

STATES OF JERSEY

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

BLAMPIED ROOM, STATES BUILDING

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

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

EVIDENCE FROM:
SENATOR TERRY LE SUEUR

on

Monday, 31st January 2005

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MR SHEPHEARD: Good afternoon to you, Senator Le Sueur.

SENATOR LE SUEUR: Good afternoon.

MR SHEPHEARD: Senator, thank you very much for coming to give evidence to us today. We are taking evidence on oath and I will proceed to administer the oath to you if I may.

The witness was sworn

MR SHEPHEARD: Thank you. Senator, the bulk of the questioning that you face this morning is going to come from my colleagues, Mr Blackstone and Mr Garrett. I will chip in with questions if I think that I need to clarify anything or if I have questions of my own.

SENATOR LE SUEUR: Right.

MR SHEPHEARD: I will hand you over now to Mr Blackstone.

MR BLACKSTONE: Good morning, Senator. I believe your involvement with the Public Services Committee and the bus business related to two meetings, one a Hoppa conciliation meeting (if I can call it that) on 3rd August 2000 and, secondly, a “final offer meeting” on 28th July 2001.

SENATOR LE SUEUR: I’m aware of the one on the 3rd August. In fact, I have notes here of meetings on 2nd and 3rd August, but I can’t recall any previous involvement.

MR BLACKSTONE: No, the other one was later. The final offer meeting was in 2001.

SENATOR LE SUEUR: 2001? Um, that wasn’t me. I must admit, I have no notes on it or any great recollection of it, so it may not have been myself on that. **(Pause)**

MR BLACKSTONE: “*Senator T. Le Sueur, Senator P. Le Claire, Deputy J. Dorey, Deputy J. Crespel, Jersey Bus and TGWU*”.

SENATOR LE SUEUR: Yes, it starts to ring a vague bell, but I’m afraid I can’t help you on that after this time.

MR BLACKSTONE: We will probably go into that in rather more detail. Anyway, starting with the Hoppa meeting, you in fact were asked to chair this meeting to resolve industrial action resulting from the granting of a subsidy to the Pioneer Coaches to run a Hoppa town service, I believe.

SENATOR LE SUEUR: Yes. In fact, I volunteered for that duty, if I can put it that way. At the time I was the President of Employment and Social Security and we were setting up a

conciliation service, rather like ACAS, called JACS. It was not yet in place, but I felt that I had political responsibility for its principles.

MR BLACKSTONE: Hmm hmm.

SENATOR LE SUEUR: And, on that basis, I offered my services as intermediary.

MR BLACKSTONE: Fine, great. **(Pause)** Now, I believe Deputy Simon Crowcroft, who was then President of the Public Services Committee, was also at that meeting, together with representatives of the Public Services Department, Jersey Bus and TGWU.

SENATOR LE SUEUR: Yes. I have notes of a series of meetings between 8am on 2nd August and 7.30pm on 3rd August, so, when you talk about “*that meeting*”, they spanned a variety of them.

MR BLACKSTONE: It was a fairly fraught time because the drivers had actually gone on strike at that time, had they not?

SENATOR LE SUEUR: They had, yes.

MR BLACKSTONE: And at that meeting, was a three to five year operating agreement given to Jersey Bus and the undertaking was given that the tendering process ... that no tendering process would be entered into until the end of that period?

SENATOR LE SUEUR: That was one of the requirements of the bus union members. The meetings I did not attend were meetings of the Public Services Committee, so I don’t know what final decisions that Committee made, but no doubt their minutes will record that.

MR BLACKSTONE: Essentially that was what was discussed at the meeting.

SENATOR LE SUEUR: Yes.

MR BLACKSTONE: And there were notes of a meeting prepared, possibly by Mr Swinnerton, because they have his computer reference in the bottom.

SENATOR LE SUEUR: Yes.

MR BLACKSTONE: And I presume you saw these?

SENATOR LE SUEUR: No.

MR BLACKSTONE: They were not circulated?

SENATOR LE SUEUR: Um, I don’t recall seeing them. I don’t have a record of them.

MR BLACKSTONE: Can you just have a look at them? (**Same handed to witness**)

SENATOR LE SUEUR: Thanks. (**Pause**) I suspect I have seen a copy of that, but certainly I didn't retain a copy of it.

MR BLACKSTONE: But it is a fair summary of what went on?

SENATOR LE SUEUR: It is a fair summary of what went on, yes, given the passage of time and my memory not being perfect.

MR BLACKSTONE: Your work with the States makes you a very fast reader.

SENATOR LE SUEUR: I have no reason to disbelieve anything on that paper.

MR BLACKSTONE: Right. This was followed up by a Public Services Committee meeting on 4th August, which you say you obviously didn't attend.

SENATOR LE SUEUR: Yes.

MR BLACKSTONE: And I can just perhaps read from those minutes: "*Having considered the position, the Committee decided to agree the proposed package as follows*", and item (b) says "*A three to five year agreement will be made between the Public Services Committee and Jersey Bus. This would initially be covered by a memorandum agreement to be made available at the end of September 2000, which would subsequently be covered by a formal service level agreement to be available by about the end of March 2001. It was accepted by all parties involved that there might be competitive tendering for such services after the initial three to five year period.*"

SENATOR LE SUEUR: Agreed.

MR BLACKSTONE: This is how the Public Services Committee moved on from your meeting.

SENATOR LE SUEUR: Yes.

MR BLACKSTONE: Are you aware that either of those undertakings, either for a memorandum agreement of September 2000 or a service level agreement the following March, were ever completed?

SENATOR LE SUEUR: I know there were ongoing delays and frustrations. I can't recall whether they were ever completed or not. (**Pause**)

MR BLACKSTONE: Are you aware that prior to giving this undertaking either PSC or PSD

had already instructed Halcrow as consultants to prepare a detailed timetable and proposals for a competitive tendering process?

SENATOR LE SUEUR: No. I have difficulty in putting things into the right time sequence. At one time I know the Public Services Department did involve Halcrow in discussions. I can't recall when those discussions began or what they were about.

MR BLACKSTONE: Going back to the undertaking by PSC to Jersey Bus to give them a three to five year agreement and not to start tendering until the end of that period, then we find a year later of the undertaking, within 12 months of the undertaking being given, PSC have reneged on their agreement, they have restricted Jersey Bus to a further one year licence and instituted a competitive tendering process.

SENATOR LE SUEUR: Yes.

MR BLACKSTONE: Do you consider this action to be honest or honourable or appropriate to a Committee of the States of Jersey?

SENATOR LE SUEUR: On the face of it, it does not seem particularly honourable with reference to the States of Jersey, but one would need to look into the circumstances to see whether in fact there was a total breakdown of the ability of the two parties to resolve the issue, in which case I can understand that there could be a justification for having to find an alternative solution.

MR BLACKSTONE: Even though a clear undertaking had been given?

SENATOR LE SUEUR: I think an undertaking had been given, but I think the spirit of the undertaking was that both sides would co-operate to deliver it. **(Pause)**

MR BLACKSTONE: After your meeting on 3rd August, or your series of meetings throughout that date, were you involved further until July 2001, or were you essentially ----

SENATOR LE SUEUR: To the best of my knowledge, no.

MR BLACKSTONE: No, right.

SENATOR LE SUEUR: Not as I recall.

MR BLACKSTONE: Therefore, you are not aware of the reasons given by PSC for reneging on the agreement?

SENATOR LE SUEUR: No, I am not.

MR BLACKSTONE: No. Did you take any subsequent action by questioning the President of PSC or otherwise to determine why PSC had not stood by the agreement that you actually entered into with Jersey Bus?

SENATOR LE SUEUR: No, I didn't. I think I regarded my duties as having been fulfilled by getting the two parties to reach an agreement and, after that, I withdrew to let them get on with it.

MR BLACKSTONE: Right, fair comment. Moving on about a year, where you present at a meeting held on Saturday, 28th July 2001 between certain States Members and representatives of Jersey Bus and TGWU in an attempt to resolve the impasse between Jersey Bus and PSC?

SENATOR LE SUEUR: I certainly recall a meeting. I can't recall what the date was. I am prepared to believe that that was the date.

MR BLACKSTONE: Subsequent to that meeting, a memorandum was sent out to all States Members. I have read this in conjunction with other evidence this morning. Perhaps if I pass it to you, you would just like to confirm that that follows your understanding of the meeting?
(Same handed to witness) (Pause) Did Deputy Crowcroft refuse to attend this meeting?

SENATOR LE SUEUR: I can't recall. **(Pause)**

MR BLACKSTONE: You signed ... sorry, was that your signature on the bottom of that?

SENATOR LE SUEUR: No.

MR BLACKSTONE: It wasn't yours, but you agree with what it says?

SENATOR LE SUEUR: I agree that was decided.

MR BLACKSTONE: Are you still of the opinion that the resultant draft represents an agreement which no reasonable person would reject out of hand?

SENATOR LE SUEUR: Sorry, which draft?

MR BLACKSTONE: The draft agreement that was prepared between PSC and Jersey Bus.
This was the opinion stated at the time by the group which you were in.

SENATOR LE SUEUR: Yes.

MR BLACKSTONE: You are still of that same opinion?

SENATOR LE SUEUR: Yes.

MR BLACKSTONE: Did Deputy Crowcroft's Committee proceed to reject this proposed agreement? **(Pause)**

SENATOR LE SUEUR: The proposed agreement was never finalised certainly. I am not sure of the grounds on which it was not proceeded with.

MR BLACKSTONE: Shortly after this, Deputy Dorey brought a proposition to the States to defer the competitive tendering process until later, 2003 at the earliest.

SENATOR LE SUEUR: Yes.

MR BLACKSTONE: Would this be connected with the undertaking which you negotiated back in August 2000, the fact that there should be no competitive tendering for three years?

SENATOR LE SUEUR: I don't know that there was necessarily a connection. I think it was the view of Deputy Dorey that more time was required and I would have said that it was not inconsistent with the three years arrangement.

MR BLACKSTONE: The minutes of a Public Services Committee meeting on 31st July 2001 state that "*The Committee agreed that it would not want to continue negotiations with Jersey Bus and decided to resist the amendment brought by Deputy Dorey.*" In view of the undertaking given to Jersey Bus in 2000, do you consider this action to be honest or honourable? **(Pause)**

SENATOR LE SUEUR: It's surprising and perhaps less than one would expect.

MR BLACKSTONE: Sorry?

SENATOR LE SUEUR: I say it is less than one might expect.

MR BLACKSTONE: Less than one might expect from a States' Committee?

SENATOR LE SUEUR: Yes. However, I am not sure whether the composition of the Committee had changed during the period.

MR BLACKSTONE: I can answer that question if you want.

SENATOR LE SUEUR: Well, it is not necessary. I am just saying there have been several changes in the Committee during the period.

MR BLACKSTONE: Yes.

SENATOR LE SUEUR: And opinions can change depending on the different Committee.

MR BLACKSTONE: In view of this very rigid stance by PSC, would you consider it reasonable

to reach a conclusion that the Public Services Committee was determined to replace Jersey Bus regardless of circumstances?

SENATOR LE SUEUR: There was certainly a view held by certain Members of the Committee that they were not happy with Jersey Bus and would like to see them replaced, but I am not sure whether that was the Committee view or an individual member's view. **(Pause)**

MR BLACKSTONE: Apart from these two meetings and the matters surrounding them, are there any other matters involving Jersey Bus, Connex, Public Services and the bus saga, anything else that you would like to advise this Committee of?

SENATOR LE SUEUR: Um, I can't really say that there are. At the time, I was engaged as the President of Employment and Social Security. As I say, my memory of those events has faded considerably with the passage of time. I was also at the same time a Member of the Policy and Resources Committee trying to promote general Island policies. I believe that bus matters did come up occasionally at P&R, but they were only the periphery of my vision.

MR BLACKSTONE: Right. I apologise for shooting from the hip on questions without prior notice, but thank you very much. I have no further questions.

SENATOR LE SUEUR: Thank you.

MR SHEPHEARD: Mr Garrett?

MR GARRETT: Can I just explore an issue that you raised in early answer to a question posed by my colleague? You spoke about the issue of spirit and focusing on both parties would co-operate if problems arose. That was in relation to advancing the proposal which you negotiated going back in 2000. If there is a breakdown between a Committee and a commercial concern, would it be reasonable or appropriate for the Committee to move to some form of mediation, employing a third party, as opposed to resorting to presenting a strategy to the States? **(Pause)**

SENATOR LE SUEUR: I think one would ... my preference would be to go for some sort of negotiation or mediation, but what any Committee should do is a matter of choice for that particular Committee. I think, as has been indicated, there were some fairly hard views about the existing bus operator and that may well have coloured decisions as to whether to go some sort of conciliation or not. I think there was probably a sense of frustration that they were getting

nowhere.

MR GARRETT: But could that frustration have been a product of the views and attitudes of individuals who, if they were removed from the equation, it might have proved beneficial in terms of actually coming to some kind of satisfactory solution?

SENATOR LE SUEUR: It is possible. That is a very hypothetical question, I think.

MR GARRETT: It is. What was your understanding of the cause of the breakdown in the relationship between Jersey Bus and the Committee?

SENATOR LE SUEUR: Basically, I think poor communications.

MR GARRETT: On both sides?

SENATOR LE SUEUR: I think ... well, yes, it takes two sides to communicate and, no matter how well I can communicate, if the other side isn't listening or doesn't understand what I am saying, I am not a good communicator. So the fact that you are doing your best and communicating to the best of your ability doesn't necessarily mean you are succeeding if the other side isn't hearing you. I am not sure, in this situation, how the breakdown in communications arose, but I am pretty certain that the communications could have been better.

MR GARRETT: You used the phrase that people don't hear you, but it could also be the case -- could it also be the case -- that people don't want to hear you?

SENATOR LE SUEUR: Um ...

MR GARRETT: If people already have preconceived ideas, no matter what you say?

SENATOR LE SUEUR: That may be, but the arrangements were brokered on the basis that both sides would try to reach a settlement and would try to co-operate with each other to reach a settlement. That arrangement, I presume, was made in good faith, and it may well be that both sides didn't do their best in what they considered was the right way to achieve a settlement, but the fact of the matter is that sometimes what appears black and white to one person looks grey and blue to somebody else.

MR GARRETT: To your knowledge, was the problem, was the communication problem, focused on the whole Committee and the whole of the Jersey Bus management, or were there significant personalities in that situation?

SENATOR LE SUEUR: On the limited experience that I had of that, I don't think there were necessarily any ... one party who was controlling things, although certainly within the breakdown, within the composition, of the Public Services Committee at that time, there were people who were more outspoken than others, but whether that influenced the Committee decision at the end of the day, I couldn't tell you.

MR GARRETT: Are you able to identify those individuals?

SENATOR LE SUEUR: Well, certainly the former Constable of St. Helier, Robert Le Brocq, was quite firmly of the view. He would take what I might call a more hard line approach, whereas I think Senator Le Claire was more conciliatory, but the Committee decision is made by a Committee of seven members at the end of the day and I'm not sure how much sway any one person had.

MR GARRETT: Thank you. Moving forwards, did you participate on the debate on the Bus Strategy? Were you in the States on that day?

SENATOR LE SUEUR: Um, I believe I was. I have no recollection of taking any great part in the debate.

MR GARRETT: With the benefit of hindsight, do you have any views on the effectiveness of the Bus Strategy which was approved by the States in July 2001?

SENATOR LE SUEUR: I think by that stage the States was desperate to find a solution almost whatever the solution was. I think there was an acceptance that the ongoing impasse, if you like, couldn't go on indefinitely and something had to be done. In that sort of situation, you often come to a solution which is less than ideal.

MR GARRETT: Did you get the feeling that the strategy which was approved by the States was a visionary, long term strategy or was it weak and short term, really aimed at getting rid of Jersey Bus?

SENATOR LE SUEUR: No. I think there was an aim for a long term strategy, but whether it was the right one is a different matter. I think, with the benefit of hindsight, there were certain shortcomings with the new arrangements, but I think the vision probably remains relatively intact.

MR GARRETT: Okay. Did you take part in the debate on the amendments to the Motor Traffic (Jersey) Law 1935 at all, which flowed from the strategy?

SENATOR LE SUEUR: I don't believe so other than to vote at the end of the day, and I can't actually recall which way I voted.

MR GARRETT: And, at this stage, you have no views on the effectiveness of the amendments which were approved by the States?

SENATOR LE SUEUR: Well, I have a view now, I suppose, as President of Finance and Economics, that it is costing the Island quite a large sum of money and I would have preferred an approach which didn't dip so deeply into our coffers.

MR GARRETT: Indeed. Can I bring you forwards now to May 2003 and refer you to a letter that was signed by Deputy Maurice Dubras on 19th May, and in particular a couple of paragraphs from there, one of which read "*After tenders were received and the contract awarded to Connex, it came to light that the Transport and General Workers' Union had negotiated a substantial increase with Jersey Bus in the form of a shift allowance of £72 per week in addition to a cost of living increase. At no time during the tender process up to the award of the contract did the Transport and General Workers' Union advise the States, its consultants or all of the tenderers that such a substantial claim had been submitted.*" What are your feelings about that statement?

SENATOR LE SUEUR: I don't think it had been verified one way or the other.

MR GARRETT: I think that is part of our job. The letter continued: "*The Committee is outraged at the conniving that appears to have taken place between the Transport and General Workers' Union and Jersey Bus and in particular the complete silence of the TGWU during the tendering process on the extent of their wage claim. I have asked the Attorney General for his opinion on whether the TGWU acted improperly during the tender process and whether there are any means of redress.*" A couple of issues arising from that, do you know of any evidence to suggest that Jersey Bus and the union, I use the term "*conspired*" as opposed to "*connived*" in any respect to withhold information from Public Services, their consultants or the tenderers?

SENATOR LE SUEUR: I have no evidence whatsoever.

MR GARRETT: Okay. Do you know whether the Attorney General was ever consulted, actually consulted?

SENATOR LE SUEUR: No, I don't know.

MR GARRETT: Okay. Would you say that the language that was used in that letter, particularly the use of the word "*connived*", was unusual in a political context?

SENATOR LE SUEUR: It suggests very extreme frustration. It may not be the language I would have chosen myself, but it may well reflect the views of the writer.

MR GARRETT: Can you confirm that that letter was generated in support of a bid for additional funding, effectively to cover the cost of the claim that had been received from Connex in respect of the shift allowance?

SENATOR LE SUEUR: That letter was certainly used as part of a request for additional funding, but whether that was its primary purpose I wouldn't like to say.

MR GARRETT: Do you think it influenced your thoughts or indeed the thoughts of any other Member of the Committee?

SENATOR LE SUEUR: Um, my thoughts were immediately influenced by the fact that (to use a much quoted phrase) we were where we were. If that agreement was in place and it should have been known for whatever reason, then there is simply an obligation that had to be covered.

MR GARRETT: Is it correct that in December 2003, I think it must be, some seven months after that letter was sent by Deputy Dubras, you received an apology for the inaccuracies that were contained in that letter?

SENATOR LE SUEUR: Yes.

MR GARRETT: Have you any reason to, at this stage, bearing in mind all that has happened since then, question the accuracy of the information that was fed to you in that letter, or indeed any of the other papers that were fed to you at that time?

SENATOR LE SUEUR: I tend to believe what I'm told if it sounds reasonably credible. The fact at the time it sounded credible, I think if one is going to have to second guess everything that is told to one, then we come to a sorry state.

MR GARRETT: So your view is that you are heavily dependent, and indeed the functions of the

States are heavily dependent, on the quality, completeness and accuracy of the quality of the information fed possibly by officers of the Department?

SENATOR LE SUEUR: Certainly we have to trust them and hope that they are going to work responsibly and, in the absence of anything to cause me to doubt or question a situation, I would believe it was accurate. If I had concerns or doubts, then I will ask for confirmation or collaboration of the facts. In the situation I have had in that situation, I was satisfied that the information given to me was quite justified.

MR GARRETT: Right. What was your personal view when you learned that Connex had been appointed?

SENATOR LE SUEUR: Disappointment, I think. I had ... I was aware of the tension between the Public Services Committee and Jersey Bus and I thought I had done something to defuse that and I was hopeful that a solution might have been found retaining them as the operator. In appointing Connex, it almost suggested that I had failed in not being able to deliver through the agreement brokered earlier on, but I didn't lose very much sleep over it because, at the end of the day, I believed that the tendering process had been carried out in good faith and on a level playing field basis.

MR GARRETT: You believed then. What is your view now? Do you think, having regard to all of the history and all that you have heard since, do you think that the level playing field actually existed and that Jersey Bus was on that level playing field?

SENATOR LE SUEUR: I haven't got enough evidence to justify that the playing field was sufficiently uneven to make it unplayable. I think inevitably there are going to be some minor differences between any tendering arrangements. It shouldn't normally affect or be of such magnitude as to affect the whole decision, and I don't know that in this case ... certainly there is nothing which at the moment would lead me to believe that the tendering process was not a fair one. I think what I have seen is perhaps grounds for uncertainty, but certainly no grounds for saying categorically that the tender process was unfair.

MR GARRETT: If the States was doing this again tomorrow, what do you think they should do differently? **(Pause)**

SENATOR LE SUEUR: I really don't know. The best way to make a good decision is to have full information. I suspect that, for one reason or another, States Members did not have adequate information and I think some would say that the existing operator did not help to provide information which might have helped them make a better decision.

MR GARRETT: I have reached the end of my questions, but, before closing, is there any statement that you want to make on any of the issues that we have touched on this morning or indeed point us in the direction of any particular issue that you believe we should be investigating? **(Pause)**

SENATOR LE SUEUR: Not really. I feel a bit guilty that my memory has not been as good as it might have been. It has been several years and it is not a subject which in recent times has exercised my own mind very seriously other than on the recent financial implications. So my memory or my views are very blurred and uncertain and I apologise, but they are the best of my recollection.

MR GARRETT: Thank you.

MR SHEPHEARD: Senator, I want to look very briefly at the events surrounding the decision to grant extra funding to meet the Connex claim. Was it ever represented to you that Public Services had received legal advice that supported the making of the payment that they wanted to make?

SENATOR LE SUEUR: I don't believe it was. **(Pause)**

MR SHEPHEARD: And did your Committee consider asking for advice, or did you choose to rely on Public Services?

SENATOR LE SUEUR: We chose to rely on Public Services.

MR SHEPHEARD: That is all I have. Anything rising, Mr Blackstone?

MR BLACKSTONE: Just one quick one. After the meeting of July 2001 when you tried to broker an agreement between the parties, PSC and Jersey Bus, Deputy J. Dorey said he got a slap on the wrist from Public Services for interfering in their business. Were you also castigated or criticised for this?

SENATOR LE SUEUR: If I was, it washed over me and I don't believe I was.

MR BLACKSTONE: Okay. Thank you.

MR SHEPHEARD: Senator Le Sueur, we are very grateful to you for coming in this morning and thank you very much.

SENATOR LE SUEUR: Good luck in your investigations.

MR SHEPHEARD: Thank you. It is now a convenient moment for us to adjourn, I believe, and we will resume at two o'clock.
