



OFFICIAL REPORT

OF THE

STATES OF DELIBERATION

OF THE

ISLAND OF GUERNSEY

HANSARD

Royal Court House, Guernsey, Wednesday, 31st July 2013

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Present:

Richard J. Collas, Esq., Bailiff and Presiding Officer

Law Officers

Miss M.M.E. Pullum, Q.C., (H.M. Comptroller)

People's Deputies

St. Peter Port South

Deputies P. A. Harwood, J. Kuttelwascher, B. L. Brehaut,
R. Domaille, A. H. Langlois, R. A. Jones

St. Peter Port North

Deputies M. K. Le Clerc, J. A. B. Gollop, P. A. Sherbourne,
R. Conder, M. J. Storey, E. G. Bebb, L. C. Queripel

St. Sampson

Deputies G. A. St Pier, K. A. Stewart, P. L. Gillson,
P. R. Le Pelley, S. J. Ogier, L. S. Trott

The Vale

Deputies M. J. Fallaize, D. B. Jones, M. M. Lowe,
A. R. Le Lièvre, A. Spruce, G. M. Collins

The Castel

Deputies D. J. Duquemin, C. J. Green, M. H. Dorey,
J. P. Le Tocq, S. A. James, M.B.E., A. H. Adam

The West

Deputies R. A. Perrot, A. H. Brouard, A. M. Wilkie,
D. de G. De Lisle, Y. Burford, D. A. Inglis

The South-East

Deputies H. J. R. Soulsby, R. W. Sillars, P. A. Luxon,
M. G. O'Hara, F. W. Quin, M. P. J. Hadley

Representatives of the Island of Alderney

Alderney Representatives L. E. Jean, E. P. Arditti

The Clerk to the States of Deliberation

J. Torode, Esq. (H.M. Greffier)

Absent at the Evocation

H.E. Roberts Esq., Q.C. (H.M. Procureur)
Deputies L. B. Queripel (*indisposé*) and B. J. E. Paint

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*The Assembly recessed at 10.22 a.m.
and resumed at 10.47 a.m.*

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*The Assembly adjourned at 12.29 p.m.
and resumed its sitting at 2.30 p.m.*

V. Policy for Access to Public Information – Debate continued –
Propositions as amended carried 1014

VI. Guernsey Financial Services Commission – 2012 Annual Report –
Debate commenced 1040

The Assembly adjourned at 5.32 p.m.

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States of Deliberation

The States met at 9.30 a.m.

[THE BAILIFF *in the Chair*]

PRAYERS
The Greffier

EVOCATION

Billet d'État XVII

TREASURY AND RESOURCES DEPARTMENT

Aurigny Air Services
Aircraft Acquisitions
Debate continued

The Greffier: Continuation of debate on Billet XVII, Treasury and Resources Department, Aurigny Air Services – Aircraft Acquisitions.

5 **The Bailiff:** Several people caught my eye yesterday who did not have a chance to speak. I was going to call next Deputy Trott and then Alderney Representative Arditti, Deputy David Jones and then Deputy Sillars who wishes to speak as well and Deputy Luxon. But Deputy Storey wishes to say something.

10 **Deputy Storey:** Please, sir. I gave way at the end of yesterday evening because the obvious rule of this Assembly was to go home. Sir, I am perfectly happy...

The Bailiff: Is this a speech, or...?

15 **Deputy Storey:** It is an explanation of what I want to do, sir, if I may.

The Bailiff: It sounds like a speech then. *(Laughter)*

20 **Deputy Storey:** No, sir, it is not. It is to ask...The reason I stand is to ask you for your indulgence in potentially moving an amendment to this Billet and the reasons, sir, are that the resolutions at the end of the Report do not reflect what is said in the Report itself. Sir, the cornerstone of good governance is –

25 **The Bailiff:** This is sounding like a speech, Deputy Storey. If you have an amendment, can you bring an amendment? If not, if you want to make a speech, I will call you after I have called the other people who had caught my eye before you stood up. It does not seem to me that this is an interruption under Rule 12(6), which is the only other instance where a Member can address the Assembly.

30 **Deputy Storey:** Well, I thought...I am sorry if that is the case, sir, I thought when I stood at the end of the meeting yesterday that you were in fact asking me to hold fire on what I wanted to say until today and that is what I have done.

35 **The Bailiff:** Well, I was, but that is because I thought you were intervening under Rule 12(6), but if you want to make a speech, I will call you in your proper turn, and I will call next Deputy Trott.
Deputy Trott.

40 **Deputy Trott:** Thank you, sir.
I think the confusion for Deputy Storey was, as you have rightly identified, that several of us had indicated our intention to speak yesterday afternoon prior to Deputy Storey catching your eye, so thank you for that.

45 I shall be brief, sir. I have a set of questions for the Minister of the Treasury of Resources Department and before I move to those questions, can I first say that this Report has my unequivocal support.

On page 1,391, sir – if Members have the Report in front of them they may care to turn to that page – page 1,391. Immediately before the four bullet points at the top of that page is the sentence:

50 ‘The Company anticipates that only one additional aircraft, either a jet or a turboprop, would need to be acquired.’

My question to the Minister is: one additional aircraft; does that mean that an existing aircraft might also be replaced as part of that process? If that is the case, of course, it would make the comments of my friend Deputy Duquemin yesterday more logical and in the sense that it is possible under that scenario for the undertaking to be considerably greater than some may think at first glance. Clarity on that would be helpful.

Sir, in paragraph 4.7, immediately below the sentence I have just referred to, we read that:

60 ‘For the avoidance of doubt, the States would not be providing the funds to the Aurigny Group, but rather would be facilitating, if necessary through guarantees, the Group borrowing the necessary funds from third parties. Alternatively, it could borrow from the States General Investment Pool.’

Certainly the Propositions, sir, would enable borrowing from the States General Investment Pool, should they be approved.

65 Clearly, sir, with that option existing, funds from the General Investment Pool would be of best value, not only to the borrower, Aurigny, but also, of course, to the lender. The logic behind that is that we would be able to provide funds to Aurigny at a premium to what we were currently getting from the Investment Pool assets, and Aurigny would be able to borrow those funds at a discount from that that they could achieve from a commercial lender; so there would be winners all round. The Minister’s view and comments on that question would be welcome.

70 Finally, sir, on page 1,395, there is, in Proposition 1, a reference to the Aurigny network:

‘The purchase of such additional aircraft as are required to service the Aurigny network.’

75 The words, sir, ‘existing’ or ‘future’ are silent in that statement and I would be grateful if the Minister would confirm that it is the *existing* Aurigny network that is being referred to, and not only future expansion.

80 If you could also give an undertaking, should any expansion plans require the purchase of additional assets or the guaranteeing of the funds for any additional assets, that he would be intending to return to this Assembly for approval. Of course that is important, because the Report advises us that once these Propositions have been agreed today – as I am sure they will be – the Treasury and Resources Department will be consulting with the Policy Council, therefore, by definition, will not be seeking the views of two thirds of this Assembly, henceforth.

Thank you, sir.

85 **The Bailiff:** Thank you.
Alderney Representative Arditti.

Alderney Representative Arditti: Thank you, sir.
To start, in response to the rear guard action by Deputy Duquemin about the name...

90

The Bailiff: Can I suggest the name is not within the scope of the Proposition, so I know that we were addressed at some length but there is a lot of business to get through at this meeting, and that is not one of the proposals before the States, so if we could not have any more speeches on the change of name, because in my view they are not relevant to the Propositions that are here.

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Alderney Representative Arditti: The only difficulty is, sir, that rather a lot of sentences were uttered by Mr Duquemin –

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The Bailiff: Well, that was my mistake, that I should have –

Alderney Representative Arditti: I only had three in response and it just leaves his sentences unchallenged. That is my only concern, sir.

105

The Bailiff: Okay, three sentences to challenge them and then that will be the end of the debate on the name. (*Laughter*) That will be the end of the debate on the name.

Unless somebody wishes to move an amendment or bring a Requête proposing a name change, otherwise –

110

Alderney Representative Arditti: Three sentences, I am most grateful for your indulgence, sir, three sentences is...

Deputy Luxon: Sir, Alderney Representative Arditti is a lawyer, they could be very long sentences. (*Laughter*) I am sure that they will not be.

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Deputy Lester Queripel: So, is that three sentences exclusively for Alderney Representative Arditti or do we all get a chance at three sentences?

120

The Bailiff: Yes, yes we have got a lot of business to get through, Deputy Queripel. If we are going to discuss every subject that every Member might wish to bring before the Assembly then we are not going to get finished this month, next month or the month after. (**Several Members:** Hear, hear.) I am afraid we have got to ensure speeches are relevant to the matters before the Assembly.

125

Deputy Lester Queripel: Okay, sir.

Alderney Representative Arditti: May I continue, sir? (**The Bailiff:** Yes.)

130

I simply say – sentence number one – I simply say Qantas, KLM, Lufthansa and the taxpayer have higher priorities for us to spend their money on. Sentence number two – I am grateful to Deputy Fallaize for reminding us of the ill-fated brand name of Guernsey Airlines. In the interests of brevity, I shall abandon sentence number three. (*Laughter*)

Sir, transport links are of fundamental importance to islands and transport links by air are of fundamental importance to islands like Guernsey and Alderney, where we have no natural resources and must earn our keep.

135

Yesterday – when my fellow Alderney Representative and I could not be here for the first half of the day – was a timely reminder of the vital importance, to our islands, of reliable and affordable access.

140

This Report *is* lacking in detail but, with or without the requisite detail, the answer in my submission is the same; there is a best aircraft to serve the economy of Guernsey, and Guernsey *must* have it. That has to be the starting point; everything else must follow. How to acquire it, lease purchase, borrow or steal, or a combination are matters for consideration, but, that Guernsey *will* have access to these aircraft, has to be a given.

145

This Report is about Guernsey's lifeline route to Gatwick, but the same applies to Alderney's lifeline routes to Southampton and Guernsey. Alderney is as dependent on the right aircraft as is Guernsey. Two islands, one economy; an economy which requires the best available access.

I welcome the Treasury and Resources Minister's comments about lifeline routes and the possibility of a single operator. We must distinguish between commercial routes, where the customer can benefit from competition, and lifeline routes, where the customer will not benefit from competition – a fundamental difference. I will support this Report and urge Treasury and Resources to look at the Aurigny fleet as a whole. One economy, two islands.

150

I would just add this, sir, fortunately, the £80 million transformation of the airfield in Guernsey is nearing completion and this means that there are no real constraints on the right choice of

aircraft for Guernsey. The airfield will soon be able to handle whatever aircraft the economy in Guernsey requires it to handle, *whatever* aircraft it is required to handle. Future modifications, if required, will be easy and comparatively inexpensive to achieve.

155

It is vital that we now do the same to the other airfield in Alderney, fortunately not at a cost of £80 million, so that T&R can select the right aircraft –

Deputy Perrot: Point of order, sir, does this touch upon the policy –

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The Bailiff: No, this is straying, I think, Alderney Representative Arditti.

Alderney Representative Arditti: I have been rumbled, I will sit down. *(Laughter)*

165

The Bailiff: Deputy David Jones.

Deputy David Jones: Bailiff, I hope I am not rumbled. *(Laughter)*

It is a shame you have made the ruling you have on the name because I could have told you about a poster I saw in America many years ago –

170

The Bailiff: Yes, but you will not. *(Laughter)*

Deputy David Jones: – about Pan American Airlines –

175

The Bailiff: But you will not.

Deputy David Jones: – which apparently knew more about the Pacific than any other airline. Sorry, I was only going to say that somebody – *(Laughter)* Okay.

180

To me, this Billet is about the security of service. We have sat in this Island for many years and seen airlines come and go and they have all promised that they are committed to Guernsey – a bit like Cable and Wireless told us – and we have seen them depart and the numbers of airlines and the choice for the Island has slimmed down.

The thing that pleases me about this particular Billet is in paragraph 4.8, where it says:

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‘The Department feels that there would be merit in considering the pros and cons of amending the States’ existing air transport licensing policy statement to provide for a sole operator on the route, possibly linked to minimum service standards and fare controls.’

190

I think that is a perfectly sensible way forward now. We have realised over the last few years that nobody outside cares about us anymore. We need this kind of security; the same kind of security that we had to find with our own fuel ships. The world has become a much more hostile place; we have to fight for our corner in it and I think we have to be a little selfish in that regard.

The security of having our own airline... I might remind you also that I was, I think, one of three Deputies in 2003 who voted not to buy Aurigny and that just shows you that we are sometimes capable of making mistakes in the way we vote. I am pretty pleased now that we did.

195

I only have one other question on this and that is for the Minister of Treasury and Resources. The question is: in the event of Flybe pulling out earlier than expected, are we going to be ready or have we got a plan B if that occurs?

Thank you, Mr Bailiff.

200

The Bailiff: Deputy Storey.

Deputy Storey: Thank you, sir.

205

Sir, I was going to say that, everything in the body of this Report, I am fully supportive of and I think it is only going to be for the good of the Island and the economy to actually go ahead as fast as possible with the proposals.

My concern, sir, is in relation to the resolutions – not the Report and not the intent of the Report – in particular, resolution 1. If you read it – Proposition 1, sorry – it says that:

210

‘To authorise the Treasury and Resources Department to facilitate any borrowing by the Aurigny Group to finance the purchase of such additional aircraft as are required to service the Aurigny network by providing guarantees for borrowing from third parties or by offering the Group a loan from the States General Investment Pool.’

215 That sounds okay, but there is no limit on the amount of money; there is no limit on the number of aircraft; and there is no limit to the time during which this authority would be maintained.

Now, sir, it is a cornerstone of good corporate governance that any delegated authority is limited. What I was to propose was that an amendment be placed that would impose appropriate limits on this delegated authority. I hoped that perhaps it would be possible for the Minister of Treasury and Resources and myself to devise wording which is acceptable to T&R, but which provides adequate limits to the authority so that we are not, in effect, writing a blank cheque here. In fact, we would not be writing a blank cheque, we would be giving over a whole book full of blank cheques to be used at any time in the future.

220 So, whilst I support what is proposed in the body of the Report, I cannot support the Proposition as it stands. So, I wondered perhaps if, at this stage, the Minister might be able to respond to the point I am raising, sir.

The Bailiff: Well, he only gets one other right to speak and that is at the end of the debate. Perhaps it is a shame you did not raise this with him overnight. All I will ask is whether the Minister wishes to request a recess and it will be a matter for the Assembly whether they do wish to recess.

230 Does the Minister wish to request a recess so that he can consider this, perhaps with the Members of his Department and with Deputy Storey?

Deputy St Pier?

235 **Deputy St Pier:** No, I do not wish to request a recess.

The Bailiff: You do not wish to request... Right.

240 **Deputy St Pier:** I will respond to Deputy Storey in my reply.

The Bailiff: In that case, we press on with the debate.
Deputy Sillars.

245 **Deputy Fallaize:** Sir, may I just ask a question? Or maybe make a point? It will not be possible, will it, for Deputy Storey to lay an amendment once Deputy St Pier has replied to the debate?

The Bailiff: No. So, he would need to do it now. If he wanted to move an amendment he would have to do it while the debate is still in progress, yes.

250 Deputy Sillars.

Deputy Sillars: Sir, surely it is a question of trust in T&R. We must allow T&R to look after our money. If we cannot trust them at this level why do we trust them at all with any of it? Anyway, we have had this speech.

255 Aurigny is a lifeline for Guernsey, Alderney, Herm and Sark. Thank goodness back in 2003 the then States recognised the threat to our Island and invested in Aurigny by buying it! Yes, it has cost £12 million or so, keeping it going through globally very different times, but in my view it was always worthwhile. Insurance policy premiums it has been called.

260 Now then, it is time to make a claim. As we have heard, many privately-owned airlines have come and now all have gone who were servicing the Gatwick route. Two main points I want to make: we were, and are, under threat regarding using Gatwick because our propeller planes are too small and Gatwick wants to increase their throughput.

265 Whichever jet we end up buying will seat between 120 and 150 passengers. EasyJet – the largest user of Gatwick – predominantly uses planes capable of seating 150 passengers, so our plane capacity is getting close to Gatwick's largest user. So, we should feel a little safer than we currently do, regarding Gatwick wanting us to go. Also, our propeller planes are slower to land and take off than jets, so we do hold up the landing and take-off patterns of the jet to Gatwick.

270 The second point I would like to make is: it is absolutely correct that whilst we are still negotiating with manufacturers and others for the best price, warranties and services, we do not show our cards now for a price that we may settle for. New planes are often very heavily discounted, it has always struck me as very odd how we tell everyone that we have x million pounds to spend on a capital project and, wow, the tender price comes in almost exactly at that price. Openness and transparency is essential, but not when contracts are being negotiated. The

275 obvious example and the exception was the tanker ships. I do wonder how much we save on the purchase price by the seller not knowing who the end user is.

I support looking at the Gatwick group having a sole operator, Aurigny – in other words a monopoly – but there must be safeguards for the travelling public regarding price and services. Taking into account all the risks we have heard, I fully support the proposals put to us today.

280 Thank you.

Deputy Luxon: Thank you, sir.

I would like to make comments but it is as the PSD Minister representing my board and Department and then just three comments from a personal point of view as a Deputy.

285 Sir, when the Flybe decision was announced to withdraw from the Gatwick/Guernsey route in March of next year, obviously, myself and the board in the PS Department were very concerned. The board immediately considered the implications – implications for the Airport in terms of revenue, passenger numbers and the like – but also because of the connectivity issues, also tried to consider some of the options.

290 The T&R Aurigny States Report, that we are debating here today, was then published and, although I would agree that it was a relatively light States Report because of the timing, in terms of Aurigny's presentation to T&R, obviously, I was pleased to see that there were proposals in there to attempt to deal with the capacity problem caused by Flybe.

295 PSD did therefore, on receipt of that Report, have proactive liaison with T&R and indeed other Departments with a specific interest in this matter, and indeed the Policy Council, to ensure that the States of Guernsey adopted an inter-departmental joined up approach to this critical issue of connectivity between London and Guernsey, Guernsey and London, and the capacity issues, specifically at Gatwick.

300 The PSD board and the Airport management team are exploring vigorously all and any options available from any airline operator, whether existing or potentially new, that may be of benefit to Guernsey's wellbeing. We will, of course, cross reference any viable options that we assess and that materialise with any other States of Guernsey Departments to ensure that all decisions are made wisely and from a fully informed position.

305 So, in summary, sir, on behalf of the PSD Department, we have work in progress. PSD does have several options under exploration and the Airport management team is exploring those to develop them further. I cannot say how these options will progress and, in fact, whether any of them will progress to a viable Proposition. I do not even know what my board's decision may be regarding those proposals but we will, of course, share those recommendations with other Departments, as is appropriate, in a timely way.

310 Then, sir, just personally as a Deputy in my own right, I fully support the recommendations in this Report. It is a light Report. I have seen some of the business case information from Aurigny which came after the Report was published, which has given me personal satisfaction that there is a degree of justification behind the proposals.

315 Sir, the States of Guernsey own this airline. We have an imminent capacity challenge which could have critical impacts on our international finance sector economic activity and indeed outside of the finance sector, which we need to resolve. So, it is essential that we replace the Flybe exit capacity so I am pleased Aurigny and T&R have brought this option to us here today. As I say, it may not be completely acceptable, but it is the best option that we have.

320 Secondly, sir, I would like to admit that if I had a hat I would eat it, because back then I did not see the logic of the States of Guernsey acquiring Aurigny. I was concerned that, for any country of government, operating an airline was a very dangerous thing, but I do accept that I was wrong back then and I will happily eat my hat here today.

Finally, sir, I fully support the matter that Deputy Duquemin should not have spoken about yesterday. *(Laughter)*

325 Thank you, sir.

Alderney Representative Jean: As we are all part of the Bailiwick together, Alderney and Aurigny airlines, we can share with you, as part of it all, but what of the best of what is happening?

330 On the phone-in a few weeks ago, I was the invited guest and the new opportunity for Aurigny was discussed. All these passengers, as Flybe leaves eventually, so Aurigny will gain.

The States, in acting as guarantor, may be looking towards Aurigny taking on – how many seats? We did some maths there on the phone-in – probably not correct and perhaps for you to correct me – but worked out that possibly 148,000... If that is right, in a two-year period, despite the reinvestment, Aurigny at last may be looking at profit instead of loss.

335 It is my belief that if that is the case, more must be done to ease the constricted situation in Alderney with regard to too few flights in and out of Alderney. People constantly tell me members of their family cannot get in owing to too few flights. This is serious for us; in many cases it is revenue lost for Alderney.

340 If Aurigny goes into profit because of the new opportunity and the arrangements with the Guernsey States, it is the best thing that can happen and it may mean investment can be made, both on our runways and in opening up our flight time, making Alderney more viable and more profitable for us all.

I am for this proposal and when it succeeds we must use this opportunity to make things better for us all.

345 Thank you, sir.

A Member: Hear, hear.

The Bailiff: Deputy Gollop.

350

Deputy Gollop: Thank you, sir.

355 Firstly, I want to thank Deputy Luxon for his change of mindset, but I would remind Members that a former Member of this House, Deputy Chris Brock, involved in Island Analysis, gave a fascinating presentation recently, and the point was made that, in fact, it is general practice for small islands and countries to have their own airline, as it is considered integral to their infrastructure.

360 Deputy Lowe said we perhaps have too many presentations and I might concur on the wrong subject, but I think this subject demanded a presentation. I would have willingly gone; not just for the free coffee – not the free lunch because we should not have the taxpayer paying for that – the reason is that I do have many questions about this topic.

365 Deputy Trott, with his ability of many years standing – including the year when he served on the Board of Administration with the master of politics, I think, former Conseiller Roger Berry – said always look to the resolution as to what we are doing and not just the debate or Report. He is quite right, as is Deputy Storey, to point out that the resolution is:

‘To authorise the Treasury and Resources Department to facilitate any borrowing by the Aurigny Group to finance the purchase of such additional aircraft as are required to service the Aurigny network.’

370 I have got two points on that. The first is: we have an option between the turboprop and the jet, and the mathematics contained within what is, in a way, too brief a Report suggests that two turboprops equals one jet, in terms of capacity. One jet would appear to make better economics and perhaps better marketing, but is more risky from a mechanical breakdown point of view, causing delays. But are we voting for one aircraft or two aircrafts? We know that we are not sure because it is a decision yet to be made on operational grounds in the business case, but that is a degree of uncertainty.

375 Secondly, as the resolution implies, we are undertaking to authorise the Treasury and Resources Department – and I do have trust in them – to look at the network as a whole. I for one would be very concerned if the French link is abandoned altogether. It does not necessarily have to be Dinard but could be Caen or Cherbourg, and I too have concerns about Alderney and believe that a continuation of the Trislander revamped or a new improved aircraft is essential. I was a bit concerned to hear Deputy Kuttelwascher – who we would acknowledge as an aviation expert – say on the radio a week or so ago that he considered that Aurigny Airlines would be in profit, if it was not for the loss-making Alderney link. He suggested that the new Aurigny management are looking perhaps to make a request to Treasury and Resources for some form of subsidy.

385 Although I would support that subsidy in principle, I think that there are real questions as to whether the States would prioritise that; would accept it; and whether Aurigny itself surely owes a duty to Sir Derrick Bailey’s founder island. I believe that is a debate not contained within this, but we are considering, nevertheless, the overall Aurigny funding situation and, indeed, the authorisation for additional network.

390 So, I would like to ask Deputy St Pier whether this includes a guarantee that the States would be prepared to offer finance, maybe from the general investment fund, to purchase small aircrafts suitable for the Guernsey/Alderney route and the Guernsey/Southampton route and maybe the Alderney/France route.

395 I would also ask that the inter-isle service with Jersey has not necessarily always made a profit because of competition with other islands, but if the Treasury and Resources Department is

advocating some form of contract scheme, whereby you have a monopoly on say the Guernsey/Gatwick run in return for guarantees on service levels and fares, that policy could surely be applied to the Alderney route and the Jersey/Guernsey inter-isle route? Maybe the Jersey/Alderney route which is defunct? If that is the case, then we need to have conversations of a meaningful kind with Blue Islands.

So, there are a whole range of issues here that we are not fully considering within the parameters of this Report. But I do find it interesting and telling that, for many years after the States acquired Aurigny, Flybe remains the brand leader on the Gatwick service. Then three years ago they broke even and Aurigny gradually achieved market dominance.

I think that is a testimony to Aurigny in difficult times. It is a testimony to Mr Malcolm Hart and his successors and to the strategy pursued. It is a no brainer, we need to support our lifeline but I do, like Deputy Storey, believe there are a lot of policy questions and corporate government issues to be resolved, as well as the policies towards Alderney. I would also say I can understand the legal reasons why the Commerce and Employment Board is not attending, but surely it is the board responsible for transport, for tourism, for business promotion and it is, therefore, awkward that it is not able to participate in any way in this debate.

The Bailiff: If there is any... yes, Deputy Perrot.

Deputy Perrot: If we adopt this Proposition today, at least through to the immediate future, we are securing our aviation connectivity and we have simply got to do that. But if we are securing that, can I just take up the theme, introduced by the Minister, which was that there really does now need, I think, to be a presumption in favour of a single operator on certain routes. If that is against competition law, then we need to change competition law. **(Several Members: Hear, hear.)**

As Deputy Jones said – incidentally, could I congratulate him on his excellent choice of neckwear this morning – *(Laughter)* other commercial operators are perfectly happy to drop us – and we have seen that with British Airways and with Flybe, so we really do have to get behind Aurigny.

Failing to authorise this now is going to leave, not simply the company in limbo, but is going to leave the passengers in limbo and it is certainly going to leave very large parts of the finance industry in limbo come the spring of next year.

Deputy Fallaize... I am sorry that I referred to him as Deputy Bailey, I do not know why I did that yesterday... but Deputy Fallaize recollected that when authorities such as this were given in the past, they were for specific aircrafts. I think there could be a danger in doing that today, because the market moves so very quickly and Aurigny has got to be given the opportunity to work at its pace and not at the very much more ponderous pace of the States of Guernsey.

One of the most important things, though, to be raised this morning was that raised by Deputy Sillars, in that we must not expose our hands. I think that there really does have to be a great deal of trust reposed in Treasury and Resources. We have had presentations from the board of Aurigny; we do know the type of aircraft which Aurigny wishes to buy, but it might be that at the last moment a different aircraft comes along and a different price comes along. It would not do us any good in the commercial market if we have said the amount up to which we are prepared to spend. So, I do hope that Deputy Storey does not start imposing or laying before us an amendment which is going to impose a limit.

Deputy Gollop raised a point as to whether we will be buying or allowing Aurigny to buy one aircraft, or lease one aircraft, or two. All that I can say to him at the moment is that, so far as we are aware on the best information available, we are talking about one aircraft to service the Guernsey/Gatwick run.

The Bailiff: Deputy Kuttelwascher and then Deputy Lester Queripel.

Deputy Kuttelwascher: Thank you, sir.

First of all, we need to be very thankful to Flybe for giving the notice they have given. The simple answer is if they had not given the notice – or the same notice as Air UK gave, which was one day when they pulled out of Heathrow, having said the day before they would not – the only option would have been to wet lease an aircraft for a considerable length of time, which would have cost us a fortune.

This is a great opportunity for Aurigny and I certainly support the idea of a single operator for the lifeline route, because history shows that any other option fails; everybody has pulled out of Gatwick except Aurigny.

460 Deputy Gollop mentioned my name in vain again. I did make some comments a while ago on the radio and what I pointed out was that our lifeline routes are actually subsidised because they incur losses and that is why Aurigny makes a loss, and the reason we accept that is because fares have to be kept at a reasonable level. The future accounts of Alderney – assuming we continue with the same lifeline route – should show an agreed subsidy for those routes because if they are not subsidised, they are not commercially viable; it is as simple as that. The only route that is not a particularly... is not designated as a lifeline route is to Dinard and that is not commercially viable.

465 The problem – and this relates to something which will relate to Deputy Storey's amendment when it arrives – is that Aurigny have got two problems. It is not just the capacity on the Gatwick route, which can be replaced; it is also the problem they have with operating the Trislanders economically. I will just refer to one aspect of it: currently, the maintenance costs are so high, you cannot operate economically because of various impositions that have been placed on the maintenance schedules by the CAA, particularly in relation to the engines. AG aircraft cost more.

470 The cost of maintaining a Trislander is now approaching the same as the cost of maintaining an Airbus A318. There is not much difference in the hourly cost of maintenance; one carries 120 passengers and one carries 16. The cost is becoming commercially unbearable and there are other issues already operated as a single pilot operation. Unfortunately, that is an alleviation granted by the CAA and it could be removed at very short notice. We can only fly the Trislander into Southampton because the CAA lets us; it is as simple as that.

475 Tomorrow, they could actually say, 'No more, we have had enough of this'. The European regulations could actually impose that and then, at very short notice, the Trislander fleet could just be grounded.

480 **The Bailiff:** Are you straying beyond the Propositions? I thought this Proposition... maybe this Proposition is intended to give authority for the Trislander fleet to be replaced as well.

Deputy Kuttelwascher: It just meant – It does not but –

485 **The Bailiff:** But is that why you are straying – ?

Deputy Kuttelwascher: No, but the question was asked whether this is a general authority to allow the Treasury... Well, the next issue that will be on the agenda will be the Trislander and it could become a very urgent issue. That is why, if this is in place now, there will not be any need to bring in an emergency Billet to seek additional authority. It is a practical solution to what is becoming an issue. If the Assembly want to do that, well, that is fine, but you could end up with the Trislander fleet sitting at the Airport and nobody flying to Alderney until we decide to let them or replace them. It is another urgent issue and they are being, as it were, buffered, like a computer buffers information. So, this would allow that, but it is not going to be kept a secret if that becomes the case.

495 So, I am quite happy with the resolution as it is. If Members want to do something else, fine, but the consequences could be severe.

Thank you, sir.

Deputy Trott: Sir, may I make a point of order?

500 I think it was inadvertent but the Deputy Kuttelwascher suggested that all lifeline routes were non-profitable. Gatwick of course is a lifeline route and is extremely profitable.

Deputy Kuttelwascher: Sir, the latest figures are that it is not profitable at the present time, but it will become profitable if we can put the larger aircraft or additional ATRs with additional slots onto it.

Deputy Trott: Sir, to note that is a very recent development, if that is the case.

510 **The Bailiff:** Does any... I think... Sorry, I said I would call Deputy Lester Queripel. Deputy Queripel.

Deputy Lester Queripel: Thank you, sir.

Sir, I rise to say that I whole-heartedly support the Proposition before us.

515 I would, however, like to see a thorough review of Aurigny Airlines carried out at some stage because I believe there are efficiency savings to be made within the organisation. Other than that, sir, I have nothing to declare.

The Bailiff: Thank you.
Yes, Deputy Collins.

520

Deputy Collins: Thank you, sir.

Aurigny – it is pretty much a no-brainer, sir. If we are happy to spent £80 million on repairs and upgrades to the Airport, what is £30 million or £40 million on planes? Gatwick, as we have heard, is a lifeline route and without it, we might as well pack up shop and all go home.

525

Sir, sorry, I must have declared perhaps, I was a Financial Planning Executive for Healthspan, which obviously owns Blue Islands, so whether that is an interest I need to declare, I do not know, but I have declared it.

Anyway, as a previous T&R Member, we certainly had concerns with the operations of Aurigny and I must say, with a new MD, hopefully we can get some business cases that do add up.

530

I was, however, concerned when Deputy St Pier said that he had not actually seen the full business case yet, but, understandably, the Gatwick route will certainly be making a profit going forward. So, Members, please support the recommendation.

Thank you.

535

The Bailiff: Thank you.

I see an amendment is being distributed. Does this relate to the matter that we are presently debating? No. Well, yes okay you have started distributing it but...

Deputy Ogier.

540

Deputy Ogier: I believe there is an amendment in the process of being copied now, sir, which will be distributed quite soon.

The Bailiff: I thought maybe that was what is being circulated, but obviously not.

545

Deputy Ogier: No, not yet. I think there was a... I saw Deputy Storey make an amendment to the copied version before it is copied, which I now think is being done and they are copying it now.

I can attempt to, as I am currently, filibuster this... *(Laughter)* Or perhaps, if you do not want to listen to my dulcet tones for five minutes, we could maybe have an adjournment.

550

A Member: Pour! *(Laughter)*

The Bailiff: Does anybody else wish to speak, before...?

Yes, Deputy Dorey would like to speak.

555

Deputy Dorey: Thank you, Mr Bailiff.

I support the Propositions, although I would look with interest in the amendments that we might be receiving. I agree with the – as others mentioned – paragraph 4.8, about a sole operator with fair controls. I felt that for a long time, we are far better, as an Island, allowing one airline to operate to one airport with fair controls and, perhaps, minimum service standards and let them get on and market that airport and make the most of that connection. So, I agree with Deputy Gollop that we should apply that policy not just to Gatwick, but to other routes.

560

The importance of lifeline routes, I think we also should consider, as it has been mentioned. Obviously, Gatwick currently is a lifeline route, but lifeline routes can change. I believe currently the Alderney/Southampton route is a lifeline route but when we are essentially often subsidising people's recreational travel – which I find difficult to justify when we are under such financial constraints because an awful lot of people who go through our Airport are recreation or are business people who can well afford to pay for the cost of flying – and perhaps the only ones that we need to think about subsidising, if any, are recreational people who are visiting our Island. By applying subsidies to the capital development to the Airport and to airlines, as in the case of Aurigny, we subsidise many people who I believe should be paying the full price of the service they use.

570

But I think that we need to consider lifeline routes – whether, for example, is it better to link in the Alderney flights with Gatwick flights so that, rather than having an Alderney/Southampton flight so that people who want to go to Alderney, say from London, can link in with the times of the Gatwick flight landing in Guernsey and get to Alderney that way? It might be cheaper, it might not be quite so convenient, but I think we have to look carefully at our financial situation.

575

Also, in relation to Gatwick, if the landing charges continue to increase at Gatwick and, therefore, in order for the route to make a profit, our fares continue to rise, it will also give other airlines the opportunity to compete more easily with the Gatwick route.

580 We know, for example, that London City is far closer to London's business area and also Stansted, which is essentially closer to the city with a 15-minute frequency train journey and a 46-minute train journey time.

585 So, although I support it, I think that we have to look carefully at the Propositions and I will welcome the amendment when it arrives and see if it is relevant and I want to support it. I think we need to carefully look at the subsidies that we use and the money we spend on air transport, and I believe there are many people who we are subsidising who can well afford to pay the full cost of flying.

Thank you.

590 **The Bailiff:** Does anybody else wish to speak?

No. Well, this is the moment, then, when I would normally invite the Minister to reply to the debate, but as everybody knows there is an amendment apparently about to be laid. I will put it to the Members of the States – is it the wish of the Assembly that we have a recess to enable an amendment to be laid? Those in favour of a recess; those against.

595

Members voted Contre.

The Bailiff: Deputy Ogier.

600 **Deputy Ogier:** May I have an *appel nominal*? (*Laughter and applause*)

The Bailiff: Under the Rules you are entitled to one, (*Laughter*) although that is plain filibustering. But under the Rules a Member is entitled to call for an *appel nominal*. Unless, Deputy Storey is now ready to lay the amendment to you. (*Interjection*)

605 That is what I have just asked the Assembly and *au voix* it sounded to me as if the majority of the Assembly did not want to recess. Deputy Ogier has just asked for an *appel nominal* on that procedure...

610 **Deputy Luxon:** Sir, on the basis of the last few minutes, can I now suggest we reconsider a recess?

Several Members: Hear, hear.

615 **The Bailiff:** Right. I will put it to you again, that the Proposition is that we recess to enable an amendment to be circulated, considered by the Treasury and Resources Department and then press to resume thereafter. Those in favour of a recess; those against.

Members voted Pour.

620 **The Bailiff:** We will have a recess.

*The Assembly recessed at 10.22 a.m.
and resumed at 10.47 a.m.*

625

**Aurigny Air Services
Debate continued
Propositions as amended carried**

630

The Bailiff: Well, Members, you should have two amendments before you. They are marked amendment B and amendment C because there might have been an amendment A, but an amendment A is not going to be laid, as I understand it.

635 So, I will read the two amendments, proposed by Deputy Storey, seconded by Deputy Ogier. Amendment B reads as follows:

'To insert at the end of proposition 1 after the word "Pool" the words " , subject to the facility / guarantee limited to the acquisition of one additional aircraft to service primarily the Guernsey / Gatwick route."'

And amendment C:

640

‘To insert three new propositions at the end of proposition 1 after “Pool” the words “, subject to this delegated authority expiring on 30th July 2014”.’

645

I hope everybody has a copy of each of those two. I suggest that they both be taken together in debate, although they will be voted on separately. I understand that neither amendment is opposed by the Department so I am hoping that debate may be fairly short.

Deputy Storey, do you wish to open on both amendments?

650

Deputy Storey: Yes, sir, just briefly, because I have already explained to the Assembly why I felt that these amendments were necessary. There was, as you rightly say, sir, an amendment A, which addressed the limitation on the quantum – the value up to which the T&R could guarantee or lend.

655

In retrospect, although I still think that is a good discipline, nevertheless because we are at the early stages of negotiation it would be foolish for us to publish in the States an amount to which we are permitting the negotiators to go. So, therefore, I think it is appropriate that we do not publish or limit that number publicly.

660

My understanding now... My original intention was that we produce three amendments so that they could be voted on individually, but I now understand, having had discussions with T&R Minister, that T&R are not going to contest amendment B or amendment C. If both amendments B and C are passed, then it will be necessary to add an ‘and’ in between the two Propositions when they are added to the Proposition 1, so that it is grammatically correct.

665

Basically, at the end of the day, what we are saying is that we are limiting... we are putting limits to the authority that we are delegating to T&R in this respect, both in terms of the number of aircraft – which will be limited to one for the Guernsey/Gatwick route primarily, which would enable Aurigny, even at this stage, to decide that they might use it on another route if it be necessary – and that this amendment puts a limit on the delegated authority for 12 months. I am sure that – what the Treasury Minister has already said – we need to have got these negotiations completed over the next three months. So, I hope that a 12-month limit to the authority is perfectly adequate for their needs.

670

So, on the basis that the T&R have decided to accept these amendments, I do not really need to say anymore, sir. Thank you.

Amendment B:

675

To insert at the end of proposition 1 after “Pool” the words “, subject to the facility / guarantee limited to the acquisition of one additional aircraft to service primarily the Guernsey / Gatwick route.”

Amendment C:

680

To insert three new propositions at the end of proposition 1 after “Pool” the words “, subject to this delegated authority expiring on 30th July 2014”.

The Bailiff: Thank you.

Deputy Ogier, do you formally second the amendments?

685

Deputy Ogier: Yes, sir. I will speak now, if I may.

The Bailiff: Yes, if you wish to do so. Otherwise the Minister wishes to speak but you are entitled to speak now if you wish to do so.

690

Deputy Ogier: I only have a few lines, sir. (**The Bailiff:** Yes.) Just to say I am glad that I did not have to filibuster that in the end. (*Laughter*)

695

Deputy Kuttelwascher makes the vision clear on this Proposition, not that blame is attached to it – it is understandable. These Propositions do allow for T&R and Aurigny to purchase other craft without coming back before the States. This is because the resolutions do not have boundaries to which delegated authorities should be limited.

As we have heard, it is the Propositions which carry forward, not always the understanding of those involved in the debate, and you really cannot piggyback the purchase of other items not contained in this Billet – as those are not the kinds of governance arrangements which represent best practice.

700 These amendments add limits to the delegated authority and, in the interest of good governance, we should support them.

The Bailiff: Thank you.
Deputy St Pier.

705

Deputy St Pier: Sir, I had indicated to Deputy Storey – and this is the problem of course with amendments being done on the hoof – Deputy Storey did raise his concerns with me at the close of play last night and I did say that I would address his concerns in my closing remarks today and obviously that has not satisfied him and he has brought these amendments.

710

I had indicated that the Department would not resist B and C, which was the very brief conversation that my Department colleagues had immediately before we resumed. In fact, I am going to resist B, I think the insertion of ‘one additional aircraft’ is an over limitation on the flexibility which Aurigny and the Department may well need.

715

Whilst that does reflect the current intention and the current state of negotiations, it is quite possible over the next few days and weeks that something were to happen that prevented that being the case, in which case it may be necessary to acquire two alternative aircraft. So I think it would be an over limitation on the Department to impose this restriction.

720

In relation to C, I do not feel it is necessary but we will not resist it. The intention clearly is to either go onto the loan or to provide a guarantee before the end of that period. It is, perhaps, worth making the comment in relation to the authority, which generally has been given by this Assembly to my Department. Of course, we do have unlimited authority in some areas in any event. In relation to borrowing, this Assembly granted authority, in not dissimilar terms in relation to supporting GEL in the Budget report last year. The authority there is not time-limited, is not project-limited and is not quantum-limited.

725

Now, I know Deputy Storey objected to that at the time, he raised his objections in debate but the Assembly did not amend the authority at that time – I simply present that by way of analogy and comparison. So, I will address other comments made, obviously in the closing remarks on the main debate. But, in relation to these amendments, I would urge Members to resist B and, as I say, the Department is not proposing to oppose C, sir.

730

The Bailiff: Deputy Trott.

Deputy Trott: The comment is around governance and I am grateful to my friend Deputy Storey for raising this amendment.

735

I entirely accept and understand the rebuttal that I have heard from the Treasury Minister. The problem with governance is this: we, as an Assembly, have a responsibility to give guidance and direction to the shareholder, which, for the purpose of the structure that we have with Aurigny is the Treasury and Resources Department, with 50% of the shares invested through a company called Cabernet in the name of the Treasury Minister and 50% in the name of the Deputy Minister.

740

But the Governance does not stop there. There is also a governance requirement, a governance obligation from the shareholder to the operational board of Aurigny. The point that he makes about unduly, if you like, constraining the operational board in obtaining the best possible outcome for both the company – and therefore, by definition, to the shareholder – is well made.

745

So, I am in a curious position of lauding Deputy Storey and Deputy Ogier for bringing this amendment, but strongly of the view that it should be rejected for the reasons the Treasury Minister has given.

Thank you, sir.

750

The Bailiff: Several people wanted to speak.
Yes, Deputy Dorey.

Deputy Dorey: Can I just ask a point of clarification in relation to what Deputy St Pier has said? Is it objection just to the word ‘one’ in B?

755

Deputy St Pier: It is, sir.

The Bailiff: Yes.
Deputy Burford, then Deputy Sillars then Deputy Gollop.

Deputy Burford: Thank you, sir.

760 Yes, I have the same problem, in fact, that the Minister does. I am happy enough with C but with amendment B the problem... it might even be better if it was a net addition of one extra aircraft, because what this does is it constrains Aurigny to having a mixed fleet, unless they buy another ATR.

765 I think that could be very problematic, particularly for crew complements and other such matters, so I will not be able to support this amendment.

The Bailiff: Thank you.
Deputy Sillars.

770 **Deputy Sillars:** Sir, on similar themes to the previous two, certainly I will support amendment C, as that gets round a whole range of issues.

775 But it is actually amendment B – for us to tell T&R, and therefore Aurigny, to limit themselves to just one plane. I am absolutely in favour of a jet, and in my speech I made that clear, but actually if they need to buy two ATRs, because they cannot do it with one jet, because of the other issues we have got, and they need to justify two by putting another one on to Manchester/Birmingham or wherever they are going to go, we are just prescribing to them and limiting it far too greatly. (**Several Members:** Hear, hear.)

780 How can they do a business plan when we limit it to this? And actually, we have no open government, we have no real information to make this, we just... as a knee-jerk reaction it cannot be right, but I am absolutely in favour of C because Deputy Gillson and I talked about doing C anyway but... So, C I do support.

The Bailiff: Deputy Gollop.

785 **Deputy Gollop:** Strictly speaking, we are over a barrel here on corporate governance because the correct position, in a way, would be to withdraw this Report because the contents of the Report are not congruent really with these amendments or, indeed, aspects of the resolutions. But, given the need to get on with the job and to make a decision, that is not an option.

790 The Report, in its, perhaps occasionally, ambivalent way, does refer to aircraft in the plural throughout and makes a case for executive action. I can support 3 because time limiting it to a year gives, I think, Assembly a direction and control but, like most of the other speakers, I cannot support 2.

795 There are two reasons for this – not only would the capacity issue be addressed by one jet or two turboprops and a commercial decision as to the cost that needs to be made – so we do need to have the flexibility of more than one – but Deputy Kuttelwascher – I am sorry to mention him again but I have – did imply – and this is important for the Alderney representatives to think about particularly – that there could be a situation whereby it was not possible to mobilise the Trislanders at short notice for their rosters. In that instance, maybe we should still be giving the flexibility in an urgent situation to Treasury and Resources Department in league with Aurigny to resolve that problem, which goes beyond the specifics of the Gatwick question.

800 If we adopted the B amendment, of Deputy Storey and Ogier, we would have effectively taken the inter-isle flights completely out of this equation.

The Bailiff: Deputy Fallaize.

805 **Deputy Fallaize:** Thank you, sir.

I am pleased there is an amendment, or amendments, because I was unhappy with 1 as it stands and I did imply that when I spoke last night. I have heard enough about good governance already this morning.

810 Good government, I want to talk about. I think that good government is impeded by amendment B, because the whole thrust of the policy letter is about permitting Aurigny to expand on the Gatwick route and to fill the gaps vacated by Flybe. I think that we are probably going to move towards a position where Aurigny is the sole operator on that route in time and I do not think that would be a bad thing. We are all saying how much of a good decision it was that the States purchased Aurigny and we want expansion on the Gatwick route; I think B conflicts with good government in that sense.

815 But I think Proposition 1, as it stands, also conflicts with good government because, it was said earlier that this is a matter of trusting the States Department. Well, I always get as concerned as Deputy Ogier does with the words ‘common sense’, I get concerned with appeals for us to trust

820 States Departments, because you could take that to its nth degree and we could simply agree to the principles that education are putting forward in their vision later in this meeting and let them get on with the whole thing and never require them to come back for the States. That is not good government, actually.

825 T&R is effectively a sub-committee of Government which is here in this Assembly and I do not think we can give a States Department that kind of unlimited delegated authority. If we did... in the case of Guernsey Electricity, I think we were wrong to do that, and I do not want us to replicate that with Aurigny. Proposition 1, as drafted, is complete, unqualified, open-ended, delegated authority to underwrite the purchase of additional aircrafts and I do not think the States have done that in the past with the purchase of Aurigny aircraft.

830 So, amendment C, I think, represents good government, because it does place some restriction, some qualification on this delegated authority, and the Treasury Department is obviously not terribly opposed to that. Of course, they can return to the States if they wish to propose an extension of that period of time and I am sure they will do that, if that becomes necessary.

835 I cannot see how amendment C would weaken our negotiating position since, as I understand it, T&R expects this business to be concluded well in advance of 30th July 2014. If it does not, then it can come back to the States and I would encourage it to do so. But I think both Proposition 1, unamended, and amendment B, are contrary to good government. I think the right balance is expressed in amendment C, sir.

840 **The Bailiff:** Does anyone else wish to speak on the amendments?
No? Deputy Storey then to reply to the debate on both amendments.

Deputy Storey: Thank you, sir.

845 Well, I thank those who have made comments. I accept that the restriction in amendment B – restricting the acquisitions to a single additional aircraft – is most probably too restrictive in terms, perhaps, of negotiating positions, and I always have an eye on our negotiating position because that is money that the States could save if we have got a strong negotiating position.

850 Sir, I have spoken with my seconder and we are happy to withdraw the word ‘one’ in amendment B so that, in fact, it leaves the negotiating position wider. We are not effectively restricting negotiations to *a* jet, but we could in fact... the negotiating position at that point could be, well, the alternative is to get two ATRs, so that would strengthen the negotiating position in that area.

855 I think I would still like to restrict the delegated authority to acquiring additional aircraft to service primarily the Guernsey/Gatwick route. I think by removing the word ‘one’, we would strengthen the negotiating position and give flexibility that –

The Bailiff: I think the difficulty –

860 **Deputy Fallaize:** This is an alternative amendment.

The Bailiff: – about amending the amendment at this point is that we then have to re-open the debate because the Minister may want to comment on whether that raises any issues.

865 So, I think that, at this point, we would have to vote on the amendment as it is. Otherwise, as I say, we are back into a new debate.

Deputy Fallaize: Sir, the amendment can be amended, can’t it?

The Bailiff: It would have to be another amendment.

870 **Deputy Fallaize:** But this amendment can be amended. If Deputy Storey wants to, he can just propose to delete the word ‘one’.

The Bailiff: Well, he is now in his closing speech; we would have to re-open the debate.

875 **Deputy Fallaize:** Yes, I accept that, but he does not have to go to the bother of circulating a whole new amendment.

The Bailiff: Oh, no.

880 **Deputy Storey:** Well, I just think, sir, that it would improve good governance, in one respect, by having a restriction, but it would provide the additional flexibility and negotiating position for the Department and Aurigny, if I deleted that one word from amendment B.

885 **The Bailiff:** As I say, if you do that then we have got to re-open the debate so we would have to effectively treat it as a fresh amendment. In effect, this amendment would be withdrawn and we would have to then lay... we need not to recirculate it because we can all cross out the word 'one', but we would then have to have a fresh debate –

890 **Deputy Luxon:** Excuse me, sir, we could not. If we remove the word 'one', this sentence is unintelligible. You cannot simply remove the word 'one', which is why I would like clarification to state exactly what Deputy Storey is suggesting you should consider, sir.

The Bailiff: Madam Comptroller.

895 **The Comptroller:** Sir, I think if Deputy Storey is proposing to withdraw this amendment, that needs to be made clear. If he is proposing to make a new amendment that also needs to be clear but he will have to be quite precise as to whether it is just withdrawing that word 'one', as Deputy Luxon has pointed out, and what the consequences of that would mean.

900 **The Bailiff:** Deputy Storey.

Deputy Storey: If I cannot amend the amendment during debate, then I will withdraw the amendment and relay it without the word 'one', so that, in fact, it reads:

905 '... subject to the facility/guarantee limited to the acquisition of additional aircraft to service primarily the Guernsey/Gatwick route.'

I do not see that that is grammatically incorrect.

910 **Deputy Langlois:** Sir, that would imply more than one and you cannot simply go for one. It would have to read 'one or more'.

The Bailiff: Yes. Would it help you if... I was going to suggest if it be 'one or more'. So, instead of deleting the word 'one', we insert the words 'or more'.
915 Does that then deal...?

Deputy Storey: Yes, sir.

920 **The Bailiff:** Yes, so – (*Laughter*)

Deputy Storey: Thank you for your assistance, sir. (*Laughter*) It is very helpful, thank you.

The Bailiff: Right. Let us –

925 **Deputy Storey:** So, if I could withdraw amendment B and re-lay it on that basis...

The Bailiff: Shall we deal with withdrawing B and let us go to the vote on C so that we get C out of the way? Then we will have a fresh debate on the amended B. Those in favour of withdrawing amendment B; those against.
930

Members voted Pour.

The Bailiff: Amendment B, in its original form, is withdrawn.
935 Those in favour of amendment C; those against.

Members voted Pour.

The Bailiff: Amendment C is carried.
940 Now, Deputy Storey, you wish to lay a fresh amendment (*Laughter*) which is amendment B in its amended form with the words 'or more' inserted after the word one. So, it relates to:

‘...the acquisition of one or more additional aircraft to service primarily the Guernsey/Gatwick route’

Deputy Storey: Yes, please, sir. Thank you.

945 **The Bailiff:** Do you wish to say anything more in opening on that amendment?

Deputy Storey: Well, I think I have already said here before that this provides the flexibility at operational level to choose whichever is the most cost effective. It also, I think, strengthens the negotiating position when talking to aircraft suppliers, because there is an alternative available to the company.

950 So, I would hope that this Assembly would support this amendment because it does put a certain degree of limit on the delegated authority, whilst providing the flexibility and preserving the negotiating position at the same time. So, I would ask the Assembly to approve this new amendment to provide an appropriate form of a limit to the authority that we are delegating.

955

Amendment B:

To insert at the end of proposition 1 after “Pool” the words “, subject to the facility / guarantee limited to the acquisition of one or more additional aircraft to service primarily the Guernsey / Gatwick route.”

960

The Bailiff: Deputy Ogier, do you formally second that?

Deputy Ogier: I do, sir. Thank you.

965 **The Bailiff:** Could the two of you please just mark it up with that amendment, then re-sign it and let the Greffier have a copy?

Deputy Burford rose first and then Deputy Fallaize.
Deputy Burford.

970 **Deputy Burford:** Thank you, sir.

I have the same reservations with this version of the amendments as I did with the past. The way crewing operates, a lot of large aircraft can only... a crew member can only fly one particular type of aircraft, although there are exceptions where aircraft are quite similar. That does not apply to an ATR and an Embraer E-195, but it would apply to an Embraer 175 and an Embraer 195.

975

It may well be that when the business case is examined, Aurigny see that, actually, to replace, let us say, the ATRs with the smaller Embraer and buy a larger Embraer for the Gatwick route, may be the most cost-effective option in the long term and this amendment would stop that kind of thing from happening, because the smaller aircraft would not be primarily for the Gatwick route. So I cannot support it.

980

The Bailiff: Deputy Fallaize.

Deputy Fallaize: The problem with this one is it has to be read in conjunction with the Proposition that has been amended already. If this amendment is approved, then any consequential purchase elsewhere in the network becomes impossible without T&R seeking a fresh States resolution.

985

So, in order to try and ensure that there is a balanced network, T&R has to be given delegated authority, along the lines of this Proposition. We have already inserted this qualification that the delegated authority expires on 30th July or 31st July 2014, but we are in danger here of trying to determine, on the floor of the Assembly, exactly which aircraft Aurigny should have on which part of their network, and I think that is quite risky and we do not have the proper information before us to do that.

990

So, I think, in order to give T&R the proper flexibility to underwrite whatever purchases are necessary for the Gatwick route and any consequential changes, which are necessary for other networks, but to restrict their delegated authority for a period of one year, we ought simply to vote for the Proposition as already amended and not amended any further, sir.

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The Bailiff: Deputy Langlois.

1000 **Deputy Langlois:** Sir, this is a very unusual moment. I find myself in full agreement with Deputy Fallaize on this occasion – not for the reasons he gave of course, (*Laughter*) but nevertheless in full agreement.

Sir, I spent four years on Treasury and Resources, I was not one of the shareholder representatives, but there was an additional link with the Aurigny board where Deputy Parkinson and I took a more active interest in their business plans and so on, in order to make sure that we were aware of the direction the board were taking.

1005 I am sorry, this Assembly can barely predict what is going to happen tomorrow or this afternoon and yet this particular amendment is trying to predict the way the airline business – the British Airport Authority, which is in a bit of a pickle at the moment – the way Gatwick is going to behave; the way other airports will behave in competition; the way the board will want to expand their routes, contract their routes, make different offers and so on. This is totally out of order relating to the freedom that the Aurigny board must have.

1010 All we are being asked for here, in my opinion, is the authority to give a guarantee. It is a financial underwriting, which is necessary for a particular loan. The restriction to next year is perfectly reasonable, but please do not tie Aurigny down in this way.

The Bailiff: Deputy Gollop.

1020 **Deputy Gollop:** Sir, I have already made my points in the earlier speech, but I would like to ask Deputy St Pier two questions to look at in his summing up.

The first would be – in agreement with Deputy Burford, Langlois, Trott and Fallaize – as to, in the nature of rostering duty rotas for the planes, it is conceivable that a good deal might be secured with the procurement of more than one plane or two planes, that indeed do not just fly to Gatwick or even primarily, but include Gatwick within a network that might embrace Manchester and other airports; therefore this amendment could pose a problem there.

1025 The other question I would like to be resolved is: Deputy Kuttelwascher did raise the issue of a quick decision being made in relation to the Trislanders, which of course service Jersey, France and Alderney and, in a way, Southampton; I believe that even the amended amendment that Deputy Storey and Ogier put forward would make a quick executive decision impossible and indeed might lead to at least two months' delay in looking for those issues; so, I would ask the Minister if he agrees with that point of view.

The Bailiff: Deputy Le Tocq and then Deputy Dorey.

1035 **Deputy Le Tocq:** You see, I could not agree more with what Deputies Langlois and Fallaize have said. I was on T&R at the time when the recent acquisition of two ATRs was taking place and, sir, I think business needs to be given the opportunity... it is a business and it needs to be given the opportunity to act swiftly. It is difficult enough for decisions to be made in the boardroom in that environment, let alone in this Assembly, which glories in doing things slowly.

1040 So, we need to give the trust to the shareholders, on behalf of the States, to use their influence but, at the end of the day, also to those who we have recommended to be around that table and make those executive decisions. So, I am not in favour of bringing any further limitation to that which might actually, in the end, work against us as an Island community.

1045 **The Bailiff:** Deputy Dorey.

Deputy Dorey: I do support this amended amendment. I was a Member of the States when the original purchase of Aurigny went ahead. I think we received the Billet on the Monday – it might even have been on the Tuesday – and the debate was on the Wednesday, either two days later or one day later. So, I think you can react very quickly if the necessity is...

1050 I think we are talking about guaranteeing public money in here and I do think that... I congratulate Deputy Storey because I think there should be some limit on those guarantees. The report is all about acquisition for Gatwick and I think it is right to have some limits on that. If those limits are not correct, T&R can come back to this House with alternatives, but the basis of this Report is very much for the Gatwick route, and I think before more public money for other acquisitions is proposed, that they should come back to this House.

Thank you.

The Bailiff: Anyone else? Deputy Bebb.

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Deputy Bebb: Very briefly. I do feel as though the Report itself, as Deputy Dorey actually stated, does concentrate on Gatwick, but I think that might have been shorthand for London and of course London does have a number of other airports – some of them might be more attractive.

1065 I therefore would not be content with tying T&R's hands down in order to negotiate simply on Gatwick. I think that the focus is for London and therefore I would ask Members to reject the amendment.

The Bailiff: Anybody else? Yes, sorry, Deputy Ogier.

1070 **Deputy Ogier:** I take the criticism of the amendments and these are the sort of dangers of these kinds of amendments coming forward on the floor of this Assembly – we have seen it happen before. But this amendment is not trying to foresee the way the Airport will behave or the way that commercial companies behave. It is not trying to foresee how airports in England will...
1075 What this amendment is trying to do is to set some governance limits on an extremely poorly drafted Proposition.

Now, we should not be discussing the possibility of replacing Trislanders on the back of this emergency Billet. The timely replacement of assets is part of the bread and butter of the company, and a company, in which we have a shareholding, should not be seeking permission to replace assets in a timely fashion in the manner of this emergency Billet.

1080 So, to think that it is a one size fits all, buy one get a number of aircraft free on the back of this, is poor governance; it is bad decision making. As I – I do not want to say this – as I go down on this boat I will just salute and throw one last bullet out, which is: T&R were made aware of the poor drafting of this Proposition and did nothing about it, leaving it up to the floor of the Assembly to try and mangle some governance arrangements into this, and that is what we have
1085 been trying to do. It looks like it will not be possible on this occasion but, as drafted... it is a poor drafting and it leaves much too much leeway and not enough governance from this Assembly.

The Bailiff: Any further debate?

1090 No. In that case the Minister will exercise his right to speak immediately before Deputy –

Deputy St Pier: Sir, if I could begin with Deputy Ogier's remarks there.

I do not accept at all that the resolution was poorly drafted. I commented, in my opening remarks yesterday, that the Report and the resolutions were intentionally widely drafted because of the fluidity of the situation and the flexibility that was required to respond to the situation in the way that was most commercially advantageous to the company and ultimately to the States as shareholder. The reference, for example, to the Aurigny network was recognition that actually any aircraft that are required may well be used on other parts of the network, and that is a comment which Deputy Fallaize has made.

1100 Yes, it is quite clearly the intention that this whole Report, or the premise of this Report, is primarily about responding to the loss of capacity on the Gatwick route but, as Deputy Bebb and others have made, there are a whole range of different responses, so I do not accept at all that this has been poorly drafted.

1105 The other comment I would make, sir, just generally before I respond, is actually going slightly off track, but I think it is relevant to the nature of what we have seen this morning. Actually, the ability to intervene in debate may well have foreshortened all of this because had I been able to indicate much earlier in the debate, rather than waiting for amendments allowing me to speak, that it was never the Department's intention to rely on this resolution to fund the Trislander replacements, if and when that is required, that may have well given the Assembly some of the reassurances that it was looking for.

1110 As I say, this is in relation to the UK routes and not in relation to primarily the inter-island routes. If we do need to return to the States, in relation to the Trislander replacements, we will do that and I had thought I had given reassurance to Deputy Storey that I would give that undertaking to the States in my concluding remarks on the main debate but that clearly was not satisfactory.

1115 Whilst we are talking about aircraft, I think it is sensible to respond to a number of the comments that have been made elsewhere in the debate so far. Deputy Fallaize specifically asked, in relation to the fact that there were not specific aircraft named as there had been before... and he is, of course, quite right; the previous Report was in relation to guarantees for two specific aircraft, the two ATR 72s. But, of course, I do not think that our present position represents a change in policy as such, because there is not a policy that we submit to the States' specific aircraft proposals; it simply recognises the different approach reflecting the urgency and the different
1120 situation that we face today. If we had waited to recommend a loan, in respect of specific aircraft,

then the probability is that we would not have been able to get to the States until September with, as I explained yesterday, the constant delays that entails.

1125 So, Deputy Trott again asked in his comments about could one existing aircraft be replaced. Well, again that does not form part of the present thinking but that could be the case. Also, the other possibility is that one of the existing aircrafts might be retained as a backup. So, in terms of the next fleet size, that again is another option.

1130 He also asked about, in relation to expansion and whether any additional aircraft will be required and would we then return to the States. I think I have hopefully covered that point and that has been laboured by these amendments.

I think, as I said, whilst the intention is primarily in relation to the Guernsey/Gatwick route, I think for the reasons which Deputy Burford... and I think, given her experience before she joined this assembly, one has to pay due credence to that – that it would be overly restrictive. I think those comments were also reinforced by Deputies Fallaize and Gollop.

1135 So, with that in mind, sir, I would urge the Assembly to reject the amendment.

The Bailiff: Deputy Storey to reply to the debate.

Deputy Storey: Thank you, sir.

1140 Well, I think first of all...several people have been talking about Trislanders, and the rest of the fleet, and how aircraft requirements change in the future and we should not be judging the future because we do not know what it is going to be.

1145 The point I will come back to, sir, is this States Report, this Billet, is solely concerning the need to respond to Flybe's withdrawal of services to Gatwick. What the Report investigates is how the States, through Aurigny, should react to that situation. That is what the Report is about, but when we come to the Propositions at the end, that is not what they are about.

1150 Now, as far as I am concerned, if in the future there is a need to replace the Trislander fleet, and that is going to need States funding, then at that point T&R can come back to this Assembly and ask for the necessary funds to enable that to happen. If in the future, the ATR aircraft that we are using become past their use by date, and they need to be replaced with funds guaranteed or provided by this Assembly, then they can come back and ask. That is not what this Report is about. This Report is about replacing aircraft or providing Aurigny with the means to replace the service that Flybe is withdrawing.

1155 So, what I am concerned about is that this Assembly provides them with the means to do just that and no more. *That* is good governance. If they wanted to talk about the overall fleet and the flexibility within the fleet and the need to do this, that and the other, well then it should have been in the Report and it is not. So, I do not think all the talk about Trislanders and the mix of the fleet are relevant to this debate.

1160 As far as I can see, in order to ensure good governance as a result of this Report which asks for permission from this Assembly to provide the financial way with Aurigny to react to Flybe's withdrawal from the Gatwick route, then the Propositions amended by amendments B and C, as I have presented, will provide adequate reassurance on good governance whilst, at the same time, ensuring that the company and T&R have been provided with adequate flexibility and that their negotiating position has not in any way been compromised.

1165 We are only talking about the Guernsey/Gatwick route because that is what the Report is talking about; therefore, I would urge you to ensure that we do insist on good governance in this area and that we do provide limits to the authority that we are delegating to T&R. I think that to restrict them to the acquisition of one or more additional aircraft to service primarily the Guernsey/Gatwick route, will provide them with adequate flexibility. So I do urge you all, in the interest of good governance, to support this amendment and make sure that we are behaving in a proper manner.

1170 Thank you, sir.

1175 **The Bailiff:** Well, we come then to the vote on amendment B as amended, proposed by Deputy Storey and seconded by Deputy Ogier, and I will just remind you that the wording of it is as circulated, but with the insertion of the words 'or more' after the word 'one' and before 'additional aircraft'. Those in favour; those against.

1180 *Members voted Contre.*

The Bailiff: I declare the amendment lost.

So, we return then to general debate and Deputy Fallaize has already spoken, but I understand that he wishes to ask a question of Her Majesty's Comptroller, but has no intention of making a further speech. (*Laughter*)

1185

Deputy Fallaize: That is right, sir.

My question is regarding these two Propositions now – 1 as amended; 2, unamended – to me, are incompatible. I want to ask Her Majesty's Comptroller whether Proposition 2 is simply a restatement of the present policy? In other words, does the Treasury and Resources Department, at the present time, enjoy, from the States, delegated authority to facilitate the leasing of any aircraft including, if required, acting as guarantor to the lease?

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Because, on Proposition 1, we have inserted a qualification that makes T&R's delegated authority subject to it expiring on 30th July 2014; whereas Proposition 2 now – unamended, or there is no amendment being laid – appears to me to give T&R delegated authority but without qualification. Since 1 and 2 are effectively A and B because they are the same Proposition just split in two – dealing with slightly different things but relating to the same matter – can she just confirm whether 2 is either a restatement of the present policy and delegated authority or something new? If it is something new, I wonder whether Deputy Storey ought to extend his amendment from 1 to 2.

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The Bailiff: Madam Comptroller?

The Comptroller: Sir, I do not think it is a matter for me to confirm whether or not Proposition 2 is a restatement of the present policy on the policy terms. What I would say, is that it was clear from the Department's Report that Proposition 2 related to whether or not leasing would, at the end of the day, be identified as a better solution. So, there is clearly some uncertainty about that until the Department, and I do not wish to put words into the Minister's mouth, but until he is able to come back with more detail on that Report.

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Certainly, I did have a very brief word with Deputy Storey before the amendment was laid and we did discuss the fact that that qualifier would not, as it stood and as presented to Members, was not also encapsulating Proposition 2. But it is really not a matter for me as to whether, in policy terms, those are fundamentally different things, or might become so, depending on how the negotiations result. As it stands, what I would say to Members is that Deputy Fallaize is correct – strictly speaking, amendment 1 has the qualifier... sorry, Proposition 1 has the qualifier with the amendment and Proposition 2 does not, but it may be that the Minister could perhaps confirm, or otherwise, on the policy grounds, sir.

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The Bailiff: Thank you. Does anybody else wish to speak in general debate, who has not already done so?

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Deputy Trott: I have not spoken in general debate, sir, so I am not testing your patience, but I would like to ask a question of Her Majesty's Comptroller, linked in to the question raised by Deputy Fallaize.

The amended Proposition 1 says 'subject to *this* delegated authority', '*this* delegated authority' relating exclusively to Proposition 1; so, surely Proposition 2 does not require the additional clarity that Deputy Fallaize was suggesting, by virtue of the fact that that is the existing... that is the extant situation of the States, to the extant situation of the resolution and, therefore, the limitation is only with regard to this particular debate and, therefore, this particular Proposition.

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The Bailiff: I think that is what you said, isn't it? (*Laughter*)

The Comptroller: With respect, I am not sure I understood entirely Deputy Trott's submission, (*Laughter*) apologies.

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Deputy Trott: Okay, I will do it again. (*Laughter*) The Proposition, as amended, includes the words, 'Subject to *this* delegated – *this* – delegated authority expiring on 30th July 2014', and relates to Proposition one which reads:

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'To authorise the Treasury and Resources Department to facilitate any borrowing by the Aurigny group to finance the purchase of such additional aircraft, as are required to service the Aurigny network, by providing guarantees for borrowing from third parties, or by offering the group a loan from the States General Investment pool.'

1245 That Proposition is clearly as a result of the content of this States Report. Therefore the word 'this' refers exclusively to *that* content; not to any additional activity, because the existing resolution of the States is for the Treasury and Resources Department to be allowed to provide guarantees without reference to this Assembly.

If that is not clear, Her Majesty's Comptroller, my apologies but I cannot think of any other way of putting it.

1250 **The Bailiff:** Well, unless you want time to think... Do you want time to think, Madam Comptroller?

The Comptroller: It may be helpful if Deputy Storey perhaps qualifies as well, sir.

1255 **The Bailiff:** Right. Deputy Storey then.

1260 **Deputy Storey:** My understanding of the situation, when I laid these amendments, was that the amendments related purely to the purchase of additional aircraft, as identified in this Report. It was not intended to produce any limitations on existing facilities in relation to the leasing or purchaser of aircraft, or loans to aircraft, which have happened previously. So, I think that is what Deputy Trott was attempting to explain.

1265 The amendments that I have placed today related purely to this Report and the purchase or leasing of aircraft, in relation to the withdrawal of the Flybe service. It did not attempt to put any limitations on the existing facilities which T&R and/or Aurigny have in place at this time, sir.

The Bailiff: Madam Comptroller.

The Comptroller: Thank you, Deputy Storey, that has assisted me.

1270 If that was the distinction Deputy Trott was seeking to make then I would agree and I would say that that *must* be the case. The amendment that Deputy Storey has put to the Assembly, which they have approved, in my view can only relate to this Report and the specific wording of, 'Such additional aircraft is required to service the Aurigny network'.

That is my view, sir.

1275 **The Bailiff:** Thank you.

1280 **Deputy Fallaize:** Sir, obviously that is true, because the amendment was to Proposition 1 and not to both Propositions, but the point is that the Propositions are now not consistent and if... Am I given to understand then, that the effect of voting for Proposition 2 is exactly the same as voting against it? Because if T&R already has delegated authority to do all of the things in Proposition 2, why is it in this States Report?

Deputy Trott: Good point. (*Laughter*) Well, the answer is because it is good governance, sir.

1285 **The Bailiff:** Well, anyway. Does anyone else wish to speak in general debate?
Deputy Ogier.

1290 **Deputy Ogier:** I entirely accept the need for Aurigny to redraw its thinking, in light of recent events. That is appropriate.

The Propositions in this Report have not been poorly drafted for Aurigny, or poorly drafted for T&R. I accept that. What is missed, however, in my view, is that the Propositions *have* been poorly drafted for this Assembly.

1295 We are unable to execute our duties of governance through these Propositions, which are not limited and not contained as they should be. It is a great result for Aurigny and it is a great result for T&R, who can do what they like within their own boundaries. But it is a poor result from this Government, exercising its duty of care. It may not have been the T&R Minister's intention to fund the Trislander replacements, but that was not what his Deputy Minister said.

1300 Now, I do not want to be overly argumentative, I see Deputy Gavin is not here holding his head, even with my head down, and I know this was an emergency Billet, but we would not have spent all this time if the Propositions had been drafted with the Assembly in mind and not the convenience of T&R and Aurigny.

The Bailiff: The Chief Minister.

The Chief Minister (Deputy Harwood): Thank you, sir.

1305 I rise to speak in the general debate. I think that Members are perhaps being misled in the suggestion by Deputy Fallaize, that the two Propositions before you are inconsistent.

I submit they are not, sir, because the first one talks about the purchase; the second one talks about leasing. If you read the Report, it is clearly set out that, even if Aurigny were able to go into the market and immediately purchase aircraft, the delivery time is such that there may be a period of time between the end of March and possibly into July where they might have to lease – whether it may be wet leasing or whatever other form of leasing may be appropriate – in order to cover the capacity constraint that will follow from the Flybe withdrawal.

1310 So I submit, sir, that both Propositions actually are consistent. Both deal with certain different aspects of the problem that will arise as a result of the withdrawal by Flybe of the Gatwick service and I would urge all States Members now to let Aurigny get on with the task of actually replacing the capacity. It is not for us to try and micro-manage the activities of Aurigny and, therefore, I would urge all States Members now to support the Propositions, as amended by Deputy Storey's earlier amendment to Proposition 1.

1315 Thank you, sir.

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The Bailiff: Does anyone else wish to speak? No.
Deputy St Pier then will reply to the debate.

Deputy St Pier: Finally, sir.

1325 I have dealt with a number of points already that have been raised. Deputy Duquemin described the acquisition of Aurigny a number of years ago as the best decision of the States and a number of other Members have spoken in similar terms and I, like Deputy Luxon probably, would be eating my hat because at the time I too instinctively questioned the acquisition, or the nationalisation, of an airline; but that is history and it was a wise decision.

1330 Only in relation to Deputy Duquemin, when I say that he referred several times to a \$100 million coin, which was queried during debate and suffice to say that I would agree with those who queried it. I do not think it will be anywhere close to that. But I am very grateful for his support.

1335 Deputy Fallaize commented on the policy statement under the licensing regime and, as I indicated in my comments yesterday, the Treasury and Resources Department has asked the Policy Council to look at that. We feel that as shareholder it would not be appropriate for us to drive that initiative. Policy Council have agreed that they will look at it; however, I think it is worth noting that even if the policy statement were to be changed, under the law, the decision remains that of the licensing authority, who will be guided by the statement but they, under the current law, will be guided by the statement but the decision is theirs. So it is still no guarantee, even if the policy statement is subsequently to be changed.

1340 Deputy Trott quite rightly raised the question of whether better value would be delivered to both the borrower and the lender by a loan from the General Investment Pool and, again instinctively, he is quite right to question that. The General Investment Pool is now being much more actively managed, as interest rates have come down and the overall objectives, the investment objectives for that fund are now RPI plus 3.5%. So the opportunity cost of lending from that fund is actually quite large.

1345 So, it is not quite as simple as saying that it will be the most obvious source of finance. Clearly one of the asset classes within that Investment Pool may well be loans at lower than the overall objective, but it was really just to make the point that it is not a slam dunk, that it is the obvious source of finance and that is something very clearly that Treasury and Resources will be examining very closely.

1350 Deputy Dave Jones questioned what would happen if Flybe pull out early. That is a risk and I think at least one other Deputy referred to that. If that is the case then it is... clearly Aurigny are preparing for the possibility that that could happen. The solution would be, I suspect, the acquisition of aircraft on wet leases. As I referred to, that is going to be required anyway between April and June, even if those resolutions are passed. So, that would be how I would imagine Aurigny would respond to any shortage in capacity before April next year.

1355 I thank Deputies Sillars and Dorey and Luxon for their support. Alderney Representative Jean referred to his calculation of £148,000; actually the Report refers to £145,000 so your calculation was very, very close.

1360 Deputy Gollop questioned whether there should have been a presentation in relation to this. Notwithstanding Deputy Lowe's comments yesterday about a proliferation of presentations, I think on this issue, again, it has been, and remains, a false moving story. There is also an

1365 overriding – again it has been referred to in the discussion on the amendments – overriding issue
of commercial sensitivity and ensuring that we actually do the best deal for the Island.

Deputy Collins suggested that I had commented that I had not seen the full business case. If I
said that or if he picked that up, I certainly did not intend to convey that impression, because he
was surprised that that was the case; I have seen the business case. I think the point is that no
1370 decisions have been made on it pre-empting the debate today.

The Chief Minister, I think his analysis of the Propositions is entirely correct and again, with
reference to leasing in relation to Deputy Jones's questions, clearly if we were needing to... if the
airline were needing to lease aircraft in the short term or as part of the solution, then that would be
dealt with under Proposition 2.

1375 It is the Department's intention to return to the States later in the year, there are a number of
issues, I think as Deputy Kuttelwascher referred to, that are buffering. There is the recapitalisation
of the airline; that is the accumulated losses since the airline was acquired in 2003. There is the
question and the possibility of the replacement of the Trislanders; and there is also the issue that
we, as a Department, are considering, again it was referred to, of the best method by which support
1380 is provided to certain routes and again that was referred to in relation to the inter-island routes.

Finally in closing, sir, there are a range of issues that were touched on in debate which are not
– I would suggest and I think you identified, sir – strictly relevant to the Report on the
Propositions and I would suggest, sir, that many of those are commercial decisions for the Board
of Aurigny; Treasury and Resources, as a representative of the States of Guernsey as shareholder,
1385 may well have a view, but they are matters which should be dealt with properly by the commercial
board. That includes, for example, the absence of interline agreements, the web-presence and
ticketing systems, and also the branding issue, which Deputy Duquemin referred to.

So, sir, I very much hope that this Report will receive the strong endorsement of this
Assembly. Thank you, sir.

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The Bailiff: Members, the Propositions are on page 1,395.
Deputy Lester Queripel?

1395 **Deputy Lester Queripel:** Sorry, sir. Could I have your permission to ask Deputy St Pier a
question I should have asked in my speech?

The Bailiff: No, because you would be re-opening your speech, Deputy Queripel. You can ask
him after the debate.

1400

Deputy Lester Queripel: Okay, sir. Thank you, sir.

Deputy Fallaize: Sir, may I ask him to answer a question I did ask, (*Laughter*) which is: in
Proposition 2, are we being requested to afford T&R more delegated authority than they currently
1405 have?

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The Bailiff: Deputy St Pier.

1410 **Deputy St Pier:** In relation to the authorities which already exist in relation to supporting
leases of the...without referring to officers to understand what authorities already exist, I cannot
fully understand that; I cannot fully, or accurately, respond to that as it may mislead Deputy
Fallaize and the Assembly.

The Proposition, as I indicated in my closing remarks, I would agree with the Chief Minister's
analysis that it is in relation... it is granting the Department authority to support leasing
arrangements in response to the situation which is currently before us, which formed the basis of
1415 the Report.

The Bailiff: The Propositions are on page 1,395. There are two of them; one has been
amended by amendment C, proposed by Deputy Storey and seconded by Deputy Ogier. Unless
anyone wishes them to be taken separately I would propose that we vote on Proposition 1, as
1420 amended, and Proposition 2, both together.

Deputy Fallaize: Sir, will you take them separately, please?

The Bailiff: You want them separately?

1425 Right, in that case we will vote, first, on Proposition 1, as amended. Those in favour; those against.

Members voted Pour.

1430 **The Bailiff:** I declare it carried.
Proposition 2. Those in favour; those against.

Members voted Pour.

1435 **The Bailiff:** I declare it carried.

Billet d'État XV

1440

POLICY COUNCIL

1445 **Policy for Access to Public Information
States Report
Debate commenced**

Article V.

The States are asked to decide:

1450 *Whether, after consideration of the Report dated 20th May, 2013, of the Policy Council, they are of the opinion:*

1. To agree the guiding principles outlined in that States of Guernsey Policy for Access to Public Information States Report, as follows:

- 1455
- *A presumption of disclosure;*
 - *A corporate approach;*
 - *A culture of openness;*
 - *Proactive publication; and*
 - *Effective record management.*

1460 *2. To agree that the presumption of disclosure will need to be subject to certain stated exceptions in order to protect legal, financial, commercial, competitive and public interests which will be agreed by the States from time to time.*

3. To agree the Code of Practice on Access to Public Information in Appendix Three of that Report which will apply to all States Departments and Committees and which incorporates the guiding principles and describes the exceptions.

1465 *4. To endorse the Policy on the Use of Confidentiality in Contracts and Agreements contained in Appendix Four of that Report.*

1470 **The Greffier:** Billet d'État XV, Article V: Policy Council Report on the States of Guernsey Policy for Access to Public Information.

The Bailiff: The Chief Minister will open the debate.

The Chief Minister (Deputy Harwood): Thank you, sir.

1475 Before opening the debate, can I just draw the attention of Members to a typographical error that has appeared on page 1079 in the Report? The last bullet point under paragraph 2.1... Unfortunately, when this was proofread, the word 'non' should have been picked up before the word 'disclosure'. It should read 'Information whose *non*-disclosure is required for the security, safety and well-being of the Bailiwick.' I am grateful to Deputy Gillson for drawing that to my attention.

1480 Sir, the principles of access to information and open Government are an important part of a modern and mature democracy. Transparency encourages scrutiny; it forces governments to think about what they are doing and how they are doing it; it helps to increase the understanding of the

process of governance of the people that it serves; and, consequently, it maintains and develops greater trust in Government.

1485 For access to information policies to be effective, we acknowledge that freedom of information is not a free-for-all. There are times when there needs to be a particular space for information when it is not in the public interest for it to be disclosed. This includes protecting the necessary candour required during policy development.

1490 When information is released, it requires some context. Without this context, the information can be misinterpreted, which may be misleading to the public. Information management systems need to be developed and maintained to enable the retrieval and publication of information.

1495 Sir, there are many different models of access to information used across the world. Some of the principles are well-established, having been implemented for many years. Whilst the States of Guernsey's current practices in relation to transparency have been influenced by these standards, there is no common policy that can be used to establish an agreed standard, which individual Departments should seek to follow. It is this lack of common standard that the Policy Council is seeking to address with this policy in the code of practice.

1500 The system of governing Guernsey has inherited transparency in its approach to its decision-making. The openness is linked to the operation role of this very Assembly in the exercise of its executive functions.

The public is given access to and is able to comment on Belinda Crowe's Information Strategy Report when that was published. The public have been able to read the Report, that we are debating today, since 21st June 2013 when it was made publicly available.

1505 The public can listen to this debate on this policy right now, both in the Public Gallery and at home on the radio. The public will know the decisions that are made following this debate and, where requested, a detailed voting record is made available. The public are also able to read the words that are uttered in this Assembly when the *Hansard* is published.

1510 All this leads to accountability in how executive decisions in Guernsey are made through this very Assembly. Those decisions are not made behind closed doors in smoke-filled rooms; they are made here in this Chamber, in public, and the debates that lead those decisions are recorded in detail.

1515 Sir, we already publish considerable amounts of information, statistics and policy decisions. The States of Guernsey website has become a tool through which the public can engage with the States, to find or ask for information; it is used for this every day. Civil servants also engage with the public on a daily basis.

1520 Sir, the Report has been developed following Belinda Crowe's Report, which was entitled 'Information Strategy' and published in October 2011. Ms Crowe's Report also followed detailed research undertaken by officials within the Policy Council. Officials attended meetings and presentations from Freedom of Information policy officials at the Ministry of Justice, and also studied regimes abroad, before drafting the proposals which are currently before you.

The proposals are not a replica of the UK regime. They are designed on general principles that were originally adopted in the Isle of Man, even before the United Kingdom created its own Code of Practice, and before the United Kingdom Freedom of Information Act 2000 was drafted.

1525 Based on the experience gleaned from other jurisdictions, the Policy Council agreed, in the first instance, that a non-statutory approach should not be followed, in order to allow a period of time to build a culture of openness through consent, rather than enforcing it as a matter of law.

1530 The Policy Council is clearly cognisant of the fact there were many calls for a Freedom of Information regime in the lead up to the General Election in 2012. The present Policy Council first considered this matter in June 2012, shortly after the election. At that time, Policy Council determined to establish the following five guided principles.

1535 Firstly, a presumption of disclosure, which means that when information in reports is prepared it should be done so on the assumption all the information will be published. It may not be published immediately but it must be recognised that it could be published in the future. A set of detailed guidelines of when information should be protected should also be included in the exceptions to Code of Practice.

1540 These exceptions would include legal, economic, social, environmental reasons to withhold information, but information should not be withheld for a whimsical reason; information should only be withheld by reference to establish and recognise the exemption. There should also be valid and serious reasons why information may not be put in the public domain. If there are no such reasons then information should be made public.

Across the States there are many examples of good practice, but there are also examples of weaker practices, in terms of openness and transparency. There are times that information has been withheld when it should be published; and it could also be said that information has been

1545 published when possibly it should have been withheld. There are times when information has been withheld and with justification, but the public should expect the entire organisation of the States to adopt the same standards when publishing or withholding information. This Code is designed to encourage those uniform standards.

1550 For the whole regime to work, the whole of the organisation needs to embrace the culture of openness. As I said before, information should only be withheld where it can be justified – for proper reasons. With a culture of openness, the publication and explanation of information should become an integral part of the process of government.

1555 The other guiding principle is a recognition of proactive publication; recognising the need for the public to ask for information is best reduced by publishing that information before it is requested. Whilst it is not desirable to swamp the public with information, it is sensible that information, where helpful to the public, should be placed in the public domain automatically. It follows that the Department should be encouraged to produce publications schemes, so the public know what information to expect proactively and when. For example, the Policy and Research Unit of the Policy Council produces a schedule of bulletin publication dates, so it is clear when updated information will be made available.

1560 The last of the guiding principles is effective record management. It must be recognised that in order to publish information, either proactively or reactively, it is necessary to find that information to collate it and prepare for publication quickly and cost effectively. Where this process is slow, it inevitably inhibits transparency; where it may take too long to find and collect information, it is less likely to be published.

1565 Therefore to encourage openness, the availability of information needs to be looked at in a holistic manner and we must recognise that this will include the development of technology to improve the storage, retention and retrieval of information.

1570 Sir, the policy and Code of Practice before this Assembly contain standards of openness that have been developed in other jurisdictions over a period of time, both to expand and, in certain circumstances, to restrict the ability to access information.

1575 All of these changes that have been developed have been made to ensure that regimes protect the public interest and to ensure that the administrative burden of those regimes is proportioned. For example, the United Kingdom adopted a Code of Practice back in the 1990's and shortly followed that with the Freedom of Information Act 2000. The legislation had a long lead time before it was enacted, to allow for implementation. The Freedom of Information Act itself is a culmination of 50 years of development, enabling Government in the United Kingdom to see the introduction of the Public Records Act 1958.

1580 The United States, for example, adopted a Freedom of Information Act in 1966. It should be noted that that Act has been modified by successive US Presidents, most notably since 1995 by Presidents Clinton, Bush and Obama. Modification has included the enhancement of open government standards, but also recognised restrictions in the application of the Freedom of Information Act.

1585 The policy, sir, that is submitted to this Assembly has benefitted from noting the various developments that have occurred in other jurisdictions. The proposed Code of Practice is based on the Code of Practices that have been used previously in the United Kingdom, Isle of Man and Jersey.

1590 I would hope, sir, the Assembly will take some comfort from the fact that the principles are included in the Code of Practice, therefore have been well developed and tested in other jurisdictions.

1595 If I may just briefly address the confidentiality clause policy, which is an appendix to the Code, it must be recognised that confidentiality is commonly used in all sorts of contracts, agreements and negotiations. However, the States must be cognisant that it is using public funds and the need to be accountable for the use of such funds. For this reason, confidentiality must only be used when necessary and justifiable. There must also be practical and manageable oversight of use of conditions of confidentiality by departmental boards.

1600 The proposed Confidentiality Policy seeks to establish this balance of accountability, practicality and the ability to ensure that confidentiality can still be used sensibly. Out of court settlements are increasingly common, as volumes of litigation increase and as litigation gets more complex. It must be recognised that settlements are entered into where it benefits the States and therefore benefits public finances. They may be entered into as a result of litigation instigated by the States, or litigation instigated against the States. Settlements or compromise agreements are frequently used to avoid excessive cost of litigation.

Sir, in the lead-up to this debate there has been considerable interest shown as to whether or not there should be an appeal process and a lack of an appeal process or an independent oversight.

1605 I am conscious of the fact, sir, that Deputy Green has put forward an amendment which, I have to say, the Policy Council is broadly supportive of. The purpose of that amendment would be to report what...would require the Policy Council to prepare a Report for the States to look at options for independent oversight on the Access to Information policy.

1610 In defence, however, of the proposals set out before this Assembly and the reason why perhaps the Policy Council chose not to put forward *ab initio* an oversight arrangement, the Policy Council is cognisant of the fact that in the United Kingdom, complaints under Code of Practice are made to the Department concerned and then to the parliamentary ombudsman. Complaints are made also by MPs. The ombudsman can recommend disclosure but not require it.

1615 In Jersey, for example, complaints under the Code of Practice are, again, to the Department concerned and then to the States of Jersey Complaints Board under its Administrative Decisions Review Law.

In the Isle of Man, complaints under its Code of Practice are to the Department concerned and then to the High Bailiff, magistrate, via a Member of Tynwald. This is similar to the process of appealing administrative decisions.

1620 Guernsey, in the proposals before you, have a similar review to the Department, then to the Policy Council, but it should be noted Guernsey also has a similar Administrative Review Law to that in Jersey, which enables a review panel to review administrative decisions.

1625 I suggest, sir, that the proposals before you are aligned to the standards that have been adopted in other jurisdictions, but we accept the... as I said, the Policy Council will accept the suggestion by Deputy Green that we should report back, perhaps, on further oversight processes.

1630 Sir, the Policy Council has looked in detail as to how... and we accept that it will be feasible to report back to the States in July 2014. However, in order to assess the demand, it should be noted that in the last available report from the Isle of Man, only one complaint was referred to the Isle of Man High Bailiff for 12 months. It is also important to ensure that any independent oversight is proportionate.

I would say, sir – and I have also discussed this with Deputy Green – a report in July 2013, whilst workable, may not be able to take in to account a full year's data.

1635 Sir, turning to the amendments which will be proposed by Deputy Gillson, again the Policy Council has no reason to object to, or to oppose, those amendments – the one, or the two... Firstly, his second amendment was to report back on effectiveness in the first quarter of 2015.

1640 That leads on to the amendment, which is proposed in the names of myself and Deputy Dorey, because in order to report back, in order to monitor, we need to put in place an effective process and the suggestion is that we need a period of time, probably from 31st March, in order to: encourage all States Departments to establish the process whereby we can monitor effectively the request for information; obviously the complaints against failure, to address those requests; and the circumstances that have lead up to the non-disclosure in response to that request.

There is a process which would have to be put in place. It will, unfortunately, I think involve an element of bureaucracy; that is something the Policy Council is anxious to discuss further with the individual Departments – as to how we can best deal with that.

1645 I would ask, in recognising Deputy Gillson's amendment to report back on the effectiveness... as a consequence of that, I would urge States Members also to take note of the amendment – the amendment that is in my name and Deputy Dorey's – to recognise that we will have to set in place a process to enable monitoring to be effective.

1650 Sir, the Policy Council is happy to undertake and report back on the effect of the 30-year rule. It has, I understand, already been considered in the past. I would, however, also make the point that, having discussed this with the States archivists, there will be an element of bureaucracy in implementing such a 30-year rule.

1655 Sir, I am also conscious of the fact that in prior discussions, before this debate, the Chairman of the Scrutiny Committee raised certain issues as to whether or not the Code would prohibit scrutiny, or inhibit scrutiny. I would suggest that it will not inhibit the ability for the Scrutiny Committee to undertake reviews of performance of States Departments against their mandates. The Public Accounts Committee and Scrutiny, we would suggest, should embrace the policy and any guidelines to the submitting evidence. These could expressly state that no Department should withhold information from the Scrutiny Committee, which should otherwise be available under the Code of Practice.

1660 I would also make the point that the policy that is before you is to deal with the request and the inter-relationship between the States of Guernsey and the public; it is not intended to inhibit the relationship between Departments and parliamentary Committees themselves. We must recognise that the policy needs to apply to the whole organisation and that it should not be accepted that one
1665 Committee could undermine public interest in the States of Guernsey.

Sir, I would also add that, in reply to questions, which again is an issue that has been raised, the Code of Practice may be used in relation to the application, sir, of, overall, seven of the rules of procedure.

1670 Sir, the States has clearly, for a number of years, wanted an Access to Public Information Policy. The Policy Council is happy to lay the draft policy before the States, together also with the appendix which deals with the principles that should apply to confidentiality clauses and I welcome the support for this, as for the proposals as amended... it will be amended by Deputies Green and Gillson.

1675 Thank you, sir.

The Bailiff: I will just pause for a moment while those Members who are standing at the back resume their seats.

1680 The Chief Minister has already referred to three amendments and I propose that we take the amendment proposed by himself and seconded by Deputy Dorey, first and then the Deputy Gillson–Deputy Green amendment, followed by the Deputy Green–Deputy Bebb amendment.

I understand there may also be an amendment proposed by Deputy Hadley and seconded by Deputy Green, but that may not yet be in its final form and I envisage that will probably be circulated at lunchtime. Is that correct, Deputy Hadley?

1685 **Deputy Hadley:** A very minor amendment, sir. I have been asked to alter the three months to six months.

1690 **The Bailiff:** Right, well, if that could be circulated then at lunchtime. I do not think we will get to that before 12.30pm.

So, we will take next the amendment, which I hope has been circulated, proposed by Deputy Harwood and seconded by Deputy Dorey.
Chief Minister.

1695 **The Chief Minister:** Thank you, sir.
If I could just read it just for the sake of the record:

To add a new Proposition 5 as follows:

1700 *“5. To direct the Policy Council to implement, no later than 31st March 2014, a consistent mechanism which Department and Committees can use to record and collate data on the number and category of requests made under the Code of Practice, including when exemptions are applied, and to direct Departments and Committees to implement the policy so that data collection can commence from 31st March 2014.”*

1705 By way of explanation: this amendment would afford the Policy Council an opportunity to establish a corporate reporting mechanism to enable full analysis of the effectiveness and the operation of the Code of Practice on Access to Public Information. It will also ensure that all practices, in respect of compliance with the Code, are in place and that systems to ensure that statutory obligations, such as under the Data Protection (Bailiwick of Guernsey), Law 2001 (as amended) can be implemented. The amendment will mean the Code of Practice and the monitoring of the Code of Practice can be fully implemented from 31st March 2014 but this does prevent Departments and Committees from following the principles in the policy in advance of this date.

Thank you, sir.

1715 **The Bailiff:** Deputy Dorey, do you formally second?

Deputy Dorey: Yes, I formally second and reserve my right to speak. Yes, sir.

1720 **The Bailiff:** Does anyone wish to speak?
Yes, Alderney Representative Arditti.

Alderney Representative Arditti: Sir, thank you.

1725 If I may, I will speak in general debate now. I will make *my* comments and comments on behalf of Scrutiny Committee in relation to all amendments and –

The Bailiff: You cannot really speak on behalf of an amendment that has not yet been laid.

Alderney Representative Arditti: My comments will be of general application, sir, and I do not aim to speak again on the subject of this Report.

1730 Sir, the Scrutiny Committee has considered the Report and it has, as the Chief Minister said, corresponded with the Policy Council. It is the view of the Committee that this is not a good Report. It is indeed the view of the Committee that it has not been thought through. Just one example, which I may return to: the Chief Minister's reference to confidentiality clauses in the aftermath of litigation. We have found often over the past few years that most confidentiality
1735 clauses were not to protect the other party to the litigation; they were almost certainly intended to enable the States, or more particularly the Department, to have a prop which would enable it to avoid transparency.

The view of the Scrutiny Committee – and I speak early, sir, because we felt that the Assembly would want to hear the view of its Scrutiny Committee and its deliberations...

1740 Guidance; other jurisdictions – what guidance the Departments have between themselves, what guidance they create in order to achieve uniformity of policy between themselves, in many respects, is a matter for them. Why would we wish to be interested in what their policy is? They will be judged, or at least they *should* be judged, in the court of public opinion. Surely, this is quite simple. If there is something which they feel should not be disclosed in the public interest, then they must tell us why; and if it is a good reason, they will receive the endorsement necessary in the
1745 court of public opinion. If it is a bad reason, they will be condemned in the court of public opinion.

Rules, guidances – what difference do they make? If the reason is a bad one and in a few months' time they hold up some guidance that they are relying on, that is not going to save us. If they cannot give a good reason, the court of public opinion will say so, regardless of any guidance or rules. This Report has clearly been drafted not with a view to enhancing transparency; it has
1750 been drafted with a whole series of exceptions to transparency. How can you draft the exceptions to cover something that has not happened yet?

Each individual dispute about transparency is unique, depending on its own particular facts. I go back to the simple example of a confidentiality agreement, in order to settle little proceedings; thoroughly good, much to be commended provided it is protecting the third party. If it is actually
1755 protecting the States, they had better have a good reason, irrespective of any guidance they may produce.

It is curious, because the Report claims credit for answering Belinda Crowe's questions; it says, it refers to Belinda Crowe's Report and the questions – the 22 questions that she said needed to be answered in order to arrive at good guidance – well, as far as we can see, 19 of them have
1760 been ignored. That is all to come later.

Now, I do not want to sound too negative, (*Laughter*) there is some good news. The first bit of good news is that they have not slavishly gone down the line of Freedom of Information legislation. They have clearly said to themselves, this needs to be Guernsey-fied; we need something Guernsey-specific; and the Scrutiny Committee wholly endorses that. Any policy for
1765 access to public information has to be proportionate and specific to Guernsey. A solution tailored to Guernsey is required and that is what they tried to do.

But I go back to the Scrutiny Committee's basic comment: this has not been thought through. The issues – actually the very few issues – have not been thought through, and the result is you get this plethora of exemptions, which are a flawed attempt to deal with a situation that has not arisen yet.
1770

Could I remind the Assembly that we have Freedom of Information now? In March 2011, this Assembly passed, approved and resolved the six principles of good governance which, unequivocally, provide us and the public with transparency and accountability. That is what the new Scrutiny Committee is all about; we begin and end on the two topics of transparency and
1775 accountability. We are there; and if there is not to be transparency, there better be a good reason; and if there is a good reason, the Scrutiny Committee will support it, as would the Assembly.

So, please, when you consider and debate these amendments, and ultimately the Report itself, please do not think that it is this or nothing. We have transparency and the recommendation of the Scrutiny Committee is that you reject this Report, ultimately. Debate is a very good thing, it will
1780 inform the Policy Council, but our recommendation is that you reject this Report. You will be no worse off by doing so. Arguably... well, indeed not arguably, you will certainly be better off by rejecting it and asking the Policy Committee to think more deeply about the issues.

Now, I referred to the fact that we have corresponded with Policy Council and there is again, some positive news to report. They replied! (*Laughter*) That was unkind. (*Laughter*)
1785

They did reply, but the reply was curious in that there were two entirely conflicting paragraphs. On the subject of the Scrutiny Committee and the fact that we feel sure that you do not wish your Scrutiny Committee to be corralled in any way by this guidance, we got two answers.

1790 In one paragraph, they said the Code cannot be applied selectively, but in the following paragraph they said it will not apply between Departments and Committees and Members of the States of Deliberation. So, clearly some work to be done there; they have got to resolve the inconsistency between those two paragraphs, and that is only an example. I would be on my feet, I suspect, for far longer than you could endure if I was going to give all the examples.

1795 The other positive aspect of the reply was that they...this ultimately presented itself in the form of the amendment: the Chief Minister–Deputy Dorey amendment. Could I invite you just to turn to that, if you have it to hand? It is the explanatory note that I just wanted to ask you to focus on.

‘The amendment will mean that the Code of Practice can be fully implemented from 31 March 2014 but will not prevent Departments and Committees from following the principles in the policy in advance of this date.’

1800 So, they are asking us to approve something which they themselves... will be half-baked at least until March 2014. They are saying, in this amendment, ‘we have got further work to do’. ‘Yes, you have’, says the Scrutiny Committee, ‘You have got further work to do’. Why would they not, as invited, pull this Report, do the further work and then come back with the thing that they actually believe in.

1805 I am not the first person this morning, or indeed yesterday, to have said that about a Report from the Policy Committee... Council, I am so sorry, Policy Council. The Policy Committee is on the brink. (*Laughter*) A Freudian slip.

1810 Why will they not pull this, give it further thought, address the real thinking that needs to be done in order to grapple with the difficult issues and then come back to the Assembly?

1815 Personally – this is a personal comment – I wish they would come back to the Assembly with something very, very small indeed. We have transparency, whatever they come back with is going to contain or restrict transparency. It follows that I would personally hope that what they come back with is very short; grappling with the big issues, like where does the public interest lie in confidentiality and where does it not lie?

1820 I think the only other thing that I really need to say is please... an amendment – and these are all worthy amendments in my view – an amendment implies that the thing that you are amending will be good, if and when your amendment has been accepted. I see no problem... the Scrutiny Committee sees no problem in these amendments being passed, but having passed them or not passed them, there is a very real question: is it good to then approve this guidance in whatever may then be its amended form? The Scrutiny Committee recommends, no. There is a lot more thinking to be done than these amendments will cure.

Thank you, sir.

1825 **The Bailiff:** Deputy Fallaize.

Deputy Fallaize: Thank you, sir.

1830 Just speaking on this amendment, always I have disliked explanatory notes on amendments because normally it is perfectly obvious what the amendment says and then underneath there is an explanatory note telling you what it says. But, on this occasion, the explanatory note sort of does the reverse of that because the last sentence of the explanatory note seems to me to imply something which is bordering on misleading and I really do not understand why the proposer and seconder of the amendment have gone to the trouble of trying to raise all sorts of fears about their amendment by the inclusion of this last sentence.

1835 I mean, the thing the amendment is dealing with is the recording of requests for information under the Code of Practice. It is basically an administrative exercise so that, presumably at some future date, someone – and it is going to be the Policy Council since the Policy Council absorbs all the things that do not fit anywhere else these days – is going to collate how many requests there have been and how many times there have been positive responses and how many times exemptions have been invoked. And so, I suppose in a year or two years’ time we can turn around and say well there has only been six occasions where exemptions have been invoked right across the States, but that is purely an administrative exercise. The last sentence of the explanatory note reads:

1845 ‘The amendment will mean that the Code of Practice can be fully implemented from 31 March 2014 but will not prevent Departments and Committees from following the principles in the policy in advance of this date.’

As if the amendment means something quite material to the implementation of the Code between now and 31st March 2014. Actually, it means nothing... the Code of Practice can be fully implemented in advance of March 2014, with or without this amendment. This is purely an

1850 amendment to do with recording requests made, or exemptions invoked, pursuant to the Access to Information Policy.

1855 So, following on from that, I wonder whether the proposer and the seconder of the amendment believe that I have misinterpreted the amendment, or whether the amendment actually does something different than I have just suggested. Because the explanatory note seems to me to indicate that it goes much further than the words in the actual amendment indicate. I would appreciate some clarification on that point, sir, when Deputy Harwood replies to this amendment.

The Bailiff: Does anyone else wish to speak on the amendment?

1860 No. Well, then Deputy Harwood do you wish to reply? Then we can probably vote on the amendment I would think, before we recess for lunch.

The Chief Minister: Thank you, sir.

1865 Deputy Fallaize, thank you for raising that point. The purpose of the amendment is to recognise that we do need to put in place a monitoring process that will actually establish the extent to which Departments are dealing with requests for public information, or requests, from the public, for information.

1870 That is the sole reason why, for the purpose of the amendment, we recognise that we will not have the mechanism in place to be able to start that process until March of next year. It is not intended to delay the implementation of the guidance once it has been approved by this Assembly. Obviously, then it immediately takes effect. It is the ability to monitor the impact of the guidance that is the aspect where work still needs to be done.

1875 With respect to Alderney Representative Arditti, I would say that until we have this debate we will not be in the position to know the extent of the monitoring – the extent of the process that we have to put in place. It is as a result of this debate that we can then take that further action to establish the correct processes for monitoring.

1880 Sir, I would ask the States to support this amendment, recognising that, also this then really links in with the amendments that this Assembly will be asked to consider – particularly the amendment proposed by Deputy Gillson... so I would ask the States Members to support this amendment, on the basis of that information.

Thank you, sir.

The Bailiff: We come then to the vote on the amendment proposed by Deputy Harwood, seconded by Deputy Dorey. Those in favour; those against.

1885 *Members voted Pour.*

The Bailiff: I declare it carried.
We will rise and resume at 2.30 p.m.

1890 *The Assembly adjourned at 12.29 p.m.
and resumed at 2.30 p.m.*

1895 **Policy for Access to Public Information**
Debate continued
Propositions as amended carried

1900 **The Greffier:** Billet d'État XV, Article V, continuation of debate on the States of Guernsey Policy for Access to Public Information.

1905 **The Bailiff:** So, we will move onto the next amendment, which is the one proposed by Deputy Gillson and seconded by Deputy Green.
Deputy Gillson.

Deputy Gillson: Thank you, sir.

1910 Firstly, I would like to thank Deputy Green for agreeing to second the amendment and, secondly, to thank the Chief Minister and Policy Council for confirming support, or at least non-objection, to the amendment.

I will be fairly brief because I think these are quite straightforward propositions.

Proposition 1 relates to section 1.6 of the Code of Practice. The wording, as it currently is in the Report, will exclude the accessibility of existing documents from the presumptions published. The precise wording of the Code is:

1915 ‘There is no commitment that pre-existing documents, as distinct from information, will be made available in response to reasonable requests.’

1920 That seems to me quite wrong because if we are, as a Government, truly serious about being open, we should have a willingness to allow documents to be accessible, as well as information. But this amendment does not immediately make documents accessible. All this part of the amendment does is remove the exclusion, so that there is a presumption to publish, but it is not an instruction that they will be published; they will have to have a valid request and the request will be tested against part 2 of the Code of Conduct. So it is removing the restriction.

1925 Part 2 is a matter of good governance and good government; it is about reviewing what we do to ensure it is appropriate. I accept that there are circumstances when it is not appropriate for information to be made public and that some of these are detailed in part 2 of the Code, but, since the Code is new, we do not know how effective it will be; we do not know if part 2 strikes the right balance. The Report itself says it is a living document that will need to change over time, but the Report is silent about what mechanism there will be for the evolution.

1930 This part of the amendment will instruct Policy Council to report back to the States with an evaluation of the effectiveness of the Code, so that the States can determine whether it needs to be revised. In that way, the amendment is completely in line with the spirit of the Report.

1935 It is good that we should have better practice – all new services should be regularly reviewed. A key part of the amendment is that it will instruct Policy Council to provide details of requests for information which have been refused. It is not going to ask for the information itself, nor for details of the person making the request; only details of the request, the reason why the request was rejected, as well as the part of the Code used to support the rejection.

1940 A concern that we should have, is that part 2 of the Code is too restrictive. That it allows information to be withheld when it could and should be made public. With the information on the number of rejections, and the areas of the Code used to support the rejections, the Assembly will be able to evaluate just how specific parts of the Code have been used and whether they need to be amended or not. There may not be many rejections, but we may find one part of the Code is used a lot and that may raise questions as to whether it is appropriate to change that part of the Code; it might need changing, it might not. All this amendment does is... it will give us the information to be able to make that decision in an evidence-based way.

1945 The timing of the Report is very deliberate: first quarter, 2015. It is not a restrictive timescale; it gives a three-month window to produce the report and the choice of Q1/2015 is itself deliberate. Even allowing for the lead-in time to write a report, it means there will be pretty much a whole year of evidence to be able to base the report on. So, I think that is a reasonable thing to do... to expect a report back and let's evaluate what we are doing, especially on something as new as this Code.

1950 Part 3 will instruct the Policy Council to revert to the Assembly with an evaluation or possible recommendations, relating to expanding the Code of Practice to include rules along the lines of the UK 30-year rule. Just to remind Members, that is a rule used not only in the UK but other countries such as Israel and Australia, where documents are automatically made public after a set period of time.

1960 This amendment is not making that happen; all it is doing is saying let us have a look at the rule, let us have an evaluation and see if that sort of rule is suitable to Guernsey. Again, I think if we are serious about being open, that is, I can argue, a starting position. I think it is a good rule, but I am open to being convinced otherwise; hence why this is not a prescriptive amendment, it is just saying let us have the facts to be able to make an evaluation.

So, sir, that is really it. I ask Members to support this and I thank Policy Council again for not opposing this amendment.

1965 Thank you.

Amendment:

1970 1. To insert at the end of the words in Proposition 3: “, but subject to removing the sentence “There is no commitment that pre-existing documents, as distinct from information, will be made available in response to reasonable requests.” from section 1.6 of that Code”.

2. To insert a new Proposition 5 as follows:

1975 “5. To direct the Policy Council to report back to the States during quarter 1 of 2015 with a report evaluating the effectiveness of the Code of Practice and recommending any changes it considers appropriate; that report to include details of all information requests which have been refused, providing the reason for the refusal, and under which part of the Code the refusal was made.”

1980 3. To insert a new Proposition 6 as follows:
“6. To direct the Policy Council to report back to the States during quarter 1 of 2015 with a report evaluating the feasibility and implications of expanding the Code of Practice to include automatic disclosure rules similar to the UK “30 year Rule”.”

1985 **The Bailiff:** Just on a very minor point: as a result of the successful amendment just before lunch, we now have a Proposition 5, so part 2 needs to be amended to insert a new Proposition 6 and part 3 to insert a new Proposition 7. As I say, it is a very minor point.

Deputy Green, do you formally second the amendment?

Deputy Green: I do indeed, sir, yes, and I reserve the right to speak later.

1990 **The Bailiff:** Thank you.
Deputy Luxon.

1995 **Deputy Luxon:** Thank you, sir.
As a younger, ex-grammar boy, I would like to congratulate an older ex-grammar boy Deputy Gillson – he does not actually believe that is true but I am sure it is – on three very practical, sensible, reasonable... in fact, I am not sure why he did not actually go a bit further and ask us to do it quicker, but I support all three Propositions. They make a lot of sense and they add to the Report that we have placed and thank you very much for the explanatory note, which I actually think is very helpful to Members.

2000 Thank you, sir.

The Bailiff: Deputy St Pier.

2005 **Deputy St Pier:** Sir, I cannot support the amendment. It comes in three parts. The first part I have no particular objection to, it is harmless enough. Inclusion of this wording in the Report was obviously intended to make clear that documents – such as contemporaneous notes and so on – that may have been drafted without an expectation that they may one day be published. But clearly, where documents were prepared, that are information, then they would be covered by the Code. But, nonetheless, I do not have a particular objection to part 1 and neither to part 2.

2010 For me, it is part 3. Again, a harmless amendment, in the sense that all it is asking Policy Council to do is to go away and report back, but for me it is that, in essence, we know what the report will say. It will talk about the feasibility of having the 30-year rule and the implications of doing so. It is likely to say that a 30-year rule is feasible in Guernsey and the implications of doing so are that it would be quite expensive to do so.

2015 Deputy Le Lièvre talked yesterday about lean government. I think that a 30-year rule is a big Government luxury. If we are serious about talking about having a slimmed down Government, I do not see that really we can afford the luxury of this. The cost to establish the process and the infrastructure to allow a review and release all the archives will have resource implications and, quite frankly, I do not see the point in sending the staff away to go and prepare a Report.

2020 So with or without prioritisation under the Government Services Plan, I would not be in favour of this and I do not think we should give it oxygen, knowing that it is likely to be snuffed out later. So, if this amendment were in three parts, I would support the first two and oppose the third, I do not have that option so, unfortunately I will be opposing the entire amendment.

2025 Thank you, sir.

The Bailiff: Madam Comptroller I think this is in three parts, is it not? We could take separate votes on parts 1, 2 and 3, could we not?

2030 **The Comptroller:** Sir, yes, I agree. It is structured in 1, 2 and 3 with three separate propositions listed, albeit within the same amendment.

The Bailiff: Yes, so we could vote separately on the three parts. Thank you.

Does anyone else wish to speak on the amendment? Yes, Deputy Le Tocq.

2035 **Deputy Le Tocq:** Sir, I was just going to point out that, if the amendment was carried, in any case the propositions could be taken separately in due course; so they could be voted on in that way.

2040 I certainly support it and, notwithstanding the comments of the Treasury Minister, which I accept, there is a cost. He has raised the issue, which I think is a real issue for us and for the Island as a whole, in that: where is the balance between wanting more information and the cost of doing that, which can be counter-productive...? Perhaps the reason we want the information is we believe that actually things were not done very cost-effectively. So, it could actually implode upon us and certainly the way in which such information systems have developed in the UK has meant that, actually, not only do they cost a lot to administrate, they are still producing a similar amount of frustration to people who want to get information.

2045 Notwithstanding that, the concept of having something like a 30-year rule is something that I think I have mentioned even in recent history as something that seems to me to be sensible, because it seems there will be likely some information that, as time moves on, becomes less of a confidential nature and so can be released in that way.

2050 So, I am supportive of an investigation to see whether such a system could be produced that would be cost-effective for us.

The Bailiff: Deputy Green.

2055 **Deputy Green:** Sir, Members, very briefly I second and support Deputy Gillson's amendment. I would suggest that this amendment is really a good housekeeping amendment, particularly points one and two. The issue of pre-existing documentation, to my mind, really ought to be subject to the same general presumption of disclosure as any other documentation. In any event, it would also be subject to the extensive exemptions that are set out in part two of this Code in any event.

2060 The main Report on this does not tackle the issue as to why pre-existing documentation is being treated differently and, really, in the absence of any particular justification, I would have thought that such documents ought to be treated like any other information. Where is the cogent explanation as to why those documents should be treated any differently?

2065 With regard to the second point... the second parts of the amendment ask the Policy Council to evaluate the effectiveness of the Code after it has operated in practice for a certain amount of time and, in particular, it would allow this Assembly to assess whether or not the exemptions, set out in part two of the Code, are either, on the one hand, broadly acceptable or, on the other hand, perhaps too restrictive to actually achieve the overarching objectives of this policy letter.

2070 So, I think part 2 is a very practical... very much a good housekeeping measure and, as Deputy Gillson has himself said, it is an ideal way to assist the overall evolution and development of this Code of Practice, as it gathers pace and that is clearly something that is envisaged in this policy letter as well.

2075 With regards to the third part, I would suggest that that is perhaps slightly more controversial, but of course the amendment is only asking the Policy Council to go away and to consider a 30-year rule. I actually think that is a very pro-active rule; I think it is worthy of further consideration. It would potentially fit in with the overarching philosophy which underpins this proposed regime and, frankly, I do not think the sky would fall in if we send the Policy Council away to think about whether there are merits or demerits to having a 30-year rule.

2080 So, the analysis may or may not suggest that this is a good idea for Guernsey, nobody is pre-judging anything and I think I agree with Deputy Le Tocq when he says... I actually have quite some sympathy with this idea, we can operate in such a way to make it appropriate to Guernsey and the sky is not going to fall in because of this amendment's third point.

So, I will be supporting this amendment and I would urge all Members to do likewise.

2085 **The Bailiff:** Anyone else? Yes, Deputy Langlois.

Deputy Langlois: Thank you, sir.

2090 Sir, now it has been established that this, effectively, can be taken into three parts, can I suggest a third variation on the theme here? Because I can understand Deputy St Pier's acceptance of the first one and I think the second one – to quote the seconder – is a piece of housekeeping which I can accept, it is not an extensive piece of work.

I was a little bit disturbed in an unofficial briefing I received when I asked questions about the 30-year rule because – and I am nowhere near an expert on this; I am just quoting some

2095 information that I have been given about the way this operates in the UK – apparently the amount
of work involved in archive review – and the wonderful word ‘readapting’ comes into it again,
which always fascinates me because I am never quite sure who has got a black enough pen to
black out the thing against all threats and so on but – no, every single document that has to be gone
through and picked to pieces to see whether there is anything that is not in the public interest and
so on... so, it really is quite a big resource commitment.

2100 What I am going to suggest to colleagues, sir, is that we accept the first two and reject the third
one, on the grounds that, when the review is done and we know a bit more about this Freedom of
Information stuff in 2015, at that point if it is worth looking at further we will be starting from a
better base.

2105 So, I would urge everybody to accept the first and second points and not the third one.

The Bailiff: Deputy Kuttelwascher.

Deputy Kuttelwascher: Thank you, sir.

2110 I too have an issue with the third item. One has to ask oneself what use, or what interest, or
what in the public interest, could there be in something that is 30 years old. It is something that
Alderney Representative Arditti said: we have to define what is in the public interest because that
may clash with what may be of interest to the public, which is a completely different thing.

2115 I think that the bureaucracy that would be involved with this is just not worth it and the
likelihood of finding anything that is 30 years old that is in the public interest is almost non-
existent. It is the sort of thing that people do when they are researching the past – historians and so
on – and I just find that it is completely superfluous really when you are talking about public
interest, as opposed to something of interest to the public.

So, I will oppose three but I am happy to support one and two.

2120 **The Bailiff:** Deputy Brehaut.

Deputy Brehaut: Thank you, Mr Bailiff.

2125 For the very reasons that Deputy Kuttelwascher has put forward, I suggest that we support it.
(*Laughter*)

2130 When we had a presentation at Beau Séjour – it was not by Belinda Crowe, it was from a
member of staff who is responsible for the Freedom of Information in the UK – she gave a very
graphic demonstration of how the parliamentary system over there generates more and more
aggressive Freedom of Information requests, because you have the Government and you have the
opposition, and the opposition are constantly trying to embarrass the Government. So, they put in
lots of Freedom of Information requests; they get them, it is not what they want so they go back
again and they keep going back.

2135 It sounds good says Deputy Fallaize, yes, (*Laughter*) but they are dealing with issues such as
abdication, Suez Canal, Iraq, Iran, Northern Island, GCHQ. The representative from the FOI – or
whatever organisation it was – said, for example, red-top newspapers were trying to get the Moors
Murderer tapes – the interview tapes – released. That was a long legal battle and they have resisted
doing that, but there are very many aggressive complaints for release of information from red-top
newspapers and from opposition parties.

2140 What interested me, actually, is that she did make a point of saying that occasionally
opposition parties ask for information; they get it and then they find themselves in power and they
do not want it released because they do not want to be embarrassed by it either.

2145 But this is Guernsey. Thirty years... There may be, and I am not being patronising, there will
be a significant event that informs history, but there probably will not be that many. If PERRC
does go awry, 30 years later, somebody may want to uncover that but I think the very nature of a
small island community makes this legislation simply less onerous than it is in other places, so I
will be supporting the amendment.

Thank you.

The Bailiff: Anyone else? No.

2150 Chief Minister then, you can exercise your right to speak immediately before Deputy Gillson.

The Chief Minister (Deputy Harwood): I am happy to do so, sir.

For the sake of Deputy Gillson, I will be supporting all three elements of the Proposition. I
understand and sympathise with the comments made by Deputy St Pier. There will undoubtedly,
as I mentioned I think in my opening, be bureaucratic issues, but there is no reason why we should

2155 not report back to this Assembly with the outcome of a review; therefore, I am happy to support all three of the amendments. It is a matter for individual Ministers whether or not they wish to support or not.

Thank you, sir.

2160 **The Bailiff:** Thank you.
Deputy Gillson.

Deputy Gillson: Thank you, sir.

2165 I would firstly like to thank Deputies Brehaut, Green, Le Tocq and Luxon for supporting this... and the Chief Minister.

2170 The contentious point is point 3, which has been raised by Deputies St Pier, Langlois and Kuttelwascher. I wrote down 'openness and evidence-based decisions'. The 30-year rule is a very major... before Freedom of Information, it was a major plank in openness in the UK and this Report is totally silent about it; it should not be. If it is not workable it should have been in here; it should have been considered.

2175 What seems to have happened is, it is either not being considered, in which case a staff level person decided it was not worth looking at so the decision has been made behind closed doors not to consider it, or it has been considered, in which case all the work has already been done in reviewing this.

2175 Either way: if the work has been done there is no great work in putting it into a report; if it has not been done, then it should have been. So, I think either way there is justification to support all three parts of the amendment and I hope people do.

Thank you, sir.

2180 **The Bailiff:** Thank you. Well, let us vote on the three parts of the amendment separately. On part 1: those in favour; those against.

Members voted Pour.

2185 **The Bailiff:** I declare it carried.
Part 2: those in favour; those against.

Members voted Pour.

2190 **The Bailiff:** I declare it carried.
Part 3: those in favour; those against.

Some Members voted Pour, others voted Contre.

2195 **The Bailiff:** In my view that is carried as well.
So, we move on then to the third amendment, which is proposed by Deputy Green and seconded by Deputy Bebb.
Deputy Green.

2200 **Deputy Green:** Sir, Members of the Assembly.
If I can refer first of all to the wording of the amendment, the wording is as follows:

2205 *To insert immediately after 'exceptions' at the end of Proposition 3: 'but to direct that, in relation to Part 1, paragraph 1.11 of the Code, by no later than July 2014, the Policy Council shall report to the States of Deliberation setting out their assessment of the feasibility, desirability and potential cost of providing a right of appeal to an independent person or persons in respect of a request made for access to information which is refused by a States Department or Committee'.*

2210 And there is an explanatory note which I will not read verbatim.

Sir, Members, I would like to start by thanking Deputy Bebb for seconding this amendment and also for the indication that Deputy Harwood gave this morning when he passed... briefly touched upon this amendment.

2215 The Code of Practice which is set out in the Billet, in my view, is a clear step in the right direction towards a greater culture of openness. But, in my view, there is one problem in the Code that is very clear and that is the way in which complaints will be handled under that Code of Practice.

2220 Interestingly, the Policy Council's Report itself does not seem to touch upon the proposed procedure of how the investigation of complaints will be handled under this new regime, but in the Code of Practice itself the relevant paragraph is 1.11, at page 1079 of the Billet. If I can just crave Members' indulgence for a moment I would like to read that verbatim:

2225 'Complaints that information which should have been provided under the Code has not been provided, should be made in writing to the Chief Officer of the Department or Principal Officer of the Committee concerned. If the applicant remains dissatisfied, the complaint may then be referred to that Department's Board. The Department may refer any matter to the Policy Council for consideration where appropriate.'

2230 Now, I consider that complaints procedure to be insufficient. Operating a system of appeal that is entirely in-house or internal within the States of Guernsey is, in my view, unlikely to inspire public confidence in this new Code of Practice on Access to Public Information. Indeed, I would actually contend it will run the risk of undermining the regime from day one and I would suggest further that to any objective bystanders, such a complaints procedure, as envisaged in paragraph 1.11, may well be tainted by at least an appearance of unfairness.

2235 This amendment, sir, is in my view a constructive and reasonable solution to that problem that I have just identified – the lack of any external scrutiny. Moreover, for people in our community to have confidence in this Code of Practice, there should, in my view, be some form of independent oversight or external supervision of requests for information that are, in fact, refused. To me that would be an entirely sensible approach.

2240 The amendment that I am moving this afternoon is not a prescriptive one. It would, if carried, simply direct the Policy Council to assess the feasibility, desirability and potential cost of establishing an appeal to an independent person or persons and to report back to this Assembly no later than July 2014.

2245 I consider that time frame itself to be relatively generous to the Policy Council; some Members may feel that it is perhaps relatively tight, but I would say it is actually fairly generous, bearing in mind that we are talking about a matter of principle.

2250 As I have said already, I am not seeking to tell the Policy Council, in any way, how an independent system of appeal could work. I will touch upon that issue just in passing, if I may, sir. I happen to believe that a system could be devised inexpensively and without excess bureaucracy in the good old-fashioned Guernsey way, possibly by using a panel of three lay people or possibly by using a Jurat sitting alone. In any event, the actual nuts and bolts of how an independent panel of appeal would work is not for today.

2255 I think that the Policy Council was entirely correct to come to this Assembly with the draft Code of Practice that we have before us, rather than seeking to legislate straight off with a Freedom of Information law. The non-statutory approach, which is enshrined in this Code, is clearly, in my view, the right pragmatic first step for this jurisdiction.

2260 We know this approach was adopted in the UK, prior to the implementation of the Freedom of Information Act in 2005, and the same non-statutory Code of Practice approach has been adopted in both Jersey and the Isle of Man. I want to talk about those other three regimes for a few moments.

Firstly, the UK's Code of Practice, which I believe operated up until 2005, left the investigation of complaints to the Parliamentary Ombudsmen, but of course that body was independent because it was separate and distinct from Government.

2265 Secondly, the States of Jersey adopted a similar Code of Practice in 1999 which had an appeal procedure, which was to the President of the Department or Committee concerned as the arbiter of the decisions. But, interestingly, if an agreed person was refused disclosure by that body, as an initial right of appeal, they could appeal further to the Jersey Complaints Board. The people who sit on that Complaints Board in Jersey may be appointed by the States but are in fact completely independent of Government; they are not States Members, they are not civil servants, they give their services on a voluntary basis. So, that is the situation in Jersey.

2270 Thirdly, if I can just touch upon the Isle of Man. The Isle of Man has had a Code of Practice on Access to Government Information, first agreed in 1996. That jurisdiction established a first point of appeal to the Government Department concerned; however, note this, following that, complaints can be made to somebody called the Commissioner, which is the head stipendiary magistrate, and it goes without saying that he or she, as a judge, is independent of Government.

2275

So, I would contend that the golden thread, which in fact merges from the now defunct UK Code of Practice but also from the systems currently in operation in Jersey and in the Isle of Man, is that there is some generally independent oversight present in all three regimes.

2280 Given the policy letter that we have before us, that puts Guernsey potentially at odds with our friends and colleagues in Jersey and the Isle of Man and it begs the simple question, why? Why should Guernsey individuals, who are told that their information requests cannot be met, rely only on a non-independent in-house arbiter?

2285 The Policy Council has said, at some stage certainly, that an agreed individual could use the Administrative Decisions (Review) Guernsey Law 1986 to challenge any refusal, but in my view that is not a real or practical solution either. Bearing in mind that neither the Report or the draft Code that we have in front of us refer to that potential avenue, I would suggest that suggestion, I am not sure when it was first mentioned but I would consider that it was something of a *post hoc* rationalisation. But in any event the panel of Members, which considers matters under the 1986 law – I believe it is Deputy Perrot who is the current Chairman of that body – is drawn in part 2290 from Members of the States of Deliberation. So that panel is not wholly independent; it is not a wholly independent body either. It is probably fair to say that the panel of Members that is constituted under the 1986 law... it was never constructed with this kind of Access to Information regime in mind.

2295 The other thing is the Policy Council may well say that it has always been envisaged that some form of independent appeal system may emerge at some unspecified point in the future, but I would suggest, rather than any further delay, we should perhaps stop dragging our feet on this issue and make some progress today.

2300 So, this is, therefore, an amendment that really, I think, is fairly sensible. It is asking the Policy Council to come back to this Assembly with a report on their assessment of having some independent body for handling complaints. I – and I am sure I am not alone in this with other Members too – I want this Code of Practice to work well and I want it to help mould a better culture of openness in our Bailiwick, but I do fear that any lack of independent oversight is not going to inspire public confidence. It is not too late and I would ask Members to please support this amendment.

2305

The Bailiff: Deputy Bebb, do you formally second the amendment?

Deputy Bebb: I do and I reserve my right to speak in debate.

2310

The Bailiff: Thank you.
Deputy Conder, then.

Deputy Conder: Thank you, sir. I rise to support Deputy Green's amendment, which was presented with his usual powerful, insightful and rational advocacy, which I thank him for.

2315

Sir, amendments do not always obviously and demonstrably improve a recommendation but, in my opinion, this one does and, indeed, I cannot improve upon Deputy Green's advocacy of his proposed amendment. I will just say that, perhaps a parallel might be drawn with our own Code of Conduct panel, which we used, as we know, recently to judge complaints against our own behaviour. We deemed that such a panel should be independent of this Assembly; we do not, for 2320 example, use States Assembly and Constitution for that purpose and I would like to suggest that the Public Access to Information is no more or less important, in terms of openness and democracy, than the use of our own Code of Conduct panel.

2320

So, I warmly endorse this amendment to my colleagues. In my opinion, it indisputably adds to the recommendations and to the Policy Council's paper and I warmly recommend it to my 2325 colleagues.

2325

Thank you, sir.

The Bailiff: Anybody else wish to speak? Deputy Gollop.

2330

Deputy Gollop: I support the amendment; I told Deputy Green that from the start. I had one or two concerns when initially he mentioned Jurats, because I think that, although the 16 Jurats are exactly the right calibre and kind of people we need in this involvement, there could on occasions be conflict with Royal Court proceedings, but nevertheless the initiative is welcome.

2335

If I can briefly speak generally, I do actually, despite Alderney Representative Arditti's disapproval, support the package as far as it goes. I make no secret of my view, that I have held for six years, that we should one day work towards a Freedom of Information Act; Jersey have got

2340 there, the Isle of Man have almost got there. They are aware that it is not a particularly cheap process; I do not believe in the scary figures we were told at one of the presentations, but it would not surprise me if it does not cost us a figure somewhere like £½ million to £1 million a year. I appreciate, at the moment, that is not where we want to go, but nevertheless I think it is an important and intrinsic component part of Government. People may laugh at that cost, but even a Code will cost that amount in a sense, because you always should factor in Civil Service time, law officers' time and everything else.

2345 I do not think I will ask HM Comptroller to define what the public interest is because it is a legal term, and I disagree with Deputy Kuttelwascher on that point, but I think we have to grasp the nettle. We have had certain instances in the last few years from the so-called Fallagate affair, to more recent events, to perhaps some of the issues that came out of the debate involving Deputy Hadley, whereby we have, at one level – Deputy Conder just mentioned the Code of Conduct for Members – we have actually toughened up the confidentiality requirement on States Members on Committees.

2350 As we have done that, with good reason, we have to balance the equation by having a robust Freedom of Information policy and, as my colleague pointed out to me next door, it is a phased approach and hopefully the phases – particularly in light of the successful Gillson amendment – will come over due course and at due cost when the time is right.

2355

The Bailiff: Deputy Perrot.

2360 **Deputy Perrot:** Sir, I am fairly slow to express my hurt, but I do feel at the moment like a rather affronted maiden aunt who is really happy to be ignored, but then overhears someone saying she is actually pretty useless. So, as far as the Administrative Review Tribunal is concerned, it may not appear to Deputy Green to be independent, but those Departments which have fallen under its purview just recently, I suspect, would say perhaps it is a little bit too independent.

2365 The reason why I am standing on my feet about this, is that if something already exists, why put extra money into trying to replicate it if you can alter it without too much of a problem? I said – I cannot remember when, one loses track of the time in here but I did say quite recently – when I was giving the annual report of the Administrative Review Tribunal, that it was our intention to toughen it up considerably. Somebody who is very closely associated with me on this is Deputy Fallaize, who has sat on various tribunals recently and understands the workings of a tribunal very well. It is our intention to speak to the Law Officers in the very near future and then it is our intention, through the Policy Council I hope, to bring back before the States a somewhat changed Administrative Review Tribunal, which I suspect will be very much more independent.

2370 So, in supporting Deputy Green's amendment here, which is directing the Policy Council to do something, I would very much hope that the Policy Council would have in mind that there is a firm intention to have an enhanced version of the Administrative Review Tribunal. Let us not invent the wheel in respect of an appeal panel.

2375

The Bailiff: Deputy Bebb.

2380 **Deputy Bebb:** Thank you, *Monsieur le Bailli*.

Very briefly, I think that, as has been indicated, there is broad support for this amendment and I welcome it. I have to say that, personally, I was attracted and I am attracted to the idea of a Jurat system and that is because it is completely independent of the States of Deliberation here. I do understand Deputy Perrot's point of view and, if we see an amended form of the panel, then indeed that may well prove to be the appropriate means of appeal but, until that change happens, I fear that it is not about mere independence, it is also the perception of independence and I am afraid that if I were not a Member of this Assembly, to find Members of the Assembly actually deciding on a decision that Members of the Assembly have made, regardless of how we have a slight arm's length, still gives the impression of being Deputies making decisions over other Deputies.

2390 The attraction to me, and I do realise that this is not prescriptive within this amendment, I would like to make it clear, but the attraction to me of a Jurat is that it not only is explicitly independent of the States of Deliberation, but it is also perceived as such by the outside Members.

2395 Regardless of that point of view... I give that as merely a thought for the Policy Council when they do bring back their Report, which I am grateful that they are actually supportive of this amendment. Regardless of that point of view, of course that is merely my personal point of view and I look forward to the Report when it does come back, should this amendment be successful.

Thank you.

The Bailiff: Deputy Lowe.

2400

Deputy Lowe: Thank you, sir.

I will support this amendment. I think it is an excellent amendment and we should have an independent panel.

2405

I would like to think that actually we will scrap the Administrative Review Committee process, because it is one that I have had concerns about for a long time, as many Members will know, because I do not believe... for the very reasons that Deputy Bebb has said, it is the perception outside that so many people say, 'What is the use of doing that because it is colleagues and you are all cliquey and friendly together?'

2410

So, if you are going to look at that, I actually would hope – (*Laughter*) That might not be the case, but that is the public perception so I think that if you are going to look at that, yes, please look at it and look at it with a view of actually enhancing the one that has been proposed by Deputy Green and Deputy Bebb to actually scrap the one that already exists as the Administrative Review.

Thank you, sir.

2415

The Bailiff: Does anybody else wish to speak?

No. Chief Minister then, if you wish to speak on the amendment.

2420

The Chief Minister (Deputy Harwood): Merely to say that I would be happy to accept the amendment.

Deputy Gollop is absolutely right, there is a cost associated with any access to public information. In coming back to this Assembly with proposals for how an appellate process might emerge, I think we need to be very conscious of that. We do want to create a very extensive bureaucracy. What may be very few complaints... Incidentally, I gather the Isle of Man has had about one complaint within 12 months. So the incidents of complaint may be very small.

2425

I welcome Deputy Perrot's comments concerning the Administrative Review Tribunal. Certainly, if there is to be a toughened up and perhaps more independent structure to that, that is something that could be factored in to any review as to the basis on creating an appellate process for this Access to Public Information.

2430

I broadly welcome the amendment and encourage Members to vote in favour of it.

The Bailiff: Deputy Green to reply to the debate.

2435

Deputy Green: Sir, Members, I can be very brief, I think.

Thank you to everybody who contributed – Deputies Conder, Gollop, Perrot, Bebb, Lowe and Harwood.

2440

I will just take up a few issues. Deputy Perrot quite rightly mentioned the Administrative Decisions Tribunal and he made the point that some people may not think that it appears to be independent. I think that is the crux of the matter, but I absolutely welcome what he says about coming up with an enhanced system which would be more independent, so I thought what Deputy Perrot added was very useful. Obviously, we are not going to reinvent the wheel if we do not absolutely have to, so what he said was very helpful.

2445

I think Deputy Bebb made a point, which was that, to many members of the general public, it is the perception of independence, or lack of independence which is the issue and Deputy Bebb is obviously a fan of having the Jurats involved. I do not know whether that is the best system or not for this area, but it would undoubtedly be explicitly independent and would be perceived as such. I think that general principle has to be taken on board.

I absolutely welcome what the Chief Minister said and I just ask Members to vote for this amendment. Thank you.

2450

The Bailiff: We will vote for the amendment proposed by Deputy Green, seconded by Deputy Bebb. Those in favour; those against.

Members voted Pour.

2455

The Bailiff: I declare it carried.

The final amendment is the one proposed by Deputy Hadley and seconded by Deputy Green, which has been circulated. The latest version should contain the words 'six months' in the third line and not 'three months'. I think that is correct, is it not, Deputy Hadley?

2460 **Deputy Hadley:** Yes.

The Bailiff: Yes. Perhaps it would be helpful if you could just read the amendment in its correct form, so that everybody knows they have the correct version in front of them.

2465 **Deputy Hadley:** Certainly, sir.
The amendment is:

To add a new Proposition as follows:

2470 5. *“To direct every Department and Committee to publish details (namely the title of the report, who it is commissioned by and from and date of commission) of all reports commissioned by the Department or Committee within six months of that report being commissioned, unless the publication of such detail would fall within one of the exemptions from disclosure set out in the Code of Practice on Access to Public Information set out in appendix 3 of the Report.”*

2475 The purpose of this amendment, Mr Bailiff, is to make people aware of what we have which they might want to look for. Departments do routinely commission reports, at considerable cost to the taxpayer. These reports do not always see the light of day and people do not know of their existence so they do not know to look for them. So, this is to make the whole process more transparent and I urge Members of the Assembly to support this amendment.

2480

The Bailiff: Thank you and Deputy Green, do you formally second the amendment?

Deputy Green: I do, sir.

2485 **The Bailiff:** Does anyone wish to speak on it? No, I see no one rising.
Chief Minister, do you wish to?

2490 **The Chief Minister (Deputy Harwood):** Sir, this amendment has not been seen by the Policy Council, so therefore all Ministers are free to really vote as they choose. On the face of it, I have to accept that it probably seems to be innocuous and I cannot imagine any reason why anyone should necessarily resist this particular amendment.

2495 The key point is the publication of the information, or the details on the Report that has been commissioned, is still itself subject to the exemption of public interest. There could well be reports, that are commissioned routinely by Departments, that may relate to individuals, where it would be totally inappropriate, I suggest, even to publish the fact that a report has been published to investigate a situation which may, impact upon an individual in advance of wider publication.

So, I therefore believe that this amendment is innocuous but, in doing so, I do recognise that the obligation to publish details is still subject to the exemptions from disclosure and that, I think, is a very important feature.

2500 Other than that, sir, I have no particular views as to whether Members should vote in favour or against the amendment.

The Bailiff: Madam Comptroller.

2505 **The Comptroller:** Sir, just as a point of detail, I believe this will become Proposition 8, not 5.

The Bailiff: Oh, thank you very much. Yes.
Deputy Hadley then to reply.

2510 **Deputy Hadley:** I do not think there is much to say, sir, except that, given that it is so innocuous, I assume the Assembly will support it.

2515 **The Bailiff:** Thank you. We come to the vote then on the amendment proposed by Deputy Hadley, seconded by Deputy Green. Those in favour; those against.

Members voted Pour.

The Bailiff: I declare it carried.
We come then to general debate. Does anyone wish to speak in general debate? No?

2520 Oh yes, Deputy Hadley.

Deputy Hadley: I think truth, openness and transparency are essential to good government and I have seen failures in all of these areas and exposing them has got me into trouble from time to time.

2525 I think really, if everything is confidential, then perhaps I would suggest nothing should be confidential. It seems to me far too much of the work of Departments and Committees is always stamped 'confidential'. We need a change of culture in this Assembly if we are really interested in openness and transparency. So many Members of the Assembly standing for election pledge themselves to be in favour of openness and transparency, but a majority of this Assembly of
2530 course has censured me in previous debate.

So, I would urge Members of the Assembly to think in future that being open and transparent is much more important than they had thought hitherto.

2535 **The Bailiff:** Deputy Bebb.

Deputy Bebb: Very briefly, Members.

It was interesting that, during the hustings for the election in St Peter Port North, the very question with regard to freedom of information came up and the question was along the lines of
2540 would you support a Freedom of Information Act here in Guernsey. At that point in time my answer was simply that I am very much in favour of open government, but that the costs incurred in Freedom of Information, to my mind, could not be justified at this point in time.

I will not vote against this Report, I think that it is the right move. I fully agree with Deputy Hadley's speech just now, that we need to have openness and transparency and I think that it is
2545 true that on too many occasions, the presumption has been to be confidential. I think that it is moving, and has moved, to be honest, far more to being open compared to the past. It is just that it has not moved sufficiently fast and I think that this will be the spur in order to create a great momentum towards that openness and transparency.

But I do wish to sound a note of caution and I know that Deputy Stewart may well be annoyed
2550 at me being gloomy once again. Recently we had a discussion from a question that I think was placed by Deputy Gillson, as to the feasibility of actually tracking the time spent by civil servants in different work. I understand that SAP has that facility – though I do realise that you may not wish to adopt it immediately – but I think that when we look at this type of report, it will inevitably come with resource implications. Those resource implications will be hidden, because the type of work that is already being done – with requests that have come in from the press, from
2555 the media – they are already the types of work that you would expect this type of report to encompass; we will just see a few more from members of the public.

I would like to know exactly how much, as a Government, we spend on such information being
2560 extracted from the Government. I do not object to it; I do not think that it is wrong, but if we do not understand the cost that is being incurred as a result of it, then we are simply writing a blank cheque that was so objected to earlier in a previous debate. It is essential that we do monitor the time that civil servants spend on it, so that we have an understanding.

I will support this Report, but I would like to give that note of caution that we may well be
2565 incurring costs that are quite justified. I think that it is also justified for me to actually ask the Freedom of Information question: how much money is being spent in pursuit of Freedom of Information?

Thank you.

The Bailiff: Deputy David Jones, then Deputy De Lisle.

2570 **Deputy David Jones:** Actually, sir, I was not going to speak in this debate but Deputy Bebb has brought me to my feet because he raises a very valid point. Most Departments at the moment are spending huge amounts of staff time and thousands of pounds in Civil Service time again, investigating questions and answering media enquiries.

2575 HSSD has been inundated I know for the last several months, and the amount of time that they must have spent collating information for the media and others must have been... it must run into now tens and tens of thousands of pounds in staff time and resources, so we are already spending a huge amount on that.

I suppose the good thing about this particular piece of legislation is that you will now be able to point the media towards it. So, instead of Departments individually spending huge amounts of

2580 time doing what they are doing at present, they can go through a different route to get the information they want.

The other thing is – while I am on my feet – I do not think that the States of Guernsey is anything like as secretive as many other Governments around the globe. If you look at Government Policy it is all laid out in Policy Reports; they come before the States. My biggest
2585 complaint, I suppose if I had one, is the condition of SoG’s website. It is appallingly bad, I am not completely... I am not as computer illiterate as many, but even I find it very difficult to find even the basic information that you want on that website about a Government Department policy; much of it is innocuous, I am looking merely to research different issues for debate and other things...
2590 but can we please plea to whoever is in charge of the States of Guernsey website to do something about the appalling way that the public have to try and trawl through that website, to find even the most basic bits of information?

I think Deputy Bebb raises a very valid point in this debate and one we should not lose sight of. Thank you.

2595 **The Bailiff:** Deputy De Lisle.

Deputy De Lisle: Sir, I wanted to say that this Report is a good *start* to a Code of Practice, through the adoption of guiding principles, at a time of austerity, if you wish.

I want to express the fact that the States has a duty to represent the wishes and reflect the will
2600 of the people of Guernsey, to keep everyone informed and maintain a culture of openness, and put an end to the criticism of a closed book mentality.

I worked on a Green Paper actually last term in Scrutiny, entitled Public Engagement in the States of Guernsey, and that suggested that the States as a whole did not perform well at even the most basic level of informing and communicating with the public. It found very little corporate
2605 direction, actually, on how the States of Guernsey engages with the public. Scrutiny identified a number of quick whims, actually, for Departments to implement to improve overall public information and engagement, which were not anticipated to require any additional resources.

Scrutiny also saw three reports together – the Information Strategy Commissioned Report, together with the Governance Report and the Scrutiny Report, could provide the necessary
2610 building blocks for improving openness and transparency in Government and stronger engagement between the States of Guernsey and the people it serves.

Therefore, I am pleased to support this development of the Code of Practice, through the adoption of the guiding principles that are indicated. Through no direct additional resources, as is
2615 stated in paragraph 8.1 and straightforward requests should be developed within existing resources.

As a new phase, in the adoption of increased transparency and openness, this is a positive initiative for the time being. The Code of Practice seeks to balance the requirements to satisfy public demand, so far as is reasonable and practicable with the costs of preparing and publishing
2620 information.

So, I would like to support the Access to Public Information Policy which will help to develop the culture of openness, through the ongoing development of guidelines, rather than through legislation at the current time. I think that that will be a very useful start in providing the type of
2625 openness and transparency that all Islanders are looking for.

Thank you, sir.

2625 **The Bailiff:** Thank you.
Next Deputy Lowe.

Deputy Lowe: Thank you, sir.

I am sort of, I think, pleased we have got this Report. Although I have to say I am fully signed
2630 up to Freedom of Information, and the Report we have got before us, I do not think brings much to the party.

I think Alderney Representative Arditti’s speech this morning covered a lot of what I actually wanted to say, so I will not repeat it. We already have the six Principles of Governance, so we
2635 should be able to have the openness and transparency – that is what we all agreed and signed up to.

The UK had a code and it is interesting that actually we want to be not forward thinking and go with the Freedom of Information. We want to go with an old system that has been thrown out. Well why do we want to do that? It has already been expressed by Deputy Brehaut that a lot of the
2640 questions and the Freedom of Information requests that were expressed to us at the presentation

we had were basically because of the party politics that exist in the UK. We would not have that problem over here in Guernsey.

2645 So, I would like to have thought that actually what we have got before us today was Freedom of Information and not... I think this is a bit of a sop to be honest, what we have got before us today. I am sorry about that but I really do not think that what we have got before us today we can do cartwheels about and say, 'Oh, isn't it great?' We can really now be open and transparent and help the public, because there are so many exemptions in here, there is nothing new. I do not see anything new in this Report than what we have already got here in this Government.

2650 All we are doing is legislating to say we will not give you any more. Is that good? I do not think it is, actually. So, I look forward to the day of the Freedom of Information, not the Report we have got before us today...

2655 I concur with what has actually been said about our website. Our States of Guernsey website is cringingly embarrassing. It is the most difficult website I think you can probably have because, no matter how many times you put something in the search engine, it just does not come up; it is very difficult. The easiest and one of the best systems... here is the time when Guernsey can work with Jersey, just speak to Jersey. If you are meeting Jersey all the time – you are telling us you are meeting them more than you ever have before, which I do not know if that is quite right, but you are telling us you are – so, when you next meet, actually just have a look and ask them, would they like to do a joint venture? Would they like to supply our website? Then we would have a great website which would be user-friendly to the public whom we serve.

2660 Thank you very much, sir.

The Bailiff: Deputy Luxon and then Deputy Soulsby.

2665 **Deputy Luxon:** Sir, I think Jersey use SAP to operate their website, (*Laughter*) but I may be wrong.

I just have three brief points, if I may. I too wanted to refer back to Alderney Representative Arditti's words this morning, because I think I might have read a different Report to that which he and Deputy Lowe read.

2670 Deputy Arditti said that this Report does not benefit the public in terms of their access to information. Well, I am just surprised and I just do not get that. I wonder if, perhaps, what Alderney Representative Arditti was really saying is that this Report does not deal with giving our Scrutiny Committee more teeth or more tools for their toolbox, which they so clearly need. But I imagine that the States Review Committee could possibly look into that, rather than the Policy Council through an FOI Report.

2675 Sir, I will support this Report but it is with a slight reluctance and it is a misplaced reluctance, I accept, because of course it clearly feels good and right that we should be introducing a Freedom and Information Policy, as we are proposing, for the benefit of openness and transparency and information access, but reluctance because of the significant, and we should not underestimate, the significant cost, resource and distraction consequences.

2680 Sir, from the Public Services Department, I just want to share a couple of examples in talking to a whole range of Department staff. They recognise the need and the desire for this policy, but they really did want to make the point clear, to me and the board, of the timed amount on their resources, their very stretched resources, in being able to comply with it.

2685 One specific recent example, from one of the smaller islands of our Bailiwick, is that recently my Department spent considerable time dealing with a resident of one of those smaller islands – our legal representatives, on a matter that could be regarded as being not of any significance. It took hours and hours and much correspondence; it absorbed quite a lot of time and I guess we can all get used to more of the same.

2690 So sir, I will support the Report, but I would ask Members to understand that if we thought the Government Service Plan yesterday was adding some bureaucracy, as opposed to spraying a bit of WD40 to make our Government work better, (*Laughter*) this proposal is a whole new regime and a whole new game change of a bureaucracy addition to have as Government works. We should not be surprised when significant costs come our way as this policy has actually implemented.

2695 Thank you, sir.

The Bailiff: Deputy Soulsby and then Deputy Gillson.

2700 **Deputy Soulsby:** Yes, sir.

I have to disagree with Deputy Luxon. I do not think this is a whole new game change at all. I fully endorse the comments made by the Chairman of the Scrutiny Committee, Alderney

Representative Arditti. Frankly, I think this is a pretty poor Report. It is a set of rules masquerading as legislation; it appears neither fish nor fowl.

2705 I draw Members' attention to the Code of Practice and the very long list of exceptions – specifically, information given in confidence, 2.14, third bullet point:

'Information whose disclosure without the consent of the supplier would prejudice the future supply of such information.'

2710 What does that mean? Nowhere does it say: 'Suppliers to the States should expect information or contracts will be disclosed, unless there is a very good reason why they should not be.' Those specific reasons should be stated, but there is no further information on this and I, frankly, think this will result in less information being made public.

2715 I do support the principle that a set of rules is practical to full Freedom of Information legislation, but this Report has been rushed. It is a cut and paste job that is not fit for purpose. I will remind Members what Alderney Representative Arditti said at the start of the debate: 'Voting against the Report does not mean we will not have more freedom of information. The fact is that accepting this Report could very well mean we have less freedom of information.' And as Deputy Lowe just reminded us, we already have the six Principles of Good Governance, which should be sufficient.

2720 I am not impressed with this effort and I cannot approve it as it is currently written. I will therefore not be supporting this Report.

2725 **A Member:** Hear, hear.

The Bailiff: Deputy Gillson. Deputy Bebb?

2730 **Deputy Bebb:** I am sorry, could I just ask for some clarification? I think this is the third time that I have heard that we are legislating or that we are referring to legislation. I do not believe that we are legislating; it is a Code of *Practice*, but I ask Members to actually use the correct terminology.

A Member: Hear, hear.

2735 **The Bailiff:** Deputy Gillson.

Deputy Gillson: Sir, I think I am about to start my speech by saying something that some people may find quite a shock. What an absolutely brilliant speech from Alderney Representative Arditti! (*Laughter*) It was a crackingly good speech, it really was.

2740 Now I am going to be contentious. (*Laughter*) I do not think it is a particularly well-written speech and so I have got a couple of questions for the Chief Minister about the genesis of this Report; specifically, was a sub-Committee of Ministers created to work and produce this Report or was it poorly produced by staff? And, if the latter, how many versions of the Report came to the Policy Council for review? And roughly how much time did Policy Council spend considering these Reports?

2745 That was contentious, now I will be really contentious for the rest of my speech.

2750 We should welcome this Report when it should enable access to information by the public and Members of the Assembly. Unfortunately, I am a little disappointed because, despite what a lot of people have said about openness, particularly a year ago at election time, we are presented with a Report which at best is the bare minimum. That is not to say that I disagree with all of it, just I think it is the bare minimum the Policy Council could get away with.

2755 I agree with some of the Report. Section 2.6 refers to the conclusion that a Code of Practice is better than legislation. I agree with that. Section 2.13 notes, in some instances, it is not the best interest for information to be made public and quotes two examples, the tankers, and I agree with the sentiment and the example – absolutely right. Section 6.2 notes that this does not necessarily lead to legislation, but that getting a culture of openness is important and good; I agree with that. So, if anything, a culture of openness is essential and something which I will return to. Section 6.5 notes a retention policy for documents – absolutely right.

2760 So, there is some good in it, but it is when you come to the Code itself – and particularly part 2 of the Code, which is an extensive list of reasons not to make public information – there is a real danger that this Code will not advance the cause of freedom of information in any way. Arguably, all it will do is codify reasons for not giving information. It will codify... allow Departments to have a justification for not.

2765 At the moment, there is no agreed basis for not providing information, but this Code will formalise it. This Code is a double-edged sword, providing a presumption to publish but also, an extensive list of justifications.

Part 1 of the Code is about openness and there are three pages of it, but part 2, about justifying why you do not give information out, runs to four pages. So, if and when this Report is approved, for the first time Departments will have formal reasons not to provide information.

2770 I can see in my mind, 'We would like to have given you that information, but the Code will not allow us'. This Report is as much about *not* providing information, as *providing* information. So this Code can only be effective if there really is a culture of openness. Without a culture of openness, this can be an effective tool for not providing information.

2775 So, why am I concerned about the culture of openness? The answer is that I do not believe that there exists, in this Government, a culture of openness, nor a real desire for a culture of openness. There is evidence over the past year which I can say to justify that statement. Actions speak louder than words. So what sort of actions have we had over the last year which makes me doubt the desire for a culture of openness? I will quote, quickly... I will not speak about it long: the AFR situation. We hopefully will debate that later on, probably in October now, (*Laughter*) but there seems to have been a default position there of keeping it confidential.

2780 I cannot speak about a culture of openness without mentioning SAP and this is not the place to speak about the rights or wrongs of the actual answers that I have been given, but I think the SAP Project, more than anything, has shattered any confidence I had that the Policy Council, at the centre, wanted a culture of openness.

2785 What has come out of my asking questions, was surprise and disappointment at many things, such as the number of Deputies who have told me that, until my questions, they had no idea about the problems of SAP. The number of times problems have been played down; the number of Deputies who have said that... there was reluctance to answer my questions fully.

2790 Sir, the absolute worst issue – and this is one which really prompted me to ask the questions about SAP – was when I was told by a person I have known for over 20 years, a person I trust that some staff had been told that, if they valued their careers, problems with SAP should not be made public.

Knowing the person who told me that, I fully believe that was true and that is an absolutely dreadful thing to have happened.

2795 I accept that sometimes problems happen, particularly with IT systems, and I think that most right-minded people actually accept that, but what should not be acceptable is the way, with regard to SAP, we have such limited information, and in some cases disinformation, given out. That demonstrates that, at least with regard to SAP, there was no... from the centre, there was no real interest in openness or transparency.

2800 Sir, I will go on to another example that this time relates to the FTP. Members will recall last August we had a presentation at Beau Séjour about the FTP and it was interesting, but a big issue with the FTP relates to the fees that Capita get. Yet the Policy Council, during that presentation, made no mention of fees. It was not until I asked a question that anything about fees came out, so with nearly half the Assembly new, who would not have seen previous Reports, the Policy Council was happy to give a presentation and miss out completely a very important part of the FTP arrangements. Right or wrong, I am not suggesting they are right or wrong, but it is an important part... and this was not voluntarily given. Again, how does that show openness?

2805 But sir, there was something more subtle at that meeting which happened and that was, after a few minutes of discussing the fee arrangements, a member of Policy Council staff stood up and commented that it was inappropriate for the Members and staff to discuss the fee arrangement while the members of Capita were there and that it should stop the discussion. There is validity in that, so what happened? The person who was chairing that meeting immediately said, 'Quite right, we will stop that discussion'. The Minister in charge did not say, 'You are quite right. Would the members of Capita leave so we could continue this discussion, we can continue giving Members information?' It was not. It was great, default position, close the doors and shutters, no more information. Again that shows that there is not a culture...

2810 The final example I am going to give is the reply the Chief Minister recently gave to my question on severance payments, a Rule 6 question. There is only one reason a Department, under the Rules, cannot give an answer and that is if they make an application to the Presiding Officer and it is ruled to be not in the public interest. No such application was made, there was a flat refusal by the Policy Council, 'We are not answering the question'.

2820 There was no attempt... I expected the Chief Minister to get on the phone to me and say there are difficulties with this, what compromise... is there a level of materiality, how could we get this information? But there was not. By the Policy Council... this was the Policy Council reply; they

2825 were happy to ignore a Rule 6 question, to ignore the Rules of Procedure by just blatantly saying, 'No.' Now, that I find is a concern. That demonstrates more than anything a lack of a culture of openness.

In giving these examples, sir, I am not suggesting that Ministers are being deliberately secretive, most likely just badly advised and passably accepting the advice rather than questioning the advice, rather than pushing for a culture of openness. But these examples, all within the last year, illustrate and indicate that a culture of openness does not exist and the actions of the Policy Council have not done anything to try and push the boundaries of a culture of openness. That really worries me, because this Code will only work if there is that culture of openness and I am not seeing it put anywhere.

2830
2835 So, in summary, we have to cautiously welcome this Code as a starting point, but remember it is a double-edged sword because it formalises reasons to be secret. The effectiveness has to be that there is a culture of openness and I think in the past year, at least the centre – and the centre controls Chief Officers, remember – demonstrated there is not such an openness.

2840 I cautiously welcome this Report. Although Alderney Representative Arditti did a cracking good speech, I will vote for it. I think I will vote for it because in a year's time, there will be a review of it and we will see just how effective it is. At that time, we will see whether any culture of openness has actually developed.

Thank you, sir. (*Applause*)

2845 **The Deputy Bailiff:** Deputy Stewart and then Deputy Brehaut.

Deputy Stewart: Just really a few points. I too am slightly confused now after Alderney Representative Arditti's speech earlier... [*Inaudible*] just before we resolved the business after lunch.

2850 They say a week is a long time in politics – sometimes it seems like ages while we are in the Chamber – but it *was* yesterday and a lot of the arguments made in other debates were against centralisation, against more bureaucracy – it has always worked well in the past so why do we need to do anymore? So perhaps we could replay those in our minds.

2855 It is not contained in the Report and I have to admit now I am not sure which way I am going to vote. What I can see, having worked within the media for a long time and dealt with various governments and jurisdictions around the world, I do believe as we go down this path, if we feel that the present system is not appropriate, that it will inevitably lead to centralisation, and that we will end up with a Department or a group of people who are going to have to deal with media enquiries and enquiries from the public; really just from the point of good practice, to lock the cause to make sure that everything is dealt with according to how we want it done.

2860 So, it is not in the Report, but my experience would say that this will lead to centralisation, without a doubt. It will also, in terms of cost... I think it will cost a lot more than we actually think. I think we will have to probably develop software systems to track this, to work with Departments; I think we will probably find that we will have to start digitising a huge amount; and all of obviously the current paperwork that we are doing so it is searchable e-discovery, if you like; and we will probably have to start speeding up investment in systems such as that; and then of course we will have to work on a back catalogue of whatever it may be from each Department and co-ordinating the digitalisation of that. Whatever we are quoted it is going to cost more.

2870 I think the points made about the website are extremely well made, it is something that I feel we could do a lot better and it need not cost a lot more at the moment. But one important factor is 56% of internet access is now done through mobile devices. In fact, the use of mobile devices, that increase is stellar; which is why we conducted a review not just to the 4G but to the whole spectrum to make sure it could be used. That is going to go on and on, so any website that the States now has, must be mobile enabled and we are not at the moment. I think we could do a lot better; we need to make it more searchable. I had several calls from a journalist who was chasing me and my Department for information that was in the Commerce and Employment Business Plan.

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2880 So, what I do say is, of course I support freedom of information. I am utterly confused, thank you Alderney Representative Arditti, but I think this will lead to a lot more bureaucracy, it will lead to a lot more centralisation, inevitably I believe; and the cost will be, I think, significant.

The Bailiff: Deputy Brehaut.

Deputy Brehaut: Thank you very much, Mr Bailiff.

2885 I thank Deputy De Lisle for pointing out that this last Scrutiny Committee did do some work
on public engagement and what it left Departments with – and it is not uncommon – is that when
there is a new intake of States Members then reports tend to be shelved and people do not refer
back to them. But it provides States Departments and Committees with a template, a pro-forma –
2890 ‘If you are thinking of doing this, why do you not consider doing these things?’ It was very
instructive and very useful.

I have to say, the former Chief Minister once said that Scrutiny was a toothless tiger and, in the
context of the system we have, I understood his observation. But what upsets me is that current
Members of Scrutiny want to disfigure the face of Scrutiny further, by effectively pulling out their
own teeth. By coming to this Assembly and saying. ‘This is a rotten Report; this is a terrible
2895 Report. Do not approve it.’ They are effectively in a forest fire with buckets of water saying, ‘Hey
guys, what do you want to do about it?’ They have the tools at their disposal.

I know Deputy Arditti and I will not agree because he is very clearly... the demarcation
between this Assembly and the role of a parliamentary Committee is a political stance; it is
different from the role that I had. But I would argue very strongly, and in fact passionately, to
2900 Scrutiny Members, you could have screamed for the first draft of this Report. You could have
argued for it strongly. You may have got the first draft of this Report; you could have improved it;
you could have enhanced it; you could have seen the failings. But no, you are content to let it
come to this Assembly and then say this Report has been made in occupational therapy by a group
of under-fives and is not worthy... Why do that? You have the tools at your disposal to improve
2905 the quality of reports that come to this Assembly and... I will give way. *(Laughter)*

The Bailiff: Alderney Representative Arditti.

2910 **Alderney Representative Arditti:** Sir, I did not say *any* of that.

The Bailiff: No.

Deputy Brehaut: No, I do not know what Deputy Arditti believes he is saying. I am giving my
interpretation of the context, sir. For the context of Scrutiny within this debate and to come to this
2915 Assembly...

The Bailiff: But you did say that he had said that it was written by occupational therapy.

2920 **Deputy Brehaut:** No, no, sir. Deputy Arditti has said before that... I will withdraw those
remarks if I did say that, sir.

The Bailiff: Yes, I think that is what he is inviting you to do.

2925 **Deputy Brehaut:** Yes, well they are withdrawn, sir.

My point is that it is this apolitical nature of Scrutiny which I think is a failing this term, if I
can put it that way, sir.

Also, we have the irony of a Policy Council in a States Report encouraging Scrutiny to be
active. It says that it calls for the parliamentary Committees to benchmark. So, what the Policy
Council itself is asking... for benchmarking, KPIs, call it what you will, on States Reports calling
2930 for the Scrutiny Committees and parliamentary Committees to have some involvement.

In the last Assembly, certainly, I remember vividly, working with the Home Department, and
Commerce and Employment, where Scrutiny would see the reports in advance and scrutinise them
and go back to that Department. Some people say that is too cosy a relationship; it is not
inappropriate, it actually did enhance and improve policy making, in my view.

2935 I just wanted to make a couple of other observations. The idea of information in 30 years, or
whenever that is discoverable... as a Member of HSSD, it has been my experience over the time I
have been on the Committee board, that people always generally gripe about the volume of
minutes. Because of the Budget, the volume of money we spend, the very broad mandate that we
have, meetings are long and minutes reflect the length and the detail of the meetings. Invariably,
2940 people say why can you not reduce the lengths of the minutes?

Now, when we have significant events, it might just be a wards closure, you can bet your
bottom dollar people will run to the minutes to see what did I say and either put their head in their
hands and cringe, or jump up in the air and click their feet together because they feel vindicated.

2945 When I have had minutes from a Policy Council that I have attended, it has been in bullet point
form. It has been very brief and I am thinking if you had to forensically track this back, what was

actually discussed at the meeting and who said what... I know that there is the minute taker's book that should be discoverable and, again, the Wales Audit Office Report referred to that and we should not forget that. I would rather have the more detailed minutes that are discoverable at short notice, and are there by volume, than bullet points that actually tell half a story.

2950 With regard to release of reports – Deputy Hadley and I will not agree on this, I am aware of that, but – I believe that the Minister of HSSD did give a commitment to release a report. But what are we releasing reports to? We are generally not releasing the report to the public, we are releasing the report to the media and the media will give that report a treatment that then takes a huge amount of staff management and time. So I think Departments can work with individuals to
2955 release reports, rather than just have people drop reports into the media then have Departments deal with the fallout.

I have to say it does amuse me more recently, that I noticed the Guernsey Press, the radio, they can reveal figures, they can reveal facts to the public; they can reveal them because they are in published documents – like they have been discovered, when in fact it has been usually in the States accounts or in another document.

2960 So, this is not ideal, this Report; it is a first step. I do not know how on earth you really do... a culture of openness is something that you get over time; I do not know how we achieve that, but if we are all aware that we are cognisant of whatever that is then, by degrees and over time, we will get there. So I support this imperfect document.

2965 Thank you.

The Bailiff: Deputy Fallaize.

2970 **Deputy Fallaize:** Thank you, sir.

In fairness to the Policy Council, and that does not always come easily to me, (*Laughter*) paragraph 2.4 of this Report refers to the States resolution of 2010, which the Policy Council's Report today effectively fulfils. The States resolution was:

2975 'To direct the Policy Council to: "*consult with all States Departments and Committees and then to report to the States of Deliberation by no later than December 2011...*"

Well, okay...

2980 '*...setting out options for improving open government and transparency and establishing a corporate policy on freedom of information and open government.*'

So the Policy Council has clearly respected that resolution and has produced a Report that is consistent with it.

2985 However, I agree with almost everything that was said by Deputy Stewart, a couple of speeches ago. In particular, I think that there is a huge issue here of commitment and, in particular, resources. I came into this debate today quite open-minded, but when I hear, from the Policy Council and from Treasury and Resources, the comfort that the proposals in this Report will not lead to any material increase in costs, that concerns me because I really do not believe that we can establish any kind of step change in Access to, or Freedom of Information, without incurring quite
2990 significant expenditure.

I submit Rule 6 questions on occasions and sometimes Ministers get quite uptight about them and say to me, 'All this staff time is being taken up. You have submitted all these questions and we have only got 15 days to reply'. That is quite a frequent theme when a Rule 6 question is submitted.

2995 The resource implications of that are absolutely tiny, compared to the kind of resource implications that would be necessary to fulfil some of the commitments that are contained in this Access to Information regime. When I listen to the speeches that I have heard today, I do not feel that there is a genuine commitment within this Assembly to do a great deal more than has been done up to this point, to make the States more open and transparent. I am not saying the States, at
3000 the moment, is particularly closed and secretive; I do not think actually that is the case – and I will come on to that in a moment – but I really do not see and feel this genuine deep commitment, from Members, from States Departments, from senior members of staff, to establish the step change that would be necessary to make this policy relevant or worthwhile.

3005 We have not yet adapted to the huge change there has been in the media, over the last 15 or 20 years. When I went to work for the Press, nearly 15 years ago, they had just gone tabloid – (*Laughter*) I missed the glory years which is typical – they had just gone tabloid and it was not very long before that, that the Press, by and large, was regarded as the in-house journal of the

3010 States of Deliberation. It was a very much more, some might say balanced, but it was a very much
 more restrained style of reporting. They were sometimes critical of the Press, but the sort of
 relentless criticism, which tends to spread cynicism about the Government today, which does
 appear in the Press and the Press has every right to print that stuff if it wants to, it is a free
 newspaper. But that is the way the Press often reports today and we have not adapted to that, as a
 3015 States; we have not adapted to that. We are often very much on the back foot, responding
 inadequately to an agenda that is set by the media and until we can... I think, dealing with that and
 the way the States work in response to that, is a prerequisite before we make a step change to an
 Access to or Freedom of Information regime.

3020 So, I am giving serious consideration now to following Mr Arditti's advice and voting against
 these propositions. If that happens, I would make two points. The first is I do not think this agenda
 will go away; I think if these proposals lose today, the Policy Council will have to come back to
 the States at some future point with alternative proposals. There is a commitment to transparency
 in place today; they are expressed in States resolutions. I know that there were a goodly number of
 Members here who were not in the last Assembly but the last States did pass resolutions which
 established a commitment to transparency and openness. Effectively, if we agree to this today, we
 3025 will be passing resolutions which, implicitly or otherwise, establish commitment to openness. I am
 not sure that these resolutions will be a whole lot different from the ones that are already in place.

3030 The other point, if these proposals lose today, is that – and Deputy Jones has already referred
 to this – we have to acknowledge, I think, that we have about the most open and transparent
 system of government there is anywhere in the world. Yesterday we had a debate in here about
 the establishment of a Government Service Plan, and we are going to have another one later today
 or tomorrow about the Strategic Asset Management Plan, and there will be States Committees
 arguing with each other across the floor of the Assembly; there will be some Ministers in favour of
 amendments and some Ministers opposed to amendments. That is policy formulation, on the floor
 of this Assembly – completely in public, completely open.

3035 Now, that does not happen in other systems of government. Policy development is done behind
 closed doors and then there is an announcement about what the policy decision is, and sometimes
 a bit of supporting information to explain it, but the discussion, the deliberation which took place
 to arrive at that policy outcome, is done behind closed doors.

3040 So, I do not think that Guernsey's lack of a Freedom of Information Law can be compared in
 any way to an era when say the UK did not have a Freedom of Information Law, because they are
 two completely different systems of government.

3045 The final point I want to make, sir, is that I think we have to remember that if we do approve
 these Propositions today, we will be creating certain expectations. People will believe that the
 States has made a material commitment, over and above the commitment which exists at the
 moment, to being more open and more transparent and I think that if we do that and then in the
 weeks and months to come it becomes easy, particularly for the media to demonstrate that actually
 there is no difference at all between the previous regime and this new Access to Information
 regime, we will have created a rod for our own back.

3050 So, I will listen to the Chief Minister's summing up on this debate; I will still keep an open
 mind. But I have to say that, given what I have just outlined in my speech, I am minded to believe
 that we might be better not to approve this rather – I think it goes beyond imperfect – *inadequate*
 regime that has been proposed today; probably on the understanding that there will have to be
 alternative proposals put to the States at some point in the future, rather than approving this with
 all of its defects, but I will listen to the summing up.

3055 Thank you, sir.

The Bailiff: Does anyone else wish to speak? Deputy Domaille.

Deputy Domaille: Thank you, sir.

3060 I had not intended to speak but, following all the words that have been used, actually I think
 Alderney Representative Arditti... I thought he made a good speech too.

3065 Deputy Gillson, I disagree with almost everything he has said, except for his conclusion.
(Laughter) I actually do share the concerns about resources; I share the concerns about openness.
 From my perspective, I just think we should be open about everything whenever we can. There is
 an attraction in this Report for me, despite everything that has been said today, that actually it does
 set out all the... Deputy Soulsby has indicated – perhaps not to everybody's agreement – that the
 Rules set in place for when information *will not* be disclosed and I think that is quite an important
 part of this process.

So, I will be supporting this Report, despite my strong concerns on all sorts of things, if only to see that 12 months from now, or whenever it is, as to how it has actually worked.

3070

At that point I think if we tear it up and throw it away, fine; if we say, 'Well, we can tweak it, fine; if it is working perfectly, fine. But I think we really do need to try and improve on what I actually think so far is quite a good system – I agree again with Deputy Fallaize.

So, for that reason, I will be supporting the Report.

3075

The Bailiff: Anyone else? Deputy Robert Jones.

Deputy Robert Jones: Thank you.

3080

I would like to address some of the points that Deputy Brehaut brought up. I think the argument for maintaining the independence of Scrutiny is now a well-rehearsed argument and I think the argument against the Committee acting as some sort of quasi policy-making entity is an argument that we have had and we are having difficulty convincing Deputy Brehaut that is the way we are going to act, but the Committee as a whole are acting in that manner.

We did engage with the Policy Council on this. We wrote to the Policy Council; we expressed our views. Those views were looked at, they were not accepted and so we are where we are now.

3085

There have been many good speeches here today. Deputy Dave Jones and Deputy Gillson have covered some of the real issues that I do not think are covered by this Report. This Report is far from ready, in my opinion. Voting against this Report you would not be voting against transparency.

3090

We have heard that the six Core Principles of Good Governance, adopted by the Assembly by the resolution that we have mentioned in March 2011, already gives this Assembly and the public transparency. This Report is made up of exceptions and is about restricting transparency. We have seen from part 2 there are 15 headings and I think almost 30 to 40 sub-headings, which give the opportunity to restrict what we already have which is openness and transparency.

3095

Deputy Dave Jones made a good point: I think he mentioned the length of time that Departments spend on answering questions. You have got to ask yourself, why are they spending this length of time answering questions. Is this in order for them to obscure the answer that people are looking for? Or do they not have the guts to actually say no and stand up and be accountable for saying no? The Home Department did that; it was subject to the AFR review, and they stood before us and were accountable for their decision. The public and the States made up their mind as to whether that reason for not disclosing was right or wrong.

3100

In conclusion, by voting today against this Report... sorry, by voting *for* this Report you would be voting for *less* transparency than we already have by virtue of the 2011 resolution. That would sum up, I think, the arguments that Alderney Representative Arditti has formulated. Okay, Deputy Gillson may not want to vote against the Report, but the thrust of his argument for not doing so is worn out.

3105

Thank you.

The Bailiff: Anyone else? Deputy Dorey.

3110

Deputy Dorey: My Department, HSSD, was mentioned earlier in debate. The figures for up to 26th July, for this year... sorry, just for this month, is that HSSD had 59 media contacts; eight of those were media releases with information proactively released by the Department and the estimation is that they spent 52 hours allocating, preparing and responding to media matters. That is for July.

3115

We have done a bit of research into the situation in our sister island. The indication that we have received is that the Code of Conduct has resulted in additional resources needed to release the information on that Code of Conduct. But that is nothing to what they would expect if you had a full Freedom of Information Act, where I think there will be considerable resources needed. That was the indication that we had when we had the presentation during the last session and it is a pity that it was done in the last session and we are voting on these matters in this one, because many of the Members who have spoken have not heard that presentation.

3120

I think we have to be very careful. We are living in times where there are considerable financial restraints and if Members want a full Freedom of Information Act, there is going to be considerable costs in that. There are considerable costs now in servicing the media with their enquiries and I think the proposals in the Billet are an acceptable compromise and I would encourage Members to vote for it.

3125

The Bailiff: Deputy St Pier.

3130 **Deputy St Pier:** Sir, I rise to my feet just to comment briefly on the resource implications, because it has been referred to by a number of Members in debate. I think in particular Deputy Fallaize commented that he felt slightly unnerved by Treasury and Resource's comment, and I just want to draw attention to that on page 1086 of the Billet:

3135 '... the Treasury and Resources Department notes that the proposals set out in this States Report should be delivered within existing resources.'

It was commenting on what had been presented in the States Report. That is what the Policy Council's Report was telling Treasury and Resources in its comment. In particular:

3140 'It is encouraging to note that the proposed Code of Practice on Access to Public Information pragmatically recognises the limited resources available and explains how the publication of information or responding to requests should be prioritised in order to minimise disruption in the delivery of services.'

3145 And so it does that in paragraph 1.7 of the Code, which appears on page 1078:

'As a small jurisdiction Guernsey has limited resources dedicated to any particular service delivery. This means that publishing information or responding to requests promptly can have significant impact on the ability to supply essential services.'

3150 This appears in the Code itself.

'This will mean that when considering how to prioritise publication of information the overriding objective of the Departments and Committees will be to provide cost effective services in line with the strategic aims of the States.'

3155 So, actually, commenting on, or responding to, Deputy Gillson's comment on the extent to which this was discussed at the Policy Council... that was a question directed at the Chief Minister who may have the facts and figures to his fingertips. My recollection was this was a Report which came back, I think, at least three times to the Policy Council. It was amended quite a lot by the Policy Council in its discussions and this was one of the paragraphs, in particular, that came out of that discussion; it was recognition that the resources are limited.

3160 Clearly, we will have a review on the effectiveness and the implications of this Code, as a result of the amendments that have been passed, and we will have to consider the impact of that. But I think really to re-emphasise that the Treasury and Resources comment is an acknowledgement of what has been, or response to, what has been presented to it; and that it should be delivered within existing rules. But I think we all recognise that there could well be resource implications, which we will need to monitor. Hopefully, the Code, in its current form, does give some recognition to that and allows it to be pragmatically operated in the meantime.

Thank you, sir.

3170 **The Bailiff:** Deputy Sherbourne.

Deputy Sherbourne: Thank you, sir.

3175 I have another dilemma. I am a Member of Scrutiny; I am critical of the Report; but I am also very conscious that the public look very closely at the decisions we make about openness and transparency and to actually vote against this poor attempt to establish guidelines – a Code – I think will be commented on in the media.

3180 That is a dilemma for me because I feel that this Assembly is open and transparent and I believe that every board does its best to keep the general public informed with the things that are going on. Yes, it is far from perfect, but I feel that, in the very short time that I have been a Member of the Assembly, that a great attempt has been made by individual Members to be open and honest with the people who voted them into the positions that we hold now.

3185 So, my dilemma is: do I vote with the general view that Scrutiny has declared, or do I say this is a start? I will be watching very carefully over the next year when these... if this is passed, these proposals are tested.

I am not satisfied with it in its present form, but then I think a small Assembly like this very often has to trial and error a process on a lot of policy. I have not got much time to make my mind up and the rest of us too. We are coming to the end of this debate, but I would ask all Members of the Assembly to consider maybe the most negative aspect of voting these proposals out and that, to me, is the perception of the public, which I think we should be considering.

3190 Thank you, sir.

The Bailiff: Deputy Le Tocq.

Deputy Le Tocq: Sir, I was not going to speak, but I want to just echo Deputy Sherbourne's, I think, honest appraisal of where we are.

3195 Changing a culture does not, and should not, happen overnight. If any society seeks to do that, in business or any organisation, then you will end up with huge problems because you cannot impose something that should be a matter of the heart really.

3200 So this, in my mind, before us is a signal that the culture is changing and, as some speakers have said, it has already begun to change. In fact, in the last Assembly, it began to change. So, this is a process and it is not going to end here either.

As a result, sir, I do not agree with those who have commended Alderney Representative Arditti. In fact, I found his speech to be ill prepared and drifting over all sorts of different things. He seemed to be saying that we are better off with nothing and yet again I find myself standing and saying, 'No, we are not'.

3205 We need to move forward with something and what we have is something here that is certainly not perfect, but, again to echo Deputy Sherbourne, we are in a small jurisdiction, as I like to often comment to reporters from the press, I like the title of their website. 'This *is* Guernsey' is what I like to call it, because we have to do something that is proportionate and, if we are going to take the whole culture of the public service in the broader sense with us, then we have to do so if we are going to be successful in an appropriate way.

In my mind, this signals that way and I think Deputy St Pier has already indicated that the Policy Council, first of all, through reviewing the Crowe Report and recommendations, and then through several iterations of what is before us today, did take seriously what was appropriate and proportionate.

3215 The comments that have been made on a more broader sense, in terms of understanding how to communicate today. Again, I very much support the comments made by Deputy Stewart, with regards to ease of access, electronic communication etc.

3220 There is a big learning curve and we obviously are not going to achieve that in one fell swoop. So, I encourage Members of this Assembly to support the propositions with that in mind and very much in the tone that Deputy Sherbourne has just spoken.

Thank you, sir.

The Bailiff: Deputy Lowe.

3225 **Deputy Lowe:** Sir, just on a point of correction really – clarification.

Deputy Le Tocq said that actually we do not have anything, so we need this Report. We do, we have the Good Governance, which, actually, everybody signed up to. It does have openness and transparency, so we already have open and transparency available.

3230 **Deputy Le Tocq:** Sir, just to clarify what I meant was something that could be compared from one Department or Committee to another and I think that was just addressing the points that Representative Arditti had made. The States is viewed as one entity from the outside and this helps us to do that effectively.

3235 **The Bailiff:** Is anyone else wanting to speak?

No? Well then Chief Minister are you ready to reply to the debate?

The Chief Minister (Deputy Harwood): Yes, sir, thank you.

First of all, can I thank all those Members who have spoken in support of this Report?

3240 Yes, it is not... some people have described it as inadequate; some people have described it as being put together too hastily. In response to that criticism, I would say that – as I said at the outset in my opening – this matter first came to Policy Council in June of last year when the principles were first discussed.

3245 To Deputy Gillson, I can confirm that this Report has gone through three iterations and has been considered each time by full Policy Council and not by a sub-Committee of Policy Council.

Sir, Alderney Representative Arditti, in his usual oratory, spoke about the court of public opinion and he also talked about the fact that we already have the principle of transparency. Principle of transparency, yes, but it is an abstract concept. The court of public opinion, that Alderney Representative Arditti is so keen on, quite clearly falls back to the Scrutiny Committee. It is through the Scrutiny Committee that it is suggested that the check and the test of public interest would lie.

3250 I submit, sir, that the present Report is not inconsistent with the overall principle of transparency. What it seeks to do is reinforce that principle by stating quite clearly that there has to

3255 be justification for non-disclosure, and that justification has to be demonstrated. At the moment, sir, you can have a situation where one Committee says, 'No, we do not accept that this is disclosable; it is not in the public interest to do so; we will not disclose'. That, without more, I would submit, sir, is not satisfactory.

3260 This policy document, poor as it may be, sets out a number of headings of exemptions to which, if there is to be non-disclosure, it has to be justified by that heading. So, I would submit, sir, that it actually expands upon and it develops, and is wholly consistent with and is an effective way of delivering, the general principle of transparency. I do not accept that, by voting for the Report, you are limiting that overriding principle.

3265 Sir, Alderney Representative Arditti did talk about public interest; where does the public interest lie? This is one of the dilemmas that faces all Departments. Departments may have different views as to what is, or is not, to be in the public interest. In the absence of such guidelines as we are proposing, Departments are potentially going to come up with inconsistency. What we are seeking to establish here is a consistent set of guidelines that Departments can use and, as I say, essentially, any attempt not to disclose or to avoid disclosure has to be justified within the terms of the policy.

3270 Sir, just turning to one or two individuals' States comments, Deputy Hadley talked about the dilemma he had because clearly documents are marked confidential. I accept and I suggest that if – and as I say I hope States Members approve this Report – the States Assembly and constitutions, which they may well wish to consider, the interrelationship between the Code which is set up in this Report and one or two aspects of the Code of Conduct, in relation to States Members and, in particular, in relation to confidentiality.

3275 I thank Deputy Bebb for recognising the need for openness and transparency. Yes, as a number of Members have also indicated, there are concerns about the resource implications but we have to take a first step in developing the concept of openness and transparency. We cannot allow it to remain as a totally abstract concept, we need to begin to put flesh on that abstract concept and this, sir, I submit is what this Report and the Code will seek to do. So, Deputy Bebb, yes, we need to monitor – also along the lines as Deputy Gillson is requiring us to do – I think to monitor, where we can, the actual cost of complying with the Code.

3280 Deputy Jones mentioned the website, other Members have also mentioned the website. I have taken note of the comments and, in particular, the very useful comment given to us by Deputy Lowe. Maybe this is a circumstance where we could benefit from working with Jersey in improving the website but I have to confess, like Deputy Jones, I am a total Luddite; I do not begin to understand websites. Others, I am sure, are more able to look at that than I am.

3285 To Deputy De Lisle – without wishing to stray into the words of quite a famous hymn – this Code is a step; it is one step. There will be other steps; there will be more steps that we will have to follow. This is not an end in itself; it is a process of evolution.

3290 I agree with Deputy Jones, sir... sorry with Deputy De Lisle, sir, that, yes, this does require a culture, it does require a constant process of cultural change. Some Members have already indicated that they believe that Departments have embraced cultural change over the last year. I know that Deputy Gillson has drawn attention to certain aspects where he believes that this culture is not yet engrained, but clearly we do constantly face the battle that we have to embrace the culture change; and we have to recognise that there are a number of civil servants who may feel uncomfortable about that culture change. We, as States Members through Departments, have to ensure that this culture becomes embedded in the system of Government.

3295 I am sorry that Deputy Lowe is disappointed that this Report does not bring much to the public, as I said, to the extent that she supports Alderney Representative Arditti. I hope I have already addressed some of the issues he has raised and I would urge Deputy Lowe to accept that the Code set out in this Report does not limit transparency, it obliges and reinforces the obligation transparency, as I say, by requiring any exemptions to non-disclosure to be justified. The Code provides methods of justification. If they cannot be justified under the Code, then the presumption of disclosure is predominant.

3300 I am somewhat confused by Deputy Soulsby's comments; her concern, I think, that the Code is neither fish nor fowl. I think she also was concerned about the number of exemptions, but I do not accept that it is a cut and paste job not fit for purpose. It works from codes that have been adopted by other jurisdictions. We have not reinvented the wheel; we have built on experience of other jurisdictions. Also, I would mention to her that, if she is concerned about the number of exemptions, those are consistent with the statutory legislation you will find in the Freedom of Information Act 2000 in the United Kingdom.

3310 To Deputy Gillson, I cannot give you chapter and verse of the number of hours spent by Policy Council, all I can repeat is that this Report has gone through three draft iterations in

3315 addition to a debate that occurred in Policy Council back in June 2012. The Report is a result of the full Policy Council, not a sub-group.

There was one criticism that Deputy Gillson referred to, which concerned the reply he got to the Rule 6 question he asked to me in relation to severance payments. Sir, the purpose of the response was to indicate to Deputy Gillson and to others the difficulty that the States, and Policy Council in fact, faced on that occasion. The Policy Council, contrary to a lot of popular views, does not have a central resource which it can draw, immediately, information that may be requested. We will be coming back to Deputy Gillson with a revised reply which goes someway, I believe, to try to identify – it will not be a definitive response but, nevertheless, from the resources we have available – to try and give some further information to him. I apologise if he felt the initial response was less than courteous.

3320 To Deputy Stewart, yes, the cost of this process, we do have to monitor; we will monitor and the monitoring report, that will be produced to the States as a result of Deputy Gillson's amendment, we will need to pick up and identify that cost, in so far as we are able to identify it.

3330 Whether or not this process of Access to Public Information leads to centralisation, I do not necessarily agree that it will automatically. There are wider issues as to centralisation of communication – which is not a subject of this particular Report – where the States may be asked at some stage whether they want to have a centralised communication team or structure, or to leave communication within each Department.

3335 To Deputy Brehaut, yes, his concern about the 30-year rule, I think, is shared. To Deputy Fallaize, I hope that I have indicated that, by voting for this resolution, you are not diminishing the commitment that the States has already given to transparency and to openness. I hope that, by agreeing to vote for this code, you recognise that, actually, you are building flesh on the obligation of transparency and the obligation of disclosure. As I say, any non-disclosure will have to be justified; this Code sets out the basis upon justification has to be proved.

3340 But I do welcome the acknowledgement, as I said in my opening speech, we are already working, I believe, as an Assembly in an open approach, we debate policy matters clearly and that is something that would not necessarily happen under a number of other systems of government. So, there is very good openness and, as I said in my opening speech, there is already a lot of information. It is out there; it is available to the public. But that notwithstanding, I believe that this Code *is* essential in order to translate the abstract concept of transparency into something meaningful.

3345 Deputy Fallaize also said that if we vote against this Code, then Policy Council is going to have to come back with something. It is difficult to see – short of coming back with a full statutory Freedom of Information regime, which I sense most Members would not welcome – what else Policy Council could come back with, except the code such as the one we are proposing.

3350 Sir, Deputy Sherbourne is sitting on the horns of a dilemma – an uncomfortable position to be in. I accepted his criticism that this may be a poor attempt, but, as I said in response to Deputy De Lisle, it should be regarded as a first step; a first step along a pathway that will lead to more effective openness, a more effective concept and regime for Access to Information. It should be viewed in that way; it is a first step. It is a living document and there will be reviews. We will be monitoring the success, or otherwise, of the regime so there will be opportunities for the States to change it.

3355 If the States, at a future time, wish to move to a statutory regime then at least, through this code, there is a procedure in place; there will be a culture in place; there will be an experience in place that will help that transition to a statutory regime, if that is the wish of a future States.

3360 Sir, I would urge all States Members to vote in favour. It is not a perfect document; it is not a perfect Code; it is a first step in the development of a policy towards Access to Public Information. It is something that the previous States committed itself to; this Policy Council is responding to that commitment, and I therefore urge that you vote in favour of this Code and let us get the process moving.

3365 Thank you, sir.

3370 **The Bailiff:** Members the propositions, in their original form, are to be found on page 1,086. I remind you that there have been four successful amendments. Proposition 3 has been amended twice, both by the Deputy Gillson–Deputy Green amendment and by the Deputy Green–Deputy Bebb amendment. I think, to make sense of those two amendments, the Deputy Green–Deputy Bebb amendment should be inserted first and then followed by the Deputy Gillson–Deputy Green amendment. Rather than starting that one then with the word 'but subject', it should read 'and further subject to'.

3375 So, subject to those qualifications that would then be proposition 3, as I say amended first by Deputy Green–Deputy Bebb’s amendment and then by Deputy Gillson–Deputy Green’s amendment.

3380 Proposition 5 has been added by the Deputy Harwood–Deputy Dorey amendment, proposition 6 and 7, by the Deputy Gillson–Deputy Green amendment, and proposition 8 has been added by the Deputy Hadley–Deputy Green amendment.

Unless anyone wants those propositions taken separately, I suggest that we vote on all eight together. If anybody wants any of them voted separately we will do so. I see nobody rising so...

3385 **Deputy Collins:** Sir, could I have a recorded vote, please?

The Bailiff: A recorded vote? Yes, certainly, on all eight together.

Members I put to you all eight Propositions, as amended, together and we will have a recorded vote.

3390 *There was a recorded vote.*

Carried – Pour 38, Contre 7, Abstained 0, Not Present 2

POUR	CONTRE	ABSTAINED	NOT PRESENT
Deputy Harwood	Alderney Rep. Jean	None	Deputy Laurie Queripel
Deputy Kuttelwascher	Alderney Rep. Arditti		Deputy Paint
Deputy Brehaut	Deputy Robert Jones		
Deputy Domaille	Deputy Lester Queripel		
Deputy Langlois	Deputy Le Pelley		
Deputy Le Clerc	Deputy Lowe		
Deputy Gollop	Deputy Soulsby		
Deputy Sherbourne			
Deputy Conder			
Deputy Storey			
Deputy Bebb			
Deputy St Pier			
Deputy Stewart			
Deputy Gillson			
Deputy Ogier			
Deputy Trott			
Deputy Fallaize			
Deputy David Jones			
Deputy Le Lièvre			
Deputy Spruce			
Deputy Collins			
Deputy Duquemin			
Deputy Green			
Deputy Dorey			
Deputy Le Tocq			
Deputy James			
Deputy Adam			
Deputy Perrot			
Deputy Brouard			
Deputy Wilkie			
Deputy De Lisle			
Deputy Burford			
Deputy Inglis			
Deputy Sillars			
Deputy Luxon			
Deputy O’Hara			
Deputy Quin			
Deputy Hadley			

3395

POLICY COUNCIL

**Guernsey Financial Services Commission
2012 Annual Report
Debate commenced**

3400

Article VI.

The States are asked to decide:

3405

Whether, after consideration of the Report dated 3rd June, 2013, of the Policy Council, they are of the opinion:

1. To note the Report.

2. To approve the accounts of the Guernsey Financial Services Commission for the year ended 31st December 2012.

3410

The Bailiff: While those votes are counted can we move on with the next Article please, Greffier?

3415

The Greffier: Article VI, Policy Council, the Guernsey Financial Services Commission 2012 Annual Report.

The Bailiff: This is the Chief Minister again to open the debate.

3420

The Chief Minister (Deputy Harwood): Thank you, sir.

I, on behalf of the Policy Council, lay before the Assembly the Annual Report of the Guernsey Financial Services Commission, for the period to 31st December 2012. As stated in the accompanying report, the Policy Council has expressed concerns with the apparent rising cost base of the Commission, although the Policy Council recognises several elements of 2011-12 costs are non-recurrent. Our concern, given that the independent evaluation report has in recent years been completed and the changes resulting from that are yet to take effect, Policy Council considers that both the States' and industry expectation would mean for the Commission to restrain and possibly reduce expenditure pressures going forward.

3425

Policy Council has also noted that the Commerce and Employment Department is already progressing a workstream relating to the governance of the Commission – a matter upon which possibly Deputy Stewart may wish to make further comment – but Policy Council also welcomes that approach.

3430

May I also add that, in relation to these accounts, the obligation is to present the accounts to this Assembly? The Guernsey Financial Services Commission is a statutory body, established under primary legislation of this Assembly. It must be recognised also that the Guernsey Financial Services Commission is an independent body and it is essential for any regulator to be independent of body politic. That is not to say that the entity itself will not necessarily be accountable for body politic, but it must be able to operate independently.

3435

I am aware that States Members had an opportunity of meeting with the Chair of the Guernsey Financial Services Commission, and other members of the executive, on Monday last week, where I hope they had an opportunity to raise, with the Commission and the Commission executive, any detailed questions they wish to raise in relation to the accounts.

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Sir, I will not be in a position to respond to any detailed questions on these accounts. Any questions that States Members wish to raise – if there is any debate on this matter – will need to be taken back to the Commission and I will ask the Commission to respond directly to the individual States Members on their individual concerns.

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Sir, subject to those caveats, I would recommend the States note the Report and the States approve the accounts of the Guernsey Financial Services Commission for the year ending 31st December 2012.

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Thank you, sir.

The Bailiff: Before we enter debate, the formal result on the voting on the Policy Council's Proposition, as amended, on the States of Guernsey Policy of Access to Public Information, had 38 votes in favour and 7 against. I declare the Propositions carried.

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Deputy Lester Queripel caught my eye first, followed by Deputy Conder.

Deputy Lester Queripel: Thank you, sir.

3460 Sir, I recently attended a presentation by the Guernsey Financial Services Commission with several of my colleagues and, at the presentation, I asked three questions. The responses I received to two of those questions were not at all satisfactory; therefore, I would like to run these by the Chief Minister and hopefully he can enlighten me.

3465 The first question I asked was in relation to the cost of renting the building that the Commission currently inhabits. If Members turn to page 54, they will see the cost per annum to rent the building is £646,338 and the lease has another 21 years to run and, even without taking a rent increase into consideration, that equates to a minimum of £13.5 million being paid in rent in that period.

3470 When I asked whether or not the Commission has ever actually considered *buying* a building, instead of renting one, I was told and I quote: ‘That would open up a whole can of worms. Buying property involves large sums of money.’ Well, sir, I am no financial expert but, for me, £13.5 million *is* a large sum of money and £646,338 per annum *is* a large sum of money. If one takes into account the amount of money GFSC must have already paid in rent and add that to the £13.5 million, it seems to me that the Commission could have actually bought the building instead of renting it and, therefore, they would have an asset to show at the end of it.

3475 At the presentation, sir, we were told that there was a break clause – a get-out clause – written into the contract after 10 or 12 years; there was some confusion regarding the timing. However, my research has now revealed that there is no such break clause. Therefore, the GFSC are committed to leasing the building for the next 21 years; how short-sighted is that? I would like the thoughts of the Chief Minister on that issue when he responds please, sir.

3480 I apologise in advance if I am missing a fundamental point, but is it really necessary for the Commission to inhabit such an expensive, state-of-the-art, polished granite and marble-floored building so close to our town?

3485 The second question I asked at the presentation, sir, focused on expenses, which Members will find on page 44. In one year, Commissioners’ fees have increased by almost 80%, from £132,250 to £237,891. Legal and professional fees have increased from £971,282 to over £1.5 million. I find the increases in those two sets of figures quite alarming, sir, especially when you bear in mind that the mission statement for the GFSC is to keep costs down.

3490 Also, in the list of expenses, Members will see that other operating expenses have increased from £689,077 to £729,769. Also, other finance costs have increased from £42,756 to £204,899, and not one of these additional costs and expenses have been itemised in these accounts. That concerns me, sir, because we are talking about almost £1 million. Just to clarify that point, Members will see that, also on page 44, alongside other finance costs, there is reference to 7(b). We are not actually told where 7(b) can be found, but if Members turn to the top of page 51, they will, indeed, find 7(b).

3495 Note 7(b) tells us that superannuation ‘Interest on obligation’ amounts to £982,298 and ‘Expected return on scheme assets’ amounts to £777,399. If you subtract the latter figure from the former, you are left with £204, 899 for other finance costs. But we are still not told what that all means. In fact, I had a long conversation with one of the Commission employees who agreed with me that the figures were vague and nebulous but that the Commission was complying with FRS17 regulation standards, which often are not easily understood by the lay person. That is precisely my point, sir. One should not need to be a qualified accountant to understand a set of accounts.

3500 When I asked at the presentation whether or not it was possible to itemise additional costs in future expense accounts, I was told, ‘It has never been done before. The question has never been asked before. It would take a lot of time and effort to itemise individual expenses, but the Commission would consider it’.

3505 I do not think that is acceptable, sir. In fact, I think it is unprofessional. This Assembly, and the people of Guernsey, have a right to know where every penny of those additional costs has been spent. Especially when you bear in mind that (a) of the Commission Law, which Members will find on page 75, dictates that:

3510 ‘The Commission shall keep proper accounts and proper records in relation to those accounts.’

and (b) dictates that:

3515 ‘The Commission shall prepare in respect of each year a statement of accounts giving a true and fair view of the state of affairs of the Commission.’

So, in reality, sir, there is a possibility that the Commission is not even complying with its own Law. It seems to me, sir, that the Commission has forgotten the procedures of basic book-keeping.

Therefore, I would like to ask the Chief Minister to please tell me whether or not he is able to pursue the issue of the GFSC itemising all expenses in future accounts.

3520 I take confidence, sir, from the statement of page 1087 of the Billet, where paragraph 2 tells us that:

‘Policy Council has concerns with the apparent rising cost base of the Commission.’

3525 But at the same time I am very confused, because the Policy Council themselves have contributed to these rising costs and, if Members turn to page 72 of the Report, sir, and read the footnote, they will see what I mean. I hope they can see what I mean, because you actually need a magnifying glass to read the small print. *(Laughter)*

3530 The smallest print in the whole document, sir, contains some of the most important information and, again, I think that is most unprofessional. However, I digress. The footnote tells us that:

‘The Policy Council, in anticipation of the increasing input required from Commissioners, wrote to the Chairman of the Commission in January 2012 varying the fee arrangement for Commissioners.’

3535 If Members look at the graph above the footnote, sir, they will see that the Chairman’s fee increased from £26,000 to £59,000 and the Vice-Chairman’s fee increased from £17,500 to £38,000. That is over 100% financial increase in both cases. There is no mention, whatsoever, of the aforementioned increasing input that will be required to justify a 100% increase in the fees paid to the Chairman and Vice-Chairman.

3540 I am sure that the Policy Council would not have agreed to the 100% increase in the fees paid to the Chairman and Vice-Chairman, unless they knew exactly what was going to be given in return, so I ask the Chief Minister to please tell me what this increasing input will actually consist of, when he responds, sir.

3545 One final point on the cusp of the GFSC: a recent e-mail from the Guernsey International Business Association told us that costs at the GFSC have increased by 65% since 2007, yet costs at the Jersey Financial Services Commission have only increased by 20%. If that is the case, then I think it is time some serious questions were asked because things seem to be getting a little too cosy at the Commission. I would like an assurance from the Chief Minister that those serious questions will be asked, please, sir.

3550 In conclusion, I want to focus on the fact that there are no contact details in this Report; *(Laughter)* no e-mail addresses, not even a phone number. That arouses certain suspicions in my mind, sir. I do not think that is acceptable and, again, I think it is most unprofessional, because it gives the impression that the Commission is unapproachable, unavailable and not willing to be contacted. Perhaps they are frightened of the questions they might ask them, sir. Yes, there is a number in the phonebook, but why is there not a telephone number somewhere in this Report.

3555 There are 17 photographs of GFSC employees featured in this Report and no contact details for any of them. So we know what they look like *(Laughter)* but we cannot get hold of them. *(Laughter and applause)* Modern day technology dictates that we all communicate by e-mail but, in fact, even when you contact someone by telephone, they often ask you if you can send them an e-mail. Therefore, I think an e-mail address under every one of those 17 photographs would be the professional approach. So, I would like to ask the Chief Minister to tell me whether or not he is able to pursue the issue of contact details being provided in future GFSC reports.

3560 Sir, I think I have made it obvious I am not at all impressed with this Report *(Laughter)*. It is fundamentally flawed in many aspects and I await the Chief Minister’s response with great interest.

3565 Thank you, sir. *(Applause)*

The Bailiff: Next, Deputy Conder and then Deputy Perrot.

3570 **Deputy Conder:** Sir, thank you for inviting me to follow Deputy Lester Queripel. *(Laughter)* I think I heard somebody say ‘follow that’ somewhere – no chance.

Sir, before speaking I wish to declare an interest: I am a non-executive director of a financial services company, regulated by the Guernsey Financial Services Commission.

3575 As last year, the Policy Council’s Proposition is that this Assembly should note the Report and approve the accounts of the GFSC. As I did last year, sir, I have to ask, when we in this Assembly are asked to vote on, and approve such resolutions, what are the consequences if we choose to reject either or both recommendations? I would appreciate the Chief Minister’s response to this question in his summing up, because I suspect the outcome of such a rejection would be very little

3580 or nothing, which once again raises for me the question of, who regulates the regulator? (A
Member: Hear, hear.)

Sir, notwithstanding the apparent lack of power or authority in this situation, I would like to make a few observations in respect of the GFSC's accounts, but before I do, I should state that I recognise that the cost of regulation is increasing across the world. My comments relate to aspects of proportionality.

3585 Sir, I think we should recognise that the fees levied *upon* the Guernsey financial service sector by the GFSC are little more than a hypothecated tax – a tax which is levied by the end user – GFSC – to maintain itself and its operations. That tax is a cost upon our most important industry which impacts upon its profitability and therefore its ability to do business in this Island. (**Several Members:** Hear, hear.)

3590 Sir, many of us have received correspondence from the Chairman of the Guernsey International Business Association, in which he draws comparisons between the costs of the GFSC in 2012, 2011 and 2007, and expresses his, and his organisation's, concerns regarding increases in these costs. He draws comparisons – as Deputy Queripel has already said – with the Jersey Financial Services Commission and the Isle of Man. I will not repeat those comments and concerns, but I would, sir, with the Assembly's indulgence, like to look over a rather longer term... indeed 11 years, which is in some cases a fixed period of time which reflects changes and growth in the financial services industry, and changes in it over a considered period.

3595 Sir, in 2012 taxes or fees receivable from the financial services by the GFSC were £12.5 million, as shown on page 44 of the accounts, the incoming expenditure account. That is £12.5 million. That is what it costs our financial services industry to pay the GFSC to regulate it.

3600 Sir, I happen to have the GFSC's accounts for 2001 in my hand. The fees receivable, the tax on the sector, that year were £3.5 million; thus in 11 years we have seen an increase of £9 million in the fees charged to our primary industry. That is £9 million per annum – *per annum* – added to the cost of the finance sector over 11 years. Or, to put it another way, an increase of more than 350% per annum in the fees charged by the GFSC for it to run itself.

3605 Further examination reveals that over that 11-year period, salaries and related costs have increased from £2.25 million to £8.76 million per annum – an increase of 389%. The cost of premises – as Deputy Queripel has said – over just over a decade have increased from £574,000 to £1.33 million – an increase of 232%. Now, wait for it... and Commissioner's fees have increased from £20,000 to £238,000 per annum – an increase of 1,190%. Sir, that education or health have been able to luxuriate in such munificence during the same period, what a different tale we would have to tell.

3610 Turning now, if I might, sir, to the matter of staff salaries, as detailed on page 71 of the GFSC's accounts... if my colleagues would indulge me perhaps they might turn to that. As in its 2011 accounts, the Commission this year has been surprisingly coy in respect of what it pays its senior staff.

3615 Colleagues will note that salaries are shown in bands of £40,000 up to £120,000 salary per annum and the number of staff is shown against each band, but then, just like last year, at the top end we are simply told that nine staff are being paid more than £120,000. I am used, sir, in the organisations I have been included in – universities and companies – to complete transparency, in terms of salaries earned by the senior staff.

3620 So why are nine staff being showed as being paid more than £120,000? Why so shy? Does it mean there are staff being paid £250,000, £350,000, £450,000? We are not told... and remember colleagues, these are salary bands, not total staff costs. We might assume we could add another 10% or 20% for total employment costs; significant numbers of staff, some Members of the States of Guernsey superannuation scheme.

3625 Sir, may I just, as a comparison... some colleagues will have our own accounts, the States of Guernsey's accounts... it was the intention we would debate these during this meeting, I suspect we will not. Most colleagues will have those accounts. I would ask them to look at the top of page 19 in our own accounts. There, they will see that States senior staff salaries are shown – gross salaries. You will see that staff costs in the States' accounts are banded in £20,000 bands, and include all senior salaries right to the top of the scale, to the point of showing the actual gross cost of the most well paid Member of the States – true and genuine transparency.

3630 I would ask again, why the GFSC accounts are so coy in this respect. Is there something they would rather not share with us? Mere States Members who are being invited to approve these accounts. Please, colleagues, if you have the two documents, just take a moment to compare the two tables on page 71 of the GFSC's accounts and page 19 of our own accounts.

3635 Finally, sir, I would like to turn to the historic funding by the finance sector of the Guernsey Training Agency through the GFSC. Again, I should remind colleagues that I was the Chief

3640 Executive of the GTA from 2002, to 2011 when I retired, so I do have an interest, albeit now long dated.

When examining the GFSC's accounts, colleagues will see on page 44, at note 9, that there is a charge against the Commission's income and expenditure account of £440,000 – £440,000 – for the finance sector's contribution to the running cost of the Guernsey Training Agency. This is the transfer of that part of the fees, paid to the GFSC by the finance sector, which has historically been utilised to fund the GTA.

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3655 Colleagues will not need reminding that, with effect from 2013, the year we are in, the Commission unilaterally sequestered that part of its fundings, previously passed on to the GTA for its own uses, as detailed at note 9 on page 54 of the GSFC's accounts. The consequence of this action was that the full cost of funding of the GTA fell upon the Guernsey taxpayer, via the Department of Commerce and Employment and your Budget. Whilst at the same time, from 2013, the Guernsey Financial Services Commission has received an uplift in its funding of £440,000 by way of diverting the GTA's funding to its own purposes. Colleagues should bear this in mind this time next year when they will again be invited to review the cost and funding of the GFSC, and colleagues you can be sure that I will remind you at that time.

I am delighted that Deputy Stewart's Department is undertaking a review of the governance of the GTA. Actually, I would not mind it if the Scrutiny Committee and PAC had also undertaken a review, but I do not want to start another turf war. I just wish Deputy Stewart and his colleagues every success and all power to their review.

3660 Sir, turning to the words 'second recommendation' – namely that I and colleagues are invited to approve the accounts of the GTA... If approving means endorsing the spending patterns apparent within this organisation over the recent few years then, whilst I will note them without enthusiasm, as per the first recommendation, I will not add my vote to the approval or endorsement of a set of accounts which includes such an increase in fees and costs. I would urge my colleagues to demonstrate their unhappiness by voting against the second recommendation.

3665 Thank you, sir. *(Applause)*

The Bailiff: Deputy Perrot.

3670 **Deputy Perrot:** I thought that I had something to say but I do not think I have anymore, *(Laughter)* having heard my colleagues.

Except perhaps to say this, that I... perhaps I could be as impertinent as to invite the Minister for Commerce and Employment – whose budget is now less than that of the Guernsey Financial Services Commission – to comment on what progress is being made in respect of the review of the Guernsey Financial Services Commission. It was a brilliant idea; it is still full of brilliant people but its cost base now is grotesque. The Commission has clearly lost its way and, although it is an independent body, something needs to be done about its set up.

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3680 Those of us who... I have not been involved at all in the finance industry – oh, yes, I have actually. I ought to declare an interest; I am the director of a captive insurance company. *(Laughter)* Sorry, I had forgotten about that.

Deputy Fallaize: It's an onerous commitment, is it?

3685 **Deputy Perrot:** Sorry, I am giving way to my...

Deputy Fallaize: It's an onerous commitment, is it?

Deputy Perrot: Thank you for the interruption. *(Laughter)*

3690 Certainly, when I was in practice, it was an open secret that there were serious misgivings about how large the Guernsey financial services industry had become. There was a great concern about excessive regulation. There was a perception – it may have been entirely unjustified but there was a perception nonetheless – about empire building and there was also a perception that there was a distaining for the views of the industry. It may well be that all of that has been much improved over the last three and a half years since I retired, but to have this size of budget, clearly something has gone terribly wrong and I look forward to hearing what the Commerce and Employment Minister has to say.

3695 **The Bailiff:** There were other people I was going to call first but... Deputy Ogier.

3700 **Deputy Ogier:** It was a correction, sir, for the purposes of *Hansard*. I think Deputy Perrot mentioned in there that there were issues with the growth of the Guernsey financial services industry, I think he meant the Commission.

3705 **The Bailiff:** Yes, I think so.
Deputy Stewart, a point of clarification?

3710 **Deputy Stewart:** Just if I may, just to help the Members, sir. I will intend to speak just before Deputy Harwood. As Members are aware currently the GFSC reports to two points: FEPG, as a sub group of Policy Council, and also C&E. I can probably be helpful with a lot of the answers so I will speak just before the Chief Minister, if I may, sir.

The Bailiff: Deputy Soulsby next and then Deputy Collins.

3715 **Deputy Soulsby:** Sir, in response to Deputy Queripel's comments that you should not need to be a qualified accountant to be able to understand a set of accounts, believe me when I say it is difficult even as a qualified accountant to understand the States of Guernsey accounts. (*Laughter*)

The capital expenditure and income account and no assets on the balance sheet... so I, therefore, look forward to Deputy Queripel's comments on those accounts when they come up, possibly in November. (*Laughter*)

3720 Sir, last year I stood up and queried aspects of the GFSC accounts and was soon after phoned up by the secretary to the then Director General summoning me to a meeting. (**Several Members:** Oooh!) I am not sure what the reaction will be to my comments today by the new Director General, but I hope he will listen and realise that I am not a lone voice, either in this Assembly or outside, in what I have to say. Mind you, I think Deputy Queripel may want to watch out. (*Laughter*)

3725 As someone who has spent 20 years in the financial services industry, I believe it is important we have strong regulation. Now, more than ever before, when the spotlight is on our financial services industry, we need to be able to show Guernsey is a top class, reputable, international finance centre; however, regulation has to be proportionate. These accounts show it costs over £1 million a month to regulate our financial services and whilst acknowledging the value of the industry to the Island, this is an eye watering amount and there is nothing to indicate in these accounts that an attempt is being made to reverse the inexorable rise in staff numbers and expenditure.

3730 I attended the presentation given to Deputies last week by the GFSC where, understandably, costs were raised and I have to say I was not entirely comforted by what I heard there either. It did seem to me that there was a feeling of, 'We will just ask for 2% now' but I felt that this was to be at the expense of bigger rises in two or three years' time. I do hope that costs are going to be controlled and in a long term, sustainable way. We cannot afford for Guernsey to become a more expensive place to do business.

3740 It is often thought by those not in the industry that financial services means big banks and institutions; however, this is not the case. If the fiduciary services sector – a business I know well... The GFSC accounts themselves show that, of the 151 licensed fiduciaries, 69 are privately, locally owned; 26 are lawyers and accountants; but only 39 are larger international companies.

3745 There is also an even split between those with turnover above and below £1 million and we find that 118 fiduciaries – that is out of 151 – employ less than 25 staff, with just 33 employing over 25. So the fiduciary services sector is comprised of predominantly small, *local* businesses. They do not have bottomless pockets and are having to compete in a global market place against jurisdictions with a cheaper cost base. An inflationary rise in fiduciary licence fees to fund a regulator is not acceptable. Neither are staggered increases, such as fees flattened off, followed by a hike in fees a couple of years later.

3750 I, therefore, welcome the comments of Policy Council in their covering Report, expressing concerns as to the increased cost, as well as those of GIBA who have made it very clear in their letter to all Members yesterday that they share those concerns.

3755 The Commission has a new mission statement: 'Integrity, proportionality, professional excellence: winning for the Bailiwick.' I just hope that they do something about ensuring costs are proportionate, before we find we have already lost.

3760 At the meeting last week, the concept of risk assessing all licensees was raised and that this would be achieved through their new Sentinel computer system. This makes complete sense to me, and was a view echoed by GIBA in their letter. I would like to see, once this has been bedded down, something that was discussed at the meeting: a more sophisticated fee structure that takes

account a licensee's risk profile, rather than just turnover. But I again believe this should be against the background of a static fee base overall.

3765 Despite all this talk about increased expenditure, I would like to draw Members' attention to the auditor's remuneration, as shown in the income expenditure account. The Public Accounts Committee has taken a proactive role in the appointment of the auditors to the DFSC this year, which included negotiating the level of remuneration.

3770 I would hope that Members would be pleased that, while we are dealing with a small figure compared to the overall level of expenditure, the Public Accounts Committee's active involvement has resulted in a reduction in the level of auditor's remuneration this year. It goes to show you really can reduce costs if you try.

The Bailiff: Deputy Collins then Deputy David Jones.

3775 **Deputy Collins:** Thank you, sir.

I also attended the briefing at the Guernsey Financial Services Commission and found it very interesting. One thing I certainly found interesting was, turning to page 38, where it says:

'The division conducted a total of six visits during 2012 and plans to conduct 65 visits in 2013.'

3780 You have got six compared to 65; so was there a problem last year by not going out to visits? Or is there a problem foreseen this year by having to go out and visit people? It seems to me very strange that last year they say the cost increased by £2.2 million, yet we only had six visits out. It seems very strange.

3785 Obviously, Members have already gone over what I was going to say about the costs – staff costs increased by £800,000; Commissioner fees gone up by £100,000; legal fees, £600,000. Personally, I would love to see a budget, sir. I would love to see the expenditure – as Deputy Queripel has said, a couple of pages' worth – to actually see what is happening.

I totally agree with Deputy Conder, I have written it here even before he said it. I ask Members to not approve these accounts.

3790 Thank you.

The Bailiff: Deputy Dave Jones.

3795 **Deputy David Jones:** Thank you Mr Bailiff, Members of the States.

I think we are getting to the stage with the GFSC where the urgency of sorting this regulator out is becoming more and more. I said last year that this is the only growth industry left in Guernsey – this particular regulator. When everybody else is cutting costs and the Government is trying hard to keep within its budgets, the GFSC is a regulator out of control. It is clear from the figures that have been quoted – I did, a week or more ago, start to write a bit of a speech on this but I need not have bothered because I think that other Members have put things much more eloquently than I was going to do – but certainly we have to do something to arrest this appalling growth in this bidding.

3800 The finance sector of this Island is contracting, all of us recognise that. It has had to; it is working in international and global markets that have contracted around it and we are not immune from that. It simply is not helped by the industry being charged fees that are becoming more and more onerous and unaffordable for regulation that is platinum-plated in many areas, rather than sensible regulation. Of course we want to be a premier offshore centre and of course we need regulation, but this has gone way beyond that. I think, in a way, the GFSC has taken up those sentences where we have said that we want to be a premier offshore and they have tried to enhance the regulation because of those statements.

3805 But it is the urgency of this and I too agree with Deputy Conder and Deputy Collins that we should not just, I believe, accept this Report any longer. It has been going on for several years. I and other Members of this Assembly have raised it and the Policy Council and the GFC come in every year and I make the same points every year and we should this time.

3815 This Assembly should now draw a line in the sand and say that we are prepared to note it, we have little choice other than doing that, but any tacit evidence of support for what is going on in that regulation business is simply unacceptable any longer.

Thank you.

3820 **The Bailiff:** Deputy Perrot.

Deputy Perrot: Could I ask a question of the Comptroller, sir? It has been suggested – Deputy Jones was the last one to suggest it – that perhaps we should not approve the accounts. Is that actually a course open to us?

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Accounts are an historical record produced by auditors and I understand that accounts might not be approved if there is an error on the face of them. But subject to that, are we able not to accept accounts?

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The Bailiff: No. Can I suggest, we are not going to conclude this today, is that something you might want to reflect on overnight, Madam Comptroller?

Deputy Robert Jones: I would argue the accounts are incomplete for many of the reasons that Deputy Queripel and Deputy Conder have –

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The Bailiff: I think it might be helpful to hear from Madam Comptroller tomorrow morning, on what would be the consequences of the States not approving the accounts.

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Deputy Storey: If we have been invited to approve something that we have no choice other than to approve, what are we making these speeches for?

The Bailiff: That is why I am suggesting she comes... what would be the consequences, if any, of not doing so? I think that would be helpful to the States.

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Deputy Storey: What is this Proposition for?

Deputy Fallaize: Sir...

The Bailiff: I was going to call Deputy Luxon next.

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Deputy Fallaize: I was just going to ask a question so that the Comptroller could ponder it overnight. If there is a problem in law with the States not approving historic accounts, could the Comptroller advise in the morning whether there is a problem with laying an amendment to proposition 2, so that the States could potentially express its disapproval or some other sort of acknowledgement.

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The Bailiff: Might it be an option to note the accounts, rather than to approve them? That might be an option. Perhaps Madam Comptroller can reflect on that.

I was going to call Deputy Luxon to speak next. Deputy Luxon.

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Deputy Luxon: Thank you, sir.

I agree entirely with what Deputies Queripel, Conder and Soulsby said, I think they did a great analysis of some of the flaws.

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What I would say, just for *Hansard*, is I do not think my colleague Deputy Jones actually meant the GFC, the Guernsey Football Club; I think he did mean the GFSC, just for *Hansard*, thank you Deputy Ogier. (*Laughter*)

What I would say on the States of Guernsey accounts is that, on the first page, it has our Bailiff's contact details and on the third page it has our Treasury and Resources Minister's name, address and contact details and, as an FTP project, we will also sell our accounts for £12 a go. Maybe the GFSC could give that some thought.

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Sir, one example of cost-saving would be if the GFSC also considered enlarging the font so that we can all read the words in there, but also not bothering to spend what I imagine is a five-figure number producing those accounts every year. I would be quite happy to have a photocopied copy rather than a glossy copy.

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Sir, but caution... Members have been rightly showing their chagrin about these accounts and indeed the cost increases, but we should also reflect that the Guernsey Financial Services Commission is a very, very necessary entity for the credibility of our international sector and it is a very professional organisation, made up of a lot of very capable professional people. So we should just caution: it is not bust it is just costing too much money. It has added real value and improved our framework of compliance and regulation and is, as I said, a very professional organisation.

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However, previous Deputies are actually right, the activities have grown topsy-turvy and indeed the costs have grown topsy-turvy. The recent years' cost rises have, frankly, been

unsustainable, too high and action must be taken to address the ratio of cost to the benefit that it gives.

3885 However, sir, the new Director General is an incredibly professional and capable individual who has got global experience and, if the whispering winds coming out of that Glatigny Esplanade are true, I think it is fair to say that he does grasp the reality of the high cost base and I am hoping that we will see him doing something about it.

3890 Sir, we do not need our finance sector operators – the businesses, to find their relationship with our regulator cosy or easy or light touched. It should be strong, challenging and it should be consistent, but equally the costs that the GFSC imposes should be proportionate and not profligate.

3895 So I look forward to seeing what the GFSC, the new Director General and indeed the Commissioners actually do to recognise and apply some appropriate recalibration of the cost base to actually operate this very necessary regulatory control body over our finance sector. If they do not, sir, then who guards the guards? I hope that Commerce and Employment will need to go on its front foot to attain the balance that we require the GFSC to deliver, in terms of the costs to operate.

3900 Many of its Members have had to show cost restraint since the financial market collapsed in 2008; many of them are pursuing shrinking revenues and had to compete in a very competitive global market place. Those finance sector business operations have had to recognise their cost base was not sustainable when they were showing significant growth here year on year and the GFSC, as the States of Guernsey's regulator over this sector, must also demonstrate that recognition of cost restraint.

Thank you, sir.

3905 **The Bailiff:** Deputy Robert Jones, then Deputy Brehaut.

3910 **Deputy Robert Jones:** Just a brief comment, Deputy Collins brought up the point about the new AML and CFT division. The point he made about six visits last year... I asked the same question at the meeting we had. That division was actually set up at the end of 2012 so it was in its infancy and this year they have done over 68 visits.

3915 What was encouraging was that those visits, as Deputy Soulsby highlighted, can be targeted on the risk analysis of licensed entities. Also something that was briefly mentioned is that there may be scope for the GFSC to look at the way they structure their fees so that their fees are then targeted to those companies that have higher risks and have the ability to be a drain on resources for the GFSC, so that was quite encouraging.

3920 There was one further point, which I... oh, yes, it was aside actually. In terms of the Commerce and Employment review into the GFSC, I can assure you that whilst Scrutiny has parked its own particular review, we will be very, very carefully monitoring the progress of the C&E report and I would not hesitate to say that we will be there, we will be watching and we will certainly pick up where they fail to deal with these points. I am sure Deputy Stewart has taken all this on board.

The Bailiff: Deputy Brehaut, do you wish to speak briefly? Then we will rise for the day.

3925 **Deputy Brehaut:** Yes, thank you sir.

I think there are no telephone numbers in here because it would be confused with salaries (*Laughter*).

3930 I just wanted to get a proportionality on this; we are in a post 9/11 environment; we are in an anti-terrorism environment. Could somebody perhaps, in summing up, give me a feel for the proportionality of regulation that is now necessary that was not in the world before 9/11 and, some years later, the bank collapse, to give me a feel for the burden of regulation that is necessary in the post 9/11 environment?

Thank you.

3935 **The Bailiff:** I suggest we rise now and continue this debate in the morning.

The Assembly adjourned at 5.32 p.m.