jersey Bus certainly of the pressure that they were under from the union and all the rest to have a significant uplift in the pay and conditions, but, I mean, this was information that we had made available to all the tenderers. The tenderers took a view on that information when they submitted their claims. They could do as they had taken it into account. Now, you know, that really was as far as we needed to go.

MR GARRETT:           The only thing was that ultimately Halcrow supported the claim submitted by Connex.

MR MACKLIN:           Yes, subsequently, yes.

MR GARRETT:           Just picking up on your words before, it is the case that tenderers have to make that commercial decision, is it not?

MR MACKLIN:           Yes, it is.

MR GARRETT:           They have to decide do they include it, in which case their tender bid would be fairly high -- another £200,000-ish -- or do they gamble on the assumption that the claim will be rejected by Jersey Bus. If they choose the latter, is it not the case that, if their decision proves to be flawed, it's tough on them?

MR MACKLIN:           They certainly all took account. They took account of it in their bid. We ... I mean, it's a commercial decision as to what degree they took account of it, whether it was from non-acceptance to full acceptance or any point in between.

MR GARRETT:           But whoever was successful would have to live with the outcome. If they

made a decision and concluded wrongly that the claim was going to be rejected, ultimately they had to pay it. There is no basis for going back to the States. It is their commercial decision, is it not?

MR MACKLIN: Um, that was a stage of the ... I have to say the subsequent going to ... the claim by Connex was something I was not personally involved in, so I can't say.

MR GARRETT: But were you aware of the nature of it?

MR MACKLIN: I was aware. I was aware of what was going on.

MR GARRETT: But were you aware of the nature of the terminology used in the tender documents?

MR MACKLIN: Yes.

MR GARRETT: So you were aware of that famous clause 3, I think it is, that basically says that it is the duty of the tenderers to inform themselves?

MR MACKLIN: Oh yes, yes.

MR GARRETT: And the concluding part of that is "You will not come back at the States".

MR MACKLIN: It means what it says on the page, yes, but there are, as was made out is the case, extenuating circumstances. But I wasn't involved in that, so I wouldn't wish to comment.

MR GARRETT: What is your understanding of the extenuating circumstances?

MR MACKLIN: Well, they clearly felt that they ... no, it is just supposition, but, I mean, they clearly felt that they were unfairly put upon or whatever. Really it is a question to ask Connex, I would suggest, why they felt they had to come back.

MR GARRETT: But you accept that they received the documentation? They received a copy of the Transport and General Workers' Union letter?

MR MACKLIN: Oh most definitely, most definitely.

MR GARRETT: And clearly they made that difficult commercial decision.

MR MACKLIN: And they assured us in the clarification that they had taken account of the wage award, yes.

MR GARRETT: They had taken full account of it?

MR MACKLIN: Taken account, no, no, taken account. I mean, it was up to them. They may have thought that they could achieve economies elsewhere or ... (indistinct) ...

MR GARRETT: But in those discussions, they didn't challenge you, they didn't question you, they didn't say to you "We think this is almost a fraudulent claim. We don't think it is going to be paid?" They didn't ask you the probability of it being paid?

MR MACKLIN: No.

MR GARRETT: They just accepted that it was in play?

MR MACKLIN: It was in play. Yes, I think that is a good expression.

MR GARRETT: Fine, and they presumably made that difficult commercial decision?

MR MACKLIN: They made a commercial decision, yes, yes.

MR GARRETT: Fine. Okay, I have come to the end of my questions, but before finishing off completely, is there anything that you want to tell us that hasn't been covered or point us in the direction of an issue that you think we should investigate?

MR MACKLIN: Not that I can think of, no, no.

MR GARRETT: Okay, thank you.

MR SHEPHEARD: Mr Macklin, I have just got a few minor points that I need to deal with. Could you give us, please, an outline of your qualifications and experience?

MR MACKLIN: Certainly. BA Honours; Chartered Member of the Institute for Logistics and Transport; some 35 years' experience in the passenger transport industry both in operations and in contracting from a local government standpoint.

MR SHEPHEARD: What sort of rôles have you occupied in the transport industry, for example?

MR MACKLIN: Five years with British Rail as a management trainee. I then headed up the passenger transport function in both Gloucestershire and Cambridgeshire County Councils and spent then five years as a freelance consultant.

MR SHEPHEARD: And then you joined Halcrow?

MR MACKLIN: Then I subsequently joined Halcrow, yes.

MR SHEPHEARD: When all this was taking place you were a freelance; is that right?

MR MACKLIN: Indeed, that's right.

MR SHEPHEARD: I think those are all the questions that I have, Mr Macklin. Mr Blackstone?

MR BLACKSTONE: Just one clarification. In your clarification meeting with Connex ----

MR MACKLIN: Yes.

MR BLACKSTONE: ---- did they say whether or not they had included the shift allowance in their quote and did you ask about it?

MR MACKLIN: Bear with me a second. **(Pause)** They certainly were able to confirm very positively the figures that were in their bid. They did not have any doubt that they were robust, robust figures.

MR BLACKSTONE: Sorry, "*robust*" is a funny word for me. They included everything?

MR MACKLIN: They believed they had and certainly ... I mean, certainly they received all the information that every other operator had. Everybody started from the same information basically, including the information about the TGWU claims.

MR BLACKSTONE: So you can't remember whether that was specifically ----

MR MACKLIN: It was not specifically. I have got no record, specific record, of that being asked as a question.

MR BLACKSTONE: In Connex's bid there were the following statements: "*Included in our costs is the assumption that the wage claim of the present Jersey Bus staff is met in full.*"

MR MACKLIN: Well, that's it.

MR BLACKSTONE: That is the end of the story, is it?

MR MACKLIN: That was clear. That was very clear.

MR BLACKSTONE: No questions, no interpretation?

MR MACKLIN: There was no sort of ifs and buts.

MR BLACKSTONE: Because they go on to say: "*We would be prepared to discuss a reduction in the staff costs directly applicable to the present staff should the claim be settled at a lower level.*" It doesn't need interpretation, does it?

MR MACKLIN: No, that is very clear.

MS GALLACHER: Thank you.

MR SHEPHEARD: Mr Macklin, thank you very much for coming to Jersey to assist us with the Inquiry and I think safe journey back to whatever part of the UK you are going back to.

MR MACKLIN: Thank you.

MR SHEPHEARD: I think we have now reached the point at which we have no further business for today and so we will adjourn until 9.30 tomorrow morning.

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