

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, 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, L. B. Queripel, M. M. Lowe,
A. R. Le Lièvre, A. Spruce, G. M. Collins

The Castel

Deputies D. J. Duquemin, C. J. Green, M. H. Dorey,
B. J. E. Paint, 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)

Deputy M. J. Storey (*indisposé*),

Business transacted

Evocation 1293

Billet d'État XV

XVI. Requête – Clarification of the Responsibility and Accountability of the
Civil Service to the Political Boards and Committees – Debate continued 1293

*The Assembly adjourned at 12.32 p.m.
and resumed its sitting at 2.30 p.m.*

XVI. Requête – Clarification of the Responsibility and Accountability of the
Civil Service to the Political Boards and Committees – Debate continued –
Amended Propositions carried 1323

XVII. Requête – Scrutiny Urgent Business Review into the Non-Disclosure of
Information Relating to the Negotiated Settlement with AFR Advocates –
Proposition 1 carried; Propositions 2 and 3 not carried 1327

The Assembly adjourned at 5.31 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 XV

REQUÊTE

**Clarification of the Responsibility and Accountability of the
Civil Service to the Political Boards and Committees
Debate continued**

The Greffier: Billet d'État XV, continuation of debate, Article XVI, clarification for the responsibility and accountability of the Civil Service to the political Boards and Committees.

5 **The Bailiff:** Members of the States, I remind you, we are debating the amendment proposed by Deputy St Pier and seconded by Deputy Fallaize. Who wishes to speak on the amendment?
I see no-one. Oh, Deputy Laurie Queripel.

Deputy Laurie Queripel: Thank you, sir.
10 It is just a quick point. Although I have signed the Requête, sir, I am in some ways tempted to support this amendment, but – (*Laughter*) it is Proposition 2, sir, that I seek clarity on, in regard to line management of Chief Officers. There is no definition in regard to what this line management involves and I wonder if Deputy St Pier could give an explanation as to what is entailed in line management, sir.
15 Thank you.

The Bailiff: Yes, Deputy Le Clerc.

Deputy Le Clerc: Sir, I will be speaking on the amendment and general debate and I do agree
20 with Deputy Laurie Queripel on some of the clarification.
It was seven months ago that I was approached by Deputy Bebb with a draft of his Requête. Upon receipt of this Requête, I looked back at the October 2011 Billet, States Strategic Plan, clarifying political and executive responsibilities. I also looked at the question of the Chief Officers' accountability and responsibility posed by Deputy Queripel in the December 2012
25 debate and the response from the Chief Minister and the Chief Minister's statement in the January 2013 debate providing yet further clarification, if there was a conflict between the Chief Executive and Chief Officer.

30 After re-reading these papers, I was still unclear of who was responsible to whom and what the lines of reporting were and, ultimately, who was and is accountable. When things are going well, accountability is not an issue, but, when they go wrong, that is when accountability and clear lines are important. I felt that there were certain items of operational responsibility that were not progressing and it was my frustration that some of these things not being addressed and, even though I did not agree with all of Deputy Bebb's Propositions, I felt a debate needed to take place.

35 I was, perhaps, naive, but, in signing the Requête, I did not believe that these proposals would lead to a fully devolved government, as the Chief Minister outlined in his speech yesterday. My intention was *not* and is *not* to de-stabilise the States of Guernsey. I just wanted to have a debate so that I could air my concerns and try to establish more clearly the lines of responsibility and accountability. (A Member: Hear, hear.)

40 Following Deputy St Pier's amendments, I have the following comments/observations regarding Propositions 2 and 3.

He said yesterday that it is not possible for the Board to be involved in the appraisal of the Chief Officers. If the Chief Executive is responsible for line management of the Chief Officer, how can he know if that officer has been effective and has worked well with the political Board if he has not consulted with the Board? Is that not a key part of his role?

45 Oh, I have lost my page 2, forgive me. Sorry, sir.

Proposition 3, asks us:

50 'To approve of the Chief Executive, when appraising a chief officer, continuing to afford an opportunity to the chairman...'

– I presume that this includes a Minister of the Department in this wording –

'... to advise as to its members' views.'

55 I can confirm that on the two Boards that I have been on since May 2012, that I have never been asked to provide any feedback on the performance of the Chief Officers, either direct to the Chief Executive or via the Minister, to provide feedback, or have been made aware that any form of appraisal has taken place.

60 I would have been interested to know if the HSSD Board were asked for feedback on the performance of their Chief Officer prior to his recent departure. I expect they were not. There are ways in which the Board can be involved in feedback and we must ensure that this happens in future. I do, however, think things have moved on, since I signed the Requête back in early May. I am not entirely happy with the proposals in Deputy St Pier's amendments and I am concerned about some of the proposals in Deputy Bebb's Requête, even though I signed it, which leaves me
65 in a great dilemma today.

The Bailiff: Deputy Gollop, then Deputy Spruce and Deputy Fallaize.

70 **Deputy Gollop:** Sir, in the early stages of the Bebb Requête, I saw a draft copy and was very tempted to sign it, but for a number of reasons that did not happen, partly because I was working on my own Requête at the time and another reason was, I think, Deputy Bebb is of the opinion, that we will see later, or have already seen, that Requetes, perhaps, are counter-productive if they are signed by 23 people and that kind of argument.

75 But, although I certainly could question some of the content and context within it about the rôles of the Civil Service and all that stuff, going back to Gladstone's time and so on, I think, like Deputy Le Clerc, it is a debate worth having and I think I am going to stick with the Bebb Requête as it is drafted. At least it is a starting point for research.

80 Clearly, some of the material within this is relevant to the States' Review Committee and its deliberations, but we certainly need greater clarity. For example, Deputy St Pier, yesterday, pointed out the absurdity of Department Boards appraising their Chief Officer, but it is not quite as simple as that. For a start, of the 10 Departments, one, in a sense, does not have one Chief Officer any more and the other nine do, although one is currently temporarily shared. At least one of the Chief Officers has a rôle detached from being a Chief Officer, because the Administrator of Social Security has a distinct statutory position and some have been in place a matter of months, some
85 have been in place many, many, many years, longer than virtually any of us in this Chamber.

In addition to that, Chief Officers have a unique role which is distinctly different from the private sector, but, nevertheless, I would imagine that many Boards of directors, especially if the directors were shareholders in the company concerned, *would* have an appraisal role. I mean, clearly, the Chairman of organisations, perhaps even state owned enterprises, would have a role in
90 determining whether the managing director or chief executive officer would continue in place or have their contract renewed and there would be a degree of appraisal. So, I think Deputy Bebb has a point in that respect.

95 In a former Department I sat on, there was a brief appraisal process and I remember the Board members were asked to mark the Chief Officer out of five, between one and five. I am not sure I ever did it, actually, because all my colleagues gave him at least four and half out of five and why

not, but it was a rather absurd process, the way it was done, but nevertheless, I suppose it was a move in the right direction.

100 But, yesterday, Deputy Bebb alluded to the departure of one of the Chief Officers of recent times and Deputy Le Clerc has repeated those issues. Unfortunately, I do not really think it is appropriate to discuss that in this Chamber for lots of reasons, but it would nevertheless be of interest to Members on a future occasion to know the role of a Board in a situation where the Chief Officer departs before one would expect, because to the public out there, the public assume, usually wrongly, that the political Board are like titans and little gods and goddesses with enormous powers over every aspect of the Department and every service that is delivered and every letter that is written and clearly, if one of the more senior Boards of the States does not have a particularly dynamic role in the selection and retention of very senior members of staff, that really does put a different light on our political culture.

105 But, moving on from that, I think most of us would agree that there is a grey area as to where the Policy Council begins and the Departments end, especially with the policy groups, like the Social Policy Group and the Economic and Political Group and the Environmental Group and so on, and that needs to be clarified, because, I think, still, we have a culture whereby Departments are stronger in delivering than the centre. That is because the Departments have five almost full-time politicians looking at the issues, maybe some non-States members as well and, generally speaking, it has to be said, we do have a high calibre of Chief Executive Officer and Deputy Chief Executive Officer and their teams, and so they will deliver – not necessarily as quickly as some would like – but they deliver, at a measured pace, initiatives, services, developments, policy letters, documents. But, in the centre, the resources are generally much smaller and even the politicians concerned are part-time, because their predominant role, in the eyes in the public and, to a degree, in the timetable, is as Minister of a particular Department.

115 Our Civil Service clearly does not reflect reality. I think Deputy Bebb is correct in assuming that the development of the Financial Transformation Programme in the executive is a new development and some might see it as a development of executive Government. In fact I do see it in that respect, because, to give an example, that probably bores some Members, but, we will come back to again and again, I am sure, is the bus issue.

120 Now, there was a curious story in *The Guernsey Press* yesterday, I think it probably needs further research before the facts are known, but it is yet another piece of evidence, if you can call it that, that the policy of this Chamber, that Deputy Fallaize and others were very conscious of, was to subsidise bus fares to encourage greener transport modes, but the executive at the centre, rather than at Department level, perhaps working together with politicians at the centre, eroded that bit by bit, after the Capita/Tribal Helm, and we have seen a confusion about policy, because this Chamber never had a change of policy, the Assembly never voted for a change of policy, but it happened by decree, perhaps for good reasons, perhaps not, but it is an example of how the frustration of scrutineers or departmental members seeing the tools that they use are no longer fitting the toolbox.

125 So I would welcome the Bebb Requête going through and, true, not every part of it could be implemented within the current structure, within the resources available, and it would actually expose anomalies. But, surely, those anomalies can be ironed out by the Policy Council working constructively with putting measures towards this Assembly and hastening up the sterling work of the States Review Committee.

130

The Bailiff: Deputy Spruce.

Deputy Spruce: Thank you, sir.

135 Members, this Requête, in my view, must be one of the most dangerous and ill-conceived pieces of political mischief making (**Several Members:** Hear, hear.) I have had the misfortune to sit through during my time in the States. I can only assume that the nine signatories got carried away with the thought of complete freedom, without fully understanding how our Government works. They surely have not thought through just how much damage these resolutions would do to the effective operation of the States as a whole. To suggest that independent fiefdoms lacking any corporate responsibility could ever work is beyond comprehension to me.

140 If the signatories believe that our current systems and operational procedures are flawed, just wait and see how bad things will be if they turn the clock back with their proposals. In my view, this Requête is a recipe for disaster. Initially, I thought that we should just throw the whole thing out, but I have come to think that we should support this sensible amendment before us today, because it clarifies many of the issues that concern us without dismantling a proven and generally successful set of government processes.

145

Members, I urge you to support the amendment before you today.
Thank you.

160 **The Bailiff:** Deputy Fallaize and then Deputy David Jones.

Deputy Fallaize: Thank you, sir.

I think I am about to undo all the good work I did with Deputy Perrot yesterday in speaking so briefly.

165 My position in this debate is one of equidistance, I suppose, if that is the right word. Halfway between the case for quite radical change, which was set out quite powerfully by Deputy Bebb, when he opened on his Requête yesterday and the case for the defence, if I can put it that way, to disregard the Requête completely, which was then set out by the Chief Minister on behalf of the Policy Council. I say that I am equidistant between them, because I think they are both equally
170 wrong.

The American economist, J K Galbraith, once said, ‘Politics consists in choosing between the disastrous and the unpalatable’, and that, frankly, is how I feel about the matter that is before the States today, hence my involvement in this amendment, which, unashamedly, was put forward by Deputy St Pier yesterday as a compromise, or at least an attempt to accommodate some of the
175 more reasonable and legitimate concerns on either side of the debate.

Sir, looking first at the Requête, I think Propositions 1 to 3 would cause particular problems. Now, in Proposition 1, we are assured that if the Requête is successful, the freedom for Chief Officers to run their Departments would be constrained by something called the Rules of the States of Guernsey. Now, sir, I think the Rules of the States of Guernsey are a mythical creature, created
180 by the petitioners to make it sound slightly more palatable, because there is no such thing as the Rules of the States of Guernsey. We have Rules of Procedure, they are the Rules of Procedure of this Assembly and they concern the proceedings of this Assembly. They have nothing in them about delivery of services of employment matters or line management functions or managing budgets or anything of that nature. So, until I can be shown what the Rules of the States of
185 Guernsey are, I will continue to believe that the effect of Proposition 1 is not so much to give Chief Officers freedom as to give them an opportunity to declare UDI from the rest of the States. It is not freedom; it is effectively self-determination that is being proposed.

With regard to Proposition 2, I fail to see how Members of the States can possibly be the people best equipped to undertake the whole range of employment functions necessary to line
190 manage Chief Officers. These are professional people with contracts of employment who are making a career in the public sector. Now, it cannot be sensible for their entire line management functions to be placed in the hands of elected Members.

Sir, I never quite understood the fascination in 2004 with calling them all *Departments* of the States. It makes them sound like some sort of Whitehall style, great institutions of state. The
195 reality actually is that they are just plain old vanilla Committees of the States and, unlike Governments in larger jurisdictions, which are supported by a huge bureaucratic and, usually, a party machine, Committees of the States are quite vulnerable and transient creatures. They have little security of tenure and really they have absolutely no resources to speak of.

There are about, I think, 17 or 18 Committees of the States, and I hope there is going to be
200 another one, once we have finished debating Deputy Perrot’s amendment on a later policy letter, but I cannot see why those Committees of the States should suddenly want to be become involved, with their lack of resources, in the whole range of employment functions at looking after Chief Officers and that is what Proposition 2 proposes. It reads:

205 ‘To direct that all matters of the Chief Officer’s employment [...] shall be between the political Board’

– which is a bit of a silly term –

‘and the Chief Officer...’

210 Now, sir, I do not see that the Committees of the States are properly equipped to carry out that task.

Proposition 3 is a bit curious, because, although, the rest of the Requête tells us of the disadvantages and the weaknesses of centralisation, Proposition 3 actually proposes much further,
215 more centralisation than we have at the moment. But there is no question, the way the States are set up, policy responsibility rests with Committees of the States.

Now, what Deputy Bebb’s Requête is proposing is that cross-Department initiatives would be placed firmly with the Policy Council. Responsibility and accountability is placed firmly with the

220 Policy Council; that is how the Requête reads. Well, the Policy Council has some responsibility for co-ordinating policy which sits with more than one Committee, but they do not have responsibility for the policy itself. That is very clearly vested by the mandates of States' Departments and Committees in those Committees, and the proposal is to change that.

225 The proposal in number 3 is for greater centralisation. I do not need to tell the States that I am not a great fan of centralisation and until I can see a proper case for the quite radical change that is set out in Proposition 3, I will not be able to support it.

230 Sir, having said all of that and, perhaps, in what I am about to say, I am going further than the proposer of the amendment, that I am seconding, would wish, but I am not entirely out of sympathy with some of the concerns which have given rise to the Requête. The signatories to the Requête want elected Members to have some directing influence upon the overall structure of the Civil Service and I agree with that. They appear to have some concern about an increasingly overbearing and occasionally possessive centre, to some extent, seeking to emasculate the proper responsibility of Committees of the States and Members will know, from the amendments I laid to the Government Service Plan and the Strategic Asset Management Plan in July, that I share some of those concerns.

235 The petitioners appear to believe that since 2004, some of the changes made to the structure and the operation of the Civil Service have not been entirely consistent with our system of Government, and I am inclined to agree with that too. And, most of all, they think that the structure of the Civil Service should be determined by the political structure and not the other way round. We should not have the tail wagging the dog, and I agree with that and I doubt there is any Member of the States who would disagree with that.

240 Now, sir, I want to say something about the signatories of the Requête who have been rather attacked by my friend, Deputy Spruce. I do not see, among the nine signatories of the Requête, too many Members who would be quick to put their names to things which they had not thought through. One or two, perhaps. (*Laughter*) But, seriously, I think their concerns, which have given rise to this Requête, ought not to be dismissed out of hand. I think there is a danger in the Policy Council's letter that that is the Policy Council's view of this and I do not share that view.

245 I also do not believe – and I say this particularly to the Policy Council after the rough ride, shall we say, that the Government Service Plan and Asset Management Plan policy letters had two months ago – I do not believe that the concerns which have given rise to this Requête will disappear simply by this Assembly burying its head in the sand and voting out this Requête. They are concerns about the relationship between elected Members and civil servants and between civil servants at the centre and civil servants in other Committees. Yes, primarily, they are concerns about structure, but they are also concerns about standards and behaviour and management, and they are concerns built up over a fairly long period of time and they are not going to go away any time soon.

255 I think a Requête of this nature was inevitable. Now, as it happens, I think the solutions proposed in this Requête are somewhat unsatisfactory and clumsy, but the sense of disquiet and disaffection which has provoked this Requête will endure unless there is meaningful corrective action and unless, to use a word that Deputy St Pier used yesterday, there is some healing.

260 I will vote against the Requête in its present form, if it comes to that, but to those Members considering voting against the amendment or for the amendment and then, if it is carried, against the Propositions as amended, I would say, beware the risks of a pyrrhic victory. I think if this Requête is lost and the Propositions are not amended, then not only will the concerns that have given rise to the Requête persist, but there is every possibility that we will see further motions before the Assembly in due course trying to make sense of things which very clearly, for whatever reason, have gone wrong in the relationship between areas of the Civil Service and Members of Committees and Departments.

265 Which brings me, sir, onto the amendment. Dealing first with Propositions 1 to 4 of the amendment, there is an argument around that perhaps they do not change anything. Now, I do not agree with that. The reason I do not agree with it is that, although I accept the interpretation that Propositions 1 to 4 set out what ought to be the case, at present, I believe they set out something subtly different from what has actually been happening in practice for some time. Certainly to many of 'us lot down here', if I can use that phrase, the arrangements set out in Propositions 1 to 4 of this amendment do not feel like what has been happening inside Committees of the States in recent months and some of the events inside Committees have unfolded quite differently to the arrangements set out in Propositions 1 to 4. Deputy Le Clerc has referred to some of that and I think, and those of us supportive of this amendment think, that events have been unfolding unsatisfactorily.

280 Now, some of that recent turbulence is on account of a lack of clarity and misunderstanding
about the appropriate political and employment arrangements to serve our Committee system of
administration and it cannot be denied that Propositions 1 to 4 would clarify those arrangements
and establish them in States' Resolutions for the first time. I think the importance of that ought not
to be underestimated.

285 So, to have any prospect of moving beyond recent problems, it is important that we should
clarify and codify four things: One, the Chief Officers take their political direction, first and
foremost from States' Resolutions, and thereafter from the Committees they are appointed to
serve; secondly, that employment functions are managed by the Chief Executive; thirdly, that the
Chief Executive and Committees should work together in appraising Chief Officers; and fourth,
290 that the structure and organisation of the Civil Service must be consistent with the system of
Government and must be consistent with States Resolutions.

Now, I suspect I could count on the fingers on one hand the number of Members of this
Assembly who could seriously oppose any of those ideas, set out in Propositions 1 to 4 of the
amendment, but the Requête would not be here today and the amendment would not be here today
if there was not, at present, an unsatisfactory degree of confusion or at least a lack of clarity about
295 the way that this process is meant to work, and the amendment provides some much needed
clarity. Deputy Le Clerc, in fact, gave us an example of why this amendment is necessary, because
I think most of us would accept that when appraisals of Chief Officers are being carried out,
Members of Committees ought to be properly involved in that process, but that has not been
happening.

300 Now, I think there are Members of the Policy Council who, frankly, through no fault of their
own, believe that is the system that has been set up, but it is not the way that things have been
working and, in the absence of a States Resolution, pursuant to this amendment, I suspect that not
much is going to change.

Deputy Gollop painted a picture – a totally erroneous picture, as far as I am concerned – of
305 these poor Committees, sat there with absolutely no powers, just being dictated to by the centre. If
that is the way it feels on any Committee that Deputy Gollop is a member of, all I can say is three
words: weak, weak, weak. (**Several Members:** Hear, hear.) Committees of the States have
mandates set out by this Assembly in States Resolutions. It is up to those Committees to be
assertive in fulfilling their mandates.

310 I am amazed at the number of occasions when Committees of the States, when I say – typically
the Policy Council, not always – ‘why is the Policy Council dealing with this issue which falls in
your mandate?’ And, typically, the Committee say, ‘Well, we do not know, really. That is the way
we were told that it was going to happen.’ Well, we are not going to have *assertive* Committees
unless the members of the Committees are properly assertive in fulfilling the terms of their
315 mandates.

The example that Deputy Gollop gave was an example of weakness: the bus contract. The
reason that money was taken out of the bus contract was nothing to do with the centre. The Policy
Council has got no mandate over the bus contract whatsoever. It was because the previous
Environment Committee voluntarily allowed the people running the Financial Transformation
320 Programme to convince them, totally erroneously, that several hundred thousand pounds could be
sucked out of the bus contract. If the Environment Committee had said, ‘We do not accept that.
This is our budget. We have been given a budget to manage by the States; we are accountable to
the States; we are accountable to the States for transport policy; this is our decision’, then, nobody
else, other than this Assembly could have done a dammed thing about it.

325 So, if we want assertive Committees, it is down to Committees to act assertively and not to
continue to behave as if they have been emasculated by some great creature at the centre. Now,
when things continue to come to the States which have the effect of emasculating Committees'
mandates, I will continue to oppose them, but those of us who feel that way and who are not in
favour, under the present system of government, of vast centralisation, have got to rely on the
330 members of the Committees themselves, when things are not before the States, to be assertive in
fulfilling their mandates.

I cannot add much to Propositions 5 and 6 – nothing useful, anyway. Deputy St Pier covered
those in his speech.

335 Now, Proposition 7 refers to the mandate of the States Review Committee. The letter of the
States Review Committee, if I can find it, says that:

‘The Committee would not... be able to fulfil its terms of reference... without giving consideration to the way in
which the civil service is organised today and might be in the future.
...some of the evidence presented to the Committee has demonstrated that increasingly there is tension between the
340 political structure... and the way in which the administration... is organised.’

But, sir, the Committee's task will be made considerably more challenging, if there is further deterioration between now and the time when the Committee reports in the issues of relationships which are set out in this amendment. So, as well as providing clarity, in my view, the amendment is likely to provide the potential for some stability between now and 2016 when, in any event, arrangements may change depending on the view that the States takes at the States' Review Committee's proposals, and we do need a period of stability. There has been too much uncertainty and lack of clarity and turbulence in the relationship between areas of the Civil Service and political Committees of the States and this amendment can provide some clarity and some stability.

Sir, I am convinced that if the amendment is lost or if the amendment is carried and then the Propositions, as amended, are lost, the disquiet and the turbulence in these matters will grow worse and the prospect of some clarity and some stability will have been lost completely.

Sir, I have spoken, as I am sure many other Members have, to quite a lot of civil servants: some senior civil servants, long standing, experienced civil servants and let me say – Members will know this – that the concerns and the frustration and the disquiet are not restricted only to political Members. There is a lot of concern inside this organisation.

Now, there has been change. There needed to be change and there will need to be further change inside the Civil Service and change always provokes some disquiet and consternation, but the quite deep well of concern which exists within the Civil Service today goes well beyond the ordinary kind of resistance to change which one might expect, and I do not think that we can just disregard that and say, 'Well, it is nothing to do with politicians. We hand this over to the senior ranks of the Civil Service.' We are the States. We talk about being assertive in fulfilling mandates. I think it is the responsibility of the States to deal with some of the disquiet that has been present within this organisation in recent months and I think facing up to it and dealing with it requires us to support this amendment.

So, sir, in closing, I believe the States needs to provide some political direction and now, today, in response to these concerns and challenges of recent months. For the reasons I have explained, I cannot support the Requête as drafted, but burying our heads in the sand and hoping these concerns go away is not a credible alternative to the Requête. If Members try to do that today, in months, if not weeks, they will realise that it has not worked. All of these issues will have grown worse and we will be back debating these issues again in the States. The amendment provides the potential for greater clarity, some certainty and some stability, in advance of consideration of the Review Committee's policy letters later this term and I very much encourage Members to support Deputy St Pier's amendment and, if it is carried, to go on and support the Propositions, as amended.

Thank you, sir.

The Bailiff: Deputy David Jones, to be followed by Deputy Green.

Deputy David Jones: Thank you, Mr Bailiff, Members of the States.

Deputy Fallaize has picked up a couple of things that I was going to zero in on, but certainly one of them is the Civil Service. What we forget, as here today and gone tomorrow or gone in a few years' time politicians, is the Civil Service is a seamless thread that runs through every administration. It is the Civil Service that steps in to fill the vacuum that is often created by weak leadership on Committees and by weak Committees who fail to deliver the services that the public expect. So, I would ask Deputy Bebb, actually, where he has acquired his years of political experience and knowledge of the States of the Guernsey and the Civil Service, to come to some of the conclusions that he has in 18 months of being a Member of this Assembly for this Requête.

I do not recognise the world that Deputy Bebb describes. The tail wagging the dog; it certainly does not happen in Housing. The Housing Board and the Housing Committee are very clear on the policies that they wish to pursue and they have a very strong Civil Service behind them and a very competent and capable Chief Officer, probably one of the best in the States and I am very fortunate for that. And it is their job, as senior staff to advise Housing and myself and members of the Board about whether some of the hair-brained schemes that we put forward from time to time are going to fly or otherwise. That is their job. It is the Civil Service's job to make that all work. So, I do not recognise, always, that the tail is wagging the dog.

And I do not recognise the micro-management from the centre either. I attend the Policy Council as Head of the Housing Department and we put forward our policies around that table, that the Board have agreed. I do not see the Chief Executive of the States of Guernsey diving in and saying, 'Hang on a minute, we do not think that is the right and proper way forward.' It is a matter of discussion. But, the idea that we can have these single-level enclaves all operating

outside the corporate structure of the States of Guernsey is simply nonsense. The whole point, even to the point of the fair use of taxpayers' money, indicates that that is not a sensible way forward.

405 But certainly I do agree with Deputy Fallaize wholeheartedly that it is weakness to say that we are led by the nose by the centre. If that the is the case, if you are finding that in your Departments, then you need to man up – sorry, I cannot say that any more – (*Laughter*) but find some backbone and do something about it. But, certainly, not keep blaming the centre for saying, 'Oh, dearie me. This is being done to us and what are we going to do about it?' I do not recognise that at all.

410 So, I will support – I was actually one of the people round the Policy Council table who thought, 'I do not want to give any credence to this ridiculous Requête at all, by even amending it.' What are we even thinking? It is an ill-thought out, cobbled together group of ideas, in my view, based on not very much and, certainly, how, as I say, Deputy Bebb, has acquired all this huge history and knowledge of our civil servants and our Government, within being in the States for 18 months is a complete mystery to most of us. But there we are.

415 So, I will support the amendment and I agree wholeheartedly with some of the issues that have been raised by Deputy Fallaize. It is not always the case, but, in this case, I think he is right. And I think, too, that the Policy Council and the States as a whole have to recognise there is some underlying disquiet about the way and the relationship between elected States Members and the Civil Service, but that is for us to sort out. That is for us to make sure that the Chief Executive of the States of Guernsey – and the present one is retiring shortly, we will have a new one, and a new Deputy. And when you think of the point that Deputy Trott made in the States several years ago, the combined knowledge of those senior civil servants is massive, but when you think we are going to be losing all of that, we have a golden opportunity to make sure that the structure is a structure that works well with the elected body of this Assembly and is one where we can deliver the services that we are duty bound to deliver to the public in a cost effective and in an efficient manner.

Thank you.

430 **The Bailiff:** Deputy Green, next, to be followed by Deputies Soulsby, Perrot and Langlois.
Deputy Green.

Deputy Green: Thank you, Mr Bailiff.

I will speak on the amendment and generally, if I may.

435 Yesterday, Deputy Bebb prayed in aid of his Requête the model of progressive thought that was Napoleon and I rather got the impression from the Chief Minister's speech, yesterday, that he would have been quite happy to send Deputy Bebb to St Helena, (*Laughter*) but, of course, Deputy Paint is already there, so it probably would not have worked. (*Laughter*)

440 Sir, Members, the issues that are raised by Deputy Bebb in this Requête are matters which, very evidently, need debating by this Assembly. His Requête is not a perfect document, a perfect instrument, at all, but I am very grateful that he is bringing this Requête and has submitted it for debate. I do happen to agree with Deputy Fallaize that the first three Propositions are, when viewed in the cold light of day, somewhat unworkable and I will come back to the fact that I signed this Requête myself in a moment. (*Laughter*) But, I must say, I will come back to it – eventually.

445 But, I must say, I am very grateful to Deputy St Pier and Deputy Fallaize for bringing this amendment, because I think this amendment is very useful indeed. It actually bores down the key strengths of the original Requête without creating some of the issues that the Requête, in an unadulterated way, arguably, may have produced.

450 But I really do think we need to get back to the core issue here, because the central thrust in all of this is very simple. Members have already spoken about some of the disquiet that there is on this topic. The perception and the reality today is that across departmental projects, led by central teams of civil servants, have generated all sorts of practical difficulties. Now, there is nothing so extraordinary about that in itself, but, in practice, the political flack complaint has been, in my experience, based squarely on the departmental political Members, as a result, even when they may have had little or no involvement or indeed influence over the policies themselves. In other words, political Board members have been held accountable for developments, for example, with regard to the SAP project, that they have not been fully in control of, and that dichotomy to me is just not right.

460 Accountability without effective political control or oversight is not a sustainable basis to run this Government upon and the culture of blame that has grown up around this issue has festered, frankly, and these things matter, these things especially matter when things go wrong and that is

what we have seen. There really ought to have been, from day one, a protocol agreed, whereby particular services have devolved away from the Departments and towards central control, there was some clear identification of lines of accountability and that is why the obvious pragmatic solution here of ensuring the employment of appropriate service level agreements, to establish very clear lines of accountability is, to my mind, a very sensible way forward in future.

I am very glad that the amendments brought by Deputy St Pier deals with that crucial aspect of the Requête itself. I happen to agree with Deputy Fallaize when he said, in effect, that service level agreements can be a helpful interim solution, perhaps a more long term solution, but certainly an interim solution here, pending the States' Review Committee's report on the machinery of Government, which I think will, in the longer term, help to ensure, in a general way, that the shape of the Civil Service does reflect that of the political system, that it actually administers, because I think if you do that, you have a much greater chance of employing very clear lines of accountability.

Personally, I would not like to see any further alterations to the Civil Service structure, unless or until we see a States report in this Assembly and, indeed, I accept that the States Review Committee should look at the Civil Service structure as a matter of principle, just as they are looking at the machinery of Government. That is the best way, that, in the short term, we can achieve the clarity and the stability that we want.

I just want to go back in time to the Review of Good Governance that the Wales Audit Office published a number of years ago, which I feel is highly relevant in all of this. Because, following on from that review, it was very obvious that some reforms to the structure of our Civil Service were necessary. But it was equally clear, in my view, that the political machinery of Government needed to change as well. The Civil Service structure was changed, the political machinery of Government, to date, has not. Of course, that may well change in due course, but it has not to date.

Generally, as I say, I do think it makes sense to have a Civil Service system that mirrors and is simpatico with your political system of government, but that is not what we have right now and there is, to mind, a certain unease and anxiety between those two systems and that anxiety is what this original Requête speaks to. The reality is that we are now picking up the pieces after the States of Deliberation failed to heed the following words by the Wales Audit Office, and I quote:

'...the Chief Executive [of the States] who would need the authority to implement corporate initiatives and to hold civil servants accountable for their actions. It is difficult to envisage how this could be achieved without simultaneously addressing the issues of autonomy, authority and accountability within the existing political structures.'

Does that not neatly encapsulate what is really wrong with our system of accountability? Political reform to the machinery of Government is manifestly the long term solution here, to enable clearer lines of accountability, but, in the shorter term, the Propositions in this amendment will help practically on the ground, at ground level.

Now, Deputy Bebb made the very stinging point, yesterday, that, because of the slightly bizarre executive branch of Government that we have in Guernsey, that does lead to a certain level of unclear leadership, which creates a void which is then filled by the Civil Service and I happen to agree with that, and I think that is something that we can no longer ignore.

I should, perhaps, concede that I do not have rose-tinted spectacles about the way our Government and Civil Service have operated in the past on this Island, but I do feel that, upon mature reflection, moving to a system where the Chief Officer of a Department is purely accountable to his Board, is not something that I am now persuaded of.

I said I would get back to the issue of why I signed this Requête and I will do it now. I signed this Requête primarily to ensure that the very real concerns about the Civil Service and about centralised cross-departmental activity was not lost and that there was a debate in this Assembly where we should be discussing these matters. There are far too many issues, in my mind, that seem to create a great deal of disquiet in our system, which do not actually bubble up to the surface in a debate in this Assembly and that is absolutely wrong and that is why I commend Deputy Bebb for bringing this Requête, because at least it gets us talking about the issues that people want us to be debating in this Assembly.

So, in conclusion, this Requête, I think, has always been a genuine attempt to deal with the imperfections in the lines of accountability that have increasingly come to the fore in recent times, but I will be supporting the amendment, because I do think it will help to provide a welcome dose of pragmatism.

So, I believe this amendment should be supported, and I urge all Members to do so.

The Bailiff: Deputy Soulsby.

525 **Deputy Soulsby:** Sir, it seems a long time ago that I signed this Requête. (*Laughter*) It was four months ago and since then, England cricketers have won the Ashes, a Scottish tennis player has won Wimbledon and Guernsey footballers have won promotion and started a new season.

I signed the Requête back in May, because of my concerns about the accountability and political oversight of the Civil Service arising from the changes that have led to the growth of what is becoming known as the centre. Contrary to what the Chief Minister said yesterday, there has clearly been growth of work done from the centre. FTP and SAP are just two examples. Although, that does not mean, I believe centralisation is wrong *per se*, having been a Chief Operating Officer myself, developing and running centralised operations, I completely understand the practical benefits and why there is a trend for central teams, at least in some areas. The centralisation of certain services, such as income collection and payment processing, should bring benefits, eventually.

The following is an extract from a media release, quoting the Chief Executive at the time of restructuring within Treasury and Resources and following the departure of the Chief Officer of Treasury and Resources last year:

540 ‘There has been a great deal of managed change in the civil service since the last Machinery of Government review, and from the beginning of 2011 that pace has accelerated. The drive for efficiency, corporate delivery and accountability is at the heart of these changes.’

545 It is clear that change has happened, whether this has led to more efficiency, corporate delivery and accountability is debatable and, as I stated during the Government Service Plan debate, the change management process has left a lot to be desired, which has been particularly evident in the FTP and SAP implementations.

My concern is that centralisation is all well and good, but this brings with it a greater need for transparency in terms of responsibilities and accountability in relation to outcomes and I will elaborate on this further in a minute.

550 Now, since the Requête was signed, we have debated the Government Service Plan and Strategic Asset Management Plan and it was clear from both debates and the successful amendments that many in this Assembly share the concerns about the accountability and political oversight of proposed Committees of civil servants tasked with taking forward each plan. Not only that, but the Strategic Asset Management Plan, had it not been amended, would have resulted in the relocation of the Chief Officers, without proper consideration of what the impact would be operationally and politically.

560 Now, I believe that life has moved on since the Requête was placed, and therefore welcome this amendment placed by Deputy St Pier, which I believe sets a right direction on where we need to go from here. I will not go through each one of the Propositions, but would like to comment on the one that I am pleased is retained in substantial form from that in the Requête and is the reason why I signed it back in May. Proposition 6 directs that:

565 ‘where appropriate, there should be internal service level agreements within the States of Guernsey, including in respect of services provided by the Shared Transaction Service Centre... in order to provide for clear definition of responsibilities and clear lines of accountability.’

570 Now, service level agreements have been defined as a means by which two parties communicate to each other, their commitments in relation to the resourcing and provision of services to a given level over a given period.

575 So, what does that mean in practice? Well, here is set out the purpose of the service level agreement in place between the John Hopkins Accounts Payable Shared Service Centre and its customers. It states that the service level agreement will (a) outline services to be offered and working assumptions between the shared service centre and its customers; (b) quantify and measure service level expectations; (c) outline the potential methods used to measure the quality of service provided; (d) define mutual requirements and expectations for critical processes and overall performance; (e) strengthen communication between shared service providers and its customers; (f) provide a vehicle for resolving conflicts. Do we not think that would be great if we had that for SAP?

580 And it is not just about quality of service. Organisations have found that they have made cost savings of between 5% to 40% by introducing service level agreements. But, what is the best thing about bringing these in? Is it that developing requires collaborative working and, if we are going to see long lasting, effective change in the States of Guernsey, we will only see it through working together. Service level agreements should be standard for centrally provided services and essential operational bodies should be subject to service level agreements. This would include those tasks

that the proposed central Committee mentioned in the Strategic Asset Management Plan and should have been developed at the start of the Financial Transformation Programme.

590 Now, there seems to be have been some idea promulgated that those signing the Requête are conspiracy theorists; that there is a plot by the centre to take over the States of Guernsey and that is what we all believe. That tone was evident in the paper received about the Executive Leadership Team yesterday, as well as from the Chief Minister's speech.

595 Well, that is not why I signed this Requête. I signed it because I felt greater accountability was required, arising from the major organisational changes that have taken place in the Civil Service, thus enabling the States of Guernsey to deliver greater value for money. So, I will respond to the Chief Minister, when he reminded those, like me, who stated in their manifesto that they wanted to see joined-up Government and more openness and transparency, that is precisely why I have supported the need for more accountability through service level agreements in the Requête and why I am happy to support this amendment now.

600 I would, therefore, urge Members to do the same.

The Bailiff: Deputy Perrot, then Deputy Langlois and then Deputy Le Tocq and Deputy Trott.

Deputy Perrot: Thank you, sir.

605 I just wonder what the electorate makes of all this? (**A Member:** Hear, hear.) We are just emerging from a period of austerity and danger; one of the worst ones since the post-war period. We are constantly under the onslaught of all sorts of organisations and countries, which are jealous of our history. We are always the subject of onslaught from the European Union, from the OECD, from the IMF and Uncle Tom Cobley and all.

610 It was quite clear from the hustings' meetings, which I went to last year, that the electorate... and when I am talking about the electorate, I am not just talking about people who write cowardly, anonymous letters in the *Guernsey Press* and I am not talking about the *Guernsey Press* itself, which regards itself as the official opposition and, therefore, entitled to speak on behalf of everybody. I am talking about those people who take a genuine, realistic interest in politics in Guernsey. They wanted, at least I thought, Deputies who were going to come into the States and try to make conditions right, so that we had a better economy and not to spend so much money. That is what I thought that I was being elected to do and we have spent a day and a half debating how many angels dance on the head of a pin. We are very much more bothered about our own procedures than we are about getting on with the jobs for which we were elected, which was to be a sensible, stable, reasonable government. (**A Member:** Hear, hear.)

620 Deputy Fallaize who, we all know, is a very good speaker, quoted the very quotable economist J K Galbraith to some effect and I congratulate him for thinking of that, but, of course, there are some other quotes from J K Galbraith and this is one of them:

625 'It is a far, far better thing to have a firm anchor in nonsense than to put out on the troubled seas of thought.'

(*Laughter*) And that is what we are doing here. We are debating something which, actually, is something of a nonsense. I know that Deputy St Pier, in his usual, very cuddly and generous way, (*Laughter*) is trying to put in what he calls 'a healing amendment', but I really do not think it has got much place here, because I do think that this Requête is so *absurd* in the circumstances in which we find ourselves as a Government, that the Requête ought to be done away with altogether.

635 After all, considering what we have been trying to do in recent times and this was something which came up at various hustings meetings last year, we have been trying to reduce the Civil Service. What happens if a Requête such as this is approved? We go entirely the other way. We also seem to be confusing what some people constantly refer to as the bogeyman, which is the centre, with a corporate approach to life. Now, I know that some people do not like even that term, 'the corporate approach to life' – I certainly do not if it means that there is a form of executive government which is the sort of government associated with party political politics.

640 But I challenge any Deputy to come up with the idea that there was anybody last year who did not sign up to 'joined-up government'. That was the phrase of the year, apart from 'communications' from people like Mr Queripel and 'transparency' again from Mr Queripel, but generally, we were talking about 'joined-up government,' because that is what we are. We are the Government, 47 of us are the Government. And what we do, then, is to delegate some of our job to the Policy Council and then we delegate various other parts of our jobs to the various
645 Departments. But we all sign up to it and it is the Policy Council and the various Departments which then have to put into place what we have already decided as a Government. If we were to accept what the Requête wishes us to do, how could it possibly be the case that a Minister and his

Chief Officer – well, let us say the Minister, the Chief Officer and the other people on the political Board – I know that Mr Fallaize does not like that term, but that is what the rest of us in the real world call it – how could it possibly be that they would make their own resolutions in respect of, say, standards of risk management or procurement or property?

I think the problem here is that the catalyst for this Requête was the introduction of SAP. That caused a terrible flutter in the political hen coop, and I know that various things did go wrong. It probably went live too soon and probably the project Board was dissolved too soon. But, the fact is, it is there and we have to make it work. But some of the problems, I have to say, which have arisen about its implementation is that there are some people in some of the Departments which are inherently hostile to it and have actually tried to sabotage its implementation. In other words, there has been something of a silo mentality about the adoption of the SAP system. I see some people shaking their heads, but that is my very firm belief.

I go back to the start of what I was saying and it is this – and I apologise to the electorate that we are spending so much time debating our internal procedures – I, for one, wish to get on with what I see as proper government and I do not think that a Requête of this type is helping that progress.

The Bailiff: Deputy Langlois.

Deputy Langlois: Thank you, sir.

I will be speaking briefly about the amendment only.

Sir, I think this is the first time in this Assembly that we have had an amendment of this particular type and the type that I am going to describe, sir, I think, is all about risk management. It is a risk management amendment here, and I am not talking about the risks associated with rapidly signing a Requête and regretting it later. Several of us have been there. I will not go there to say which one it was for me, but other people do know. It does happen and you go back to it and you get over it. No, the risk management here is, I think, a very important one.

Now, Deputy Bebb gave a very articulate, a very provocative in some ways, and somewhat extreme exposition, yesterday, of the reasons he thought this was necessary. The Chief Minister restored the balance, in a somewhat dramatic manner, by, if I may say so, his standards, and so we started with a pretty wide gap to bridge here. I think that the amendment... I understand Deputy Perrot's comment about – well, I am not quite sure if I understand about Deputy St Pier being cuddly – but the comment about him being, shall we say, prepared to compromise and find compromise and so on. I understand what Deputy Perrot is saying, but I think it is quite important that it was put today, because we could have been heading into a debate which solely had this huge chasm to bridge and, on the spin of a coin, on a funny day in this place, we suddenly end up on the wrong side and, therefore, I do think this amendment is useful.

But can I just please remind all of us that the right tactic here today, there are two groups of Deputies who should support this amendment; two distinct groups. That includes people who have signed the Requête and others. The first is those who believe that the amendments honestly offer the best options and a really good recipe for change. You have seen that a lot of work has gone into it. If you believe that is the right way forward, of course, you will support the amendment. But, there is another group and that is a group who, I believe, are into damage limitation here. You can still reject the Requête after you have accepted the amendment, and from the outside that – we have heard talk of pyrrhic victories and all sorts of dramatic stuff from another quarter – but, if you do that, it looks, on the outside to be somewhat inconsistent, some would say disingenuous, some would say, 'not really putting the question'. Sir, those groups are both in a legitimate territory. They are both in the area which is fine. It absolutely does the job and it reduces the risk of us ending up on the wrong side.

So, please support this amendment.

The Bailiff: Deputy Le Tocq.

Deputy Le Tocq: Mr Bailiff, I have also sympathy with the *requérants* and, for the reasons, really, that Deputy Fallaize mentioned, I think I understand where they are coming from, but I totally disagree with the Propositions that result from there.

Sir, I believe we are on a journey from A to B and, a little while back, a friend of mine showed me a little diagram which said, A is the problem, B is the solution. Most people think A to B is a straight-line – and had a straight-line between A and B – but actually the journey is really like that, a squiggly line. In reality, most things are like that. The trouble is, sir, we are on a journey. We are midway on that journey, but we really have not decided where B is yet. We have set off and we do

710 not know where it is. Politically we have made some changes, we have certainly left A, as a result of which, the Civil Service has changed... in some areas, changed quite dramatically. In other areas, perhaps, particularly in the culture, it has changed very slowly and very little has changed.

I feel the frustration, because as many in this Assembly will know, when I was on Education under the *ancien régime*, we had issues relating to Chief Officer and it was very, very difficult to deal with and it was also difficult for any senior Civil Servant to deal with. We were almost in the position, I think, that this Requête would take us back to. But it is worse than that, because I think – and I do not want to be patronising in any way – but the number of newcomers to this Assembly last year who signed the Requête felt very similarly to the frustration I felt at that time over ten years ago in Education, that we seem to be powerless to handle issues of that sort.

I will *reluctantly* support the amendment. Reluctant, because I do not think it does much except a damage limitation exercise and that is because I have my own views, and I am sure each one of us do, as to what the shape ought to be and how we ought to look. For example, I do not have the problems that Deputy Fallaize has with Boards and Departments and calling things Committees. They were Boards before, they were Departments before and I do not think we ought to be too pedantic about those sorts of things. But what I do not want to see happen is for us to end up mid-way on this journey and end up down some cul-de-sac or clos, as we are in Guernsey, and find that, actually, we have made a huge mistake, because we have responded inappropriately to the frustration that I think we all feel. I think we can all sign up to the frustration. We read it in the press; we hear it on the media. People want speedier decisions; they want more accountability at the same time and yet there is – and it is difficult to tell whether it is the same people, but I know – there certainly are some like this who do not want the system to adapt, to change. They do not want too much change. We are fearful of change.

With regard to appraisals, for example, it is not surprising that Deputy Le Clerc feels she has not been included in appraisals of the Chief Officer of Home Department, because there is only one that has happened so far and it happened a couple of weeks after the election last year and she may have forgotten, but at the time, I mentioned to Board members that this is a bit ridiculous, but we are going to have to go in with this and this year we have delayed it somewhat. So, certainly Board members will have an opportunity to be involved in that, when I get involved in that and it is, I think, the right way of dealing with things as we currently are. Maybe, there are some further tweaks, but, in my mind it is a big improvement on what was not there before, because there was not any of that there before.

I think it will be wrong that any appraisal of the Chief Officer will be done by, for example, a committee of people and particularly inappropriate that it should be done a few weeks after the election when there were only two of my Board members who had any experience of working with the Chief Officer. So, there has to be a better way of dealing with those sorts of things, but on this journey we are midway, we are *en route*, we have not reached the destination; we need to have that debate about what the destination actually looks like and where it is on the map and that will influence the sorts of things we are talking about here, that we are frustrated about.

As a result, as I said before, I will reluctantly support this amendment, but it does not solve things. I do not believe that it will get rid of our frustrations. I think they will still be there, so I raise that as an issue, because some have said that, if we vote against the Requête, the frustrations will be there. I think, if we vote for the amendment, the frustrations will still be there, as well. I think we have to live with them and there is a tension there that is – it is a tension for me and I have learned to live with it. I would like to see it minimised and that is a debate for a different occasion, because it involves political structures that need to change.

755 So, I will support this amendment.

The Bailiff: Deputy Trott and then Alderney Representative Arditti.

760 **Deputy Trott:** Sir, the letters of the Policy Council, Treasury and Resources and the States Review Committee are well written and I am in agreement with the comments contained within them. Now, that will lead Members to the conclusion that I intend to support the amendment.

Sir, what is telling to me – and some Members of the Assembly may be uncomfortable with a couple of things I intend to say – but, what is telling to me, is that eight out of the nine signatories of the Requête are from the 2012 intake and the other, a very close friend of mine, has no experience, through his own choice, of senior political office.

765 Sir, what is striking to me in this debate is how many of the signatories to the Requête are now favouring the amendment, when the amendment is, in many respects, the absolute antithesis of the Requête. They are *yin* and *yang* in that sense. The *requérants* are admitting that they have got this

770 Requête spectacularly wrong without having the courage to say so and that, for me at least, is disappointing.

Sir, the Civil Service has been modernised over the last few years to provide a support network which seeks to camouflage the inadequacies of our current political machinery of Government and thank goodness that it has and, may I say, sir, that that process has been undertaken, certainly since the middle of the last term, with the guidance and encouragement of the previous Assembly.

775 May I ask Members to turn to page 1342. The top two bullet points are taken from a report by the Wales Audit Office. The first one says:

‘Authoritative and decisive leadership is an essential element of good governance within the public service where it was necessary to provide vision and direction and ensure that things get done.’

780 And the second bullet point says:

‘Without such leadership the impression can be created that the public body is drifting without direction and purpose and failing to deliver value in its use of public resources.’

785 Now, sir, asked, on a recent radio show, where the guests that morning were the Chief Minister and I, the question, ‘Who runs the political show: the Civil Service or elected representatives?’ I responded with a short sentence:

790 ‘It depends on the quality of the elected representatives because nature abhors a vacuum.’

Sir, in conclusion, we have a Civil Service that tries to plug the gaps in our political processes. That is the problem.

I shall support the amendment. Thank you, sir.

795 **The Bailiff:** Alderney Representative Arditti.

Alderney Representative Arditti: Thank you, sir.

800 I will speak only on the amendment. At this late stage, I have no point to make that has not already been made and there is nothing I can say better than others have already said, particularly Deputy St Pier and Deputy Fallaize.

805 I rise, if I may, to be very brief and simply to emphasise what I think lies at the heart of this debate. I agree also with almost everything Deputy Poirot (*Laughter*) had to say... *Perrot*...sorry, so, sorry, but, I reached the opposite conclusion to him on how to vote on the Requête. I believe we should vote on the amendment. I believe we should vote decisively in favour of the amendment, whatever we feel that we might or might not do when it comes to voting on the Requête. The point – and I do want to be brief – I wish to emphasise is that the independence of the Civil Service is paramount (**A Member:** Hear, hear.) and, without voting for these amendments, I fear we shall be in a very real pickle.

810 For me, the speeches against the amendments illustrate how easy it is for the process, first and last school of thought, to miss the point. They put the cart before the horse. The independence of the Civil Service, as I say, should be our first and last thought in this debate and these amendments by Deputy St Pier and Deputy Fallaize seek to keep it that way. There cannot be any ifs, buts or maybes about this independence. This, and I refer to comments by Deputy Green, this, I believe, is good governance.

815 Throughout the British Isles and beyond, we elected politicians, we just come and go. Our independent Civil Service execute the policy set by this Assembly and by departmental Boards, both. They do the executing; we do the setting of the policy. If a Board finds that its Chief Officer is not executing the policy of the Assembly and the Board, it should complain. The earlier reference was to ‘weak’ Boards, but – and this is what I rose to offer to you for your consideration – what if a Board persuades its Chief Officer to execute a policy of the Board which is at variance with the policy of this Assembly, without the Board coming back to this Assembly? I rather suspect that this may lie close to the heart of this Requête, at least for some of the *requérants*. That Board, in that situation, embarrasses the Civil Service. It puts the Civil Service in a very difficult situation and the Civil Service must, in my submission, remain steadfast and resolute about its independence in the face of that Board. And, if the Board’s own Chief Officer cannot see this, then I expect his superior, the Chief Executive, to advise him, and, if necessary, to do what line managers or bosses are supposed to do. In no way should a politician or a political Board be a Chief Officer’s boss. The Civil Service, I repeat, is an independent service which exists to execute the policy set both by this Assembly and by its Boards and Committees.

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Thank you, sir.

The Bailiff: Next the Chief Minister and then Deputy Conder.

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

At this stage, I wish to just speak on the amendment.

Before doing so, can I really echo what Deputy Trott has already said, that since the amendments to the machinery of government that were introduced in 2004, the Civil Service has been placed in an impossible situation. That changes of the machinery of government were a fudge. I think we all have to recognise that (**Several Members:** Hear, hear.) and clearly, with the responsibility, there was a recognition at that time, which, again, I think the States of Assembly at that time totally ignored. There was a recognition that the States had to act corporately. That was the theme that was picked up by the Welsh Audit Office. It has been the theme that has been picked up by the Public Accounts Committee, that there are clearly circumstances where the States has to act in a corporate capacity. It has been very difficult for the Civil Service to have to- because they are, at the end of the day, they are the only people in the fudged political system that we have, they are the only people who can deliver that corporate service and I think we must recognise that. I would, actually, at this stage, like to play tribute to the Civil Service who have carried this responsibility for the past, well, nine, ten years. They have had an unenviable position and it is not helped, sir, by the nature of the Requête today.

850 I am happy to, reluctantly, and, again, for reasons already stated, I was one of those who, perhaps, suggested we should not add any credence to the Requête by passing an amendment, but I have been persuaded, I think, that I am happy to accept and to enjoin this Assembly to go wholeheartedly behind the amendment that is being put forward by Deputy St Pier and by Deputy Fallaize. I think it establishes, what I believe, to be the current position and it recognises and codifies the practices that should be followed.

855 I also agree with Alderney Representative Arditti. We should not be seen to undermine the independence of the Civil Service, but I recognise that, as a States Assembly, we are an executive. Therefore, we should have a right and I think the amendment recognises this, to establish the principles that should apply between the body politic and the Civil Service and I believe that the amendments actually do achieve that. It does achieve that balance.

860 We must not, however, micromanage the Civil Service. I think, also, the amendment is absolutely right in saying that we must, when the States' Review Committee comes back to this Assembly, we must recognise that somehow or other we have to address that fundamental problem that arose in 2004. We have to identify exactly how we can deliver politically and through the Civil Service, the corporate necessities of any government. That is one of the tasks we must do. If we do not do it, we will have failed miserably.

865 So, sir, I would endorse the amendment. I would encourage all Members of the States to vote in favour of the amendment.

870 As to whether or not he votes then in favour of the Requête, as amended, is a different issue and I would probably urge Members, actually, for the reasons already mentioned, that we recognise there will be tensions and tensions are there and we must recognise that. I would be inclined to recommend to all States Members that, if the amendments are approved, we then actually vote on the Requête as amended.

875 Thank you, sir.

The Bailiff: Deputy Conder.

Deputy Conder: Thank you, sir.

880 I speak on the amendment and generally. Sir, colleagues, I am a member of the States Review Committee and, like so many colleagues, I agree with nearly everything, indeed everything, actually, that Deputy Fallaize made in his speech on the amendment. Deputy Fallaize, of course, is also a member of the States Review Committee. So, before speaking on the substance of the contribution I want to make, I would like to say that I honour the matters and the reasons that Deputy Bebb and his colleagues, the other *requérants*, have raised. I believe these issues do need debating and it is right and healthy that it should be debated. I deprecate the criticisms made of Deputy Bebb and his colleagues.

885 Sir, as a member of the States Review Committee, I have come to learn and value the special nature of our consensual form of government, in which parties are absent, the executive and the legislative are combined and, as others have said it, we, the 47 of us are the Government.

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I have learned, over my 18 months on that Committee, to honour, enjoy and value the special nature of our Government and governance. However, there are inevitable consequences of our system, briefly and incompletely they include: firstly, in the absence of parties and manifestos and slates that are approved by the electorate, following each election, it takes us a little while and sometimes a long while for Government to get moving and for policies and strategies to be determined. Equally, following each election, politicians, Committees and their public servants have to establish working relationships and policies. As Deputy David Jones quite rightly said, 'We are here today and gone tomorrow politicians'. It is the nature of our politics that our transient nature, makes the thread of continuity, delivered by our public servants, perhaps, even more important than in other jurisdictions. That importance for me means that we must protect and respect the role of the public sector.

Sir, I will not waste the States time in reiterating the very important points made by Deputy Fallaize, both in terms of supporting this amendment, but equally the dangers of ignoring the quite proper concerns of the *requérants*. I urge colleagues to support this amendment and to support the Requête, as amended, if it is. If we do so, it will address some of the immediate concerns, both within this Assembly and within the public service. It would properly define and codify the entirely proper relationship between the political class and the public servants which serve this Government and implement the resolutions of this Assembly. Thirdly, it will properly direct the States Review Committee to return to this Assembly with proposals that ensure that the structure of the Civil Servant is consistent with the organisation of the States affairs. I quote directly. This Requête, if amended, codifies and addresses many of the concerns and problems expressed in the *real* world by those colleagues who experience the operation of our system on a day to day basis, through our Committees. Sir, I could not work for this Requête as it stands, but, sir, I will vote for this amendment and, if it is passed, for the Requête, as amended, and I hope that my colleagues will do the same.

Thank you, sir.

The Bailiff: Deputy Sherbourne. Sorry, I thought you were about to rise. Deputy Sherbourne, were you about to rise? Yes.

Deputy Sherbourne.

Deputy Sherbourne: Thank you, Mr Bailiff.

I welcome the comments of the Chief Minister with regard to the position of our Civil Service and the professionalism that they show in carrying out their duties. (**Several Members:** Hear, hear.) There was no intention at all that, as a signatory of the Requête, to suggest otherwise.

It is useful to have the old history lesson and, I must admit, I was in the Island in 2004, but not part of this Assembly at the time of change. They have been working in very difficult circumstances during this period. However, I do want, just to say a few words about our debate, which has been quite illuminating, but to take us back right to the start of that debate when there was quite a lot of laughter at Deputy Laurie Queripel's comments about being attracted to the amendment. Well, you can laugh again, because I am attracted to the amendment.

Deputy Soulsby, very eloquently, expressed the timescale of this Requête and what has happened since. There is a different culture emerging, because of the threat of the Requête. I signed in May and we are now debating it at the end of September. Things have moved on. The amendment actually reflects, in my mind a very good exposition of the present situation and I will be very happy to support that. I do not hear laughter.

I would like to refer, also, to Deputy Perrot's comments about what the electorate think of *us*. Well, if we cannot spend time talking about our form of governments and the way that the Civil Service enact our decisions, then I would ask him, perhaps, why he is here? Because there is a great need, from time to time, to actually debate these issues and the one thing that this Requête has done is provide the opportunity for some very articulate people to express their position. I do not like poking fun at colleagues who, in all good faith, have offered an opportunity to this States to put things right, because they are not right at the moment.

Yes, I am a new Member, Deputy Jones. I am inexperienced with regard to governance. I am not inexperienced to the work of Committees and I have really valued the time I have spent on Education during the last 18 months. We are a firm, assertive Board. We will, no doubt, be on the receiving end of that perception quite soon, but we are willing to take it. But we want to work within a system where accountability is clear, where there is clarity on accountability and that is not there at the moment and it has confused our debate in Education from time to time.

I know that every single civil servant working for the Department that I am associated with work extremely hard and with the best intentions to reflect what the Board wishes to enact, and I

applaud them for that. But, there have been times, with regard to the corporate initiatives, not just SAP, but the Financial Transformation Programme, where there has been confusion, where we have been terribly frustrated, because we feel that our reasonable deliberations and decisions have
955 been undermined by the centre. Now, that might be the wrong assessment, but it is one that I felt very strongly and I suspect that some of my colleagues on the Board felt the same and I suspect that it has been reflected in most Boards across the Island.

So, Deputy Perrot, I feel it is terribly important that we air these issues, that we talk about them and we explain to the public why. It is not an attack on our Civil Service. We want good, joined-
960 up government and these sort of debates will help that, well I feel, will enhance the possibility of that being achieved. (*Applause*)

The Bailiff: Deputy Kuttelwascher.

965 **Deputy Kuttelwascher:** Thank you, sir.

Sir, I support this amendment wholeheartedly, because it adds some value to what, otherwise, I would have considered quite an inappropriate list of Propositions in the Requête. I also believe that if one supports the amendment, and I will certainly and I hope other Members would support the amended Requête. But I want to ask Deputy Bebb to consider something and that is to also
970 accept the amendment.

Now, I draw a parallel between a Requête I laid in the last Assembly relating to an incinerator. My objective was to stop it being built. Now, the original Requête was very benign. Two amendments were made, one of them quite substantial, which I actually supported and won by one vote. What happened after that was the amended Requête was, as near as damn it, unanimously
975 accepted.

Now Deputy Bebb has come to this Assembly with a Requête and I do not believe that the Propositions, as they stand, will be accepted and I think, for him, it would be politically a shame if it was just dumped. If he were to accept the amendment, he would then have the great pleasure of being able to vote on an amended Requête in his own name, which I believe would be passed. If
980 he finds himself in the position of an amended Requête, he may find himself in the position that he will vote against his own Requête, albeit amended, and that is a bit of anomaly for him, but I believe it would be the most statesman like option for him, although the amended Requête would be completely different from his own, like mine was in relation to the incinerator. I think that would show or give the best outcome from this debate, not only for ourselves. I think it would be
985 viewed most favourably by the public, so I will support the amendment, assuming it passes, I will support the amended Requête and I would urge Members to do the same.

Thank you, sir.

The Bailiff: Deputy Brehaut.

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Deputy Brehaut: Thank you, sir.

Following on from Deputy Sherbourne, can I also remark that I feel that the *requérants*, particularly Deputy Bebb, was dragged over the coals for placing the Requête, but it does take courage to do things like this and it does consume your time and there needs to be preparation and
995 you need to rally around for support and we should not, as Deputy Conder has said, as well, we should not be overly critical of people who are motivated by a sincerely held belief.

Yesterday, sir, in a speech, I posed a question, ‘Where is the Key Worker Housing Project?’ I could also pose the question, ‘Where is the Older Persons Strategy?’ or I believe it is now called SLAWS. When did this States Assembly agree to set those two policy areas aside? When did they
1000 say, ‘Actually it is a good idea, we are going to set them aside; we are not going to do them?’ When did political Boards sit round the table and say ‘SLAWS, Keyworker Housing, forget it, we are not going to do it’? For all sorts of different reasons, they are not being progressed, but one of the main reasons, the reporting lines, now, of the Civil Service and pressures coming from, if you can call it the centre, from the FTP. SAMP is another example. If you look at the senior members
1005 of staff who were dealing Strategic Asset Management Plan, I would have to pose the question, when the Chief Officer of Housing became involved with the Strategic Asset Management Plan, he must have done so in the knowledge that the Older Person’s Strategy and that the Keyworker Housing Strategy, to use the – we are playing cliché bingo this morning – had to be left by the wayside because his reporting line is to the Chief Executive, who is directing him in a different
1010 area.

The expression was used before, ‘Why do politicians not simply man up?’ Well, I attempted to man up when it came to the Road Transport Strategy. The Road Transport Strategy is one of the

biggest work-streams, probably, that Environment has taken on for some time. But the resource given to that one significant area of policy development is very, very low indeed. Is it a tenth of a Chief Officer's time? It probably is and what is that Chief Officer doing? He is involved in modern ways of working, reporting to the Chief Executive of the States. So, this is why politicians, and I do, I feel disempowered by that process. When I raise this around the Policy Council table, I think the Policy Council are given the assurance that Environment broadly were equipped to produce a, or have the resource, for a Road Transport Strategy. If we were doing it properly, it would be a team of three or four civil servants in a policy development setting, really thrashing it out. The reality is, it is predominantly a politically led initiative ultimately.

If I could just say to Deputy Perrot – and I am speaking generally, sir, sorry – it is not the case that members of HSSD staff who work, try to work with SAP are being stubborn or that they refuse to get out of that silo. They simply cannot get the system to work and I am conscious I might be generating a headline and these things happen, but companies, taxis that have contracts with the PEH do not come any more because nobody is paying them. That is a systems failure. It is not belligerent individuals who do not want elderly relatives picked up from the hospital. That is a systems failure.

Deputy Fallaize said that politicians were 'weak, weak, weak'. Perhaps I could say to him, you were the future once. (*Laughter*).

The Bailiff: I think this is the first instance of a Member standing to invite you to give way, Deputy Brehaut.

Deputy Brehaut: I will give way, sir.

Deputy Perrot: This is wonderful. Under the old Rules, I would say, 'on a point of order', I never mentioned HSSD. I did not point a finger at any Department, but I thank Deputy Brehaut for fessing up.

Deputy Brehaut: Yes, well, not a bad attempt, *not a bad attempt*. (*Laughter*)

I would argue, sir, finishing the point, that the Civil Service, the current reporting lines leave politicians feeling disempowered and, if people say, 'Well you are just fessing up to your own weakness', I think the example of the Road Transport Strategy would challenge that.

I want to give a very specific example, the Finnamore Report was published recently. It was a report into HSSD and finances generally; the Finnamore Report. It was commissioned by the Chief Executive of the States. In the forward to that report was criticisms of the then political Board. Now, I am reading the opening paragraphs, I am pretty sure I know the author or the individual who made those observations and it was not a political individual who made those observations. So, if the Chief Executive commissioned a report, the forward into that report was not, in my view, a political forward, the ownership of that document was to the Chief Executive of the States.

I asked to have some input, to have the forward amended and I think Deputy Dorey may have made a similar observation. We were told it was an independent report from the Chief Officer and there could be no amendment made by politicians. So, what you had effectively was the Island's most senior civil servant releasing a report into the community that had no input from politicians who were being criticised, so that a senior civil servant left a political Board exposed in that way. That is not right. That surely cannot be right and we should have had the opportunity to have some input to temper that.

I will give way, sir.

The Bailiff: Alderney Representative Arditti.

Alderney Representative Arditti: Sir, I am just slightly troubled about what Deputy 'Bre-hoo' just said about the Chief Executive who is not here to defend himself. If I understood Deputy Brehaut correctly, he accused the Chief Executive of interfering with an independent report. I may have misunderstood him, in which case, my apologies, but if that *was* what he was saying, then it seems to me very unfair when the Chief Executive is not represented in this place to defend himself.

Deputy Brehaut: Well, fortunately you misunderstood Deputy 'Bre-hoo', who does not exist, (*Laughter*) but the point, sir, is this. The Chief Executive of the States commissioned a report, the report was heavily critical of a political Board and, although the report was sent to us, we were

1075 given no opportunity to moderate the overtly political comments contained in the report. It was commissioned by the Chief Executive. It was not a report commissioned by politicians.

Alderney Representative Arditti: I apologise and I thought there was another sentence, but I must have been wrong.

1080 **The Bailiff:** Chief Minister.

The Chief Minister: I would also wish to take the same point that Deputy Arditti has that, in fact, as I understand it, it was an independent report. Yes, it was commissioned by the Chief Executive, but the foreword was part of the independent reporter's comments.

1085 **Deputy Brehaut:** Would it be easier to have a filter in turn or a give way? I am not too sure. *(Laughter)*

1090 My point stands, sir, that there must be, I think this probably represents what actually is almost the impetus or the sentiment that there has been over recent months with the Civil Service. Sorry, that sounds too harsh; that, unwittingly or otherwise, politicians are left exposed by reports, that they should have actually had some input in, to moderate them so they are representative. The report quite simply criticised the then HSSD Board for their attitude towards an overspend and the individuals who gave that evidence were senior civil servants. Now, the politicians should have been given the opportunity, also, to have an input into that report.

1095 In closing, sir, just remarks made by Deputy Sherbourne, that it has been the tensions, at times, created by the FTP process that politicians have felt spectators to events rather than participants and I understand it is the will of this Assembly, it is a resolution of this Assembly, the FTP, but there have been tensions with some of the decisions we have had to make and I hope that this amended Requête can ultimately iron out some of the creases and improve the relationship and ultimately outcomes for the people of Guernsey.

1100 Thank you.

The Bailiff: Deputy Dorey.

1105 **Deputy Dorey:** Thank you, Mr Bailiff.

I also support, like many others, the amendment. I note that three of the Propositions start with, 'to confirm' which in my view effectively just confirms what happens now, which is, effectively, the *status quo*. That is how it is worded, effectively.

1110 Mention has been made in the Assembly of the recent staff changes at HSSD. It is, in my view, inappropriate to discuss this in the Assembly. All I can say that, in my view, the Chief Executive has been infallible in his support of HSSD during the period.

1115 I know Deputy Brehaut just mentioned it, but I feel I need to also refer to the remarks that Deputy Perrot made about SAP and sabotaging and I fully accept that he did not name any Department and he also mentioned the word, 'silo'. In my view, and I recently went on a visit with the Minister of T&R and based on that and also numerous conversations I have had with staff over this period since it has been introduced, the staff have been extremely committed to making it work and, in fact, they have done many hours or extra work to try and make it a successful implementation, but unfortunately, some of the lack of functionality and training has caused significant problems, some which have been solved, some of which are being solved, but there are some which are still to be solved, but I can assure you that the feedback I got, they are working hard on trying to find the solutions. They are working hard to work with the Hub to make sure we do fix it and they are committed to making the system work. I think the extra work that it has caused some, and the fact that they have taken that extra work on, shows that they do want it to work, because they do not want to do that extra work, they would rather have a system which is up and running and being successful.

1125 Thank you.

The Bailiff: Deputy Adam.

1130 **Deputy Adam:** Thank you, sir.

Sir, I must admit I feel a bit uncomfortable with this debate, as Deputy Perrot and Deputy Spruce mentioned, because we are talking about the civil servants who spend on us, support us, advise us. But, sir, as the Chief Minister will be fully aware, I have concerns about various issues in relation to civil servants and what has been happening over the last 12 months. I feel there has

1135 been friction arising. As some people say, it is between the centre and the Chief Officers and, if
you speak to some of the Chief Officers or if you speak to some of the Chief Officer's wives, you
suddenly realise how deep this is. They are concerned, they are even more concerned now, since
1140 one Chief Officer was moved on, moved sideways or went, and it frightens me slightly that this
has been created, supposedly by Policy Council. I would like to know how they are going to try
and get a balance back in place again to give the Civil Service the confidence in the politicians,
because that is what we need to do.

Change is difficult. I accept change is difficult, but it must be managed properly and I would
suggest that some aspects of the change has not been managed properly and, therefore, you have
this upset, this debate, being brought forward to suggest various propositions.

1145 Now, Deputy Le Clerc asked a pointed question: whether the Minister was involved in the
appraisal of the previous Chief Officer. The answer, Deputy Le Clerc, is, yes, this Minister was
involved on two occasions, because I was on the appointment panel for the previous Chief Officer.
Then there was an appraisal which the Chief Officer asked for, because of course at that time the
Chief Executive was not line manager, and then there was another appraisal after that concerning
1150 issue.

Also, I had a business yearly objectives plan produced for me in relation to what work he was
going to do each year, which then I went over a couple of months after the year end and, yes,
obviously realised those appraisals were very satisfactory as far as I was concerned. But, then, I
could work well with him and I really do not understand – Deputy Dorey said the Chief Executive
1155 had been very supportive of him. – I do not really know what happened in the six months
afterwards, which I was very upset about.

So, as I say, I have worked with the Chief Minister on two occasions, concerning various
issues. I think what Deputy Le Clerc said, when things are going well, accountability does not
seem to be highlighted so often. When things go wrong, we want to know why and who is
1160 responsible, and that is where you have got cross-departmental issues arising.

We have heard SAP from one point of view of HSSD; SAP from the other point of view you
might say a member of Treasury and Resources and who is responsible, who is accountable? Is it
all the Chief Officers, because they are not supporting it properly? I am not saying all the Chief
Officers are not supporting it, but are all the Chief Officers responsible to support it and encourage
1165 everyone to use it appropriately and make sure training happens in all the different Departments?

So, that is always difficult and it does not matter what cross-Department project you are
looking at. It is vital that we get everyone on Board and we cannot go back to, as Deputy Le Tocq
said, the situation that happened in the Education Department in 2002, 2003, 2004 and nothing
could be done about it. We do need accountability. We do need a line manager, but we do need
1170 things done in a sensible, sensitive manner, so that we get rid of this friction and get rid of this
them and us. The ELT is now the body to be scared of and that is going to be a difficult thing,
which must be managed by Policy Council in an appropriate way to ensure there is not this divide
happening.

I, personally, will be supporting the amendments, because I think it is reasonable. It reaffirms,
1175 as has already been confirmed, confirmed and confirmed and I think they are very sensible points.
I do not think we can go back through the bad old days, as Deputy Le Tocq pointed out. It did
mean that problems arose, not just within Education, but also in HSSD, about five or six years ago
and there was no clear solution. We do need to have clear solutions, but change is difficult. Help
them to manage that and give them support, a balanced support. I ask you.

1180 Also, Chief Minister, I would like a reply to my letter. Thank you very much.
Thank you, sir.

The Bailiff: Deputy Lester Queripel.

1185 **Deputy Lester Queripel:** Thank you, sir.

Sir, like Deputy Le Clerc, I am also in dilemma over this issue, so I will speak now on the
amendment and the Requête itself. Now, do I support the amendment or do I support the Requête?

At the moment, I can see the reasons why Members would choose to vote in favour of the
amendment and I can see the reasons why Members choose to vote against the amendment and
1190 support the Requête. I would like to spend a few moments focusing on both sides of the argument
to display why I am currently in this dilemma, and the way I see is, we do not have joined-up
Government and I do not think that is due to lack of effort by any of my colleagues either down
here or up there. I think it is due to the extremely poor levels of communication that currently exist
within Government and the levels of communication within government really do need to be

1195 improved, because we, as politicians, often hear in the media of projects and initiatives that are proposed and that is the first that we have ever heard of them, and that is completely unacceptable.

That leads me onto another example of communication which was displayed in a letter published in the *Press* recently, written by Deputy Brehaut, under the heading, 'Political Boards are in the dark' and three paragraphs in Deputy Brehaut's letter really nailed the issue. Those three paragraphs read as follows:

1200 'It strikes me how ludicrous a position I have been left in, wholly unable to answer a straightforward question and why? Because I am as far removed from the real information as the reporter who asks me the question. Good Boards have a rather direct, perhaps frank relationship with senior staff. Let's not forget if the collective get it wrong, it is usually the political Members who carry the can.'

And finally,

1210 'When I am next called to account by any reporter, I want to have as much information, the same information as those who have been involved in making any such decision and why? Because I am ultimately accountable to the electorate, to the taxpayer and others in the process are not.'

So, the fact of the matter is, sir, that we, as politicians have to take responsibility for actions that we have very little to do with and that fact is actually to be found on page 1329, point 14 of the Billet, which reads:

1215 '... political members are left having to take responsibility for actions that they have very little to do with, little influence over and no means of resolving.'

1220 So, being held responsible and accountable for decisions that are made, without being able to influence or resolve them, sir, really concerns me, as I know it does many others in this Assembly. Moving on to the other side of the argument, Housing tell us, on page 1337 of the Billet that:

1225 '... the board was surprised that these matters were being raised at this time, given that these are issues that fall within the current review of the machinery of government.'

And the Policy Council tell us on page 1340, that if the Requête is successful, it could:

1230 '- Require extensive renegotiation of employee and some commercial contracts and
- Have major cost and resource implications.'

Finally, on page 1345, Her Majesty's Comptroller tells us that legal and financial implications could result if the Requête is successful.

1235 So, sir, there are powerful argument on both sides and I want to focus, for a moment, on possible weakness. Deputy Fallaize used the word three times and Deputy Jones suggests that, if politicians are frightened of expressing their views to senior civil servants, then they should 'man up'. That is not the terminology that I would choose to use, sir, but what I would say is, if any of my colleagues are frightened of expressing their views, then perhaps they should ask themselves, what are they frightened of? What is it that stops them expressing their views?

1240 To conclude, sir, I make no apologies whatsoever for returning to the issue of communication, because communication is key to everything and we can support or reject as many Requetes or amendments as we like, but unless our levels of communication improve, the notices are a complete waste of time, because we need to communicate and those levels of communication really do need to be improved, both within Government and from Government.

1245 So I ask Deputy St Pier, is he able to assure me – ?

The Bailiff: Deputy Lester Queripel, Deputy Fallaize is standing up. Are you going to give way?

1250 **Deputy Lester Queripel:** Sorry, sir.

Deputy Fallaize: Sir, may I just ask Deputy Lester Queripel, because I am interested in his introduction of the issue of communication into this debate, what does he mean when he suggests that improved communication would be a way of resolving any of the concerns which have given rise to this Requête? Is it that he is suggesting that there ought to be communication between Committees about...? Sorry, should Committees communicate with other Members of the States who are not members of that particular Committee about matters in the Committees' mandate? Or, is he suggesting that there is insufficient communication between the civil servants who serve the

1260 Committee and the members of the Committee? I sometimes have some sympathy with the points he makes about communication, but I do not understand how improved communication would address any of the issues that are set out in the Requête or that have been spoken to by the proposer or me as the seconder of the amendment.

1265 **Deputy Lester Queripel:** Sir, my concern is communication in general, because very often one is left floundering to reply to questions that one is asked, because one does not have the information, so that is why I focus on the levels of communications within and from Government.

I am not sure of the reasons. I do not know why the levels of communication are so poor. All I know is they need to be improved. I hope that satisfies Deputy Fallaize. He is smiling, so I am not quite sure what to make of the smile, but...

1270

Deputy Fallaize: That was not a smile, sir. (*Laughter*)

1275 **Deputy Lester Queripel:** Sir, so I would just like to ask Deputy St Pier, is he able to assure me that the levels of communication *will* improve, if I vote for his amendment? (*Laughter and interjections*) Because, that is a major point in this whole issue.

In closing, sir, recently the media focused on the gap that is considered to exist between the Policy Council, up there, and the rest of us down here. I do not actually feel there is a gap, sir. I am obviously poles apart from most of them personally, but I do not feel poles apart from them professionally. But I do want to close by saying that, as we all know, when ex-Deputy Flouquet was up there, he referred to 'you lot down there'. When he was down here, he referred to the top benches as 'those of you up there'. So, he obviously had a different perception of Government from wherever he was sitting and I wonder if some of you up there, if you were down here... (*Laughter*) how much your perception of Government would change?

1285

Thank you, sir.

The Bailiff: Does anyone else wish to speak on the amendment? No, in that case, Deputy Bebb, do you want to exercise your right to speak immediately before Deputy St Pier sums up?

1290 **Deputy Bebb:** Thank you, *Monsieur le Bailli*.

I will start by actually making reference to those who have spoken and try to respond to as many as I feel that I can.

Initially, we had the response to the actual Requête and that was from Deputy Harwood and Deputy St Pier in particular. Once again, I feel that Deputy Harwood made reference to claims that were necessary in relation to the actual Requête without actually substantiating any evidence.

1295 The Requête actually states that employment must be within the Rules of the States of Guernsey and the term, 'Rules of the States of Guernsey' was actually another term that was raised by Deputy Fallaize in his speech. I would actually like to clarify that the term, 'Rules of the States of Guernsey' was a phrase that was inserted at the request of Her Majesty's Comptroller.

1300 I do not know whether Her Majesty's Comptroller would actually like to speak to that, but realistically, my understanding and, if she disagrees, she is more than welcome to speak on that. But, my understanding is that the States of Guernsey have rules in relation to its employment and that, therefore, it was necessary that Chief Officers do not move outside of the current Rules of the States of Guernsey regardless of their means of appointment. Therefore, I think that is partly what is actually misunderstood from the Requête. There seems to be an idea that the appointment process suddenly negates Chief Officers from having to operate within the Rules of the States of Guernsey.

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I ask Her Majesty's Comptroller whether she would like to contribute towards that?

1310 **The Bailiff:** Her Majesty's Comptroller.

1315 **The Comptroller:** I know that when we discussed Deputy Bebb's original Requête, I did have concerns about the wording and those concerns were expressed, as replicated directly by the Policy Council. I was not aware that the wording of the Requête subsequently changed and so, as far as I recall, my concerns were addressed at the wording of the Requête. When we discussed the matter subsequently, you did very eloquently explain that the intention behind those words was, perhaps, slightly different, but I did say that, if that was the case, the wording would need to be changed and, therefore, the Requête, as it stands, the objection stands as replicated in Policy Council's report.

1320 **Deputy Bebb:** I thank Her Majesty's Comptroller for her input, but my understanding and my recollection – and, as many people have said, it was a long time ago and life has moved on a little since then – but my understanding is that, when I initially submitted the Requête's wording to Her Majesty's Comptroller, the request was that, if the insertion of the 'Rules of the States Guernsey' were included, that some of her fears would have been allayed, because it obviously shows that
 1325 Chief Officers cannot move outside of the rules of employment that exist within the States of Guernsey.

The comments, then, from Deputy Le Clerc. She actually made reference to the questions that were raised in December and in January meetings and those that were actually raised, I remember distinctly by Deputy Laurie Queripel and myself, in relation to this very issue. Following those
 1330 questions that were raised and the supposed explanation, which did not satisfy some of us, a meeting was then arranged between the Chief Minister, the Chief Executive and those Deputies who felt that it was of benefit to attend. I remember attending those meetings. I remember stating, quite clearly, what my issues were. I remember, actually, discussing with the Chief Minister and the Chief Executive, those fears that I had and how we needed to try and allay them and at the end
 1335 of that meeting, my understanding is that we were due to have a report back to this Assembly to debate. None came. It is therefore unsurprising when a Requête then appears. I have to say that that meeting, I would have hoped to have seen some form of response to it, but there was not, and therefore I quite rightly agree with Deputy Le Clerc, when she says that this issue has been festering, but there has been no means of actually answering the concerns that were raised.

1340 Deputy Gollop rightly raises the concerns that exist with anomalies –

The Bailiff: Deputy Bebb, will you give way to the Chief Minister?

Deputy Bebb: No, I do not give way at the moment, I would like to proceed a little further if I
 1345 may. (*Interjections*)

Deputy Gollop rightly raises the concerns that exist with anomalies and the truth is that the current position is anomalous and this goes to a lot of what people have said. I have spoken privately with a number of the Ministers in relation to this particular Requête. I do not want to name anybody, but all of them felt that, if at any point in time their Chief Officer was to depart for
 1350 whatever reason and they were to need a new Chief Officer, that they would be directly involved in their appointment process.

Indeed, the Chief Minister himself is about to embark on the employment of a Chief Executive and a Chief Officer to the Policy Council. It seems anomalous that each and every Member that I have spoken to feels that this would be the norm, but they do not want to codify it. They seem to think that, actually participating within the employment of a Chief Officer is somehow different
 1355 from what I have actually suggested, and I would also suggest that they also feel that despite this involvement, that they would quite rightly, in my mind, expect to have, they feel that that somehow, without it being codified, somehow gives credence to the independence of the Civil Service.

I do not believe that codifying current practices would somehow impinge upon the independence of the Civil Service and I make the example in my opening speech of New Zealand where they do have a system of appointment that is by Ministers, but they also incorporate independence within the values of their Civil Service and that is extended to Australia. I know that it also exists within Canada and I know that it also exists in Austria. Other examples, I am sure,
 1360 exist of it. So, the idea that the appointment process somehow compromises the independence of the Civil Service, I would say is flawed. I think that that actually speaks partly to Deputy Spruce's concerns in relation to the independence of the Civil Service. But it also raised the question which, unfortunately, has repeated itself by certain people in relation to this bizarre suggestion that I first heard within the opinion pages of the *Guernsey Press*, that it would create 10 different fiefdoms.

The process of appointing a Chief Officer should not in any way mean that he is suddenly exempt from the expectations of each and every single Member of that Department, the political Members. I know that I would not in any way support someone who had decided to pursue their own agenda in a different way. Chief Officers must work within the expectations of the States and I would have hoped that the idea that the responsibility lies with us, as members of that
 1365 Department, would actually clarify that role. I do not think that in any way I could support any Department that I would be a member of pursuing its own agenda and think that I would not face a vote of no confidence. We simply must act in what has been termed as 'corporate' for the simple reason that the resolutions of this Assembly means that it is imperative that we then act upon those resolutions.

1380 I think that I have responded to the points that Deputy Fallaize raised in relation to the Rules of the States of Guernsey and I think that a lot of what he actually speaks in his speech were valid.

I somehow feel, in relation to the whole of this debate, a little like there is a general understanding that there is a problem, but few have actually thought of a means of solution. I am proposing a solution and I fully accept that people might not like that, but please do not shoot the messenger for highlighting the problem and proposing a possible solution.

1385 Deputy David Jones, actually, made reference to the Housing Department. Well, I am glad to hear that his Department is in rude health and, indeed, commend him, but may I suggest that that picture may not be replicated across the whole of the States and I think that when Deputy Lester Queripel made reference to the different perceptions, there are different perceptions, not necessarily between up there and down here, which I do not agree with that distinction. But I do think that there are different perceptions as to exactly what is happening and the problems that are currently being experienced.

I thank those Members who actually spoke generally in favour of and, in particular, Deputy Green, Deputy Soulsby, who actually raised the question of why they initially supported the Requête, but, once again, as I pointed out in my opening speech, that passion which was actually felt when the Requête was written, that time has ebbed away, that passion, but on the other hand it still exposes the fundamental flaw within the system.

1390 Deputy Perrot asked what the electorate would make of this. I say to Deputy Perrot that in my opening speech I was asked of this very type of question in the hustings. Therefore, I have no qualms in saying to my electorate that I have actually responded to one of those questions that were asked of me during the election. This goes to the heart of our system of Government and, therefore, I feel no shame in spending time debating it.

1400 Also, I am sure Deputy Perrot does not subscribe to this belief, but I think that it is worth repeating that the amount of time that we spend debating matters in this Chamber bears no relevance to the importance that we place upon it. Frequently we find matters raised by the Treasury and Resources Department – I think there are a few double taxation treaties on their way for the September business – which are fundamentally important, but the arguments are long past and everybody subscribes to the absolute common sense and virtue of actually continuing with that and, therefore, I would actually question anybody who thinks that the quantity of time that we spend in debating matters somehow bears a relevance to its importance. But, on the other hand, I would say that this question is of great importance in relation to my accountability and to all of our accountability to our electorate, and I feel that my electorate would be happy in supporting me in that respect.

1405 He also made reference to the strange thing about the idea that procurement would somehow be devolved into Departments. I do not see that. Once again, I feel that there has been a confusion between mandates of Departments and the actual appointment process of a Chief Officer. Changing the appointment process, changing the actual means of appraising Chief Officers would not change departmental mandates and HSSD do not undertake large procurement, as Deputy Perrot would know from the fact that he sits on the Treasury and Resources Department, which, quite rightly, has received the mandate from this Assembly in order to undertake that work. Once again, it is one of those things that appeared within the Policy Council's response, that had no basis of evidence to it and it is one of those things that I feel slightly falls under what I would term as shroud waving.

1410 I thank Deputy Langlois for his involvement. I am pleased to find someone who was willing to understand and accept that there is currently a gulf, because there is. I recognise that we may be at opposite sides of that gulf, but on the other hand I am pleased to note that there is an understanding of that and the need to do something in order to deal with it.

1425 Deputy Le Tocq talks about appraisals and here I would actually like to say that those of us who have done appraisals would actually know, there is no one means of doing this, there is as many ways of doing it as many other things. There is a multitude of ways of doing this. Personally, I would be quite happy with the idea of what is called a 360-degree appraisal. This is common practice in many areas and – no, Deputy Le Tocq, I am continuing with my speech; I am not giving way – I feel that 360-degree appraisals are actually perfectly reasonable and actually the most understandable and the most compatible means of appraisal to do with our system of Government. If we will have a Committee that is somehow mandated in order to undertake this work, then I feel that a 360-degree appraisal is compatible with that –

Deputy Le Tocq: Point of order.

1440 **The Bailiff:** Deputy Le Tocq is raising a point of order, which he is entitled to do.

Deputy Le Tocq: Point of order.

When I was talking about appraisals, I was talking about 360-degree appraisals which take place now.

1445 **The Bailiff:** Deputy Bebb.

Deputy Bebb: I am pleased to hear it and therefore we are simply agreeing on what I was actually raising within my Requête, which is that I would expect Deputies to have some means of input into that, something that does not always happen.

1450 I thank the Alderney Member Arditti, who spoke of the independence of the Civil Service, but, as I said, I do believe that there are examples that are fairly exceptional, well developed democracies, that have examples of what I would actually try and incorporate. Therefore I think that we will need to agree to differ on that point.

1455 Deputy Harwood speaks of the amendment as codifying current practice, but I would actually suggest that that is partly much of the Requête itself, the original one, actually did. He knows full well that there is involvement already from the political class in relation to this appointment process and, therefore, I am a little unsure as to why he feels that the amendment, somehow, is different.

1460 Moving on to Deputy Kuttelwascher, evidently my feelings are such that I feel, as I said in my opening speech, that inertia could prevail here and, therefore, obviously, my wish would be to have the Requête accepted and amended – though I would actually say that I am also not deaf to what I heard in the debate and from what I hear it looks more than likely that the amendment will be accepted.

1465 My simple response is that I feel that the amendment is preferable to the *status quo*. I think that Deputy Fallaize spoke very clearly as to what may happen and what I would suggest is the danger of ignoring this issue and therefore rejecting the whole Requête. Therefore, I am more than content to say that, should the amendment be accepted, I will most definitely be voting in favour of the amended Requête.

1470 The interesting thing from Deputy Adam is that he simply illustrated what was current practice and I would say that, once again, the Requête made reference to that current practice.

Deputy Lester Queripel talks about joined-up Government and there is part of me that cringes at that phrase and it is not because I do not wish it; it is because we somehow seem to have this impression that we enforce, within the public mind-set of talking down the Civil Service too frequently, that this is an indicative problem for Guernsey and Guernsey alone. This is not.

1475 The idea of trying to join up your various Departments, your various Committees is not indicative to Guernsey. It is a problem that is experienced in Governments across the world and this is not surprising, when you consider the complexity of the mandates which each and every Department has. It is unsurprising that they may focus on those mandates and sometimes lose sight of what we need in order for it to actually work with other Departments. None of it is done by intention. I doubt anybody sits at a table and says, ‘I wish to adopt a silo mentality’, but we talk down, we talk of this without proposing solutions and I feel the need to try and incorporate the Policy Council further in a solution to that problem is what I spoke of when Deputy Fallaize made reference to how he does not agree with some of the wording of my Requête. I think that there really needs to be some further thought as to how the Policy Council can, in and of itself, resolve some of the perceived problems in relation to what we call silo mentality, which may exist to some degree, but I also see far more work between Departments than I ever expected when I entered Government.

1480 Members, I understand why the amendment is attractive at this point in time and I am not going to talk down the amendment in any way. As I said, I believe that it currently tries to codify what is current practice in many respects, but it will not codify it completely, there will be anomalies within it and I am not trying to resolve all anomalies that exist in our system of government – Lord only knows that is a little bit beyond *my* ability.

1490 But the truth is that we need to either accept that we actually undertake active participation within the management of the Civil Service and we either accept that we do that but do not codify it or that we do it and codify it and, at this point in time, I am feeling that this debate is falling between those two schools, because nobody is speaking of the fact that there would be no involvement. People talk about independence, but yet they still want some active participation, and I do not think that that is wrong. I understand the difficulties in it and I understand the problems. I can live with anomalies, but, personally, I was trying to resolve some of them. I do not think that there is an awful lot more to say on the matter other than to say that evidently the problem exists and I hope that Members, when we enter into the general debate, should they wish to continue

within the general debate, should recognise that my intentions were not in order to fester problems, they were to try and resolve a specific issue, which I feel is currently working against good governance within this Government. It is currently working in a detrimental factor when we talk about embarking on corporate initiatives.

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We all have spoken of SAP. Few of us today would argue that SAP was a bad idea. Few of us would argue that the implementation of a piece of software that would give the States of Guernsey such great savings is wrong, but experience has showed, in my opinion, that when the balance is removed, when active participation is not done to a sufficient degree that corporate initiatives can fail and fail badly, and what I am asking for is greater involvement of Deputies within the activities of their Departments and greater voice in order to simply to say, 'no, it may be corporate, but it may not always be the right choice'.

1510

Thank you.

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The Bailiff: Deputy St Pier will reply to the debate on the amendment.

Deputy St Pier: Sir, given the mood of the debate, I think I can be relatively brief, but I do want to respond to a number of particular questions and comments which have been raised.

Sir, had I remembered the give way rule, I could have, perhaps, been the first one to intervene during Deputy Brehaut's speech, because there is an issue I would just like to address first of all. He said that he was conscious that he would be making headlines by referring to SAP and the systems failure and he referred to a number of instances in HSSD and I do want to correct that, because there is no systems failure within SAP. There are some process failures. There are some process challenges which need to be addressed, and the Minister for Health and Social Services mentioned that he and I had a visit earlier this week to the troops on the ground at HSSD which was initiated by Deputy Gillson, for which I am grateful. That was very interesting and useful visit, but it did identify that there are, as the Minister said, there have been issues which have been addressed, there are issues which are being addressed and there are issues which remain to be addressed, but they are process issues rather than system issues and I do want to correct that.

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Returning to the amendment, sir, Deputy Laurie Queripel asked what I meant by 'line management'. My interpretation of that is the line manager is responsible for appraisals, for objective setting, performance management and, ultimately, for the disciplinary process, or being part of or initiating that.

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Deputy Le Clerc asked whether the Chairman of the Committee meant Minister and that is absolutely right. That speaks to an issue which Deputy Fallaize referred to, which is that the Departments are merely Committees of the States and the Ministers are Chairs of those Committees.

The absence of appraisals, which again, Deputy Le Clerc spoke to, of course. Appraisals of Chief Officers by the Chief Executive has only been in place since 2011, so it has not been a longstanding practice. The Chief Executive should be seeking feedback from Ministers, who should, in turn, be seeking feedback from members of their Department. If that is not happening and a number of others spoke to their experience of that, then that is a different problem, that has got nothing to do, really, with this particular amendment, but I would suggest that actually encapsulating that requirement, if you like, by this amendment, would, perhaps, further reinforce that requirement and I think, in that sense, it would be useful. Again, I would echo Deputy Le Tocq's comments that it is a big improvement on nothing, that may have been going on before.

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Deputy Gollop said that, in the commercial world, the board would perhaps be appraising and I would challenge that and say, no. In the commercial world, line managers appraise, but that line manager may well be taking feedback from others, whether that is in the 360-degree model that Deputy Bebb referred to or in another way, so I would not expect it to be a collective appraisal in any system that I have seen.

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I would like to thank Deputy Fallaize again, as I did in my opening comments, but, in particular, of course, his forensic dissection of the Requête, in his style, was a very useful contribution to the debate on the amendment, but, in particular, I do want to pick up on the term 'pyrrhic victory'. I think to vote for the amendment and then vote against the amended Propositions, when we get to that stage, would be a pyrrhic victory and Deputy Langlois referred to that. It would leave a vacuum and I would urge Members, if the amendment is accepted, to then support the amended Propositions to 'codify', was the term the Chief Minister used, and I would very much endorse that.

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Deputy David Jones, I had described this amendment as being a 'healing process' and there was a part of his speech where I felt that was not working, (*Laughter*) but he did get there in the end, so I would like to thank him for that.

1565 Deputy Perrot – well, I really do not know how Alderney Arditti could possibly have confused Deputy Perrot with a cuddly, fat Belgian with a moustache – (*Laughter*) but I am off the immediate amendment here. But he did refer to me as being cuddly and I do not know how anybody could possibly make that conclusion either, having seen the cartoons of me in the media, where I look positively cadaverous on all occasions.

1570 **Deputy Brehaut:** But not in a onesie, certainly. (*Laughter*)

Deputy St Pier: Yes, my children are terrified that the next cartoon of me in the media is going to be of me in a onesie, so I am sure the press will give them that –

1575 **Deputy Soulsby:** My next doodle, I think.

Deputy Gollop: Point of order, sir.

Deputy St Pier has neglected to mention that he and me were an unlikely cuddly toy item at a Guernsey auction recently. (*Laughter*)

1580 **Deputy St Pier:** I think I will return to the topic, sir. (*Laughter*)

Alderney Representative Arditti did refer to independence and this was absolutely central to his thinking and I could not agree more and Deputy David Jones also referred to the Civil Service as being the thread of continuity through government, that out-survives any of us as the temporary participants in Government, as we are, and if we pull at that thread, I suggest we do so very much at our peril.

1585 Deputy Brehaut referred to the courage of bringing this Requête and, again, really just to reiterate what I was saying in my opening statement. This amendment seeks to recognise the genuine concerns which gave rise to the Requête.

1590 Deputy Adam expressed concern in relation to, if you like, the confidence that the Civil Service would have, and I would suggest to Deputy Adam, sir, and to others, that actually these amendments will be helpful for them too, because it will help give them some certainty by this codification of the relationship, limited and imperfect though it may be, but I would suggest that it would help them, it gives them a better understanding of the nature of the relationship albeit, perhaps, temporary pending the work of the States Review Committee, again, as Deputy Fallaize has said.

1595 Deputy Lester Queripel asked me to give him an assurance that communication will approve. Well, sir, I can, of course, not do that at all. If this amendment goes through, will it, of itself, improve communication? No, but what I think I can do is to guarantee that, if the Requête goes through unamended, communication will definitely deteriorate, because of the fragmentation that would result as a result of the Propositions, if unamended.

1600 I have nothing further to add and encourage Members to support the amendment and just to confirm, again, sir, in relation to a question which I received, just to confirm, and, again, I am sure Madam Comptroller would confirm this, that, if the amendment is successful, then all the Propositions in the Requête would be replaced and we would then be voting on those amended Propositions in the final vote, sir.

1605 **The Bailiff:** Yes, that is correct.

The Comptroller: Yes.

1610 **The Bailiff:** So, Members, you are asked to vote on the amendment proposed by Deputy St Pier, seconded by Deputy Fallaize and there is a request for a recorded vote.

1615 *There was a recorded vote.*

The Bailiff: Well, clearly that has been carried.

While the votes are counted, does anybody wish to speak in general debate who has not already done so?

1620 Deputy Langlois, you will have a right to speak as a Minister. Do you wish to speak now, if you wish?

Deputy Langlois.

Deputy Langlois: This is Deputy Langlois; this is not the Minister.

1625 Sir, I spoke earlier, it is a very brief comment, but I think it is a very important aspect, as we go into this final vote which I suspect is going to be fairly predictable. I spoke earlier about risk. Whichever way this vote goes, risk will remain within the organisation. Now, I just wanted to refer back to a gentleman called the late Sir John Harvey Jones, a famous management guru or whatever you call them. He wrote a book called, 'Making Things Happen'. To me, a very important title, because it is what management is about and is what the States and the Civil Service have been criticised for for many years, usually a matter of making things not happen, as has been the case. 1630 In there, there is a very key quote and that is that he says that:

1635 'the primary responsibility of senior management is to ensure that organisational change occurs at the greatest speed that the organisation can sustain.'

I will just repeat that, 'the primary responsibility of senior management is to ensure that organisational change occurs at the greatest speed that the organisation can sustain.' Now, initially, that sounds like a plea for 'change, change, change, let us get on with it' and so on. Think about it: not too slow and not too fast.

1640 Sir, I have got some 25 years of organisational development experience and, wherever we go with this vote, can I please make a plea to all of us, from here, certainly to the end of this term, to then take a very responsible view and be supportive of the changes that our civil servants are still going to have to take.

1645 *Amendment by Deputies St Pier and Fallaize*
Carried – Pour 42, Contre 4, Abstained 0, Not Present 1

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

1650 **The Bailiff:** The result of the vote on the Deputy St Pier, Deputy Fallaize amendment was 42 in favour, 4 against. I declare it carried.

Deputy Gollop.

Deputy Gollop: Yes, sir.

1655 Now we have a new Proposition in front of us, I am going to vote for the package, despite misgivings about some of it. I think the name change will be useful, because it will make clearer accountability.

1660 I would, however, mention that Deputy St Pier had said that line managers should be responsible for appraisals, yes, but who appraises, as a colleague has asked me, the supervisor, or Chief Executive of the States? And are we in a structure where the line management goes to the Policy Council rather than to Departments?

The Bailiff: Chief Minister.

The Chief Minister: Sir, it is really a point of clarification.

1665 At this stage, the responsibility for line managing the Chief Executive falls onto Policy Council. Policy Council has deputed three Members: myself, the Deputy Chief Minister and Deputy Langlois as line managers.

1670 **Deputy Gollop:** I thank the Chief Minister for the clarification, but that indicates, in that instance, there is a degree of political appraisal which, perhaps, will not be the case in Departments.

1675 I think the reason why I had a certain amount of time for the Bebb Requête is that there are alternative models of managing change, as Deputy Langlois has ably pointed out, and one model might have been to do what I think we were on a trajectory of doing, which was commercialising and segmenting functions of the States into semi-autonomous bodies with political control and oversight, that would have been self-managed business units. Such an organisational structure would, perhaps, be as efficient, if not more efficient, than the current goal, but would have been different and I therefore suggest that I think that this debate is far from over.

1680 **The Bailiff:** Does anyone else want to...? Yes, Deputy Laurie Queripel.

Deputy Laurie Queripel: Thank you, sir.

1685 Sir, I do not know why, but I seem to have the term ‘curate’s egg’ in my head, so Members might be surprised that I did not vote for the amendment, but, as Deputy Dorey said and so pointed out, it actually just confirms or retains the status quo which the Members who signed the Requête were not happy with in the first place. So, I know it brings about some improvements and changes things slightly, but it is still far from perfect. It is still a compromise and, of course, as Deputy Green pointed out, sir, I think most of the Members that signed the Requête realised the Requête was not perfectly formed but it was a platform for Members to air their genuine concerns.

1690 So, moving on, I still believe that most of my prepared remarks are relevant. Sir, ‘Frankenstein politics’, that is a term I coined to use on social media to describe the system that we currently operate under. It is a phrase that the press seemed to catch onto, because it was used as part of a headline in its political column, but the column went on to suggest that, perhaps, the Requête was somewhat akin to political navel gazing. Now, sir, I strongly refute that.

1695 The structure, systems, processes a government works to underpins everything that it does. They are fundamental, there is no meaningful progress without proper coherent, complementary process. So, it is not about being a political anorak. It is about getting the basics right. It is about achieving the best possible outcomes for the community. It is about having a system in place where the public can be confident that their elected representatives have a real awareness of what is going on, can provide effective oversight and bring genuine influence to bear where responsibility is clearly assigned and accountability is real and apportionable. It is about certainty and it is about clarity. It is about the integrity of the structure. Hardly navel gazing.

1700 Sir, all I care about is this Assembly’s ability to provide the best possible service to the people of the Baliwick. I will have no truck, sir – and, perhaps that is enough of that term since my first name is Laurie, I will have no truck. (*Laughter*) It took me all night to think of that one, sir. I will have no truck with the circumvention of the democratic process.

1710 Sir, the public do not want to hear about this thick veil that is drawn between the political and the operational, because, in my limited experience, and I am sure it is the experience of many other Assembly Members, sir, especially when we consider the topics of the raised parish surgeries, when things go array operationally, they very quickly become political issues.

I believe in a proper consensus and committee system, the lines of reporting, responsibility and accountability are clearly and firmly defined and assigned, so those lines are only blurred and fuzzed when components are grafted onto that system that are not compatible with it, when attempts are made to cross-wire a system, sir, you end up with short circuiting, surges, meltdowns and friction.

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Whenever you try to insert a centrist way of working into a consensus system, when you try to put in place a form of executive, non-political authority in decision making, it has the effect of a virus. It injects conflict, dualism or duality and complication. So, no wonder there is some stalling and crunching of gears. There is no manual for that model. It is a horrible mishmash of parts that have been found in a political scrapyard. You end up with a mutant, hybrid model where the driver sitting on the right has the hand controls, the steering wheel and the gear shift and the passenger on the left has the clutch and the brake pedal. Watch out, here comes a crash. 'Well, I did not see that coming.' It is false, it is misleading to try to fuse the two together and expect an incident free journey – and I must apologise, sir, I do have some more vehicle-based analogies to come.

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The irony is that the media and the public will not get the open and transparent government they desire by supporting a further shift towards centralisation and, therefore, inevitably a degree of political emasculation. Politicians will not be able to supply sufficient input, oversight and have the detailed awareness that the public and the media expect them to have, so that they can be truly responsible and accountable.

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Sir, it is also false and misleading and this is something that Deputy Lowe alluded to in a recent e-mail. To confer titles upon officers and teams, such as director, executive leadership, which I know has been slightly amended now, to infer a sort of authority and a pseudo-corporate image that seems to extend beyond the real scope of these roles. So, we have a sort of emperor's new clothes scenario, almost a process of attrition. When it is said for long enough, the emperor is wearing a lavish ensemble, topped off by a fabulous robe, it will be believed, when, in fact, he is not wearing a stitch of clothing.

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Sir, I fear to continue in this direction could create an undesirable culture, a disconnect between staff and politicians, where, because of the confusion and uncertainty, there may be a delay in conveying information to politicians or only selective information is conveyed. I believe I can cite specific examples of this political operational divide, this missing the connection, differing end game, and will further emasculate politicians: the central administration of the FTP, the drain on Department staff from resources where political Members could have no real say or influence on that, despite the effects on their Departments' budgets and staff moral. Sir, the considerable delay in getting the information to the Board members of Treasury and Resources in regard to the technical and data problems that have been experienced at Cadastre. The Minister, sir, acknowledged that it had taken too long for information to reach his Board. What resulted was a classic example of an operational matter becoming a political one.

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Some time ago, sir, I sent some questions to Treasury and Resources in regard to the problems being experienced with the SAP system. The answers I received laid heavy emphasis on the fact that staff needed to show a willingness to change their way of working and that was where the bulk of the problems lay and yet, sir, the PMO review into the SAP project clearly stated that many other problems were of a technical nature. So, there seems to be some disparity, sir, concerning the information the Treasury and Resources Board received and findings of the PMO report.

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And then, the news that was handed down that was almost a bolt from the blue, that an FTP Plan B initiative was going to be activated, with a further 5% cutting of the Department salary budgets. Sir, this came out after the Departments are already well advanced in their budget plans for 2014 and some were already complete. No-one had seen fit to pre-warn Departments that this option had been cooked up at the centre and may well be activated.

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Sir, none of these are good examples of corporate working. None of these are a good example of sharing the knowledge. This is not inclusive, cross-organisation co-operation; not a good example of keeping politicians in the loop, nor of timely communication and exchange.

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Sir, I am not saying that this is a gargantuan conspiracy of malintent or a Dick Dastardly dark plot. I am simply saying that structure, process, the balance of power, clarity, establishing defined parameters, clear, unconflicted lines of reporting, responsibility and accountability do matter. Getting these things right will make all the difference in regard to the outcomes for this community. But neither fish nor fowl nature of the current system has created dysfunctionality and confusion and I sincerely hope that findings and recommendations of the Review Committee acknowledge this.

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We have not discussed this matter at length at Commerce and Employment, but I think it is right to say that most of the time that Deputy Stewart and I see eye to eye on most things, but on

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this matter we differ and that is not a problem, because that is politics. That is what politics is all about.

1775 Deputy Stewart said that he wanted to go forwards, not backwards, so he could not support the Requête. But, I say, sir, that unless we address the clear conflicts and clashes that have arisen, at persisting with this incompatible amalgam, we are, whatever we perceive our destination to be, driving in a fog and it is no good thinking you are going forward if, in the end, you end up at a dead end. So, we need clarity, we need a coherent travel plan. We have not got those things at the moment.

1780 Thank you, sir.

The Bailiff: We will rise now and resume at 2.30 p.m.

1785 *The Assembly adjourned at 12.32 p.m.
and resumed its sitting at 2.30 p.m.*

**Clarification of the Responsibility and Accountability of the
Civil Service to the Political Boards and Committees
Debate continued
Amended Propositions carried**

1790 **The Bailiff:** Members of the States, we will continue debate on the Bebb Requête.
Yes, Deputy St Pier.

Deputy St Pier: Sir, I just rise on a point of order, please. I would like to correct a potentially inaccurate and misleading statement by Deputy Laurie Queripel.

1795 I just want to explain what he was referring to when he referred to a 5% pay cut on Departments, imposed by the centre. I think it would be useful to give Members the background, if I may, because I think it is potentially misleading as it stands.

1800 Sir, in my May statement to the Assembly, I did refer to the necessity to perhaps consider a plan B and, in particular, I referred to looking at persistent underspends in Departments, part of which are persistent vacancies which exist in Departments. This was considered by the Treasury and Resources Board in June and Policy Council thereafter.

1805 The 5% vacancy factor, which is part of Departmental budgets and the planning process for 2014, is a response to that, and the proposal is that some of those persistent underspends will, if you like, be held centrally in the Budget reserves so that Departments will be no worse off if they do, in fact, fill vacancies which are persistently unfilled.

1810 In particular, I want to emphasise that there has been political oversight of that process through Policy Council and Treasury and Resources and, indeed, the political Boards, in consideration of their Budgets. I think they have acknowledged there have been perhaps issues in relation to the communication of that, and the timeliness of the communication of that, to Departments. But it is certainly not a 5% pay cut imposed by unelected civil servants, which was potentially how his statement could have been interpreted, sir.

The Bailiff: Does anyone else wish to speak in general debate?

1815 Yes, Deputy Wilkie.

Deputy Wilkie: Thank you, sir.

I am not going to repeat what has been said already, but I just wanted to give a practical example to the Assembly of how what we have been talking about in practice actually happens.

1820 I was on the HSSD Board last year. The HSSD Board had identified it required more accountants, but we did not have the power to employ those accountants; we had to ask Treasury if we could employ those accountants. So, this was done. Treasury came back and said, 'No, you cannot employ these accountants. We have a project coming up which will sort that out in the future.' And there it stood. But, then, when things went wrong, when we had problems, suddenly we were vilified by Treasury for not having enough accountants and having an overspend.

1825 So, what we have got a situation of here is that the decision-making has been taken away from the Board; it has been given to Treasury, but the accountability is not with Treasury. They did not stand up and say, 'Actually, yes, we told you you could not have those accountants, so, in effect, you should have not been vilified for not having enough accountants, because it was the

1830 responsibility of Treasury to do that.’ I just wanted to share that example with everyone so you can see how it actually works in practice.

I have no shame in supporting the amendment. I think, if you listen to debate and you change your mind, that is part of how we do things. I do not have an issue with that and I will now support the amended document.

Thank you.

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The Bailiff: Does anybody else wish to speak in general debate?

Yes, Deputy Collins.

Deputy Collins: Thank you, sir.

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I rise to basically add a few comments and I will be very careful what I say, as last time I did say something I ended up with three hours at the *Guernsey Press* on Monday morning.

Deputy Soulsby, I will not be offended... you did a very good list of listing sports achievements and I would just remind you again, I did become a British Champion since we last met, but I will not hold that against you. (*Interjection*) So, thank you very much.

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You did touch upon the new T&R structure and, obviously, I have got a great deal to comment about exactly how that happened. Obviously, I was very sad to hear that our Chief Officer resigned over the situation of the fraud and the T&R Minister phoned me up and said that they were going to restructure it and this was the plan. Personally, I said, ‘Well, okay’. The Chief Executive asked us for opinions and my opinion was, I do not like it.

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I do not think the Department should have two Chief Officers. How is that going to work practically? I was dead against it and, in fact, the T&R Board met with the Chief Executive and we laid out all our concerns and we basically were told, ‘Well, it is my decision. I have made my decision and you just have to let it go.’

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Deputy Perrot, I totally agreed with what you said about the SAP project. It was dissolved too early, so I totally agree with that.

Also, following on from Deputy Sherbourne’s point earlier, I was around; I was a civil servant around when the machinery of Government happened. I do think that our civil servants sometimes do get a hard time but, on the other side of it, our wage bill is £200 million. So, with the public who are concerned about costs – and in Education we are starting to do various other things that are affecting them – the biggest bill that faces them is our wages bill, so we have to be on top of that and we have to justify what we are doing.

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Personally, sir, I think it is something that we do need to focus on. At the end of the day, we have got a £500 million deficit in the superannuation fund. That is absolutely huge; that is a huge deficit and the sooner we get our full accounting sorted, through Treasury and Resources, the sooner the better.

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Deputy Lester Queripel, I do not really want to comment on a lot of your things. I did get very confused about whether you were in or out, but I am sure you are out there somewhere. (*Laughter*)

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I really just wanted to go after what Deputy Laurie Queripel said about the Treasury and Resources structure... I personally feel that the Chief Executive is responsible for his Chief Officers and I felt that having two Chief Officers on one Board was very, very difficult. I take my hat off to the T&R Minister to have to deal with that, because he is the one that is having to deal with two different people.

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A good example of that, and I was there – and I have seen it with my own eyes – both of them fighting over the same resource; whether someone was going to work on the SAP project or somebody was going to work on the FTP project. A project person was pulled in such different directions that it was very difficult for them to achieve what they wanted to achieve.

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So, I do support... and I found it quite interesting, because I happened to be in Frossard House, in the Members’ room where the two Requêtees – and the Requête that we will be talking about later – were being signed... I was there. A lot of what has been said is about right; a lot of this, I think, has come out because of the SAP situation. Again, I do support that SAP is right but, at the end of the day, I do think that the intervention was not handled correctly and I do admit that I was part of that; I was involved and again pulled the full Board in to discuss it.

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I am certainly going off what I wanted to say but I do support the Requête and I will be voting in favour, as I ask Members to do.

Thank you.

The Bailiff: Anyone else? No.

In that case, we will draw the debate to a close. In order to do so, we need to give an opportunity to those Ministers to whom the Requête was circulated to reply to the debate; taking

1890 them in the reverse order in which they were entitled to speak when we opened the debate, which means we go first to the Commerce and Employment Minister, Deputy Stewart. Do you wish to say anything in replying to the debate?

Deputy Stewart: I have no comments, sir.

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The Bailiff: No comment.
Deputy Dorey?

Deputy Dorey: I have nothing to add to the debate.

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The Bailiff: Nothing to add. Deputy Sillars.

Deputy Sillars: It has all been said, sir.

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The Bailiff: Deputy O'Hara.

Deputy O'Hara: Likewise.

The Bailiff: Deputy Dave Jones.

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Deputy David Jones: No, sir.

The Bailiff: Deputy Domaille.

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Deputy Domaille: No, sir.

The Bailiff: Chief Minister?

The Chief Minister: Nothing further to add, sir.

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The Bailiff: Deputy St Pier?

Deputy St Pier: No, sir.

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The Bailiff: Sorry, no, it should have been, not Deputy... It should have been your Vice-Chair of the Review Committee.

Deputy Fallaize: Well, I am very reluctant to be in concert with all of them, sir, (*Laughter*) but... unfortunately, I have nothing to say.

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The Bailiff: Then Deputy St Pier and then Deputy Harwood.

That just leaves Deputy Bebb, then to reply to the debate, if there is anything more he wishes to say.

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Deputy Bebb: Thank you Monsieur Le Bailli.

I will be very brief, because I think that all that needs to be said was actually said during the debate on the amendment; but there are a few things that I think bear raising at this point in time, just in order to close.

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Deputy Langlois makes reference to organisational change and it is interesting that I remember – and I know that certain people will be surprised at me quoting Polly Toynbee (*Laughter*), but I will – shocking as that is – but Polly Toynbee actually gave what I believe to be an exceptionally good example of when we have change and how we undertake it.

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She referred, quite appropriately for Guernsey, to ships moored in the harbour and that we all can only rise at the same speed. If ships are actually tied too closely, then they will drown. At this point in time, the feeling is that with all this change that is happening, there are moments that we feel disassociated from the change; and there are problems that accountability is very real at a period of time when we undertake decisions which are very difficult, and Departments are having to make on a regular basis, some of which appear here.

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So, I agree with Deputy Langlois' point with regard to organisational change. I think that we need to realise that it is particularly burdensome and the reason that part of these issues raised is

1955 because of the sheer volume of change that is happening now. In that respect, I would agree with Deputy Harwood in his statement with regard to the amount of work that the Civil Service is currently undertaking, in order to actually try and achieve this change. We make those demands upon the bureaucracy that we are supposed to be at the helm of, and we need to recognise... and I think that the debate was quite respectful of the Civil Service, in its ability and what it achieves, but it does still leave that question with regard to accountability.

1960 Deputy Wilkie's point, in relation to accountability, and then further Deputy Collins'... both of which made reference to accountability, but I would also suggest to Deputy Dave Jones, it also gives that view from the other perspective. I do recognise that not everybody currently sees it, but it does happen.

1965 In closing, I would actually suggest that... I posed a question in my opening speech. The question was simply: are we ready to take on forms of accountability that I ask of within the Requête? I do understand when Members say, 'We are strong enough in order to take it on, but on the other hand we are reluctant in order to move with such speed. We prefer to have reports; we prefer to have that consideration.'

1970 When the Policy Council Members – which certain Members have in the past – said that they feel that they wanted travel faster, bear in mind that that direction may be different to where other people are wanting to go. I think that we can all understand that, at this point in time, there is that tension, that people want to go in various directions. Therefore, wanting to go faster does not always mean, for *all* of us, whether it is in the direction that we initially want to disappear.

1975 I think that I, in accepting the amendment and the amended Requête, am an indication of that. It does not go as fast as I wish; it does not go to all that I intended it to. But I will accept the amendment and I think that it should be supported – the Requête now amended – and I will leave it at that.

The Bailiff: We vote, then, on the Requête, as amended, and there is a request for a recorded vote.

There was a recorded vote.

1980 *Carried – Pour 42, Contre 4, Abstained 0, Not Present 1*

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

Deputy Inglis
Deputy Soulsby
Deputy Sillars
Deputy Luxon
Deputy O'Hara
Deputy Quin
Deputy Hadley

1985 **The Bailiff:** Members of the States, the votes cast on the Deputy Bebb Requête, as amended, were 46 in favour; with 4 against.

No, sorry, that cannot be right. (*Laughter*) I cannot read the... Greffier is that...? It must be 42.

The Greffier: It is 42, yes.

1990 **The Bailiff:** It is 42 in favour; with 4 against. I declare the Requête carried.

REQUÊTE

Scrutiny Urgent Business Review into the Non-Disclosure of Information Relating to the Negotiated Settlement with AFR Advocates Proposition 1 carried; Propositions 2 and 3 not carried

Article XVII

1995 *The States are asked to decide:*

Whether, after consideration of the Requête dated 14th May, 2013 signed by Deputy J A B Gollop and nine other Members of the States, they are of the opinion:

2000 *1. To note the contents of the Summary Report of the Scrutiny Committee's Review Panel and transcription of the public hearing held on Thursday 21st March 2013 into the non-disclosure of information relating to the negotiated settlement with AFR Advocates, which was published on 27th March, 2013, as appended to that Requête.*

2005 *2. To instruct the Scrutiny Committee, in order to assist the Policy Council in its formulation of a policy on the use of non-disclosure agreements and based on its experience investigating the Home Department / AFR issue, to provide the Policy Council with recommendations relating to the circumstances when it is appropriate to agree the use of a non-disclosure agreement.*

3. To instruct the Home Department to enter into discussions with the signatories to the non-disclosure agreement with the objective of obtaining agreement for the amount of the settlement paid to AFR Advocates to be made public and report to the States of Deliberation no later than February 2014.

2010 **The Greffier:** Billet d'État XV, Article XVII: Scrutiny urgent business review into the non-disclosure of information relating to the negotiated settlement with AFR Advocates.

2015 **The Bailiff:** Deputy Gollop will open the debate. Deputy Gollop.

Deputy Gollop: Sir, I think the mood amongst some – not necessarily all – of my colleagues, is to move on to the September Billet and, therefore, not necessarily spend two days on this. (*Laughter*)

2020 Nevertheless, like Deputy Bebb's Requête – and I am heartened that he got virtually unanimous support, at least for the amended Requête (*Laughter and applause*) – and hopefully my signatories will not change their mind in the middle, but never mind...

Basically, it is a simple matter, but – like the Bebb Requête – it has been delayed due to our political processes so that it is no longer, perhaps, as topical as it was when it was constructed. Nevertheless, many of the underlying issues have not been resolved.

2025 The Propositions to look at are:

2030 'To note the contents of the Summary Report of the Scrutiny Committee's Review Panel and transcription of the public hearing held on Thursday 21st March 2013 into the non-disclosure of information relating to the negotiated settlement with AFR Advocates, which was published on 27th March, 2013...'

Item 2:

2035 'In order to assist the Policy Council in its formulation of a policy on the use of non-disclosure agreements to instruct the Scrutiny Committee, based on its experience investigating the Home Department / AFR issue, to provide the Policy Council with recommendations relating to the circumstances when it is appropriate to agree the use of a non-disclosure agreement.'

and Proposition 3:

2040 'To instruct the Home Department to enter into discussions with the signatories to the non-disclosure agreement with the objective of obtaining agreement for the amount of the settlement paid to AFR Advocates to be made public and report to the States of Deliberation no later than February 2014.'

2045 Of course, we are aware, as Members, that we have had a Freedom of Information Policy Report since that time, which the States approved; and to that extent, it could be argued the Requête, and the views behind it, has achieved a lot of its objectives. But, nevertheless, not every respect of Proposition 2 has been satisfied by that.

2050 There are, indeed, many issues that remain to be considered. One issue is that the letters of explanation we have had from the different bodies have differed. The Policy Council, for example, has argued that Scrutiny's mandate is concerned with the identifying of perhaps gaps in policy, but the Scrutiny Committee's response has really been that they are not in the business of policy formulation at all. I think that the distinction between those two views, and the general view that they had a role in the viewing policy and service delivery, is just one of a number of issues.

2055 Also, the Scrutiny Review itself has admitted that the conclusions that were reached, perhaps would be best... it was not really a summary Report; it was more an identification of ideas.

The Scrutiny Committee said that:

2060 'After consideration of the evidence provided... the Panel concludes that there were insufficient grounds for the Home Department to justify its decision not to disclose information relating to the cost of the settlement with AFR Advocates.'

2065 However, not every aspect of that was dealt with in the Report, as to why they made that judgement; partly, because some of the questions that they raised – which you can read in the transcript – were not fully answered by the Home Minister or the Chief of Police, partly, perhaps, for legal reasons. So, we have a problem there, as to what the reasons were.

2070 It has not been answered fully to everyone's satisfaction as to why, when the issue went to the court relating to the possibility of compensation – when the decision was made that, in fact, the original warrants had, perhaps, been unlawful – why the Home Department Board did not appreciate that it had ceased to be an operational issue; and it had, effectively, become an issue of public interest and, therefore, one that merited political considerations, because many of the transcripts reveal discussions. Deputy Le Tocq, in the transcript, for example, mentioned, in his capacity as Home Minister:

2075 'It is not appropriate for politicians to get involved in micro-managing and dealing with issues which, to be honest, neither have we got the time nor is it proper to deal with and that applies to many areas of the States.'

2080 But the Scrutiny Committee themselves acknowledge that they lack particular expertise here in these areas in doing reviews. So, the question has to be borne in mind: where does the accountability come from? Because, surely, an effective scrutinising process would bring in advice that would enable politicians to take a dispassionate look.

Another concern is the Home Department have stated that they did not wish to be involved in overseeing the Chief Officer's negotiations, because they might have to review them at a later point. What is the policy behind that and how has it been arrived at?

2085 We also read in the transcripts that, for example, on page 1361, Deputy Le Tocq replied:

'That was a time when the Chief of Police could brief the Board on the agreement that had been made. Subsequent to that, at the meetings of the Board in February, we reviewed the situation and we received advice.'

2090 Now, as I mentioned before, the majority in the Home Department Board – whilst we did not take the vote on it at that time – would have been in favour of disclosing the full facts and figures. Once we had received legal advice, we had listened to the advice of our own officers and we heard the full briefing that the Chief of Police gave us; the majority of us changed our minds on that. To be doubly certain – because there were a number of the Policy Council who were also concerned about this – the Policy Council were also briefed in a similar manner; again, those who were concerned changed their mind, on the basis of the advice given. Subsequently, there were discussions as to whether the advice would prejudice other cases and so on.

Another point that comes up, again from Deputy Le Tocq, quoting page 1378,

2100 'It has not been easy to ascertain those figures for the reasons given before: one is that this matter has been going on for over two years; secondly, a lot of the expenses to the taxpayer were very small indeed – the total cost to the taxpayer being only a little, we now know, over £10,000 total cost.'

2105 Again, a detailed analysis of the transcripts would reveal – and I have no reason to disbelieve this – that there were two different quantum of payment. One was through the mechanism of States insurers, that we as a body had not necessarily been given the full picture on; and the other relates to the costs that the Chief of Police incurred.

2110 I am not suggesting that anything improper occurred and I personally think and believe that the Chief of Police, who inherited much of the situation, has acted entirely properly and in the interests of the Island's Police Force and in the interest to the public; and that is true of all the lawyers concerned as well. But, I think what we need to come out of this, is a full and frank debate on the scope of the Report – much of the process was, indeed, very interesting and very effectively done, but there were loose ends that were not completed. I think we need to reassure Islanders what the amounts were, rather than allowing the speculation – and uninformed speculation – that has been a problem throughout the year; and we need to solidify our commitment, which Deputy

2115 Le Tocq has identified, to openness and transparency as a default position. I think, too, we need effectively to complete the process and ensure that we have a policy that is robust and actually works on the first occasion that, perhaps, the States has really been challenged on these issues.

2120 I think, too, the co-signatories to this Requête, many of whom have brought different skills to the table and will hopefully, in debate later, bring out other aspects of this complex but, nevertheless, important set of circumstances.

The Bailiff: Now, the Ministers and Chairmen who are entitled to speak are, first of all, the Chief Minister, then the Minister for the Home Department and then the Chairman of the Scrutiny Committee, before we throw it open for debate.

2125 Chief Minister.

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

2130 Just in relation to the Propositions, as listed: the Policy Council has no comments on Proposition 1; on Proposition 2, Policy Council has made the point that we believe that this has now been superseded, as a result of the resolution of the States, passed in July of this year, to adopt Access to Public Information policy and, in particular, adopting the Code of Practice; and we have suggested that it is up to Scrutiny Committee that, perhaps, it would be appropriate in due course for Scrutiny Committee to see how the process is working, once it has been bedded in.

2135 With relation to Proposition 3, we made the point that directing the Home Department, in the absence of the full information which was available to the Home Department at the time when it took its decisions, at a time now, when the Access to Public Information Policy is in place, would work contrary to that policy; therefore, for that reason, sir, Policy Council does not support either Propositions 2 or 3.

2140 **The Bailiff:** Deputy Le Tocq.

2145 **Deputy Le Tocq:** Sir, I have not really anything to add as Home Department Minister, in addition to what we have stated in the Billet. But just, if it saves time, I will answer the question that... one issue that Deputy Gollop raised – with regard to that part of the Home Department's responsibility for reviewing decisions of senior Police officers and particularly that of the Chief of Police – comes under the Police Complaints Law, which was passed by this Assembly a few years ago. As such, that is what I was referring to, in terms of our considerations of when we could get involved; if we got involved too soon, we would not be able to then act as appropriate authority under that law to review the decision made by the Chief of Police. So, it is a Police Complaints' Commission law that I was referring to.

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(Police sirens heard.)

2155 **The Bailiff:** The Chief of Police is coming. *(Laughter)*

Deputy Le Tocq: Just watch what you say. *(Laughter)*

The Bailiff: Alderney Representative Arditti as the Chairman of the Scrutiny Committee.

Alderney Representative Arditti: Thank you, sir.

2160 Scrutiny Committee was consulted, by the Policy Council, on this Requête for which we are grateful – at least we are grateful for the consultation, but the Policy Council were not grateful for the Requête. (*Laughter*)

2165 The letter that the Policy Council invited from us is in from the Billet. Taking a leaf from Deputy Perrot's book, I am not going to detain you too long. You have got the letter in the Billet; I know you have all read it. But I will, if I may, confine myself to emphasising just a few points.

2170 It is Proposition 2 which concerns the Scrutiny Committee greatly. Starting, however, with Proposition 1: the request by the *requérants* for a debate. The Scrutiny Committee worked hard – and the Panel worked very hard – to deliver to the Assembly, to all Members, the evidence, in the form of a transcript, for them to do with whatever they, in their wisdom, felt appropriate. We are not against a debate; not at all. It is our responsibility to be agnostic on that subject. It is not for us to presume to say whether this Assembly should debate it or should not.

2175 For the information of the Assembly, we have recently agreed, as a Committee, that we are going to publish an annual report. We listened to some States Members back in April and May, and it seemed to us that the best way to respond to their calls was to agree that we would publish an annual report, in which these UBRs – these Urgent Business Reviews – will be published. Thereby – with the leave of the Bailiff – an opportunity to debate, and to note any, of those Urgent Business Reviews will be available to the Assembly.

2180 Of course, in the meantime, as some may feel, by definition, if it is an Urgent Business Review, that debate should be much sooner than that and we will continue to endeavour to live up to the rather difficult standard that we set with our first one, in which we delivered the transcript within 10 days... we will try and do it again with the next one.

2185 So, we will continue to provide the Assembly with the evidence it needs for a debate, if a Requête is brought in the immediate aftermath. If that is not felt necessary, then there will be another opportunity at the time of our annual report and Members can make use of the appropriate Rules of Procedure in order to debate, to note, the UBRs then. The other type of business we do is a PBR – a Planned Business Review – and that is on a completely different timescale. For information, we hope to have our annual report available to States Members by the end of the year.

2190 I will leave Proposition 2 to one side and just skip to Proposition 3. Again, the Scrutiny Committee is agnostic on Proposition 3; it is not for us to presume to say how the Assembly should vote on that Proposition.

2195 So, that brings me back to Proposition 2. Deputy Gollop said, in support of his Requête, that there were a number of unanswered questions; that there are loose ends. Sir, in my opening comments in the transcript of the urgent business review, I said this, on behalf of the Committee and on behalf of the Panel, and I quote,

‘There are a number of questions arising out of what has come to be known as the AFR affair, to which the public and the Assembly have not had clear and complete answers. Regrettably, the limited resources of this committee do not enable us to tackle all the outstanding questions at this hearing.’

2200 Now, we could shut down and do nothing else, if that is the will of the Assembly, but we have to move on, as a Committee. I am not suggesting whether the Assembly needs to move on or not; but, as a Committee, we really do have some very important, some very useful work, which we are now embarking upon and which will be announced within the next couple of weeks. It would be a crying shame if we had to divert our very limited, our very precious, resources away from that work and back towards AFR.

2205 There is also, in my submission, a fundamental flaw in Proposition 2, because it pre-supposes, it expressly pre-supposes that the Scrutiny Committee has some special experience. Well, it does not. All we are, are Members just like you: Members of the States of Guernsey. We have no special experience; we have no experience other than what you see in the transcript of the evidence, which has been before you since April and which is reproduced in the Billet today. We have no other information, no secret information, no confidential information; that is it; our questions and the answers that were given...

2215 When Deputy Gollop says, ‘Well, how did they formulate such comments’ as we made in the Panel commentary, and there are precious few of them and deliberately so? We formulated those comments simply and solely on the basis of that transcript. Every Member of this Assembly is as equipped as we are to form their own view about the answers we were given to the questions which we asked.

2220 Now, if this thing will go back from iAnnotate to Documents to Go.... Lastly – and forgive me if I am repeating myself – the Committee does not presume to say whether the AFR matter has run its course. It is for the Assembly to decide whether it wishes to debate the issues now, or when we publish our annual report at the end of the year, or, whether it wishes to focus now on other business.

2225 However, from our perspective in the Scrutiny Committee, our work is done and we have said so publicly. We have laid the evidence before you to the extent that the present Rules permit and we have equipped the Assembly as best we can for a debate, if that is what the Assembly so decides. The Assembly may feel that the urgent business review delivered a clear message to all Departments, and the Departments would not wish to find themselves in a similar situation. The Assembly may even feel that pursuing the Home Department, or part of it, for what other Departments might have done – because it has been the culture or a culture of Government for many years – is unnecessary, because a clear message has been delivered as to what a Department might expect if it does. However, as I have said, these are matters for you, the Assembly, to decide.

2235 On behalf of the Scrutiny Committee, I ask you, please, allow us to focus on our forward work programme, which – as I just said – we will be announcing in the next few weeks. As I have assured you, this includes several important and useful topics. Your Scrutiny Committee asks you to vote against Proposition 2 and does not presume to ask the Assembly to vote one way or the other in relation to Propositions 1 and 3.

2240 My Deputy Chair, a little later, will touch upon the fact that the Assembly’s decision, in relation to access to public information in the July Assembly, really has a very serious effect, indeed, on what possible purpose Proposition 2 could achieve, but I will leave that to him.

Thank you, sir.

The Bailiff: Deputy Perrot.

2245 **Deputy Perrot:** Sir, in view of what has been said by Alderney Representative ‘Arditt-eye’ (*Laughter*), could I ask that a vote be put as to whether the debate be closed under Rule 14(1).

2250 **The Bailiff:** In that case, under Rule 14(1), I put to you the Proposition that the vote be closed. We need to see whether there is a majority of two-thirds or more who support that, so we will have to have a recorded vote. So, the Proposition is that the vote be closed.

Sorry, Deputy Lowe, are you trying to say something? (*Interjection by Deputy Lowe*) Oh yes. If you want to close the debate, you vote *Pour* – that is the Proposition. If you do not want to close the debate, at this point, you vote *Contre*.

2255 *There was a recorded vote.*

Lost – Pour 24, Contre 18, Abstained 3, Not Present 2

POUR	CONTRE	ABSTAINED	NOT PRESENT
Deputy Kuttelwascher	Deputy Harwood	Deputy Lester Queripel	Deputy Storey
Deputy Langlois	Deputy Brehaut	Deputy Ogier	Deputy Trott
Deputy Robert Jones	Deputy Domaïlle	Alderney Rep. Arditti	
Deputy Le Clerc	Deputy Gollop		
Deputy Sherbourne	Deputy Gillson		
Deputy Conder	Deputy Fallaize		
Deputy Bebb	Deputy Laurie Queripel		
Deputy St Pier	Deputy Lowe		
Deputy Stewart	Deputy Le Lièvre		
Deputy Le Pelley	Deputy Collins		
Deputy David Jones	Deputy Duquemin		
Deputy Spruce	Deputy Green		
Deputy Paint	Deputy Dorey		
Deputy Le Tocq	Deputy Brouard		
Deputy James	Deputy Wilkie		
Deputy Adam	Deputy De Lisle		
Deputy Perrot	Deputy Sillars		
Deputy Burford	Deputy O’Hara		
Deputy Inglis			
Deputy Soulsby			
Deputy Luxon			
Deputy Quin			
Deputy Hadley			
Alderney Rep. Jean			

2260 **The Bailiff:** Members, the motion was that debate be closed at this point. There were 24 votes in favour of that motion; 18 against. In order to be successful it required a two-thirds majority of the Members voting to support it. It has not secured a two-thirds majority and, therefore, that motion is lost and debate will continue.

2265 **Deputy Ogier:** Just a point or a question, how does one handle the people who elect not to vote? Are they considered to have voted or are they – ?

The Bailiff: No, the Rules say Members voting. So, if Members did not vote, they did not vote that is how I read the Rules.

2270 **Deputy Ogier:** I did vote and I said I was not going to vote, so that is not counted as a vote – (*Laughter*)

2275 **The Bailiff:** As it happens on that vote it is academic, it makes no difference anyway, but if you choose not to vote, then you are not voting.
Anybody? Deputy Laurie Queripel.

Deputy Laurie Queripel: Thank you, sir.

Mr Bailiff, Assembly, colleagues, in supporting this Requête I have to ask myself a question: what are my duties as a States Deputy?

2280 As I see it, high on my list, I have a duty of care and respect towards by fellow States Members and towards the Committees that I serve on, and that is something that I take very seriously. But it is clear to me that my first duty is to work, speak and act in the public interest – but even that is a matter of perception. It has to be based on *my* best judgements and the information that *I* have available to *me*. It must be ranked above any written or unwritten creed in a government or political context; it must supersede personalities and political preferences, even at the risk at putting one at odds with one's colleagues.

2285 As I see it, attempting to achieve the best possible outcomes for our community and the public is my number one priority; and anything that can be instrumental in that goal being realised, I have to seriously consider supporting. Invariably that would lead to hard choices. So, it is very easy to conjure up reasons why one should not pursue that route, and it is very easy to listen to persuasive reasons or arguments as to why one should not pursue that route. It is very easy to file something into the 'too hard to do' tray.

2290 In my opinion – and I stress it is in my opinion – as individuals, we all have to make our best judgements according to our conscience and the facts as we see them. Anything that I believe will lead to Government, and every arm and entity within Government, being more effective, relevant, open, accessible, leading to the public having greater trust and confidence in their Government, leading to better outcomes for our community... I cannot turn my back on, for the sake of keeping the peace.

2300 That is why – despite the fact that it may bring me into conflict with my Chairman of Scrutiny and my fellow members of Scrutiny, all of whom I have the highest regard for, sir – but it is for those reasons – that my number one duty is the public interest and what I think best serves our community – that I have to support every aspect of this Requête; because I believe it is in the public interest to do so.

Thank you, sir.

2305

The Bailiff: Deputy Fallaize and then Deputy Gillson.

Deputy Fallaize: Thank you, sir.

I am a signatory to the Requête and, so, I will get the back-peddling out of the way first.

2310 I am going to vote against Proposition 2. At the time that this Requête was signed, the States had not debated – actually the Members had not even received – the Policy Council's Access to Public Information policy letter and I accept the arguments made by the Chief Minister, and by the Chairman of the Scrutiny Committee, that there would be no value now in pursuing Proposition 2. I will, therefore, vote against it and I would encourage other Members to do the same.

2315 I will, though, vote in favour of Proposition 3 and the reason for that is not so much the transcript of the Scrutiny Committee's urgent business review hearing, but the conclusion, which is set out on page 1351 of the Billet.

The conclusion reached by the Scrutiny Committee – after investigating this matter and after their public hearing – and, I am afraid, sir, I am going to read at least an extract of it. It says that:

2320 '... the Panel concludes that there were insufficient grounds for the Home Department to justify its decision not to disclose information relating to the cost of the settlement with AFR Advocates. The Panel also concluded that, at the point where the negotiation of the settlement ceased to be a matter to be resolved amongst individual parties and became a matter of spending public money on behalf of the individuals concerned, the Home Department abrogated political oversight of the process by failing to support the Chief of Police in his negotiations by providing the necessary political safeguards to ensure that it was the Department and not the Chief of Police that was responsible for exercising political judgement on this matter.'

2325

The key for me there is... the two extracts that are key are:

2330 '... the Panel concludes that there were insufficient grounds for the Home Department to justify its decision not to disclose Information...'

And that:

2335 '... the Home Department abrogated political oversight of the process...'

Those are very, very strong words, made by a Committee of the States about another Committee of the States. It seems to me, sir, that in those circumstances it has been entirely appropriate for Deputy Gollop and for the other signatories to lay this Requête before the States and to provoke a debate about this matter.

2340

I am not content with a Committee of the States making those kinds of claims about another Committee of the States, without them being debated in what I consider to be the proper forum, which is here in the States Assembly. It seems to me that, if we are to respect the authority and the legitimacy of the Scrutiny Committee, then we really have got to vote in favour of Proposition 3; because Proposition 3 of the Requête follows naturally from the conclusion of the Scrutiny Committee; because if one accepts the Scrutiny Committee's conclusion – that there were insufficient grounds for the Home Department not to disclose the information, and that the Home Department abrogated political oversight of the process – it must follow that we are able to vote for a Proposition to instruct the Department to enter into discussions with the signatories, etc, etc. etc. and report to the States no later than February of next year.

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2350

That Proposition does not require the Home Department to publish the information; it requires the Home Department to enter into negotiations and then to produce a report for the States. I do not think that that is an unreasonable request to make of a States Department which a States Committee has accused of abrogating political oversight and not providing justifiable reasons to disclose the information that was at the heart of this urgent business review.

2355

So, sir, I think that is reason enough to vote in favour of Proposition 3. As I say, I think Proposition 2 falls, purely because of the passage of time and because there is no point in making the task of the Scrutiny Committee more onerous now that we have the Access to Public Information regime in place. Proposition 3 is as valid today as it was when this Requête was first drafted and I urge Members to support it.

2360

Thank you, sir.

The Bailiff: Deputy Gillson.

2365 **Deputy Gillson:** Sir, firstly, I would like to reiterate something that was said in the public hearing, which is that throughout this speech and debate, absolutely no criticism of any of the Police officers who were involved in the original incident; they acted in absolute good faith, believing they had a valid warrant.

Secondly, and this may surprise some Members, I offer no criticism of the Chief of Police in negotiating a settlement. Indeed, based on what we have been told, he should be congratulated on achieving the good settlement that he did.

2370

Sir, during the April States meeting, Deputy Gollop asked questions regarding this issue, during which Deputy Paint asked a supplementary question of the Chairman of Scrutiny. He asked what would the benefits of debating this subject would be. The Chairman of Scrutiny's answer was, and I quote:

2375

'No benefit to the tax payer whatsoever.'

I disagree. There are some very important issues which can be drawn from the ARF issue; issues, which are at the very heart of the interaction between the Civil Service and Deputies.

2380

In this speech, I will endeavour to show that there has been a partial failure of the scrutiny process; the possible failure by staff keeping the Home board informed; possible failure of

political oversight by the Home Board; possible communication failure within Chief Officer group; possible failure in keeping the Chief Minister informed; as well as a question regarding the nature of legal advice and the use of legal privilege.

2385

So, in answer to Deputy Paint's question, yes, there is benefit to the taxpayer for this debate. There is a lot to be gained. Not all of it is going to be comfortable, in fact a lot of it will be uncomfortable, but I think these issues need to be aired; they need to be addressed. Just because something is not comfortable is no reason for it not to be addressed; indeed, rather the opposite, more reason for it to be addressed.

2390

This debate may not provide all the solutions, but at least the debate will shine light upon them and, as Deputy Trott often says, 'Light is the best disinfectant'. (**A Member:** Hear, hear.) I am sure that a number of people will dispute what I say, but I doubt if anyone will prove it wrong. All of my conclusions, I think, are logically drawn from the facts.

2395

Firstly, sir, a few words about the Propositions. Proposition 1 is purely to note, so its real consequence is enabling this debate. Proposition 2 – I agree entirely with Deputy Fallaize; we had the debate on Access to Information. That debate has been had, so Proposition 2 is really superseded and so I am tempted to vote against it, because I do not think it will do any good. But Proposition 3 is a very important part of it.

2400

Sir, some Members may suggest that, since the events surrounding the settlement occurred last year, that because the Scrutiny Review was in March and we are now in September – six months later – it is too late to have the debate and time has moved on. I disagree; time does not defeat the seriousness of these issues. What the period of time between the Scrutiny Review and this debate illustrates is how wrong it was for Scrutiny Committee not to submit the Report in a Billet earlier on.

2405

At that time of the April questions, Alderney Representative Arditti made much of the Members' ability to bring the Requête, which is what happened. However, there is an 11-week lead-in for a Requête. So, even had Deputy Gollop submitted the Requête on the day he asked his questions, the earliest we could have debated it would have been July; and because of volumes of work, here we are six months later. However, had Scrutiny submitted the Report, as an appendix to the Billet, it could have got into the May Billet and we could have had this debate in a much more timely manner.

2410

Sir, the first issue I listed, in my list of items that need to be drawn out from this issue, was that there was a partial failure of the scrutiny process, which I believe and I will explain why.

2415

I turn, first, to the scrutiny letter of comments, appended to the Requête, because it is either an attempt to re-write history or demonstrate a remarkable lack of understanding of how this Assembly operates. The section of letter I am referring to is on page 1382, end of paragraph 3, and I will read it:

2420

'... its Review Panel worked hard to place these materials in the public domain as soon as possible after the public hearing to enable States Members to initiate debate at the States meeting in April, although this course of action was not pursued by Deputies at that time.'

2425

Half of that sentence is correct; half of it is a complete misrepresentation, not only of what happened, but what could have happened. The first part:

'... its Review Panel worked hard to place these materials in the public domain as soon as possible after the public hearing...'

2430

That is correct. Yes, I agree the Committee – in particular, its Principal Officer – worked hard to release the information in time for the March States meeting. I support that part of the statement totally, but it is the rest of the statement which is inaccurate and misleading. It reads:

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'... to enable States Members to initiate debate at the States meeting in April, although this course of action was not pursued by Deputies at that time.'

2440

The key words are 'enable States Members to initiate debate'. The wording clearly gives the impression that Deputies had the opportunity to initiate a debate during April, but declined to do so. What other meaning can be taken from the words, 'to enable States Members to initiate debate'? It is completely wrong. The Scrutiny Report was not in the April Billet, even as an appendix, so it could not be debated. There was no opportunity for Members to initiate a debate during the April meeting; this Requête is the earliest opportunity.

2445

The only reference to this issue during April was the questions raised by Deputy Gollop and we cannot have a debate during Question Time; it is a process where a Member asks questions and the Chairman answers it. Members are not allowed to comment or express opinions, only the

Chairman. Sir, a question and answer session is not a debate. There was no opportunity. The statement in the Scrutiny letter, implying Members had an opportunity to initiate a debate, but declined to do so, is completely wrong. So, unfortunately, we now have an incorrect and misleading statement by a parliamentary Committee in the public record.

2450 Sir, I was not going to refer to the way Scrutiny decided not to include the report in the Billet, but that incorrect and misleading statement leaves me no choice, but to do so, to set the record straight. Although I initiated the idea of raising questions about this issue, it was the Chairman who suggested a hearing with only inviting the Minister to answer questions. At first I disagreed, but he convinced me of the logic of it and I stand by the validity of the decision we made at that
2455 time. With 20/20 hindsight, perhaps it was not the best decision; maybe we should have invited the whole Committee, but, given where we were at the time, I think it was a reasonable decision that we made.

2460 Before the hearing was held, we, the then Scrutiny, met to consider the type of report we should produce following the hearing. One suggestion was to publish only the transcript with no commentary or comment. I disagreed, suggesting that we should publish a report; we should draw conclusions from the hearing.

2465 My logic for this was threefold. One – as Deputy Fallaize has commented – it is appropriate for a parliamentary Committee to analyse events and then report on its findings to this parliament. So, the majority of people, actually, are not going to read the whole transcript; and the third, which links the two, is that Scrutiny needs to be fair to the Minister and Members of the Home Department. I need to explain a little further. If my assumption, that the majority of the public would not read the transcript, is correct – and I think it is – the only way they are going to be aware of the issues raised on the hearing is by the media; and my concern is in relation to the completeness of such reporting. There exists the possibility that reporting – particularly headlines
2470 – could focus on the negative and not give a balanced account. For instance, Home Minister says 10 good things and one bad thing and the headline is just focussing on the bad thing. A report from Scrutiny would provide a balance in conclusions. It may be uncomfortable, it may be challenged, but at least they would be balanced.

2475 Sir, a number of other members of Scrutiny have the opposite view – that Scrutiny should not draw any conclusions at all. A middle road was agreed that the transcript would be produced along with a commentary, but without conclusions. On 21st March, the public hearing is held and, credit where credit is due, it was well organised. The Alderney Representative, I believe, chaired it well and he ensured that the Panel was well prepared. I believe – and I will stand by that – he did a very good job in that respect.

2480 But you can imagine my surprise when, the following Monday after the review, I and the rest of the Panel, during the late afternoon/evening, received a copy of the transcript to the hearing and the Panel report, which includes conclusions. My response was to ask a technical question about the transcript and I questioned whether or not all members of Scrutiny were content to have conclusions included?

2485 So, we, as an Assembly, met on the Tuesday, Wednesday and Thursday that week, and, during those days, there was a series of conversations and notes between myself and the Chairman of Scrutiny. My suggestion that it is important the whole Committee got to see the conclusions as quickly as possible and that, because the conclusions were so critical of Home Department, we had to give Home Department – especially the Members who had not been asked any questions or be
2490 given any opportunity to give their point of view – a chance to do that and the correct place was in this Assembly.

2495 I also asked the Chairman to convene a meeting of Scrutiny because, after all, we were all in this Assembly, so it would have been quite easy. Sadly, that did not happen. The report was circulated to the whole Committee on the Wednesday; it was made public on Wednesday, but there was no attempt to hold a meeting of Scrutiny or put the report in the Billet.

2500 On the Friday, before the April States meeting, I attended my last Scrutiny meeting, the main topic of which was the AFR report, in particular whether or not it should be published. We know the decision was made not to publish it but, Members will not know one of the reasons given for not publishing it. I have thought long and hard about whether I say this or not, but I think I should do. I was shocked when, during the meeting of Scrutiny, the Chairman of Scrutiny said that a reason for not publishing the report was that he would not be able to defend the conclusions of the report in this Assembly. The Chairman of Scrutiny, who had approved the report and the conclusions a few weeks earlier, was saying that he would not be able to defend it in a public debate. That was what prompted my supplementary question in the April meeting, to which the
2505 Chairman said, ‘Absolutely, everything, without question, every comma, every full-stop’.

2510 So, within the period of a month, the report went from being approved, to not being defensible, to being defensible. Some Members may think that possibly I misheard or misinterpreted what was said. Fortunately the meetings of Scrutiny are recorded and, under Rule 14(2) of our Rules relating to operating Departments, they have to be kept for six years, so any dispute as to my interpretation can very easily be settled.

All of this leads me to a conclusion that there has been a partial failure in the Scrutiny process. It is not all bad. As I said, I think the hearing went well; it was well-organised; it was well-chaired and the report and the conclusions, I think, were fair. But it was the decision not to bring it into this Assembly.

2515 I know that it has been said, on some occasions, that the information is out there; it is in the court of public opinion. Those of us who decide to stand for re-election in 2016 will face public opinion but, in intervening years, we, as Deputies, should be accountable to this Assembly; and so that report should have been presented in this Assembly; it should be challenged in this Assembly; and it should be defended in this Assembly; which, thankfully, this Requête is doing.

2520 I will move onto another aspect. I said that one thing I was uncomfortable with was some of the legal advice and the use of privilege in the hearing. I have concerns in relation to the way legal privilege was used as reasons not to answer questions –

2525 **The Bailiff:** Alderney Representative Arditti is asking you to give way.

Alderney Representative Arditti: Sir, I detect that Deputy Gillson is moving on to another topic and I did not want to rise and interrupt his flow while he was... I rise only to say this; at the appropriate time – later on this afternoon I hope – I will justify this comment.

2530 There is nothing, whatsoever, incorrect or misleading in the letter from the Chairman of the Scrutiny Committee to the Policy Council, in response to the request for consultation. What Deputy Gillson has described as incorrect and misleading was neither. But I will not take up the Assembly's time now and I will do it when I get an opportunity to speak again later.

Deputy Gillson: Thank you, sir.

2535 I am sure the Law Officers will quote umpteen reasons and precedents why representatives of Home Department had the right to invoke legal opinion, and I am not going to, in any way, question their right to do so. That is something which is way outside my skills but, I will say that, just because we have right to do something does not make it appropriate to do it. The lanes outside my house have a 35-mile speed limit but I certainly would not go that speed; the same with invoking legal privileges at the Scrutiny hearing. It was invoked but I do not think it was really the right thing to have happened. As I said, I am not contesting the right to invoke privilege; I just think it was not appropriate. I hope that other Scrutiny PAC hearings do not have to contend with politicians or senior civil servants invoking that in a Scrutiny hearing. It is not a court of law. I might be the minority on that; I just think it was not right.

2545 Sir, I will move now onto the bigger issue of political oversight. I said I think there are a number of possible failures.

In order to justify these concerns, we need to consider events since the Election; but, before doing so, I would like to refer to a confidential meeting a number of us attended; and it was confidential and we were told we were sworn to secrecy.

2550 I am not going to break anything I was told in there, but what I can say is that, in order to illustrate what good deal had been achieved – and credit, as I said, needs to be given for the negotiations – we were told an amount, in terms of the order of magnitude that the settlements could have been. It was in the context of informing us that the Home Department Board had not been told the amount, but they had been told it was less than x . In such a statement, the only relevance of being told that number can be if that number is close, or near, to what was expected to have been a possible outcome. As I say, the number that we were told was not what was the outcome; it was just what it could have been.

2560 Indeed, on many occasions, prior to that meeting, the Home Department Minister has commented on what a great deal it was and, logically, you can only comment on saying a deal is good if the know the magnitude of what it could have been, otherwise the statement is pretty meaningless. The Minister told this Assembly in February and I quote:

2565 ‘The Home Department can provide this Assembly and Islanders of Guernsey the assurance that a minimal settlement was agreed and, as such, is a sum considered to be substantially lower than would have been necessary had it gone through the courts.’

Clearly, based on the order of magnitude we were told at the meeting and the Minister's own words in February, a good deal was negotiated. It is clear that the Chief of Police acted in the best interest of the Island, when he negotiated a settlement, which the Minister said was substantially lower than had the matter gone to court.

2570 But, it is important to note that the Department was – before the November negotiations finalised – looking at a very large possible settlement; a substantial amount, possibly a Budget-effecting amount. We have got no reason to believe the Minister of Home Department was not being accurate when he said it could have been a substantial amount.

2575 Sir, there is a slight complication to this; and I will explain it, because it has been used, in a way, to muddy waters. For various reasons, the legal action was not taken against the States, it was taken against the individual Police officers, but – and quite rightly – the officers were told that the States fully supported them and would bear all costs and liabilities from this, because they acted in good faith. Absolutely right; I 100% support that.

2580 So, even though that legal technicality of who the claim was against, the effect was that any judgement, any cost, would have been borne by the States, by the Home Department or the insurance company. So, there was a potentially, a significant loss against States of Guernsey budgets. That was the position in November and, therefore, it is safe to assume that would have been the position in May, June, July, August, until the settlement was made.

2585 Given that situation that there was legal action, effectively against the States, potentially involving a reputational risk, a significant financial risk, what was a newly-elected Board of the Home Department told when they took office? According to the Minister, they were told nothing. Remember the Minister confirmed that the first he knew about this matter was in November, six months after taking office. I find it quite incredible that a Department was facing legal action, and facing a significant cost, and the Board were not briefed about it. (**A Member:** Hear, hear.)

2590 I will draw a parallel. I am director of a number of private equity funds. A standing agenda item on our quarterly agenda meetings is in relation to legal action to ensure that the Guernsey board is aware of any and all legal action – at board level, at adviser level, at investee company level, anywhere down the chain – to ensure we are advised of it because of the direct or indirect impact on the investor's value.

2595 So, for a Board to take office in the May and not be briefed, is a major failing of communication and a major covenant and the questions that spring to mind are: why were the Board not told? Why weren't they told of the legal action? Why weren't they told of the possible costs? And who actually took the decision not to tell the Board? Possibly, the most astonishing aspect of this is the attitude of the Minister of Home Department that, when asked if he thought it was right for the Board not to have been told anything until November, he said that he was 'content'. If anybody wants to read it later, it is line 595 of the transcript. He was 'content' not to have been told that his Department was facing legal action, possibly facing a substantial cost. That is political oversight.

2600 Now, I –

Deputy Le Tocq: Sir, can we just clarify that, because, in some ways I do not disagree with what Deputy Gillson is saying. However, he has added substance to the question that I was asked; I said I was content with the way it was operating. If you look at the answers in there, I did not say that I was content not to have been given all that information; and the States has voted in a confidentiality clause, as part of the Freedom of Information report that came, and you will see there that in that instance, the Department would have to take a view in that and it does and has.

So, he is misleading in insisting that that is what I would have done that time.

2615 **Deputy Fallaize:** Sir, may I just ask the Minister to clarify the comment that he has just made. Is he able to advise the States in respect of this matter and the potential for facing legal action –

The Bailiff: Can you ask questions of a Minister when somebody else is speaking?

2620 **Deputy Fallaize:** It was just –

The Bailiff: We will have everybody wanting to ask questions of everybody.

2625 **Deputy Fallaize:** It was just for the Minister to clarify the remark that he had just made.

The Bailiff: Well, I am not sure of any Rule that permits one Member to ask questions of another Member during the course of a debate when somebody else is speaking.

Deputy Gillson

2630 **Deputy Fallaize:** Sorry, sir. I thought it was a point of order that Deputy Le Tocq was making.

The Bailiff: He did not call out.

2635 Under the Rules, can I just draw Members' attention... just in case there is any confusion under the new Rule 12(5)? If somebody is raising a point of correction, they must say, 'point of correction' or 'point of order' as they stand up, and then the Member who is speaking must stop speaking.

2640 If they do not say that, then I take it that they are merely asking the Member who is speaking to give way and Deputy Le Tocq, when he stood up, was silent until Deputy Gillson gave way, so I took it that he was just asking him to give way. He then did say, 'on a point of clarification', I think he said.

2645 Can I just make it clear to Members, that if you want to raise a point of order or a point of correction when you stand, you must say, 'point of order' or 'point of correction', and the person who is speaking must then give way to you. If you are merely asking them to give way, you stand there until the Member either gives way or indicates he is not to give way. That is how I understand the new Rules 12(6) and 12(6A).

Deputy Gillson, please continue.

Deputy Gillson: Thank you, sir.

2650 I know that, during the hearing, the Minister made much that moneys would have been paid out of the Police budget and that is a devolved budget; but it is devolved by whom, to whom? It is devolved by the Home Department. If you look in the index on the States Budget, there is no Police budget; it is part of the Home Department budget.

2655 So, if the Police needed additional funds, they would have to come initially out of the Home Department's budget and if that could not cope with it, out of this Assembly. It would be the Minister and the political Board who would approach this Assembly for more money. The Police budget is ultimately the political responsibility of the board. So, I think that it is inappropriate to just try and say, 'No, it is not the Home Department's responsibility because it is Police budget'.

2660 We were told by the Minister that he was not briefed until November and the rest of the Board were not briefed until January. So, you have to then pose the question, how can you apply any criticism of a Board if they are not told? How can they be responsible for something they do not know? But, I think it is worth noting that the front page of the *Press*, on 18th May 2012, had a front page article about the AFR incident and the fact that Home Department... and the case was happening.

2665 So, I accept that when you are newly elected there is a lot going on, but certainly the Minister was not new to politics and I find it amazing that that newspaper article was not a trigger to at least ask staff for information.

Deputy Le Tocq: Sir, I do not [*Inaudible*] *Guernsey Press*.

2670 **Deputy Gillson:** Very wise of you.

2675 At the risk of now upsetting virtually everybody in the Assembly, I think that mention was made, during the hearing, that the money could have been, or was – still a bit vague to some people – as to the settlement would be paid out of the insurance company, so it was not a drain on States funds. But that raises another question, because I know from my experience as a directing officer, experienced in the finance sector, that as soon as there is any expectation or hint of a claim, you have to tell your insurance company.

2680 My understanding, and I stand to be corrected, is that the insurance companies are controlled and run through T&R. So, I think it is a reasonable assumption that somebody at Home Department would have told somebody at T&R that there could have been a claim against their insurance policy, especially as it is a substantial amount, as we have been told. So, again: a big issue.

2685 Were the board of T&R... and I am not criticising the board of T&R, I am just saying I am amazed that they were not told that there was a legal case against the Department of the States, of which a claim could have been against the insurance policy.

I say this very carefully, this next step – because I know the person, I have known him for over 20 years and I have great respect for him – the Chief Executive is the line manager of all Chief Officers, so he must have known this case was on-going; it had been around long enough. It raises the question why – on a legal case where there is a reputational issue, there is a cost issue – was

2690 the Chief Minister not told about this? Why was the Policy Council not briefed? I find it amazing that all these things illustrate is there has been... I am sure everybody involved in this acted in absolute good faith for the good of the Island, but there seems to have been serious issues relating to the flow of information, in relation to this – up to politicians. It does not seem to have happened in a way that I would have expected people here to know. I find it very strange.

2695 Sir, with regard to Proposition 3, I move on to this... that the Home Department be instructed to open negotiations with a view to reaching the agreement. The important point – and Deputy Gollop had stressed – is the Proposition is not instructing the release of information; it is instructing just negotiations.

2700 It would be absolutely wrong for this Assembly to instruct a Department to break and negotiate a contract and I would certainly not sanction that, but what we are asking for is a reopening of negotiations to come to a negotiated settlement to release that information. It may be that some of the parties say, no; even if one party says no, that is it, it does not get released; but, at least enter into negotiations. We have heard over the months, some really spurious reasons for not doing this. It would make it difficult to enter into future negotiations if we try and renegotiate that contract; I disagree, because what we are doing is actually confirming that the States will adhere to contracts. 2705 There is nothing wrong with renegotiating contracts, it happens all the time, but we are not suggesting... we are saying adhere to the contract, do not do anything to break it, let us just try and renegotiate it.

2710 It is suggested that this could create a precedent and risks – that we might have lines of spurious claims coming against the States if people know what the settlement was. One thing we should remember is that, actually, in this situation, the States was in the wrong. AFR did not make a spurious claim; there was a mistake on the part of the States. So, what we are actually showing is that whatever the settlement is, if it is, as we have been led to believe, a low settlement, it would indicate that, even if the States is in the wrong, it will fight hard to minimise... I think that making it public will not actually damage the States and I think it will be far better to be open with the amount so that the speculation would not continue. 2715

2720 So, sir – and you will be glad to know I have reached the summing up stage – as I said, I do not criticise the Chief of Police in making a settlement and – this may surprise you – I do not criticise him for the non-disclosure clause, because we need to remember he had just come over from England; he operated in a manner that he was used to operating in the UK. So, I think, everything he did was absolutely understandable.

2725 But what for me does come out of this was partial failure of Scrutiny. I do question, as I said, how legal privilege is used in a Scrutiny review; that concerns me. I think there has been a communication failure at a lot of levels, up to politicians, in a lot of these... the fact that so few people at political level knew anything about this.

2730 But, what is really sad about this, and the way it has been handled, is that actually the settlement that was got should have been a good news story; it was a good deal and so it is a shame that the secrecy has created this air of mystery and distrust relating to it; that is a shame and that is why I am tempted to vote against Proposition 2, because it is too late for that to be effective, but I do hope Members will vote for Proposition 3.

2730 Thank you.

The Bailiff: I call Deputy Le Clerc next.

Deputy Le Clerc: Thank you, sir.

2735 Those other Board members on Home Department know that I have been very reluctant to stand up to debate this matter, but I just cannot agree with some of the comments of Deputy Gollop or Deputy Gillson. I do not feel that the summary of Scrutiny accurately reflects the review and the transcript; and I would ask that you have a look at that yourself.

2740 For instance, Deputy Le Tocq was advised that he would be given an opportunity to make a closing statement when we first went into the Scrutiny and this was not given to him at the end. So, that is just one thing that I just wanted to say.

2745 The Home Department... it says that 2.1.5 in the conclusion, ‘the Home Department concluded that it would do nothing differently and has learnt no lessons...’ I must just reiterate that I am a member of the Home Department and I was not given the opportunity to speak to Scrutiny about this and the Minister was not representing the Board; that is not the way consensus Government works; he did not represent the board on that Scrutiny interview; so, I wanted to dispute that.

But lastly – or second to last – in the 3.1, I want to just say – and I think Deputy Gillson has highlighted this – that, as a Board, we were only made aware of the settlement on 21st January

2750 2012, and my understanding that the actual settlement and the negotiations took place in October/November 2011... Sorry, yes, is that right? I am getting my dates confused now.

Anyway, we were only aware two or three months – as a Board – after the negotiations had taken place; so I seriously refute the fact that we had abrogated our political oversight, because how can I have oversight on something that I was not aware of.

2755 Lastly, for Proposition 3, I just want to say that the taxpayer will incur additional money being spent, because the parties to that agreement – even if they decide they want to go ahead and publish the confidential terms of that agreement – will seek legal advice before they say they want to publish or not publish. So there will be additional costs incurred, irrespective of what the outcome; of whether they decide yes or no.

2760 That is all I want to say on the matter.
Thank you.

The Bailiff: Deputy Brehaut.

2765 **Deputy Brehaut:** Just a clarification, if the Minister of the Home Department was not representing the Home Department Board, in what capacity was he there and in whom was he representing? (*Interjection*)

Deputy Le Tocq: Sir, am I allowed to, obviously, respond to that now or is that...?

2770 **The Bailiff:** Are you going to...? You can respond to it later. You have your right to speak later.
Deputy Trott.

2775 **Deputy Trott:** Very briefly, I have had – or rather I *had* – the ubiquitous Mrs Le Page on the phone at the time when this was in the news; and she asked me, sir, if it was true what she heard, and that was that the settlement was less than £10,000. I said I did not know, to which she replied, ‘You are useless.’ (*Laughter*) To which I replied, whilst that is a commonly held view, I still did not know. (*Laughter*)

2780 Sir, the point is that, at that time – and reference has been made to it by Deputy Gillson and, indeed, by the Minister for the Home Department – the Guernsey press had suggested that AFR would not be resistant to making the figure of the settlement publicly known. What, if any, conditions were associated with that disclosure is a matter that we will never find out unless we support Proposition 3, which I intend to do.

2785 Because, if, as part of the negotiations – if Proposition 3 is supported – AFR then decide to play – I cannot use that description, sir, because that is not good parliamentary language – if they were to be in anyway obstructive, I suspect the court of public opinion would be quick to question AFR’s honesty, if you like, in the manner in which they dealt with the media.

2790 I do not think for one moment that the principles of AFR are anything other than very upstanding citizens and I am sure they will go out of their way to co-operate. If, however, they do not, if one reads the Proposition 3, it says:

2795 ‘To instruct the Home Department to enter into discussions with the signatories to the non-disclosure agreement with the objective of obtaining agreement for the amount of the settlement paid to AFR Advocates to be made public and report to the States of Deliberation no later than February 2014.’

2800 Sir, as I understand that, if, having entered into those discussions, AFR were then of the view that they were only prepared to, if you like, adhere to the statement that it was inferred was a public one at the time, i.e. their intention to, or their – I am struggling to use the right words – their acquiescence, if you like, that the figure be made public, then it would be up to the relevant body to report back to this Assembly in that way.

2805 So, it seems to me that Proposition 3 is an absolute no-brainer. To not support Proposition 3 does not give the opportunity for the public appetite to be satisfied; it does not give AFR the opportunity to act in a manner in which they have been reported as wishing to act in and it does not allow the ubiquitous Mrs Le Page the opportunity to ring me up and apologise for calling me useless, sir.

The Bailiff: Deputy Lowe.

Deputy Lowe: Thank you, sir.

2810 I, too, as a Member of the Home Department, want to reiterate, actually, that the Chief of Police at the time made a very good deal, so I am told; and I am not questioning his ability and the way he operated. It was the process and how things actually materialised and panned out that have given me concern.

2815 So, why did I sign a Requête, bearing in mind I am a Member of the Home Department? It is quite simple really. At no time have I heard anything at the Board meetings that convinces me amounts cannot be disclosed. In fact, I wish I knew the amount as I have heard several – possibly about five different ones – and the last time we were told at the Board meeting that they were not that sure that it was the final amount. I find that quite staggering really. If this Requête succeeds, maybe the final amount will be available.

2820 At one time we were told the insurance company would not release pay out details. We are the clients, are not we? Haven't they a duty to tell us so the States will be aware of whether such payments would affect premiums in the future? It is fair to say that the majority of the Board did vote to write and ask AFR if – as media reports indicated – they would still be prepared to disclose the amount; and if their reply came back that they would do so, then the Home Department, by
2825 majority vote, would disclose the amount paid. That was on a Tuesday at a meeting. On the Thursday, I asked if any response had been received from AFR, to be told another Home Department meeting was being called for on Friday, as the wrong decision had been made, and we needed to be sure, after legal advice, if we still wanted to go down this route. Again, nothing at this meeting convinced me the advice – and that is exactly what it is – the political Board can take
2830 it or leave it; it would not be for the first time actually, during my time as a Deputy, and indeed, to be fair, after the vote was taken, the legal adviser admitted, yes, the board could have disclosed if they had wanted to. But it ribs in reverse; the majority now decided not to disclose.

2835 There was all sorts said at that meeting, sir, that I have concerns about. I still remain of the view – in fact, more so now – that if the Home Department had just come out with the amounts paid, much of the bad press would not have happened. It is the cloak and dagger, 'cannot tell you', when, let us remember, it was the States itself that sought the confidential agreement, not AFR. So, why would we want an open government – and I cough a little bit here – to seek a confidential agreement?

2840 The Housing Minister, on the phone-in, said the case was live, when he was questioned about it, so he could not discuss it. The following morning, at the Home Department meeting, the Minister used the same terminology, 'the case was live.' Yet, when the Chief of Police attended that meeting, as head of law enforcement, he came in and I put the questions to him, 'Is the case live?' He replied, 'No, it is all finished and closed.' Following that meeting, I sent a message asking as the Chief of Police, did he mean AFR or the individual case was closed. He replied, 'All
2845 three are closed.' I then sent another message that same week, asking, 'was that this week, last month or when?' and the reply came back saying, 'Months ago.'

So, the question for me is why was the Minister of the Housing saying on radio it was live, and indeed the Minister of the Home Department saying it was live? Where did that come from?

2850 The secret meeting for States Members, held in the Royal Court building: States Members were given assurances during Question Time before that, in this Assembly, that any private meeting attended by States Members, they would be told the same as the Home Department Board meeting. That was not the case; different amounts again were banded about; and, as I have said already, I have now heard, I think it was, five different amounts and still not a final figure.

2855 We have never seen the agreement at Home Department. We have never been told who signed it or had authorisation to sign it; or when authorisation was given on amounts that could be agreed between both parties. What we had been told – and I am not questioning that – is that it was a good deal and that we were very lucky, as the States had saved us a lot of money. I take that in all good faith as being absolutely right, but can I put hand on heart and tell the electorate that it was a good deal, as a Member of the Home Department? I cannot. It might be a good deal, if you have
2860 got a £500 million budget and you look at it and you think, well, that amount is really good, because it is so small. It is all relevant and I do not know; and I still, to this day, do not know.

2865 As for the scrutiny process, I asked the Chairman of Scrutiny three times – twice on the phone – if I could attend the Scrutiny hearing. Each time, I was told the Minister would be speaking on behalf of the Home Department Board. As I have differing views to the Board, how could the Minister speak on my behalf? And I would like thank the Minister of Home Department, because, actually, during the hearing he did make it clear, it was the majority and that he could not say it was unanimous, because it was not. So, he did point it out to them.

2870 But why weren't all the Board members interview before Scrutiny Panel? Why did Scrutiny not ask to see the Home Department Board minutes? Why did Scrutiny not ask to read all the correspondence, including the agreement? Who signed the agreement? We did, after asking

several questions, get a timeline as Board members, but that was quite skint on information as some of the timeline was not filled in, after legal advice. Unbelievable, as elected members of the Board and yet they have been kept in the dark on some of the detail.

2875 So much has been in the public domain that, apart from the amount, there is not anything left to tell as far as I am aware. Now, the States have signed up to Guernsey's answer to Freedom of Information, I hope the Members will vote for this Requête and enable the Proposition 3 to go forward and see what happens in the future of a report coming back to this Assembly.

Thank you, sir.

2880 **The Bailiff:** Deputy Trott.

Deputy Trott: Sir, I was wanting to ask Deputy Lowe to give way.

2885 **Deputy Lowe:** I am sorry, Deputy Trott. I did not see you.

Deputy Trott: Not at all, I was late to my feet.

Can I just ask, you mentioned that you had been advised that it was the States that asked for the confidentiality clause; can I ask, by whom you were advised and when?

2890 **The Bailiff:** Deputy Lowe.

Deputy Lowe: I was advised at a Board meeting, both by the staff – if I remember rightly – and I cannot give you the date, but it would be in the minutes. But, quite some time ago.

2895 **Deputy Trott:** Thank you, sir.

On a point of order, would it be appropriate for me to ask through you, if Her Majesty's Comptroller can confirm that that was in fact the case, and that the States had asked for the confidentiality clause and, if so, why?

2900 **The Bailiff:** Are you able to answer that, Madam Comptroller?

2905 **The Comptroller:** I am not. I have to say that is not my understanding of the position and I think, actually, the transcript – and I have not had a change to go through this in detail – records the Chief of Police at the time saying he specifically requested it, but I would not want to mislead the House and so I will say no more than that.

Deputy Le Tocq: Sir, can I just help with that?

2910 My understanding is that leading up to a potential judicial review, the other parties had asked for the hearings to be *in camera*. As a result of that, when negotiating a quite sudden opportunity to an out of court settlement that was asked for by the Chief of Police.

The Bailiff: Does anyone else wish...?
Deputy Wilkie.

2915 **Deputy Wilkie:** Thank you, sir.

I am going to read to you an e-mail that I sent to all members of the Home Department Board the night before we made this decision. I am going to give this to you warts and all; this is exactly what I said.

2920 'I have been giving some thought to our situation with AFR. I believe that Patrick Rice has acted correctly in obtaining a deal with a confidentiality clause. More than that, it is a settlement that is a very good deal for the States, and hats off to Patrick Rice for closing this settlement. If we reach a new disclosure agreement with AFR containing what can and cannot be disclosed, that will not reflect at all on Patrick Rice. AFR will not want to go down the road of disclosing their own shortcomings and should limit the disclosure purely to financial information. If we are to disclose the financial details, we should disclose all of them and not cherry pick the least damaging. As AFR has made a public statement that they would be happy to disclose the financial agreement. I will now advocate that approach. A ministerial statement will tick all the boxes to inform the States Members and the media at the same time without running the risk of an early leak. We do not want Members being ambushed by the media unprepared. We should prepare a media strategy for interviews, post ministerial statements, giving a united front as a board and promoting that out of a very difficult situation the Home Department secured a favourable outcome for the Guernsey taxpayer. Food for thought. See you all tomorrow.'

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And that was the e-mail I sent the night before the decision. Something must have changed my mind between then and the decision we made the next day, and it did. The legal ramifications and

2935 risk to States funds in breaking the confidentiality agreement were explained to me in detail by a member of St James Chambers. I voted not to release this figure, because I felt we could have a situation whereby releasing the figure could incur costs greater than the actual settlement, which I believed then, as I believe now, would be ridiculous.

2940 Does this e-mail that I have just read out to you show a culture of non-disclosure, as alluded to in paragraph 2.1.4 of the Scrutiny Committee's observations? No, of course it does not; but that is exactly what the scrutiny Panel states in their observations. How could Scrutiny get this so wrong? Could it be – and this is just a stab in the dark – because they carried out an urgent business Scrutiny review into a matter involving the Home Department, without interviewing four out of the five Members of the Home Department? If you are investigating the reasons behind a decision
2945 made by five people, how can you arrive at the correct answer by interviewing one? Every Member of the Home Department or, indeed, any Board, would have reached their decisions by different thought processes, as none of us are exactly the same. If that is the case, then would it a reasonable course of action to interview all five Members from the Home Department and extrapolate a common thread of reasons behind those Members' decisions and thus have a full
2950 picture of the facts?

The Panel states it could not find any overriding reason for the non-disclosure of the AFR settlement and how on earth could they find the overriding reason if they did not look for it? In the observations, the Panel states that the Home Department concluded that it would do nothing differently and has learned no lessons from AFR. That statement is simply untrue and is no way
2955 reflected in the evidence given in the hearing. I cannot see how that incorrect observation can be defended by the Panel? In the conclusion, the Panel seems to say that when the Chief Officer of Police started to spend public money, there should be political oversight, and I hate to break it to the Panel, but the Chief of Police and many of the Home Department employees spend public money every day. If every time an employee of the Home Department spent maybe £20,000 and it required political oversight, we would need 1,600 meetings per year. HSSD would require 5,500 oversight meetings per year. This is clearly a nonsense.

The Chief of Police spent public money on legal advice leading up the settlement, which is perfectly normal; that is the cost to the taxpayer. The actual settlement was paid by the States insurer who was present at the settlement. The sum paid by the insurers was of such a small
2965 amount that it would not increase the insurance premiums paid by the States. So, at which point should there be political oversight? Should it be, as the Panel states, when the Chief Officer spends his first Pound on legal advice or when the deal is looming? If we have to sign off every single payment, the whole system will grind to a halt. Now, I do not know what value this report gives to me as a Board member. It gives me no recommendations for assisting in future decisions and it does not state at which point political oversight should start. I am bitterly disappointed by this
2970 urgent business review and I hope Scrutiny will follow the Home Department's lead by learning lessons and doing things differently in the future.

Proposition 3, as the Home Department discussed with signatories of the non-disclosure agreement with an objective of releasing the amount of the settlement paid to AFR. Now, this
2975 seems perfectly reasonable. However, this Proposition makes it sound like the Home Department and the signatories will sit down over a cup of *cha* and ask that they be awfully nice and agree to release the information. This simply will not happen. We will have to communicate through our legal representatives with the signatories; we will send a carefully crafted letter to them; they will send a craftily... (*Laughter*) letter to us, asking for clarification and we will send a reply; they will then ask for further points; a scoping meeting will be called and then further meetings will take
2980 place to finalise the new arrangement; and all the time the costs are escalating.

Now, we could, and probably will, end up with a bill larger than the amount paid to AFR, being paid by the taxpayer to release a figure paid by the insurer. Is this really the best use of our time and resources? Lessons have been learned, changes have been made. At all levels, it is time
2985 to stop spending money on a settlement which saved the States from spending a huge amount of money on defending a judicial review.

I support Proposals 1, but not 2, for reasons that have been stated already. I will not support 3, because of the risk of the renegotiating of the confidentiality agreement, costing more than the settlement.

2990 **The Bailiff:** Deputy Trott is asking you to give way. (*Interjection by Deputy Trott and laughter*)

Deputy Wilkie: Sir, he is out of my sight, although I...

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Deputy Trott: It has to be this way otherwise it would be a point of order, so we just got there, did not we, sir? *(Laughter)*

3000 Deputy Wilkie, in giving way, said the Chief of Police spent funds on legal advice. I am somewhat confused, because a moment ago Her Majesty's Comptroller advised that there was no legal advice advising him to seek a confidentiality clause; it was something that he did of his own volition, clearly believing it to be in the best interests.

I wondered whether Deputy Wilkie was in a position to elaborate.

3005 **Deputy Wilkie:** Yes, sir. It is independent legal advice he received; it was not just towards the confidentiality agreement, it was independent legal advice taken by the Chief Officer.

Deputy Trott: Thank you.

3010 Sir, can I ask, now, a point of order of Her Majesty's Comptroller? Is St James Chambers aware whether or not independent legal advice obtained by the Chief of Police advised him to seek a confidentiality clause?

The Comptroller: I cannot answer that question. No, I am not.

3015 **The Bailiff:** Deputy Quin.

Deputy Quin: Well, very interesting listening to all of this and I thank Deputy Wilkie for taking all of my speech and more; and I should have one of those little iPad things, because I could do all that instead of carting a big thing round.

3020 We were very fortunate in this case. We had a new Chief Officer who had had nothing to do with the previous case. He had come from a large organisation with this type of experience and I, as Board member, was quite happy to use his experience to our advantage. Let me repeat: to *our* advantage; when I say 'our' I am talking about the Island's and the taxpayer's advantage.

3025 I was continually informed, at meetings we had, by representatives of the Crown Offices as to what the legal position was. I was never in any doubt. The only thing I never found out was what was wrong with the original warrant that caused the whole thing to go skewwhiff; I never found that bit out that is okay. That is not a problem; we picked up the pieces, as the Police always do. The Police are the whipping boys who pick up the pieces. People have taken the advantage of political gain over this matter. The media has had a field day. I think that the Board, on information received, acted to the best it could. The original figures, we were being told that we
3030 could be taken to court for, were horrendous. I think a good deal was made at the end.

If I remember rightly, the insurers were one of those who did not want a declaration. There were seven other Police officers involved in this, in the original raid; they were all represented by the Chief. So, you have got seven people to agree to confidentiality, the insurers, plus AFR; this is a difficult job. I am quite happy that our Chief of Police did an excellent job. I am happy with the way that our Minister, Deputy Le Tocq, ran the show. I had the information. Only one person argued with the legal advice in the room and I will leave you to guess which member that was. The rest of us were happy that the legal advice we got was from people who knew better than we did; that is not really something that some of us might want to hear. I could not offer legal advice, for instance, because I do not know any; Deputy Perrot might be able to help us along there, but I
3040 have no idea as to what was wrong with the original warrant. I do not think I should know; it is nothing to do with me and I am quite happy with the way it is handled and I thank Deputy Wilkie for pinching my speech.

3045 **The Bailiff:** Deputy Trott, again. *(Interjection and laughter)*

Deputy Trott: Sir, is Deputy Quin able to advise whether he, as Deputy Minister for Home Department, saw the independent advice given to the Chief of Police and, if he did, is he able to confirm whether that independent legal advice recommended that he seek a confidentiality clause?

3050 **The Bailiff:** Deputy Quin.

Deputy Quin: I did not see the independent advice that the Chief was given, because it was independent.

3055 **Deputy Trott:** Sir, may I ask, did anyone see this independent advice *(Laughter)* received by the Chief of Police, other than the Chief of Police?

Deputy Brehaut: Sir, is this the Scrutiny hearing, here? *(Laughter)*

The Bailiff: It is in danger.

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Deputy Quin: Does Deputy Trott know it gets dark at 8.00 p.m.? You quite lost me with the second and third charge. *(Laughter)*

Deputy Trott: It is no charge. I am simply trying to ascertain whether anyone has seen any legal advice from anyone that suggested that a confidentiality clause be sought.

3065

So far, I have seen no evidence... and this question was not pursued during the Scrutiny Panel in the manner in which I am this afternoon. I have seen nothing to convince me that any independent legal advice, or any legal advice of any sort, was given that that should be the manner in which this matter was progressed.

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Deputy Quin: I have been lost somewhere along the line. I think that Deputy Brehaut was quite right. This is not a Scrutiny hearing. That is something that should have come up from Scrutiny.

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The Bailiff: Madam Comptroller.

The Comptroller: It might just be worth also making a point of the fact that this matter was a very long running matter, and in the middle of this matter was also the Le Huray case, which made it quite clear that the States of Guernsey was not liable for the actions of police officers. Therefore, there seems to be some feeling that the Chief of Police was not entitled to have independent legal advice, but actually, it was entirely correct and necessary that he did so, because States of Guernsey, under the Le Huray hearing, was not then entitled to advise those individual police officers. I just thought that may be helpful clarification at this point.

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The Bailiff: Thank you.

Does anyone else wish to speak before –? You will get a chance to reply, but do you wish to speak in debate, Deputy Le Tocq?

Deputy Le Tocq: Sir, if I may speak as an individual rather than the Home Department particularly although it is difficult to draw that line; but just to pick up, perhaps, where we were.

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The Home Department had an opportunity on several occasions to question the Chief of Police on the advice that he had been given. It was a complex case; it did go back over two years. Some of the advice he had to seek was changed, as a result of the Le Huray hearing midway during that time.

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It is complex, because this is an unusual case that was involving several individuals, not just the States of Guernsey in terms of, yes, I completely agree, in terms of having to pay the amount. There was a time when it was fearful, because of the Le Huray hearing, that individual police officers would be personally liable for their actions. Obviously, that would be a very difficult and wrong situation to be in; it would make police officers very wary of taking any action in the future, in case they were personally liable. As a result of that, the Chief of Police was right to get advice and, as we said several times, the total cost to the taxpayer, that was not paid the insurance in terms of settlement, was quite minimal.

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However, I would say, and I will say at this juncture, one of the concerns I have over Proposition 3 is that, were we to go and seek to find out whether the parties involved and my Deputy Minister has made it clear that there was more than one party; the Chief of Police was an interested party, there were six police officers, there was another individual involved as well as AFR and then you could say the States of Guernsey, in terms of paying it. It is a complex situation here, both legally and in terms of practically doing that. If we were to go back to every individual, the cost of just doing that is very likely to be more than the cost of the settlement to the taxpayer. That was, for me personally, a big overriding reason not to go back. That did not mean that lessons have not been learned and that was a very wrong conclusion of the Scrutiny Review to come to. I did not have the right of reply to that; I have written a reply and I hope States Members have read that. It is in the public domain, where I make it very clear that to say lessons have not been learned is absolutely wrong; we would not do this again. It is quite clear that we would want an early warning of what was going on. I do not blame the Chief of Police for that. This has been going on for over two years; but you cannot say the Chief of Police... on the one hand, commend him for his actions and, at the same time, say that the Home Department, abrogated their responsibility.

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3120 We should have known before; we want to know in the future and we have certainly made that very clear. But, to go back and to seek to renegotiate, when we have very strong reason to believe that at least one party will chose to say no to disclosure, will be a foolish waste of taxpayers' money.

3125 If you vote for Proposition 3, I can almost guarantee what will... I was going to say, well, can we have a couple of extra months as we have spent two months before coming to this; but I think really that the chances are of us coming back with an opportunity to disclose, in this instance, are minimal, if we have to get the permission of all the parties involved. But, in even just going there, it is going to cost us more than the taxpayer paid – almost definitely. Some of those costs are, in terms of time, as well, of officers and of legal professionals. So, for Deputy Gillson to try to quantify these things in his speech, I think, we have to take note of the amount of time it takes.

3130 I think, sir, there are lessons to be learned, certainly, retrospectively, we look back and we do that. I was looking forward to some degree to the Scrutiny Panel hearing, because I do not mind robust questioning at all. However, I found that to be a very strange experience, for all sorts of reasons. I know the Chairman has made it clear, it was the first one and they had limited resources, but the information given to us beforehand as to who would be called and how they would be called and how the questioning would... was very limited indeed. So, it was difficult to prepare.

3135 Secondly, I was given to understand that I would be given an opportunity for a closing statement, where some of these remarks, and the remarks I made in my response, would have been able to have been made, if we had a recess and an opportunity to consider what we could say. Instead, we seemed to have a kangaroo court situation where the eventual response of Scrutiny – the conclusion – seemed to bear no relevance to the actual questions that I was asked during that process. I find that, sir, very difficult and I think other Members, if they were in the same process, would say, as well, it is not helpful to us as the States of Guernsey.

3140 Sir, I will make some comments, as well, while I am on my feet, if I can about the fact that the States has now passed a policy on disclosure of information. If Members turn to that, they will see that there is – on appendix 4 on Billet XV, on page 1084 – a policy on the use of confidentiality in contract agreements. Were we to go through this again – and I hinted at this in the Scrutiny hearing, because I am not surprised that we have agreed, as an Assembly, to this particular form of disclosure of information – were the States to go through this process again... were the Home Department to go through it again, but hopefully with more advanced warning in the future, there are some things that we would do differently.

3150 For example, I think we would want political knowledge of the fact that there was a possibility of an out of court settlement. That might be very last minute. It would be difficult to do, but at least we could delegate, perhaps, some political advice and involvement. We have not, in any way, suggested that that should not be done in the future. But, if you turn to page 1080 and there see... or 1079, in fact, 'Exemptions to the Presumption of Disclosure', there are a number of exemptions there where this would clearly fall under those exemptions.

3155 So, for example, on 2.2, there is an element there where, certainly, 'information whose disclosure would prejudice economic or commercial interests of any person.' That is certainly something that would have to be taken into consideration. We have Police officers here who personally needed to have individual representation, because of the Le Huray hearing, and the change in the States of Guernsey's involvement in this particular incident.

3160 Under 2.3, we have the bullet point:

3165 'Information whose disclosure could lead to improper gain or advantage or would prejudice:
▪ the competitive position of a Department or other public body or authority;'

And, certainly, the second one:

3170 '▪ negotiations or the effective conduct of personnel management or commercial or contractual activities;'

Those certainly apply, because sometimes, as I pointed out in my response, the States is in receipt of funds with out of court settlements; in fact, that happens more frequently than people might think.

3175 Perhaps not surprisingly, no-one is asking, at the moment... crying out for that disclosure of those sorts of information, but the reason... It would be logical to understand why a third party, in wanting an out of court settlement with the States, where we are the recipients as the States, and the public purse is the recipient of funds, why that would be better done as a confidential agreement.

If there is the risk that we may disclose funds and information and, certainly, whilst this was taking place earlier in the year, there was a case going on which we could not talk about, for

3180 natural reasons, that would have been effected by that. When Deputy Lowe spoke she alluded to this, but she was somewhat economical with the truth, because we were aware of the fact that there were other live cases related to this. The Police are not civil servants; the Police operate under their own law and must be independent of Government.

3185 **The Bailiff:** Deputy Lowe.

Deputy Lowe: Sir, I want make it very clear: I spoke directly with the Chief of Police and he said there were no cases live at all, relating to this case to do with AFR.

3190 **The Bailiff:** Deputy Le Tocq.

Deputy Le Tocq: I beg to differ; there were related cases... potential cases, that could have come and would have been affected; it would have affected the investigations. We have got to be very careful where we tread when we come to dealing with those matters; that is why issues like legal advice, legal privilege do play a part in this, because the Police are not civil servants. No-one in this case was stating – and Members have certainly made this clear, those who have spoken, certainly – that the Police officers did not act in good faith. They acted in good faith when this incident occurred several years ago. There was a technical problem with the warrant and, as a result of that, that is why AFR brought proceedings.

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3200 However, we have to recognise, in the section that I am responding to here, under the new Rules that this Assembly has agreed to, that there are several reasons why this sort of case may well fall, in the future, under the exemption clause, because of these sorts of reasons. Again, Deputy Quin mentioned that, for commercial reasons, the States' insurers were unwilling for us to disclose; that does not mean we cannot disclose, but they were certainly unwilling for a disclosure of the amounts paid.

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3210 There is good reason to believe – and the Department took it very seriously when we considered it – that it could increase vexatious claims; and you will that, again, under 2.9 'Voluminous or vexatious requests'. Actually, there are quite a number of things that happen, on a regular basis – particularly with the Police, because they are dealing with law and order – which the Department is aware of, that could take up a lot of time and a lot of resources and a lot of money. It is in this instance, whilst we would want to do things differently in the future, because we can always learn, we felt it was best to move on, because a good deal was done.

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3220 So, sir, that is why I would encourage – and I have loads more to say, but I will not at this stage, maybe, if anybody else speaks, I will speak a bit later – but, I would encourage the Assembly to very seriously consider, before voting for Proposition 3. It seems like most people are going to vote against Proposition 2. I have issues with the Scrutiny process; I have got, certainly, things I could say on that.

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3230 In terms of the non-disclosure agreement, well, Deputy Gillson said that he would probably vote against Proposition 2; Deputy Fallaize said similarly. It seems to me that it is incongruous to vote against Proposition 2 and vote for Proposition 3, in the knowledge that it is very likely, all it is going to do is to cost the public purse even more and still not satisfy what people would like; and that is the danger. We have to live with the fact that some of us need to make decisions, from time to time, that may not – and I have said this before, but I will say it again – may be in the public interest, but may not be what the public are interested in.

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3240 So, I would encourage Members of this Assembly not to vote for Proposition 3.
Thank you, sir.

The Bailiff: Deputy Robert Jones.

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3235 **Deputy Robert Jones:** Yes, I only rise, because of the Chairman of Scrutiny indicated I had talked to Proposition 2, but I think the Chief Minister, Deputy Fallaize and Deputy Gillson have already covered the fact that Proposition 2 is probably superseded by the endorsement of the policy on the use of confidentiality in contracts and in agreements.

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3245 One thing I would just add, after Deputy Le Tocq's small speech there, is that (*Laughter*) what he has vindicated is Scrutiny's objection to that policy in July. I have heard it described as a double-edged sword, but I think what Deputy Le Tocq has just indicated is that that particular double-edged sword is sharper on one edge than the other.

The Bailiff: I see no-one else rising to speak. So, we will close the debate by calling the Chairman and Ministers in reverse order.

Alderney Representative Arditti.

Alderney Representative Arditti: Thank you, sir.

3245 If I could just take this opportunity to explain why I abstained from voting on the closure motion. Of course, that would have been an ideal solution to Scrutiny Committee's concerns, that Proposition 2 could divert them from their forward work programme, but a vote is a personal thing and I would find it very difficult to vote against debate. Ultimately, I am a believer in debate.

3250 However, we all seem to be largely agreed that Proposition 2 falls away and, if that is to be the case, heartfelt thanks from Scrutiny Committee. I, and my Committee, as I have said before, are content, whatever the Assembly decides to do about Propositions 1 and 3. So, really, there ought not to be much more for me to say, but I do continue, just briefly, with a heavy heart.

3255 When Deputy Gillson resigned from the Scrutiny Committee, in his letter of resignation, he said he did not want his resignation debated and we all, on the Committee, accepted that. I find it difficult to construe the first, very large, part of his speech today as anything other than a resignation speech.

3260 Yes, he hijacked me; I am not prepared; I am not equipped. I have not had an opportunity to go through the transcripts and the references that he has referred to. I am not in a position to lay before you the evidence to justify my response, which is that he has misunderstood an awful lot in what he said in that speech.

3265 So, I will just focus on the allegation that I misled you in the letter that I signed, on behalf of my Committee, in response to the invitation from the Policy Council to comment upon this Requête. I did not, and I would be horrified if I ever did so. The offending passage that Deputy Gillson read out was as follows the Panel worked hard, quote:

3265 'to enable States Members to initiate a debate at the States meeting in April, although this course of action was not pursued by Deputies at that time...'

3270 I can satisfy new Members at several levels, but let me just take the simplest response first. Had Deputy Gillson read on, he would have seen that he has misconstrued what is being said, because the passage goes on to say:

'... and it transpired that the focus of the debate in April was directed on matters of process.'

3275 It could have been directed on something else, but it was directed on matters of process. At the risk of over simplification, the issue was whether Scrutiny Committee should be apolitical and whether it should leave Members to decide on the motion that they wanted to be bring or whether there were risks to Scrutiny Committee's neutrality if *it* brought the debate and chose the motion. I am very grateful, because the Assembly voted clearly that Scrutiny Committee should be apolitical.

3280 That is really the answer to the point, but I am going to go further – and I really will not take up much of your time. Deputy Gillson was not privy to the *hours* and *hours* of telephone calls between numerous States Members and myself about what Requetes they may bring or not bring, and asking for such advice as I could give, which was very limited. I could only speak to the transcript; I could not express a political view and I could only keep emphasising that Scrutiny Committee had resolved that *it* would not bring the debate – a decision which, as I have just said, you very kindly ratified.

3285 They know who they are, but I have had the opportunity – because one of them sits next to me – to obtain his permission to mention his name. Deputy Matt Fallaize and I had lengthy conversations on the telephone and he had some degree – 'confidence' is too strong a word – but he had ways and means whereby he thought that the Bailiff could be persuaded to allow some of the procedures and some of the 11-week timeline, that Deputy Gillson suggested is immutable. He had all sorts of ideas, as you would imagine, as to how he might be able to persuade those who make the decisions to foreshorten that timeline in the circumstances.

3295 Why else would Scrutiny Committee have worked so hard and busted a gut? Staff working unpaid overtime to get this evidence out and before you, within just 10 days, if we were not trying to, quote:

'... enable States Members to initiate a debate at the States meeting in April.'

3300 Well, I do not think I need to say any more on that. I would just like to acknowledge the points made by Deputy Le Clerc and Deputy Wilkie. I respect their views of the transcript; and if there is a debate, maybe those views will be debated and others will have other views. No-one knows what

my view is and I am not going to say what my view is, beyond the comments made by the Panel in that report. If they feel strongly, let them initiate a debate.

3305 I can confirm, Deputy Mary Lowe, is quite right, I am sure it was three telephone conversations that we had; and she was very keen that the Scrutiny Committee included, as part of its Panel's investigation, disunity within the Board, but, regrettably, that was one of many good questions which Scrutiny had to jettison. As I said at the beginning, we had to focus and we have no doubts that what we did was the most that was achievable.

3310 So, let me say that our silence, as it were, on Propositions 1 and 3, is not to be misconstrued in any way; the fact that we are agnostic about them does not imply that we are for or that we are against, but I do hope that we all vote against Proposition 2, please.

The Bailiff: Deputy Le Tocq, you have spoken recently. Do you wish to reply as Minister of the Home Department?

3315 Just before you do, it has been suggested, I do not have the right to give you a further speech. Under the Rules, as amended – recent amendments – I do have the right to allow a Member to have an extra speech and I felt it was right that you should have the opportunity to address the Assembly personally, because there had been personal comments made about you, including the fact that you were not representing your Department when you appeared before Scrutiny Committee.

3320 Therefore, the speech that you had was an additional speech that I gave you, as I am entitled to do, under the Rules, as now amended, and you are entitled, also, to reply as Minister for the Home Department.

3325 **Deputy Le Tocq:** Thank you, sir, and I think I will just begin with that, because I think we are united in the Home Department in feeling that it was not possible for me to represent the views of the whole Department, for the reasons that Deputy Wilkie has made clear, in that we came to – and I think Boards and Departments and Committees will do this – our decision for different reasons. We might come to the same reason, but we have different priorities and different systems of coming to those conclusions, but, also, overall, because we have one member of our Board who felt differently and I could not possibly have spoken for her, and cannot now.

3330 So, what I will say is, just to pick up a couple of points from Deputy Gollop right at the beginning where he questioned the issue – and I did answer it in part – the issue of the problem of where can the political Members of the Department get involved in cases such as this, where it ceases to be an operational issue – bearing in mind that the Police have a very different sort of operation to every other civil service and public service, a very different sort of operation – where can the Home Department get involved to make what should be – and rightly so and I agree – a political decision?

3340 We have thought long and hard about that and we need to continue to think that because the problem would be that, under the Police Complaints law, if there is a complaint against a senior officer or the Chief Officer of Police, then the Board – acting as appropriate authority, monitored by the Police Complaints Commission – then has to make decisions about investigating that. If we had already been involved in some way, it could be construed that we were prejudicing the investigation in some form and so we have to take that very seriously, but I do think there is a way around that.

3345 In the future, how I would see this panning out is the Board deciding that a member – perhaps the Minister or Deputy Minister – would be delegated to be involved at some point in, for example, in instructing, let us say the Chief of Police – but it could be to do with a Border Agency issue, any law enforcement issue – let us say that the Board instructs that particular member to get involved and that member instructs the Chief of Police to negotiate a settlement and if there is confidentiality involved, if it has to go that way, that if possible, the disclosure of the amount to the taxpayer, not included in that confidentiality agreement.

3350 That may well be possible, but then a political decision would need to be made if that is not possible or if that is going to increase the cost of such an agreement. So it becomes difficult then; it has to be some degree of delegated authority as to how that decision is made because, were that to be scrutinised in the future by some sort of complaint procedure, then the other four Members could be involved, but not that one Member who got involved at that point. Do you see our dilemma? Because I hope the Assembly does see our dilemma, because that is a problem that we need to take very, very seriously and we do.

3360 So I will finish by just reiterating two things. The first is this, that we have not said and I certainly do not want to intimate that lessons have not been learned from this. We believe that we should have known and, had we known, we would have got involved as soon as we could in an

3365 appropriate way. However, bearing that in mind, secondly, that this is a retrospective... this has happened. We made the pragmatic decision that, bearing in mind that the Chief of Police had done the best he possibly could, over a situation that could have continued to go to judicial review and may still have been continuing, bubbling away, behind the scenes right now as we speak, he made a pragmatic decision to negotiate and he negotiated a good deal for the taxpayer.

3370 But it was best for us not to tamper with that or to seek to do that, particularly when we knew, we were aware, that at least one person was likely not to want to do that and the cost of seeking legal advice and providing that would probably be more than we had already spent – well, the taxpayer had spent – so we made that pragmatic decision.

3375 Sir, I stood at election – public service, not self-service. I do not believe it was self-serving at all; we have almost invited the criticism of others on this, but we felt we were doing it in the public interest, because we did not want to waste time and money; and unless we vote out Proposition 3, we will continue to waste money and time.

So, I urge the Members of this Assembly to vote against Proposition 3.

The Bailiff: Chief Minister.

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The Chief Minister: Thank you, sir.

As stated at the outset, Policy Council did not support Propositions 2 or 3 of the Requête. Proposition 1 has clearly been dealt with because we have had the debate on the Scrutiny Committee's review.

3385 Proposition 2, I think, by common consent, no longer applies; it has been pre-empted or superseded by the policy that was adopted by the States in July of this year, on Access to Public Information and also on the Code of Practice.

With reference to Proposition 3, merely repeat the statement we made on page 1385:

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'Furthermore, the Policy Council is of the view that if any direction is made by the States in relation to the disclosure of this information it should take into account the balance of the costs of renegotiating the undertaking of confidentiality against the amount paid in settlement of the claim against the States by AFR Advocates.'

3395 And, as States Members have already heard, there is more than one interested party, whose consent would have to be obtained before that disclosure could be made and you have heard the problems that may be associated with that, but certainly there would be a cost implication and we would draw that the attention of the States, if you are minded to approve Proposition 3 of the Requête.

3400 **The Bailiff:** Deputy Gollop to reply to the debate.

Deputy Gollop: Thank you very much, Mr President, sir.

3405 A number of Members and, indeed, both the letter of comment from the Policy Council and from the Scrutiny Committee on the Requête, mention the mandate of Scrutiny. I know all my gismos have not been working very well and, maybe, that is a Deputy Stewart issue about the power of bandwidth in this building but... It nevertheless says here:

'... through a process of political scrutiny...'

3410 This is the mandate of May 2004 of the Scrutiny. It is to:

'...subject Departments and Committees to regular...'

3415 whatever... (*Laughter*)

'...with particular emphasis on:
(i) Determining the effectiveness...'

3420 This is such a poor thing...

'... of the policies of, and services provided by, Departments and Committees;
(ii) Assessing the performance of Departments and Committees...'

3425 We are going back to the traditional book, which is more effective:

'Mandate
(a) Through a process of political scrutiny, to subject Departments and Committees to regular reviews with particular emphasis on:
(i) Determining the effectiveness of the policies of, and services provided by, Departments and

- 3430 Committees;
- (ii) Assessing the performance of Departments and Committees in implementing policies and services;
- (iii) Identifying areas of policy or service delivery that might be inadequately or inappropriately addressed;
- 3435 (iv) Identifying new areas of policy or service delivery that may require implementation;
- (v) Determining how well a new policy or service or project has been implemented including the development processes and whether the desired outcomes were achieved;
- (vi) Promoting changes in policies and services where evidence persuades the Committee that these require amendment;
- 3440 (vii) Holding reviews into such issues and matters of public importance that the Committee may determine from time to time.’

The Scrutiny Committee clearly did very well with part 7 of this mandate. With particular speed and urgency, the – with a new approach, powerful approach – embarked on a work-stream that delivered a result. But, I would argue that, in some of these other areas, there had been clearly a policy of Freedom of Information that applied both corporately across the States and the Home Department; and the full part 2 of the review was never completed.

I would come back to the Scrutiny Committee that the terms and references, therefore, were perhaps flawed and also that the initial terms of reference of the scrutiny short review were not fully answered by the report; not just the good governance, but how much was in the public interest.

It should be said that Mr Arditti, Alderney Representative, spoke of Deputy Gillson hijacking the debate. I would disagree with that view, because I think –

3455 **Alderney Representative Arditti:** Point of order, sir.

The Bailiff: Yes. Alderney Representative Arditti.

3460 **Alderney Representative Arditti:** I said that Deputy Gillson had hijacked *me* with a resignation speech in the middle of this Requête; not that he had hijacked the debate.

Deputy Gollop: Apologies, that is correct.

3465 But, it has to be assumed, perhaps, that if you are in a situation where two members of a Committee resign shortly after the short review had taken place and both of them sign a Requête, that it is a possibility that at least one will speak strongly in that debate, so... And, of course, we do know Deputy Gillson has a particular expertise in forensic examination and putting arguments about corporate governance very skilfully.

As I have already intimated, I do not entirely agree with the Scrutiny analysis that they should not be a quasi-policy making entity.

3470 Going on to the specifics, the Home Department Minister, Deputy Le Tocq, mentioned the complexities of the issue; he mentioned the Le Huray case; and he described the process that he and the Home Department, in a sense, were subjected to, as a ‘kangaroo court’. That is an unfair phrase, but I can understand why that view is held by, perhaps, some parts of the Home Department, because the process of having a right of reply in the Chamber did not occur speedily.

3475 The Scrutiny Chairman made reference to individual members contacting him by phone, suggesting, in April, the possibility of laying a Requête. I was not one of them and I am surprised that Scrutiny, at officer level, did not interrelate and connect and communicate with SAC in the Bailiff’s Office and, maybe, the Government Business Unit at officer level, because I think the mechanism for producing a Requête along the lines that was subject to conversation would not have been possible.

3480 Deputy Le Tocq mentions the public interest. Of course, a strong part of Deputy Le Tocq’s arguments – that, also, it was in the Scrutiny inquiry – was that there is a balancing act between cost to the taxpayer and complete openness and transparency. I think we have heard those arguments from the Chief Minister; we have seen those arguments used and, of course, they are absolutely right. I would probably agree that, if you reopen a situation there is a financial cost, but, clearly, the public interest here and, if you like, the public relations of the States, requires, on this occasion, a vote for Proposition 3, rather than a judgement call along those lines.

3485 I would not disagree that the Scrutiny judgement on the Home Department – the conclusions reached – were, perhaps, on the harsh side. In that respect, I agree with Deputy Le Clerc. I also agreed that the Home Department Members – including Deputy Wilkie and Deputy Lowe – were entitled to put their views forward, both at the hearing and in the States; and this has certainly been part of the reason for this debate. I think Deputy Gillson is absolutely right, unless there had been some extraordinary move, perhaps, by the Policy Council, of deciding to publish the Scrutiny

3495 report, it could not have got here any quicker than the July meeting; and, as it was a Requête, it was likely to become deferred anyway.

Deputy Brehaut, amongst others, questioned Deputy Le Tocq's ability to go to the Scrutiny hearing and whether he was there as an individual senior politician or in a ministerial role on behalf of his Board. I would say that, effectively, he was there in his office as a Minister and as Chairman, but he could not necessarily represent the collective view of his Board. Our system, as I think the Law Officers have advised us in the past, means that is true, even with supplementary questions at Question Time. That is why we needed a voice for the members of the Board to put forward their point of view; and I think we have heard some very interesting speeches from those Board members.

3500 Deputy Trott asked some searching questions which certainly disproved Mrs Le Page's view that he is a useless politician, (*Laughter*) as well as many other reasons.

I will come back... Clearly the least popular part of this Requête was Proposition 2. The reason why we, as a collective team, phrased them in this way was precisely because it was possible that not all three parts would appeal to everybody. I would actually agree that Proposition 2 has been partially superseded by events, but I wish to emphasis three words in the three Propositions.

3510 Proposition 1, 'to note' – that is not an approval; it is not an endorsement of the Scrutiny view or of the Scrutiny Committee or the Home Department, or any other player in this. Just to note; to put it on the public record, which was not actually there in parliamentary terms.

Proposition 2, is

3515 'To instruct the Scrutiny Committee, in order to assist the Policy Council in its formulation of a policy on the use of non-disclosure agreements.'

That is not specifically about the AFR issue; it is a general policy that would be useful in many cases to come. It is a request, if you like, for a Scrutiny report. I have heard the Chairman say, and he has a point here, that is not necessarily for the States Assembly or for Parliament, to try to control or direct the role of a parliamentary Committee although they should be representative of us. But it is not an attempt to re-open the AFR... and to substitute that. I think it will be essential for Scrutiny in the fullness of time to return to this general area, because we have no knowledge, at this stage – and even the Policy Council admits this in their letter of comment – as to whether the new Freedom of Information, Access to Information policy will be entirely effective. They trust and hope that it will, but it is not a certainty.

3520 Where I do sense... I am grateful for the Chief Minister for saying that they would support Proposition 1 – 'to note the contents' – and I would also emphasise that Proposition 3 – 'to instruct the Home Department' – is really a win-win situation. There has been so much water under the bridge. We have heard today, in a difficult debate, more revelations coming out, perhaps: the role of the independent non-States legal adviser; the difficulty, perhaps, of justifying conclusions to a report that was bravely but hastily put together; differences of opinion on the Home Department. A brilliant analysis by Deputy Gillson about potential failures of corporate governance, in that the Policy Council and the Treasury and Resources Board were, perhaps, not fully aware of all the liabilities; and an admission from the Home Department that they had learned lessons and, another time, if there was a potential area of litigation of this severity, the new members of a Board would be informed at a political level earlier.

3530 It is pretty obvious in the circumstances, the Chief of Police – who inherited this situation from a previous court and Chief – did a brilliant job and commendably resolved the issues. Hearing from Deputy Quin about the number of officers involved, the last thing you want is a witch hunt on anybody connected with what was a effectively protecting the public. But, the questions have come up about the role of where Boards oversee litigation. Indeed, one Member has suggested other Departments might have litigation from time to time and, perhaps, Board members on those Departments should become more aware of the risks and liabilities, loss of premium, costs directly to the taxpayer, costs to the States insurers and their roles. So, I think that has been a useful area.

3545 And, to conclude on Proposition... What have we got to lose by voting for Proposition 3? We know that the law firm is supportive of some arrangement. I heard one or two Members concerned about the cost; I think they have exaggerated; I think that the circumstances are that most parties, if not all, will be co-operative and we should have the courage now, with a perspective, because at least the six months that we have has allowed, I think, a more calm atmosphere to come onto this.

3550 One of the reasons I ended up leading this process, was I asked questions, because the Parliamentary procedure was not working in April, something was going wrong; the media were leading an agenda and the States Members were not in control and the Question Time was an

3555 inappropriate forum. It has been a slow process, perhaps not ideal, but we should now be in the driving seat and support, wherever possible, openness and transparency.

The third one is to instruct the Department to enter into discussions. I would admit, if I had sat on the Home Department, I would have gone for a limited disclosure. I would not have gone as far as Deputy Lowe wishes to go, because I do think there are matters which have to be kept secure and confidential for the public interest. But, what is wrong in instructing the Home Department to enter into discussions, particularly when the commercial litigants are sympathetic to the view? We have to be courageous; we have to test the new policy of Freedom of Information and, maybe, we also need to see whether there is a cost involved and measure that cost and then have an evidence base for the future.

3565 **Deputy Le Tocq:** Sir, I hesitate to interrupt, but I wonder if Deputy Gollop would like to explain what we should do if one or more of the parties he hinted at do not want to disclose?

The Bailiff: Deputy Gollop.

3570 **Deputy Gollop:** I would say the appropriate approach – and I do take on board the Deputy Chief Minister’s view that February 2014 might be unrealistic and that April might be a more realistic time – but I would assume that the correct procedure would be for the Home Department to work constructively with all the parties and, if they got *one* party who objected, for whatever reason, they would bring a report back or make a statement to the States along those lines, and that would be the correct path to follow.

The Bailiff: Madam Comptroller.

3580 **The Comptroller:** Sir, I also hesitate to interrupt, but the States may wish to just to take notice of the transcript which does actually make it clear that one party is already objecting.

It may well be that, should the Proposition be passed, that the Home Department can enter in new discussions, but States should be aware, if they do have the transcript attached, that it is paragraph 1410 that makes it quite clear that at least one party is not currently happy with that.

3585 **The Bailiff:** Thank you.
Deputy Gollop.

Deputy Gollop: I thank the Comptroller for her advice there.

3590 In a sense, that point actually is a ‘Get Out of Jail’ card for all of us and the Home Department, because we have done our duty, at this reactive stage in corporate governance, by going for a default position of Freedom of Information. If, having passed this Proposition, one party continues to object for a legitimate reason, that is probably the end of the issue; not in terms of a learning experience, but as an event. But we will, nevertheless, have set, I think, the standard for the future that will be a better way forward. So, regardless of how those negotiations go, we should give the process an opportunity to occur.

3595 I urge the States, particularly to vote for Propositions 1 and 3; and for 2 as well, despite some aspects of 2 having been resolved.

3600 **The Bailiff:** Just before we go to the vote, in relation to Proposition 3, we are two months later debating this than was expected when the Requête was drafted. Is it the wish of the States that we leave the date as February 2014 or is either Deputy Gollop or Deputy Le Tocq requesting that we extend that by two months and hence amend the proposition to April 2014?

Deputy Le Tocq.

3605 **Deputy Le Tocq:** Sir, I am pretty agnostic on it, actually. I am not agnostic on much, but (*Laughter*) on this point, because, in some ways I think we know what the answer is going to be already, so it depends whether the Assembly is minded to spend a long time and a lot of wasted money trying to find out what we really already know.

3610 **The Bailiff:** Well, if you are not requesting it be amended, Deputy Gollop is not rising to request that, we will leave it as drafted.

I will put the three Propositions to you individually, because there may be a separate vote on Proposition 2.

Deputy Lowe would like a recorded vote on Proposition 3, did you say?

3615 So we will go *au voix* on Proposition 1, to note the contents of the Report and the transcript of the public hearing. Those in favour; those against.

Members voted Pour.

3620 **The Bailiff:** I declare it carried.
Au voix on Proposition 2: to instruct the Scrutiny Committee to assist the Policy Council in formulating a policy. Those in favour – (**Two Members: Pour.**) (*Laughter*)
 Shall we start again? (*Laughter*) It has been a long day.

3625 **Deputy Domaille:** Some Members may think I am not paying attention.

The Bailiff: We will have a vote on Proposition 2. Those in favour; those against.

Members voted Contre.

3630 **The Bailiff:** Proposition 2 is lost.
 Then we go to a recorded vote on Proposition 3. Vote *Pour* if you are in favour; *Contre* if you are against.

3635 *There was a recorded vote.*

Lost – Pour 15, Contre 29, Abstained 2, Not Present 1

POUR

Deputy Brehaut
 Deputy Gollop
 Deputy Bebb
 Deputy Lester Queripel
 Deputy Gillson
 Deputy Ogier
 Deputy Trott
 Deputy Fallaize
 Deputy Laurie Queripel
 Deputy Lowe
 Deputy Le Lièvre
 Deputy Collins
 Deputy Green
 Deputy De Lisle
 Deputy Burford

CONTRE

Deputy Harwood
 Deputy Kuttelwascher
 Deputy Domaille
 Deputy Langlois
 Deputy Robert Jones
 Deputy Le Clerc
 Deputy Sherbourne
 Deputy Conder
 Deputy St Pier
 Deputy Stewart
 Deputy David Jones
 Deputy Spruce
 Deputy Duquemin
 Deputy Dorey
 Deputy Paint
 Deputy Le Tocq
 Deputy James
 Deputy Adam
 Deputy Perrot
 Deputy Brouard
 Deputy Wilkie
 Deputy Inglis
 Deputy Soulsby
 Deputy Sillars
 Deputy Luxon
 Deputy O'Hara
 Deputy Quin
 Deputy Hadley
 Alderney Rep. Jean

ABSTAINED

Deputy Le Pelley
 Alderney Rep. Arditti

NOT PRESENT

Deputy Storey

3640 **The Bailiff:** We will just pause while the votes are counted. Then we will rise and resume tomorrow, when we will be able to start the September Billet. (*Laughter*)

Members of the States, the votes cast on Proposition 3 of the Gollop Requête are as follows: 15 in favour; 29 against, with two abstentions. I declare the Proposition lost. So Proposition 1 was carried and the other two Propositions were lost.

3645 We will rise now.

The Assembly adjourned at 5.31 p.m.