



OFFICIAL REPORT

OF THE

STATES OF DELIBERATION

OF THE

ISLAND OF GUERNSEY

HANSARD

Royal Court House, Guernsey, Thursday, 17th March 2016

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Present:

Richard James McMahon, Esq., Deputy Bailiff and Deputy Presiding Officer (morning);
Sir Richard J. Collas, Kt, Bailiff and Presiding Officer (afternoon)

Law Officers

H. E. Roberts Esq., O.B.E., Q.C. (H.M. Procureur)

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, P. A. Sherbourne,
R. Conder, C. N. K. Parkinson, 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, G. M. Collins

The Castel

Deputies D. J. Duquemin, C. J. Green, M. H. Dorey,
B. J. E. Paint, 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, 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 and S. D. G. McKinley, O. B. E.

The Clerk to the States of Deliberation

S. M. D. Ross, Esq. (H.M. Senior Deputy Greffier) (morning);
J. Torode, Esq. (H.M. Greffier) (afternoon)

Absent at the Evocation

Miss M. M. E. Pullum, Q.C. (H.M. Comptroller);
Deputy J. A. B. Gollop (*relevé à 9h 33*); Deputy A. Spruce (*indisposé*);
Deputy J. P. Le Tocq (*relevé à 10h 05*); Deputy Y. Burford (*relevée à 14h 30*)

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States of Deliberation

The States met at 9.30 a.m.

[THE DEPUTY BAILIFF *in the Chair*]

PRAYERS

The Senior Deputy Greffier

EVOCATION

Billet d'État VII

CULTURE & LEISURE DEPARTMENT

II. Amendments to the Vale Commons Ordinance, 1932 – Protecting Organised Sporting and Leisure Activities on L'Ancrese Common – Proposition as amended carried

The States are asked:

- 1) Approve the amendment of section 12 of The Vale Commons Ordinance 1932 to transfer the function of authorising games and entertainments on the Common (including the game of golf) to the States;*
- 2) Approve such consequential amendments as may be required in sections 2, 4, 14, 15 and 19 of that Ordinance to ensure the effective control and reasonable exercise of authorisations so given;*
- 3) Include the functions thus transferred within the mandate of the Committee for Education, Sport & Culture;*
- 4) Direct the preparation of such legislation as may be necessary to give effect to recommendations 1) and 2) above.*

The Senior Deputy Greffier: Billet d'État VII, Article II – Amendments to the Vale Commons Ordinance, 1932 – Protecting organised sporting and leisure activities on L'Ancrese Common.

5 **The Deputy Bailiff:** Deputy Greffier, during the roll call, Deputy Gollop came into the Chamber. Do you wish to be *relevé*, Deputy Gollop?

Deputy Gollop: Yes, please, thank you very much, sir.

10 **The Deputy Bailiff:** I invite the Minister of the Culture & Leisure Department, Deputy O'Hara, to open debate.

Deputy O'Hara: Thank you, sir.

Members, I think I should start by declaring an interest. I am a social member of the golf club, but I have not played golf for a considerable time, therefore I am not a playing member.

15 Sir, Members of the States, as I am sure you are all aware from various media reports, the dispute between the Vale Commons Council and the two golf clubs has been going on for a very long time, but I appreciate that not everyone may be fully aware of all the background, so let me just briefly outline some of this and, in particular, a bit of the less well-known history, so that there can be a full appreciation of the context.

20 If we turn the clock back 100 years or so, the L'Ancrese Common was used extensively for grazing cattle. At that time, farmers living in the area, formerly known as Le Clos de Vale, in exercising what was ancient grazing rights over the land, paid a fee which was then used to help maintain the common.

25 But, by the early 1930's, use of the common was in far greater demand and, even though several sporting and recreational users, including golfers, had used the common for many years prior to this, the amount of use and the possibility of conflict had caused concern. Arising from this, several persons petitioned the Royal Court, with a view to establishing better control of activities on the common.

30 As a result, legislation was subsequently passed, which resulted in the establishment of the Vale Commons Council, which was provided with legal powers to control and supervise activities on the common.

35 Following the German Occupation of the Island, during the Second World War, it was necessary to undertake substantial reconstruction of the golf course. Given the sums of money involved, and recognising the importance of tourism, the States agreed to make a significant contribution to the cause.

40 However, as part of discussions at that time, and wishing to ensure long-term protection of their investment, had agreed to grant what was effectively a 70-year lease from 1947, which was 50 years with an option for a further 20 years, which was exercised in 1997. I should mention here, by the way, that whilst it is referred to as a lease, legal advice has confirmed that it is an incorrect term given and the council does not own the land but it, nevertheless, provided long-term security of tenure, which the States was seeking.

45 Not long after exercising the renewal option in 1997, it was agreed through a States' Resolution to transfer responsibility for management of the golf course to the two clubs and, as part of this arrangement, the present lease, as it is still referred to, was extended into a sub-lease to the clubs.

Sir, since this time, the clubs have done an excellent job in maintaining the course, which independent professional reports have confirmed is in very good condition. Perhaps also of note is the fact that, unlike many sports clubs, they have never sought any subsidy since the original States' investment over 60 years ago.

50 However, over the last 10 years or so, there has been growing concern about the dangers associated with playing some holes on the course, because there is a requirement to drive across the Mont Cuét and La Jaoenneuse Road. The clubs have both fully acknowledged and accept that there will have to be a very significant and very costly redesign of the course. Understandably, therefore, they have been seeking for some time to renegotiate a long-term extension of the present usage agreement in order to safeguard their investment.

55 Unfortunately, as I think we are all aware, relations between the council and the clubs have not been good for a long time and, despite many years of discussions, and the clubs offering a very substantial annual payment, which was well in excess of many clubs in Jersey and the UK, and have been paying for even more exclusivity, it had not been possible to reach an agreement.

60 Given that current impasse, the fact that the existing agreement was due to run out at the end of this year and the need to safeguard the future of what is Guernsey's only championship course, it was the Department's view, following legal advice, that it was left with no option but to seek an amendment to the 1932 Vale Commons Ordinance that would have transferred those powers to the council in relation to the supervision and control of organised sporting and recreational activities on the common back to the States.

Members will note that I am now using past tense. This is because events have moved on. In the efforts to seek a resolution to the impasse, when the opportunity came to employ the services of the Vale Deputies Fallaize, Queripel and Spruce, we were only too pleased to seek their assistance.

70 The ultimate aim of the Department was to gain resolution. However, understandably, bearing in mind the many years of discussions that had previously taken place, plus the fact that the present lease was to run out this year, running the risk that golf would not be played on Guernsey's championship course, the Department felt it had to produce the policy letter which hopefully would bring discussions to a head.

75 Very substantial efforts by the Deputies, and in particular Deputy Fallaize, has resulted in an agreement which was signed by both the council and the clubs towards the end of last week's States' Meeting.

80 Naturally, we are pleased that this agreement has been reached. What makes us more pleased is that the new agreement sees the real opportunity of developing a much better working relationship between all parties, which hopefully will lead to mutual trust.

Sir and Members, trust is what it is all about. Trust has been sadly lacking over the years and we feel sure that the proposed working forum, which will include the States and is part of the new agreement, will develop into a better understanding of each other's activities and what happens on the common.

85 The understanding of what happens on the common is vital, including the excellent and hard-working efforts of the Vale Commons Council and that is something the Department and its board has always taken into consideration during their deliberations.

90 The signed agreement helps us to assist and bring to the attention of all parties all the activities that take place on the common, from both recreational and environmental bases. Part of this agreement involves some financial arrangements relating to the grants presently provided through the States' Environment Department. Hence it is necessary to lay an amendment, which Deputy Fallaize will be presenting and I will be seconding.

Sir, Members, I could continue verbatim on the many years of discussions that have taken place in the past, but I will resist that temptation.

95 The past is the past. It is the future that is important and I am convinced that the new agreement will seek to make that future much brighter for all the users of the common, to the benefit of the Island.

Thank you, sir.

100 **The Deputy Bailiff:** Deputy Fallaize, I understand that you have an amendment that you wish to place.

Deputy Fallaize: Yes, please, sir. It has been circulated and it is on Members' desks.

105 I think I ought to have included a motion to suspend the Rules at the top of it, which I think perhaps you are about to remind me of, because of the financial aspects in it being circulated this morning. No? Okay. Cool.

110 **The Deputy Bailiff:** Deputy Fallaize, I took the view that it did not need a suspension of the Rules when I saw it, because of the Propositions that are being amended. The Procureur is nodding his head, which *Hansard* will pick up very well! (*Laughter*)

Therefore, my ruling is that there is no need unless anyone wants me to do so to have such a motion. (*Interjection and laughter*)

Are you going to read the amendments as they have so recently been circulated, or invite the Greffier to do so?

115 **Deputy Fallaize:** Would the Greffier be able to do so?

The Senior Deputy Greffier read the amendment.

Amendment:

To delete the Propositions and substitute therefore:

'1. To increase the annual grant payable by the States, acting through the Committee for the Environment & Infrastructure, to the Vale Commons Council to £40,000 annually (to be adjusted each year by any rise in RPIX) commencing in 2017 for a period of 25 years, to be applied for the maintenance of the Vale Commons in accordance with the Ordinance relating to the Vale Commons, 1932 as amended, and subject always to compliance by the Council with the conditions of such grant.

2. To direct that from 2017 the Policy & Resources Committee shall include in the recommended cash limit of the Committee for the Environment & Infrastructure the amount set in accordance with Proposition 1, exclusively for the payment of the annual grant to the Vale Commons Council.

3. To authorise the Culture and Leisure Department and the Environment Department, on behalf of the States, to enter into an agreement settled on the 11th of March, 2016 between the Vale Commons Council, L'Ancrese Golf Club, Royal Guernsey Golf Club and Golf Course Management LBG, which agreement includes reference to such grant, contains the conditions of such grant, acknowledges that it does not fetter the discretion of the States in connection with their above decision, the States' Grant nor any other matter, and records that it does not prejudice or affect any of the rights, powers or duties of the States of Guernsey as a legislature, government, regulatory, licensing, permitting or other similar authority.'

The Deputy Bailiff: Deputy Fallaize.

Deputy Fallaize: Thank you, sir.

120 I should point out that that number 3 ... the Procureur drafted that before Members accuse me of all those words! *(Laughter)*

I became involved in this issue about a year or so ago, when it was quite clear that there was, as Deputy O'Hara has said, something of an impasse between the Vale Commons Council and the clubs, because I thought that perhaps people who had not been involved previously and were
125 connected to the area of land, at least as Vale Deputies, might be able to perhaps share two or three meetings and to bring the parties together.

This, I anticipated, would be a very short-lived endeavour, taking up hardly any time at all. A year later and what is probably many dozens of hours later, we have been through what, at times, have been frustrating negotiations, but ultimately have proven fruitful. The Vale Deputies involved
130 latterly have been Deputy Queripel, Deputy Spruce and me. Initially, Deputy Jones was also involved and I would like to thank all of those Vale Deputies who have made a significant contribution to this endeavour.

The two parties obviously wanted the best possible outcome for their members and in light of their responsibilities and that, essentially, is why it has taken so long. Relations between the
135 Commons Council and the clubs were extremely tense. To begin with, it was not possible to negotiate with them together; we were negotiating separately with both parties and then relaying information back from one party to the other, but I have to say that, in the end, the two parties came together and there has been quite a lot of compromise on both sides. I do not think either party would say that the agreement is exactly what they wanted, but there is enough in it for both
140 parties and there has been a degree of compromise.

I am quite optimistic, given the way negotiations ended up in the final few weeks and the creation of the forum which Deputy O'Hara has referred to, that this agreement, as well as getting the agreement in place, it does provide a platform for a much healthier relationship between the Commons Council and the clubs and indeed the States in the years ahead.

145 As far as the States are concerned, the Culture & Leisure and the Environment Departments have the authority to sign an agreement of this nature without requiring a States' Resolution, except in respect of the States' grant which, really, is the purpose of this amendment and I will come onto that in a moment.

150 But if I can just build on some of what Deputy O'Hara said and explain the main elements of the agreement which has been reached. It is a 25-year agreement. It was signed by the Vale Commons Council and the clubs on Friday of last week, so the agreement would run from 1st January 2017 until 2041, in replacement of an agreement which runs out this year.

155 The clubs shall pay £50,000 annually, index-linked and, during 2016, the clubs, in addition to the annual payments of £50,000 from 2017, the clubs shall pay a total of £100,000 by way of a capital contribution. All of which is to be applied for the purpose of maintaining the commons.

Deputy O'Hara has mentioned the creation of the forum. There is also to be a slight revision in the area which is marked out as the permitted golf area, to accommodate the alterations which Deputy O'Hara referred to and, importantly, the rights of the public to use the commons are protected in the agreement.

160 The Policy Council's letter of comment to the Culture & Leisure Department's policy letter notes that there remains an impasse between the Commons Council and other interested parties and goes on to say:

'It would clearly be preferable to reach a negotiated agreement.'

165 Well, it has now been possible to reach that negotiated agreement. I have to say to the States that the signing of the other parties, the non-States parties, is conditional on the States increasing their grant in the way that is set out in this amendment. It is also conditional on the Culture & Leisure and Environment Departments signing this agreement by tomorrow. So that is the nature of the agreement. It will come into effect only if the States vote in favour of this amendment and then the two Departments sign, this week, on that basis.

170 In laying this amendment, I am very grateful to have had the support of the Culture & Leisure Minister and the Environment Minister and the Chief Minister and the Treasury & Resources Minister and I assume the Members of their Departments as well.

175 The history of the States' grant is almost as convoluted as the history of the use of the commons. In the late 1980's, the grant was set at £15,000 per year, which, if index-linked, now stands at about £42,000 per year. In 2001, it was increased to £30,000 per year and I have got the policy letter here from 2001 and it is really very clear that the intention at the time was that it would be £30,000 per year and then it would be increased in line with inflation annually. The Resolution is a bit woolly, but the policy letter, it is quite clear what the intention was.

180 But the grant has not been increased in line with inflation. Had it been, it would now have a value of about £45,000 per year. So Members can see that the grant has lost about a third of its value over the last 15 years and what is proposed in the amendment, the sum of £40,000, in effect restores the purchasing power of the grant to what it was in 2001 and what, if anybody reads the policy letter they would see, was always intended to be the case.

185 The new agreement also, in return for the increase in the States' grant or restoring it to its original 2001 value, also imposes further conditions on the payment of the grant, which have not existed up to this point. So this agreement is an opportunity for the States to impose conditions attached to the grant, which probably ought to have been in place all this time, so it sort of modernises the arrangement as well.

190 I would also like to thank H.M. Procureur and his chambers for their considerable assistance in putting this agreement together. I am not sure if one is meant to mention the names of people who work in St James' Chambers, but I will anyway. (*Interjection*) Antony Ellis, in particular, has contributed many, many hours to this enterprise and we, the Vale Deputies, are very grateful to him.

So I think it is fair to say that this is a good deal for the commons. It protects and secures the maintenance of the commons for the next 25 years and provides the necessary funds to do that.

195 When one compares the amount of money that is spent on the commons with the area of land that the Commons Council has to maintain, it is quite clear that there has been structural under-funding, and therefore under-investment, over a period of decades and this agreement puts that right.

200 It is good for sport in the Island, because it secures the use of one half of the commons for golf, very much along the lines that it has been used for in recent decades, and I think it is good for the States, because it allows the States to secure the maintenance of the commons through a non-governmental body, which I am convinced keeps the costs down. The people who run the Vale Commons Council, of course, are volunteers and I am sure that running it on that basis keeps costs down, which would otherwise be incurred by the States and it is also a good deal for the
205 States because it allows the States to promote sport, which of course is a responsibility which the Culture & Leisure Department takes very seriously.

So I think the agreement provides all of those things but, as I say, it is entirely conditional on the States approving this amendment, increasing the grant or restoring it to its 2001 value and then allowing the Environment and Culture & Leisure Departments to sign the agreement,
210 hopefully later today or tomorrow.

I do not need to say anything more, sir. I thank all those Members and officers who have been involved and ask Members to support the amendment.

Thank you.

215 **The Deputy Bailiff:** Deputy O'Hara, do you formally second the amendment?

Deputy O'Hara: Yes, I do. Thank you.

The Deputy Bailiff: Can we relevé Deputy Parkinson, please?

220 Deputy David Jones.

Deputy David Jones: Thank you.

There is nobody more pleased than me that the golf club and the Commons Council have finally come to an agreement. I think that the Deputies that have been involved in bringing this
225 together have done a fantastic job.

It cannot be missed that, as Deputy Fallaize has said, the Commons Council have maintained the large areas, several hundred verges of the common on a shoestring budget for many years. I myself used to donate many hours with a JCB free of charge because there simply was not the money in the system to do it.

230 I was happy to do it because the common is a big part of my parish and maintaining it in the way that they wanted to see it was a good thing, in my view.

The 2001 so-called increase was as a result of an amendment, I think, by myself and Deputy Flouquet, I think it was, to increase that grant and index-link it but, unfortunately, Environment have not done that. So I absolutely agree with Deputy Fallaize that this about takes us, this
235 amendment, just below where we would have been had that index-linked grant been paid.

I hope all Members can support this. If the agreements that Deputy Fallaize has referred to between all the Departments are on board then I should think that it will be signed off tomorrow and that will be a good thing and we can put this issue to bed.

240 There is nobody more pleased than me to see golf continue on the common. I think we were getting into fairly silly realms over the last year or so, talking about maybe we should not have golf and it should all go over to recreational use and all the rest of it. It is remarkable to think actually what the common is used for. They have horse racing down there. A lot of people use it for recreational use, for walking and many other issues, playing football on the football pitches etc.

245 So please support this. I do not think we need to spend all day on this. It is a very sensible agreement. A lot of people have put a lot of hard work behind this to make this happen and the States should back them, in my view.

Thank you.

250 **The Deputy Bailiff:** Deputy Gollop, to be followed by Deputy Ogier.

255 **Deputy Gollop:** No, we do not need to spend all day on it, but I was not entirely sure of every factor in this. I mean, to a degree, it might raise the budget of the States in finding the money. I note that it will go to the Department of Environment & Infrastructure as additional budget, but it will be ring-fenced.

If one looks at the letter of comment from Treasury & Resources, they note that the Culture & Leisure Department expects there to be no additional resource requirements. Well, this in a sense is an additional resource requirement, albeit in a different way.

260 It has to be said that some people on Environment realise that the L'Ancrese Common is not just a golf course or a race course or a sporting area, but it is also an area of important habitat and ecological diversity and I think it is important that the amendment, which I do support, that the additional £10,000 will go to very much conserve that diversity and ensure that the golf course continues to thrive, but perhaps in a safer way as outlined in this States' Report, which perhaps does not fully go into as much as it might of the costs of running the common from the Vale
265 Commons Council's point of view.

Nevertheless, I think this is a useful and pragmatic way forward.

The Deputy Bailiff: Deputy Ogier, to be followed by Deputy St Pier.

270 **Deputy Ogier:** Thank you, sir.

I welcome the news that an agreement has been reached between the council and the golf clubs. It has been a long-running saga and one's outlook is coloured by which side of the story one hears first, I suspect.

275 I do support this amendment and the increase in budget, which puts to right a previous agreement, but would wish to raise one concern over public safety. This relates to the land around the Millennium Stone. This public access area is a popular viewing point for members of the public, watching events on the commons and by those visiting the Millennium Monument and other historic sites on this hill.

280 I understand that as part of the agreement the golf clubs will take over the two football pitches on the commons and to improve the safety of the golf course, as the Minister has already outlined. In 2011, the Minister proposed that the Millennium Stone and its surrounding area would be returned to the council if they agreed to release these pitches to the golf clubs. The Minister was clearly thinking of the safety issue, as he has outlined when he made this suggestion. This, I think, is an ideal opportunity to visit that issue and the public access land near to the
285 Millennium Stone.

Could the Minister for Culture & Leisure, if he is speaking on this amendment, or if not the proposer, confirm the clubs are to receive the football pitches they need to improve public safety in this area and that the clubs will be returning land near the Millennium Stone to the council under this agreement?

290 **The Deputy Bailiff:** Deputy St Pier.

295 **Deputy St Pier:** Deputy Gollop referred to Treasury & Resources' letter of comment. Of course, that related to the policy letter as drafted, so he is quite correct that the letter of comment said there was no additional resource. Of course, this amendment does provide for additional resource.

Deputy Fallaize kindly cited me as having played a very small part in this. He was kind enough, as have others been, to keep Treasury & Resources in the loop through me. I have taken a rather pragmatic view in relation to this and in the twists and turn of this over the last few months, have sought not to keep my board appraised of every single move in this particular story.

The sum that is required from the States to create this settlement – the additional £10,000, plus inflation, over the next 25 years – I have taken the view is a modest settlement, given the alternative, which was clearly heading towards a major re-visitation of either the structure of the Vale Commons Council or possibly litigation, or quite possibly both.

In that context, I think that the sum is modest and an entirely pragmatic decision by this Assembly if it so endorses this amendment.

I should point out I think it may be unique. The Procureur may be able to advise otherwise, but certainly I suspect it is unusual that the States should be committing to a spending commitment in this way, by Resolution for the next 25 years. In that sense, of course, it is a prioritisation of spending above all others. I suspect, of course, we will have other spending commitments that stretch that long, possibly by way of leases and so on, but it is a slightly unusual position.

The only other point that I would wish to raise, sir, and perhaps Deputy Fallaize could address this in his closing, given his knowledge of the agreement, is he referred to the fact that there would be conditions attached to this grant and, in particular, I would like to have a greater understanding of the level of transparency, particularly the financial transparency, which the Vale Commons Council will give, perhaps as part of this settlement and I would be grateful if he could address that, sir.

The Deputy Bailiff: Deputy Le Tocq, you wish to be relevé?

The Chief Minister (Deputy Le Tocq): Yes, I do, sir.

The Bailiff: Deputy Brehaut, to be followed by Deputy De Lisle.

Deputy Brehaut: Thank you very much, sir.

The Environment Department's role in this evolved somewhat, because we met with the Vale Commons Council on one occasion and they wanted an uplift in the grant and there was simply no provision for the Environment Department to do that. You would have to be living somewhere else other than Guernsey to be unaware that the Environment Department has had significant issues with regard to legislation to give it something of a budget.

I took part in a meeting on behalf of the Environment Department, a meeting referred to by Deputy Fallaize, and if I could just read my own note I took from the meeting that I circulated to Deputy Fallaize after that. I made this note: 'If it was the clear intent and will of this group' – that was the group that sat to discuss this – 'to uplift the grant then the Environment Department would respect that view within an agreed commensurate increase in its cash limit. The role of T&R is integral to that decision.'

We have heard already from the T&R Minister today.

As Deputy Gollop has said, the role of the commons as a whole is important, because there are real biodiversity issues and there has been a degree of tension over the years, when the putting greens have become, perhaps, over-managed to the loss of biodiversity in that area.

As others have done, I just want to flag up the issue, now with this level of funding, that the governance mechanism in place and that this Assembly and the States' Departments have the tools and the mechanisms to go back and are in a strong position to negotiate rather than have a situation that took some time to resolve.

I understand that when Deputy Fallaize leaves here today he is speaking to Bashir al Assad to resolve the Syrian conflict (*Laughter*) and then perhaps resolve issues in the Middle East!

Chapeau to Deputy Fallaize, who once again, sir, applied himself to a situation and the outcome is incredibly positive.

Thank you.

The Deputy Bailiff: Deputy De Lisle.

Deputy De Lisle: Thank you, sir.

I am happy that a Resolution has been made to these talks that have been ongoing and I commend the members of the special committee that were put forward to attain that agreement.

We have a very special asset, I think, with the common in the Vale parish, that all parishes use – the size, actually, almost of the parish of Torteval. It is a huge area, an ecological and environmental asset to the Island that, in reality, needs to be protected in that it is being intensively used, at least half of it, by the clubs at the current time.

I also note that all Island households, essentially, if we agree to this £40k contribution, will be paying an additional 50p, if you like, per year to accommodate the £10,000 extra that is being called for, in addition to the £1 that all the households are already contributing and I wonder, can I ask, whether there has been any consideration given to making the commons our first national park?

In addition to that, I would like to ask one other question, with regard to the £100,000 that Deputy Fallaize mentioned in terms of the capital contribution to maintain the commons. Was that £100,000 multiplied by two, with respect to the two clubs, or is it just £100,000 capital contribution by the clubs?

Thank you, sir.

The Deputy Bailiff: Deputy Le Tocq, to be followed by Deputy Laurie Queripel.

The Chief Minister: Thank you, sir.

I will be brief. I welcome this, rather eleventh hour, but nevertheless compromise agreement and I similarly thank Deputy Fallaize for keeping me in the loop.

It was an education for me to sit in on a couple of meetings and see the amount of effort and, to a certain degree, I would say, sir, it is a bit of a shame that it takes so much effort and time from States' Members and officers on matters like this. It makes some of the more international matters that I have to deal with seem a bit like a walk in the park or a walk on the common, perhaps, or a good walk spoiled, or one of those things. *(Laughter)*

I do think that a heck of a lot of hours have been put in to get to this conclusion, so I commend them for all the effort put in, but I do think in the future the States is going to have to focus its attention, and should do, on more long-term serious things for this Island and so we have to bear that in mind.

I am certainly going to support this amendment.

The Deputy Bailiff: Deputy Laurie Queripel.

Deputy Laurie Queripel: Thank you, sir.

I played a part in this matter, assisting Deputy Fallaize, who has taken the lead, trying to bring the parties involved to an agreement. It has certainly been a protracted process and we have ended up, as it were, in the rough on a number of occasions, but via a series of meetings and talks we eventually got there.

This is important, sir, because it means that the clubs, for many years to come, can continue to play on and maintain a superb golf course and invest in that course on their half of the common and, at the same time, the Vale Commons Council – an incredibly dedicated group of volunteers – continue their good work in maintaining and looking after the other parts of the common.

In Guernsey terms, we are talking about a vast area here – a unique area – that can be put to many uses and is valuable not only to the parish of The Vale, but to the Island's community and the Vale Commons Council have a great responsibility. This is an area of great environmental and

recreational use. It is a dynamic area, rich in habitats, scrub, bracken, ponds, as well as artificial structures, flowers etc. All these need to be maintained in an appropriate and sensitive manner.

Despite being committed and devoted to the cause of the common for very many years, the work of the Vale Commons Council has been carried out with very limited funds. In fact, they have been under-funded, chronically so, for a very long time. As a result, notwithstanding their best efforts, there are a number of things that they have wanted to attend to but have not been able to simply because of a lack of resource, sir, and this is where this amendment comes into place.

The cost of looking after the common has clearly increased over the years, but the funding has not. That has not kept pace with inflation.

But now, with a much improved contribution from the golf clubs and an increase in funding from the States, the Vale Commons Council can not only continue its good work, but also expand its efforts, with new standards of environmental management as advised by local environmental groups.

It must be said that this has been a very good deal for the States for very many years. If the States had taken responsibility for the work carried out by the Commons Council, the cost to the taxpayer would have been much higher and much greater.

The continuing use and maintenance of a top class golf course by the clubs and sufficient funding for the Vale Commons Council to not only continue but enhance their efforts on the common in a management and environmental sense, I think, represents a very good arrangement for the States, for the Guernsey community and, as such, I recommend this amendment to the States.

Thank you, sir.

The Deputy Bailiff: I invite Deputy O'Hara, as the Minister of the Culture & Leisure Department, to respond to the debate on the amendment.

Deputy O'Hara: Thank you, sir.

First of all, may I echo the thanks to Antony Ellis for his remarkable work in pulling this agreement together. I understand there was almost 10 drafts altogether. It took a long, long, long time.

Equally, I do not want to not mention the efforts of the Department, in particular Colin Thorburn, over the many years who has dealt with this. The portfolios are very large. In fact, I can say that two years ago we almost had a situation almost identical to the agreement that we have got here and indeed spoke with T&R at that time with a view to looking for £10,000 at that time to try to seek out this deal, but it was at a time when that was not possible. But things change.

The governance and transparency aspect is vitally important. Sadly, it has been lacking and that has been tightened up substantially and I am sure that Deputy Fallaize will confirm that.

The thing about our first national park, which Deputy De Lisle brought up, I think it is a great idea but I am not sure how to go about that, to be frank.

The important one that came out was public safety, which Deputy Ogier brought up about the Millennium Stone. I have to confess that a few years have passed since that came about but safety is absolutely paramount, obviously, on a golf course and so forth. So we will look at that again, sir, if we may, to have a look to see what is involved. I do not know what was put into motion there. Time has gone on, but I promise you that we will look at that for you.

I should really be saying this when I come to sum up after we have discussed the main policy letter, but I cannot let it go because I just want to let people know that the Department absolutely knows fully just the kind of efforts and work that the Vale Commons Council do. It is part of our heritage in a way – it is – and we had to take that seriously into consideration all the time, at the same time as speaking with the clubs. We represent sport, of course.

The problem that we have had is that it has been a very frustrating time to try to come around the table to try to agree things and it just was not happening. It is as simple as that and I am very

thankful for the Deputies, in particular Deputy Fallaize, who has burned much midnight oil (**A Member:** Hear, hear.) in gaining this agreement. I thank him very much.

455 I apologise to Deputy Jones for missing him off the list. I am sorry about that, sir. (*Interjection and laughter*)

As I said, I am just thankful that we have reached this agreement now. Onward and upward and let's hope that we can all vote it through and everything will be fine.

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

The Deputy Bailiff: Deputy Fallaize, as the proposer of the amendment, to reply to the debate on it.

Deputy Fallaize: Thank you, sir.

465 Deputy David Jones pointed out the multiple uses of the commons and I think it is important to emphasise that that is protected in this agreement, including for horse racing. There is a specific section of the agreement devoted to horse racing on the commons, believe it or not. The recreational, public use of the commons, which the Island is familiar with, is very much protected in this agreement.

470 Deputy Gollop talked about the environmental importance of the commons. Now, that is recognised in the agreement. There are environmental conditions attached to this agreement, which there was not to any previous agreement.

Deputy Ogier said that one's views on this matter perhaps depend upon which side you spoke to first and there is something in that. I think, probably, the only way in which the Vale Deputies
475 have been able to bring the parties together and reach agreement is by quite studiously avoiding trying to pin responsibility on one party or the other and, as much as the media has encouraged me to do that in recent days, I am going to refrain from doing it.

The issue of land is quite complicated but, suffice it to say, there is no transfer of land from the clubs to the Commons Council included in this agreement. It was a point of negotiation over
480 many hours and Deputy Ogier is quite right that, at one time, there was an understanding that there would be an area of land carved out around the Millennium Stone, which would be excluded from the permitted golf area. That has not been done in this agreement – I have to make that clear – but the role of the forum, which brings together the States and the Commons Council and the clubs will partly be to promote the use of the commons for public use and it was felt in the
485 end, by the parties, that there was nothing much to be gained from carving out this area of land by the Millennium Stone and, actually, ensuring public safety around that area, promoting the use of the commons by the public, in particular, around that area, could be done through the forum, through the parties acting collaboratively, rather than having to transfer any land formally.

Deputy St Pier said that he has taken a pragmatic approach, which he has, and we thank the
490 Treasury & Resources Department for that and I think the key point about costs, as I said when opened debate on this amendment, is that it would invariably cost the States more if the nuclear button, as Deputy O'Hara once referred to it as, had to be pressed and the States had to take much more direct day-to-day control over the commons.

I think, although the amendment does propose this slight increase in global terms in the
495 States' grant, it actually avoids costs of the alternative option.

He also asked for further information on the conditions attached to the grant, particularly with regard to transparency and there is a long list of conditions of the States' grant, one of which is that the Commons Council must provide to the States annually its business plan and its budget. There is also, in this agreement, conditions which permit the States to have some oversight and,
500 indeed, for the approval of the States to be required if the Council wishes to spend more than a certain percentage of the grant on any one particular activity.

So I think there is, clearly, much more transparency in this agreement. There are more conditions attached to it than there have been in previous agreements and that is partly what the States are getting in return for the slight increase in the grant.

505 Deputy Brehaut raised a point about governance and the management of this agreement over the period of 25 years will have to be through the forum that has been set up. It will be necessary for a member of the next Committee *for* Education, Sport and Culture and a member of the Committee *for* Environment and Infrastructure to sit on this forum. The States will be fully represented and we are hopeful that the tension that there has been between the Commons
510 Council and the clubs, to some extent in previous years, will be alleviated somewhat by the creation of the forum.

I am afraid I cannot comment on Deputy De Lisle's suggestion about the commons becoming Guernsey's first national park. On the face of it, it sounds like a jolly good idea. Presumably, the Environment Department would be in a better position to pursue that and to give it some
515 impetus, as Deputy De Lisle hopes.

The answer to his question about the capital contribution is that the total is £100,000, to be paid in advance of this agreement coming into force on 1st January, 2017. It is actually two lots of £50,000 during this present calendar year. I think that is quite significant for the Commons Council. They will get, in advance of this agreement coming into effect, a capital injection of
520 £100,000.

Finally, Deputy Queripel was right. There are good people on both sides. Golf is a popular sport and obviously has wanted to protect the use of one half of the commons – not exclusively, because of course people use that half of the commons for many other things besides, but nonetheless to protect the use of one half of the commons for golf. And the Vale Commons
525 Council has been living something of a hand to mouth existence and Deputy O'Hara is right: the volunteers involved in the Commons Council make quite extraordinary efforts to maintain the commons. They are very enthusiastic, very committed and that has to be supported.

I think the agreement is good for sport, it is good for the commons and it is good for the States. I hope Members will vote in favour of this amendment, which will allow the two States' committees to sign this agreement this week and finally bring to a conclusion what has been a
530 long-running tale.

Thank you, sir.

The Deputy Bailiff: Members of the States, we move to the vote on the amendment proposed
535 by Deputy Fallaize, seconded by Deputy O'Hara, which will have the effect of substituting a new set of Propositions for those published. Those in favour; those against.

Members voted Pour.

The Deputy Bailiff: I declare the amendment duly carried.

Is there any general debate or can we move straight to closing?

Deputy O'Hara.

540 **Deputy Fallaize:** Sir, can I just say, on behalf of the Vale Deputies, thank you to the Culture & Leisure Department, because we were only able to become involved in this really at their invitation, and they have given us the space and the support necessary to bring the agreement to a conclusion. So I would like to thank all of the members and officers of the Culture & Leisure
545 Department for that.

The Deputy Bailiff: Thank you, Deputy Fallaize.

Deputy Lowe.

550 **Deputy Lowe:** Sir, I just want to place on record our thanks, certainly my thanks, and the rest
of the Vale Deputies because, by not saying anything, I would not like it to look like we have not
supported. We were all involved right at the very beginning and it was rather silly to have so many
of us actually meeting with them. We met, originally, with the working group and so it was
555 decided for the other three ... but we fully support all that has been put forward and also endorse
and thank those that have carried forward the agreement today.

The Deputy Bailiff: Well, Deputy O'Hara, there is very little to reply to there.

Deputy O'Hara: You are quite right, really. All I will say is it has been an absolute pleasure to
560 work alongside the Vale Deputies to bring this to conclusion. It has been a very, very difficult time
over many, many years and I am just thankful that we have reached this conclusion.
Please vote everything through. Thank you.

The Deputy Bailiff: Members of the States, we now go to the vote on the Propositions as
565 amended. You have just approved those Propositions being the amendment by Deputy Fallaize
and Deputy O'Hara. Those in favour; those against.

Members voted Pour.

The Deputy Bailiff: I declare that matter duly carried.

COMMERCE & EMPLOYMENT DEPARTMENT

IV. Financial Measures to Mitigate the Likely Adverse Consequences Upon Existing Milk Distributors of the Dairy Being Free to Sell Milk and Milk Product to any Commercial Customer – Debate commenced

The States are asked to decide:

*Whether, after consideration of the Policy Letter dated 17th December 2015, of the Commerce &
Employment Department, they are of the opinion not to approve the payment of financial
mitigation to milk distributors.*

The Senior Deputy Greffier: Article IV, Commerce & Employment Department – Financial
Measures to mitigate the likely adverse consequences upon existing milk distributors of the Dairy
570 being free to sell milk and milk product to any commercial customer.

The Deputy Bailiff: I invite Deputy Stewart, the Minister of the Department, to open debate.

Deputy Stewart: Mr Deputy Bailiff, if I may start off with the headline position of where we
575 are, the majority Commerce & Employment board decision – and, for clarity, that is all but one
member – is to make, as you can see from the Report in front of you, no recommendation for any
ex gratia payment to Guernsey milk retailers and, furthermore, in my personal view, any such *ex*
gratia payment by the States would show little or no regard to taxpayers' hard-earned money
entrusted to us as States' Deputies to spend wisely.

580 If I can walk through how we, perhaps, arrived at this decision. Over the years, the milk retailers
have always accepted that they are on shifting sands. Customers in their rounds have come and
gone and, I think from previous debate, Members would have noticed maps have been waved
around and all the rest of it.

But of course, whatever was so in 1970 changed in 1980 and I think we touched on this in an earlier debate. For example, back in the 1980's, we all remember going to Bessant's supermarket. There was no Waitrose; there was no big group of large Co-op stores. We had the Island-wides, but of course, over the years, through no fault of the Government, these have come and gone. Some people got a bonus, some people have lost it.

For example, if I take my local milk round person, nearly all doorstep deliveries and then St David's were sold to the group that run Creaseys and suddenly, 'Oh, there's a bit of luck. I have got a Marks & Spencer on my doorstep,' whereas others may have lost a café or a coffee shop.

So, just to emphasise, it has always been on shifting sands. Over the years some retailers have seen increases while others have lost. However, the point is whether they benefited or lost, whether new people came into their milk round or not, it was nothing to do with Government – *nothing to do with Government*.

Doorstep sales, as we know, have dropped over the years in a very, very steady decline and continue to fall. They are probably, now, around roughly 20% of total milk sales. *Nothing to do with Government*. That is a change in consumer buying habits. *Nothing to do with Government!*

Furthermore, licences have always been the property of the Government. Milk rounds have changed hands on a willing buyer, willing seller basis, just like we would sell any of our own businesses or businesses we have been involved in.

But throughout, the licences always remained the property of the Government. So the value is in the business – its profit and loss account, its balance sheet – not in some sort of intrinsic value in the licence.

The Dairy, right across the years, all this time, has never under the Law been prevented from issuing additional licences. There has never been a cap on the amount of retailers that could or could not be. Nothing has changed.

The advice on *ex gratia* payment to the milk retailers from the Law Officers has been robust and consistent. In their view, there is no case in Law to make a payment to the milk retailers and this has been the consistent view of my board.

Furthermore, for the future, we are not shutting down milk retailers. Their businesses will continue. I, for one, certainly will not stop getting my milk delivered to my doorstep and shops, cafes, retail outlets may or may not change their distributor and their arrangements, so any change in the turnover of any of these businesses is unknown. Some – and I suspect there are some – may even do better, for all we know!

Since January 2015, milk retailers have been able to charge what they like for a litre of milk. I am sure many of them are being sensible, like my man who delivers my newspaper, and make a delivery charge or adjust the price per litre to compensate them for the very hard job they do. They are out there in all weathers, delivering milk. I expect to pay for my newspaper to be delivered, all weathers, and I expect to pay for that service to have my milk delivered.

If some of them choose not to make a charge and try and match the shop prices which now are starting to vary, then that is their own business. They make that as a pure business decision. Of course we only have to look where there are supermarket deliveries. I believe, in the UK, for example, Tesco will charge £5 for delivering your shopping; people are prepared to pay for that convenience.

So they still have, and in fact since 2015, have had more control over their business, more control over what they can charge.

Whatever the States decide, sir, whether any *ex gratia* payment, if indeed one is approved, sir, comes from general revenue or the Dairy, it is all one and the same thing – *it is all one and the same thing*. It is taxpayers' money. *Taxpayers' money*. The Dairy has reserves, as you can see within the Billet, for planned capital expenditure and, as you can further see from the Billet, if they cannot put that hard-earned cash towards planned capital expenditure, it is going to have to come from somewhere. We cannot have a Dairy that has plant that, for example, cannot package the milk. We cannot have a Dairy that cannot process the milk.

635 They have been very prudent as a dairy. Two of the members of the Commerce & Employment board sit on the Dairy board and the Dairy has been prudent. They are planning their capital expenditure. This money is not just sitting in a pot waiting for something to happen. They know what they are going to have to spend and if we think, 'Oh well it is a way around it', it is taxpayers' money and if the Dairy needs the money, it will have to come from somewhere else. It will come from T&R because if we need to spend it, we need to spend it.

640 Whichever way you cut it, if this States goes against the proposal in this Billet and decides to make some sort of *ex gratia* payment, whichever way you cut it, it is taxpayers' money. **(Two Members: Hear, hear.)**

645 I think there is also something interesting which I discussed with my colleague, Deputy Harwood. I think we must be careful that we do not give future States of Guernsey a real legacy problem in this debate. We must be very cognisant of that.

650 Deputy Harwood in a previous debate, in my view, was on point. Having far better explained it than I, but if any milk retailers believe in some way that this Government has acted in a manner that has damaged their businesses and they can evidence that damage and, furthermore, quantify that damage, then in my view I concur with Deputy Harwood in his previous speech in the previous debate, the proper way is to go through the courts. That is why we have the court system.

655 I will make this a very short speech and look forward to replying to this debate. I think the Billet is clear. The legal advice has been clear. I think I have been quite clear in this opening speech and, by golly, have I had a very clear message from taxpayers and my parishioners: do not throw our hard-earned cash around like confetti.

This is a serious debate. The serious issue is this is taxpayers' money and should we, as a States, as a legislature, start to then get involved in what really should be properly going through – if people have been damaged – the proper process and our courts?

660 Thank you, sir. I hope Members will support the proposal in the Billet.

The Deputy Bailiff: Members of the States, there are potentially two amendments that have been circulated.

665 Because they are so similar, what I am minded to do is to have both of them proposed, subject to the procedural motion in respect of one of them and have a debate on the issue of the amendments and then take the two amendments in voting order, if there are two in play.

Deputy Laurie Queripel, you have to move a motion under Article 7(1) of the Reform Guernsey Law 1948 to be allowed to move this amendment.

670 **Deputy Laurie Queripel:** I do so. I move that amendment.
Thank you, sir.

The Deputy Bailiff: That is seconded by you, Deputy Lester Queripel?

675 **Deputy Lester Queripel:** Yes, sir.

The States are asked:

To suspend Rule 13(2) and any other provision of the Rules of Procedure to the extent necessary to permit the amendment set out below to be debated and take effect.

The Deputy Bailiff: Thank you.

Well, Members of the States, because of the timing issue in relation to the amendment that is proposed by the two Deputies Queripel, there has to be this motion under Article 7(1), so I will put that to you first. If you do not approve it, then this amendment cannot come into play.

680 Those in favour of the motion ... This is to suspend Rule 13(2) and any other provision of the Rules of Procedure to the extent necessary to permit the amendment set out below to be debated and take effect.

Those in favour; those against.

Some Members voted Pour, others voted Contre.

685 **The Deputy Bailiff:** I think we might have to go to a recorded vote on that.
Deputy Greffier.

There was a recorded vote.

The Deputy Bailiff: We will get the formal result of that in due course, but that motion has been carried as far as I can see.

Therefore, I invite Deputy Laurie Queripel to move the amendment.

690 **Deputy Laurie Queripel:** Thank you, sir.
Could I ask the Greffier, sir, to read the amendment, if possible?

The Deputy Greffier read the amendment.

Amendment:

To delete 'not to approve the payment of financial mitigation to milk distributors' and substitute: '1. To agree the payment of ex-gratia payments of financial mitigation to existing milk distributors as set out in the succeeding Propositions.

2. To agree that the payments to existing milk distributors shall be determined on the basis of sub-paragraph (h) of paragraph 4.3 of that Policy Letter, namely: "The distribution mechanism proposed is based on total milk sales and the proportion of the total milk sales revenue that is made by each distributor. This approach weights the allocations, taking into account different business structures - i.e. the proportion of milk sales conducted via doorstep or commercial and wholesale customers - and the different revenues arising from each type of sale."

3. To agree that no existing milk distributors shall receive payments exceeding £60,000.

4. To note that, as is stated on the KPMG report entitled 'Financial mitigation for milk distributors' attached as Appendix 1 to that Policy Letter, the maximum difference between the current and future market valuation of existing milk distribution businesses is £1.1 million; and to agree that the aggregate sum paid to all existing milk distributors shall be as close as is reasonably possible to, but in any event shall not exceed, £1.1 million.

5. To agree that the payments to be made to existing milk distributors shall be drawn from the existing cash balances of the States' Dairy.

6. To note paragraphs 5.6 and 5.7 of that Policy Letter, namely: "Should a financial settlement payment be approved, the Department considers that it is essential that any payments paid to milk distributors are explicitly given on the basis that they are in full and final settlement of all claims in this matter. The Department is advised that distributors wishing to take a settlement should be required to sign an agreement by which they clearly waive their right to seek further damages through civil action."

7. To direct the Treasury and Resources Department to administer the payments to existing milk distributors as set out in the preceding Propositions; and further to direct that payments should be made by the 30th June 2016.'

The Deputy Bailiff: Thank you very much.
Deputy Laurie Queripel.

695 **Deputy Laurie Queripel:** Thank you, sir. I thank the Greffier for reading the amendment.

I am going to start by saying that I am convinced – and I hope this is a view shared by the majority of my colleagues – that mitigation measures are required and justified. So I am going to base my case for the amendment on five points in particular.

700 The first one, I have already made this point to my colleagues earlier this week and I think it was last week, actually, that I made this point. If we move the quantum to the figure quoted in the KPMG report, £1.1 million, I believe by doing that we increase the likelihood of most, if not all, milk retailers signing up to a settlement and thereby reduce the risk of some pursuing the matter through legal action.

705 Now, sir, I know that Commerce & Employment have received legal advice, saying there is no substantive case for financial mitigation, but as we know legal advice to the States can be challenged and challenged successfully. It is by no means a guarantee and it does not come with a guarantee.

710 My second point covers the new system versus the current system of distribution, sir. Just as an aside, I have noted that throughout Commerce & Employment's Report and throughout the KPMG report, the folk that deliver our milk are now referred to as distributors. They are milk retailers, sir, and they have been licensed as such for many, many years and I think that is a less than subtle attempt to expunge that title and all that pertains to that description.

715 It is interesting, in the KPMG report, on page six, which is page 1819 of the Billet – I am just going to turn to it, sir – a page headed Executive Summary, Overview. In the grey sidebar on the left hand side, at the very top, it says in part:

'Historically, milk distributors have operated in a restricted market.'

Now, sir, a number of things could be said about that and I will touch on those in a moment. But the initial questions might be, restricted by who and why? Answer, sir, restricted by the Dairy and the responsible States' committee at the time, in other words, the States. Prior to that –

720 **Deputy Stewart:** Point of correction.

The Deputy Bailiff: Point of correction, Deputy Stewart.

725 **Deputy Stewart:** Point of correction, sir. I made it quite clear in my speech, there has never been a cap on the amount of licences the Dairy can issue, and therefore there has been no restriction. The milk retailers themselves have worked together to sort out where their rounds are.

Deputy Laurie Queripel: Unbelievable! Extraordinary!

730 **Deputy Lowe:** Sir, I would like a point of correction.

The Deputy Bailiff: Deputy Lowe, point of correction.

735 **Deputy Lowe:** What Deputy Stewart has just said – that is incorrect. That is *absolutely, totally incorrect!* The Dairy would not issue a licence to anybody to go into an area that had already been zoned. (**A Member:** Exactly.) They distributed the amount of licences for the zoned areas and they would *not* allow another milk retailer to go into that area.

So, yes, the Dairy *are* responsible.

740 **Deputy Trott:** Sir, on a point of order –

The Deputy Bailiff: Deputy Trott, point of order.

Deputy Trott: Thank you, sir.

745 On a point of order, don't you think it would be sensible for one of the Law Officers of the Crown to be present for the duration of this debate? I certainly do.

Several Members: Yes.

750 **The Deputy Bailiff:** I am not sure that it is a breach of the Rules for a Law Officer not to be here, Deputy Trott, so I am not sure that it is a valid point of order. But, the Law Officers, if they are doing what I used to do, will be listening and, therefore, will know that that point has been made, Deputy Trott.

755 **Deputy Trott:** If I may make a valid point of order, sir? Can I give notice to the Law Officers that, at some stage during this debate, I will need to seek their legal advice and, on that basis, it would be sensible if one of them was here.

The Deputy Bailiff: The point is taken, Deputy Trott.
760 Deputy Laurie Queripel to continue.

Deputy Laurie Queripel: Thank you, sir.

I think Deputy Stewart's comment, sir, shows that the Department are in a very awkward and unusual position, in the sense of they seem to be digging their heels in, but at the same time have
765 their heads in the sand. That is a very strange position to be in, but it is typical of the position they have taken from the very start.

It was a system that restricted, as borne out by the KPMG report, by the Dairy and responsible States' committee at the time, so therefore by the States. Prior to that, it was a bit of a free for all; a free market, an open system of distribution. I believe the thinking was that that system was not
770 an efficient model for the distribution of milk and milk products.

So the current system was introduced and the fingerprints of the States and the Dairy are all over its design.

I am not intending to repeat the exercise but, on at least two occasions, I have stood here and I have exhibited document after document and Deputy Stewart referred to this, coloured maps
775 signifying the rounds, licences with terms and conditions attached, lists showing streets and depots which were in the different zones, comments from Deputies past and present at Scrutiny hearings endorsing and confirming the arrangements, States' letters endorsing and confirming the arrangements.

I have a small sample of those documents here. I will be quite happy to pass them around if
780 Members want to look at them again. It includes licences, maps, lists etc. all showing that this system was endorsed and overseen and regulated by the States and by the Dairy and by the responsible committees at the time.

All confirming, all proving, that a closed market system, a restricted system, was brought into being by the States and regulated by the States, thus creating specific zones and creating a value
785 for those zones; an asset that required significant capital investment – all with the knowledge and approval of the States and the Dairy, who oversaw the sale of those rounds. They knew those rounds had value. They knew they were being asked, they knew they were being invested in and they endorsed that practice, sir.

That is an inconvenient truth to those who do not want to accept responsibility, who simply want to walk away from this system, wash their hands of it and start again with a new/old system – a back to the future system. It is ironic really that a return is sought to a system that was classed
790 at one time as not being in the best interest of the Dairy and not being efficient.

It could perhaps be said, and it has been said, that these licences constitute a binding contract. These are unique licences, sir, in that they do not state or contain an expiry date. That is a point,
795 sir, that should not be under-estimated or under-valued.

Deputy Trott: Sir, on a point of order.

The Deputy Bailiff: Deputy Trott, point of order.

Deputy Trott: Thank you, sir.

Clearly, my good friend Deputy Laurie Queripel is misleading this Assembly. The Law Officers' advice is quite clear. There is no case in Law to make a payment to the milk retailers. Therefore, as a consequence, everything that Deputy Laurie Queripel is saying must be incorrect.

Deputy Laurie Queripel: I disagree, sir, and that was not a point of order in my opinion.

A Member: Hear, hear.

The Deputy Bailiff: Deputy Queripel, the debate is about whether or not to provide compensation; it is not to revisit the decisions that have already been taken. It is just that simple issue.

Deputy Laurie Queripel: I agree, sir, but I think I have to make the case for that. I have to justify that case and I can do so, in my opinion.

Deputy Trott: On a point of order, sir.

The Deputy Bailiff: Point of order, Deputy Trott. Which Rule is being breached?

Deputy Trott: There can be no more relevant point of order than legal opinion this Assembly has been given.

The Deputy Bailiff: Deputy Queripel.

Deputy Laurie Queripel: Thank you, sir.

I will carry on.

I give way to Deputy Fallaize.

Deputy Fallaize: I am grateful. Before Deputy Queripel continues – and I thank him for giving way – would he agree with me that this Assembly, indeed successive Assemblies, have already made Resolutions which clearly expressed the view of the States that the States were heavily involved (**A Member:** Hear, hear.) in the distribution network and that some financial mitigation is necessary and that the Commerce & Employment Department was clearly sent away to come back with proposals for financial mitigation and that therefore this debate ought to be about quantum rather than the principle?

Several Members: Hear, hear.

Deputy Laurie Queripel: Thank you, sir.

I do agree and there seems to be some selective memories at play today, in this Assembly, particularly in the Commerce & Employment Department.

The third point I have entitled 'the journey'. This is to emphasise why the source of financial mitigation should be the Dairy reserve.

We have to ask who wanted to take this journey from the current system to the new/old system. It was not the taxpayer. The taxpayer did not give the Dairy or C&E a mandate to pursue this course of action. It certainly was not the milk retailers. Initially, it was not the farmers. The farmers had concerns about these proposed changes to the industry, but they were given

guarantees, a good measure of certainty – and rightly so, because without the farmers there is no product – and guarantees that meant they eventually clambered onto the bus.

There is certainty for the farmers. There is certainty for the Dairy. They are all safely strapped into their seats. But the milk retailers are told, 'Look, we are not really going invite you onto the bus, but if you want to latch onto the bumper at the back of the bus and take your chances, then feel free to do so.'

This excursion, sir, was booked by C&E and the Dairy. They are the ones who wanted to take this journey. It might be taking them to their chosen and preferred destination, but it is very likely to lead to the end of many milk retailers' businesses. What Commerce & Employment and what the Dairy and what we need to understand is there is no such thing as a free ride. There is a fare to pay for this journey and it needs to come from the pockets of those who chose to embark on it.

Sir, at one of the presentations given by the milk retailers ... this presentation took place in 2015, and the milk retailers have been forced to give several presentations over the years when they would have rather just got on with their lives and their businesses, but States' Members were given a paper. In part, I will read from that paper:

'Opening up the Dairy to any commercial customer and the removal of any notion of responsibility by the department over zoning will have a disastrous effect on the majority of milk retailers who operate their businesses with a mix of doorstep, commercial and retail outlet deliveries.'

We were given samples of three different rounds. Round one included 150 doorstep customers, one newsagent's shop, one nursing home, one small coffee shop, two convenience stores. Round two: 250 doorstep customers, two cafes, one residential home. Round three: 70 doorstep customers, primarily offices and larger deliveries, one small convenience store, 12 commercial customers and one medium-size supermarket.

The common denominator was that none of these sample rounds remain viable without commercial and shop deliveries.

I will not read all the papers, sir and I will not go into all the figures, but what that is telling us is that without those deliveries, there is a drastic and unsustainable reduction in income on those rounds and they will become unviable.

The paper goes on to say, sir:

'The local food service wholesalers already have trade accounts with the Dairy, so they can simply pick up milk along with other goods for the catering trade in direct competition, with a small, independent milk retailer, who needs this cross-subsidy to make serving the doorstep customers viable.'

C&E state they do not want doorstep services to stop, but without the larger drops, it is simply not worth the time, effort and expense involved. Household doorstep deliveries will very likely cease.

So the idea of a delivery charge and all these other things that perhaps the milk retailers could take on board, they will not make up for that unsustainable loss. It is not as simple as Deputy Stewart would like to make it out.

Those comments are actually supported by some of the comments in the KPMG report, commissioned by Commerce & Employment.

If we look at page 1820 of that report, it says:

'This is likely to drive down the price that retailers and caterers currently pay for milk. While those distributors serving door to door deliveries will not be prevent from continuing to serve their community, they will no longer have their perceived protection of their geographical zones under the current system.'

Then it goes on to say:

'It is possible that some geographical pockets within Guernsey may no longer be provided by door to door service.'

It says again:

'Based on this analysis, in summary, it is likely that the total industry net milk revenue currently enjoyed by the 23 milk distributors will fall once option C is adopted. This would reduce the expected business valuation associated with milk distribution in Guernsey.'

So all these points are backed up and confirmed by the KPMG report.

890 My fourth point, I have entitled 'the Jersey experience'. The latest news from Jersey – they changed their model of dairy industry some time ago – is now there are only two distributors left in Jersey. One, only – and the word 'exclusive' is not lost on me, it is a bit ironic – carries out commercial deliveries to hotels, supermarkets, shops etc. the other does mostly commercial deliveries but also a few selected doorsteps in St Helier.

895 In other words, it is only viable to do a very convenient network of doorstep deliveries, thus confirming to us the information given to us by our milk retailers and contained in the KPMG report. In other words, Mrs Le Parmontier, who lives down a little lane in St Brelade, sir, is not going to get her doorstep delivery, even though she wants it.

I do not doubt for a second that there are many people in Jersey who would quite like a
900 doorstep delivery but they are denied it.

Deputy Stewart: Sir, point of correction.

Deputy Bailiff: Point of correction, Deputy Stewart.

905

Deputy Stewart: I met with the chairman during our whole dairy review of the Jersey Dairy. They have had very little negative feedback on doorstep deliveries and, in fact, their doorstep deliveries were falling faster than ours at the time.

I do not think you can say that everyone wants doorstep delivery. Clearly that demand is
910 dropping off.

Deputy Laurie Queripel: I did not say everybody wants doorstep deliveries. I am saying there will clearly be people in Jersey who will not get them and that will be the case in Guernsey as well when we move to this model. There is no doubt about that. It is confirmed in the information and
915 the detail given in the report by KPMG.

The system we are moving to here, may well, as proffered by Commerce & Employment and the Dairy, produce benefits and choice for the consumer, but almost without doubt, many consumers who want doorstep deliveries will not get that service.

My fifth point, I have named 'compensation, what compensation?' All along we have been
920 talking about mitigation measures. There has been very little mention of the 10 years-plus of stress, anxiety, distress and uncertainty suffered by the milk retailers since this review of the industry was announced.

They have been operating under duress, under a dark cloud for all of that time and it certainly has not been business as usual for them and that has taken its toll. This was plainly evident to
925 States' Members who attended a presentation at Les Cotils last year. There were some very upset milk retailers. I do not mean angry upset; I mean emotionally upset. It was not stage-managed; it was absolutely genuine. This whole sorry, protracted episode has clearly caused mental and emotional anguish.

Finally, the milk retailers believe that the figure should be between £1.7 million and
930 £3.2 million, such is the value of their rounds to them. That kind of figure is not going to be acceptable to the vast majority of States' Members. I think we should at least adhere to the figure quoted in the KPMG report as commissioned by Commerce & Employment and that is why I have used the figure of £1.1 million.

I urge my colleagues, I urge States' Members, support this amendment. It is only right and fair
935 to reach an agreement, a settlement of this quantum, sir, and I do thank Deputy Lester Queripel for seconding the amendment.

Thank you, sir.

A Member: Hear, hear.

940 **The Deputy Bailiff:** Deputy Lester Queripel, do you formally second the amendment?

Deputy Lester Queripel: I do, sir. May I speak now, sir?

Suspend the Rules pursuant to 7(1) of the Reform Law:

Carried – Pour 25, Contre 18, Ne vote pas 0, Absent 4

POUR

Deputy Brehaut
Deputy Langlois
Deputy Robert Jones
Deputy Le Clerc
Deputy Gollop
Deputy Sherbourne
Deputy Conder
Deputy Lester Queripel
Deputy Le Pelley
Deputy Ogier
Deputy Fallaize
Deputy Laurie Queripel
Deputy Lowe
Deputy Le Lièvre
Deputy Collins
Deputy Duquemin
Deputy Green
Deputy Dorey
Deputy Paint
Deputy James
Deputy Wilkie
Deputy Inglis
Deputy O'Hara
Deputy Hadley
Alderney Rep. McKinley

CONTRE

Deputy Harwood
Deputy Kuttelwascher
Deputy Domaille
Deputy Parkinson
Deputy Bebb
Deputy St Pier
Deputy Stewart
Deputy Gillson
Deputy Trott
Deputy Adam
Deputy Perrot
Deputy Brouard
Deputy De Lisle
Deputy Soulsby
Deputy Sillars
Deputy Luxon
Deputy Quin
Alderney Rep. Jean

NE VOTE PAS

None

ABSENT

Deputy David Jones
Deputy Spruce
Deputy Le Tocq
Deputy Burford

945 **The Deputy Bailiff:** Ideally not, because I just want to announce the result of the vote on the Proposition to suspend the Rules pursuant to 7(1) of the Reform Law. There voted in favour 25, and against 18, which is why it was carried and the amendment has been placed.

If you want to speak now, Deputy Lester Queripel, you can.

950 **Deputy Langlois:** Sir, sorry, are we taking both the amendments together, in which case, I am sorry to challenge your immediate judgement, but whether Deputy Le Lièvre should speak?

The Deputy Bailiff: No, Deputy Lester Queripel, as the seconder, is entitled to speak on this amendment, (**Deputy Langlois:** Okay.) so he can speak on this amendment. Then we will invite

955 Deputy Le Lièvre to place his amendment.

Deputy Lester Queripel.

Deputy Langlois: Fine, thank you.

960 **The Deputy Bailiff:** Deputy Lester Queripel.

Deputy Lester Queripel: Thank you, sir.

It was Winston Churchill who once said:

'If you open up a quarrel between the present and the past then you are in danger of losing sight of the future.'

That certainly seems to have happened in this case. He also said:

'Never in the field of human conflict has so much been owed by so many to so few.'

965 *(Interjections)* I will wait for the merriment and mirth and heckling to die down, sir.

I appreciate some of my colleagues might consider it to be rather over the top for me to start a speech with two quotes from Winston Churchill, but we are talking about years and years of conflict here and what we, as politicians, must not do – as my brother Deputy Laurie Queripel has already mentioned – is underestimate the extreme levels of stress and trauma our milk
970 distributors have been forced to endure during those years of conflict.

Focussing on the present, all of our milk distributors are still being forced to endure tremendous stress and trauma, due to the fact that they do not know if they will be able to continue with their rounds.

As I have said in this Chamber several times, sir, the very reason I wanted to be a Deputy in the
975 first place was to enable and empower my fellow Islanders, not discourage, demoralise or disadvantage any of them.

Over the last four years in this Chamber, sir, some of my colleagues have said in their speeches we should not be overly concerned about the few and that our primary focus should be on the many.

980 I do not agree with that approach at all. In my opinion, everyone has a right to be included in society and valued for who they are and the contribution they make to society. Our milk distributors contribute a terrific amount to our society, because not only do they provide a much-needed service, but they help to maintain a community spirit here in the Island by sometimes stopping to have a chat to their customers. That means a lot to a lonely person who does not
985 actually talk to many people during the day.

So, in effect, they also provide something of a befriender service, which, as we all know, apart from Mencap and the autism service, we do not have a befriending service here in the Island. I look forward to a meeting with Deputy Luxon on that issue in the future.

But moving back to the present, sir, and here is where I link in with the quote from Winston
990 Churchill. I point out to my colleagues that we are not only talking about our 20-plus milk distributors being severely disadvantaged if they do not receive financial compensation, but we are also talking about thousands of our fellow Islanders who rely on doorstep deliveries of milk, cheese, butter, cream etc. Amongst those thousands of Islanders will be people with mobility problems, who really need those deliveries to continue and they will all be disadvantaged if their
995 milk distributor goes out of business. Now, we must not forget our milk distributors' family members, because they share that stress and trauma.

So I would like my colleagues to bear that crucial point in mind when they come to vote. The point being, if we carry on disadvantaging the few, then the few will eventually become the many.

I ask my colleagues to bear in mind the number one objective of the States' Strategic Plan,
1000 which is to improve the quality of life of Islanders. The vast majority of this Assembly signed up to that aspiration, sir, and here we have an opportunity to go some way towards obtaining it.

Another point I want to emphasise to colleagues is that the money needed for the pay-out is already sitting there in the account of the States' Dairy. There will be no need to make a request for it to be paid out of any other States' account, such as the budget reserve, for example.

1005 We spent several days debating how we should educate our children in preparation for employment and adulthood. Bearing that in mind and bearing in mind the very reason why we did that and bearing in mind our number one States' objective, and bearing in mind that if we continue to disadvantage the few then the few will eventually become the many, what kind of message will it send out to our children if we treat our adults, in this case our milk distributors, in
1010 such an inconsiderate and disrespectful manner by not providing at least some kind of compensation for the States' putting those distributors in such a precarious position in the first place?

So there is a real moral issue to consider here and I know I am not the only Member of this Assembly who is only too aware of that moral issue.

1015 One final point. This Article is headed 'Financial measures to mitigate the likely adverse consequences upon existing milk distributors of the dairy being free to sell milk and milk product to any commercial customer'. Twenty-seven words where surely six or seven would have been more than adequate?

1020 Putting that aside, C&E have not done what the States asked them to do. The States asked the Department to report back by March 2016, setting out financial measures to mitigate the likely adverse consequences upon existing milk distributors of moving to option C.

We are told that in paragraph 2.2. So the Department have not done what the States asked them to do and shame on them for not doing that. Shame on them! Because that displays –

1025 **Deputy Stewart:** Point of correction.

The Deputy Bailiff: Point of correction, Deputy Stewart.

1030 **Deputy Stewart:** We have done exactly (**Deputy Lester Queripel:** You haven't!) what the States have asked us to do. We have brought a report and asked to determine a level of compensation. In the view of the Commerce & Employment board, the level of compensation or *ex gratia* payment is zero.

We have done what this Assembly has asked!

1035 **The Deputy Bailiff:** Deputy Lester Queripel.

Deputy Fallaize: Sir, on a point of correction.

The Deputy Bailiff: Point of correction, Deputy Fallaize.

1040 **Deputy Fallaize:** Thank you, sir.

The policy letter says that the Department has looked at various options to bring about a solution and the members remain unconvinced that there is a substantive case for financial mitigation.

1045 It does not say that they accept the States' Resolution that there is a case for financial mitigation and they propose that the level is zero.

Deputy Stewart has just said the Department has brought a Report to fulfil the direction of the States to set out financial mitigation, but the Report says that they do not accept that there is a substantive case for financial mitigation.

1050 So I do think that Deputy Stewart is misleading the States and he ought not to do that.

A Member: Hear, hear.

The Deputy Bailiff: Deputy Lester Queripel to continue.

1055 **Deputy Lester Queripel:** Thank you, sir.

I wonder if Deputy Stewart might want to withdraw that statement, sir?

1060 **The Deputy Bailiff:** I think the Minister has made his position clear on behalf of his board. Let's just continue.

Deputy Lester Queripel: Sir, going back to my speech, C&E have not done what the States asked them to do and shame on them for not doing that, because that displays a complete disregard for the States and for the distributors themselves.

1065 Not only is that irresponsible, but in my opinion that is a prime example of dereliction of duty.
Whilst being guilty of that dereliction of duty, the Department simply left the responsibility of coming up with financial measures to mitigate to Members of the Assembly, which is why my brother, Deputy Laurie Queripel, and I have laid this amendment.

1070 In closing, shame on the Department for not doing what the States asked them to do, especially bearing in mind it was a majority of the Members of this Assembly who put –

Deputy Brouard: Point of correction, sir.

The Deputy Bailiff: Point of correction, Deputy Brouard.

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Deputy Brouard: Thank you, sir.

I would like Deputy Queripel to withdraw those remarks. We have got a Report from Commerce & Employment in front of us which details all matters about mitigation to the milk retailers.

1080 Whether or not you agree with our Report or not, the Report is that we have it here. So I would like Deputy Queripel to think very carefully of what he says next and, please, I would like him to withdraw those remarks that we have not done what we have been asked to do.

A Member: Hear, hear.

1085

The Deputy Bailiff: Deputy Lester Queripel, you are invited to withdraw the remarks or just continue.

Deputy Lester Queripel: Sir, I have no intention of withdrawing those remarks.

1090 The Report might go into detail but it does not do what the States asked the Department to do.

Paragraph 2.2 clearly says:

'The States asks the Department to report back by March 2016, setting out financial measures to mitigate the likely adverse consequences upon existing milk distributors of moving to option C.'

It cannot be clearer than that.

1095 It sounds to me that the department are doing what my brother Deputy Laurie Queripel said is digging their heels in and burying their head in the sand. Appalling! Absolutely appalling!

In closing, shame on the Department for not doing what the States asked them to do and, bearing in mind that it was the majority of this Assembly who put the distributors in such a precarious position in the first place and bearing in mind that surely we have a duty and a moral obligation to provide compensation, I would remind colleagues that the money is there.

1100 Thank you, sir.

The Deputy Bailiff: Deputy Le Lièvre, do you wish to move the variant on the amendment?

Deputy Le Lièvre: I do, sir.

1105

The Deputy Bailiff: I invite you to do so then, please.

Amendment:

To delete 'not to approve the payment of financial mitigation to milk distributors' and substitute:

‘

1. To agree the payment of ex-gratia payments of financial mitigation to existing milk distributors as set out in the succeeding Propositions.

2. To agree that the payments to existing milk distributors shall be determined on the basis of sub-paragraph (h) of paragraph 4.3 of that Policy Letter, namely: - "The distribution mechanism proposed is based on total milk sales and the proportion of the total milk sales revenue that is made by each distributor. This approach weights the allocations, taking into account different business structures - i.e. the proportion of milk sales conducted via doorstep or commercial and wholesale customers - and the different revenues arising from each type of sale."

3. To agree that no existing milk distributors shall receive payments exceeding £40,000.

4. To note that, as is stated on the KPMG report entitled "Financial mitigation for milk distributors" attached as Appendix 1 to that Policy Letter, the midway point of the difference between the current and future market valuation of existing milk distribution businesses is £750,000; and to agree that the aggregate sum paid to all existing milk distributors shall be as close as is reasonable possible to, but in any event shall not exceed, £750,000.

5. To agree that the payments to be made to existing milk distributors shall be drawn from the existing cash balances of the States' Dairy.

6. To note paragraphs 5.6 and 5.7 of that Policy Letter, namely: "Should a financial settlement payment be approved, the department considers that it is essential that any payments paid to milk distributors are explicitly given on the basis that they are in full and final settlement of all claims in this matter. The Department is advised that distributors wishing to take a settlement should be required to sign an agreement by which they clearly waive their right to seek further damages through civil action."

7. To direct the Treasury & Resources Department to administer the payments to existing milk distributors as set out in the preceding Propositions; and further to direct that every effort must be made to make such payments by no later than 30th June 2016.'

Deputy Le Lièvre: Is it not necessary to read it again? We will just take it that the amounts are different.

1110 Mr Deputy Bailiff, Members of the Assembly, this amendment is comprised of elements derived from either the KPMG report, elements of Commerce & Employment's policy letter or the Policy Council's letter of comment.

1115 There is nothing in this amendment that is new or original or should cause Members surprise or disquiet. As I have said, all the elements in the amendment are contained in one form or another in the Commerce & Employment policy letter, including the mechanism for the calculation of mitigation levels, an overall limit on the aggregate amount of mitigation payable, a limit on the amount of mitigation payable to an individual milk distributor, the requirement to accept the mitigation is in full and final settlement of all claims and a recommendation that the mitigation is drawn from the Dairy's capital reserves.

1120 All of these components of the amendment may be found in the Billet before us today.

Now, let's cut to the chase. This amendment is based purely on the grounds of morality, nothing more, nothing less. After all, we have been told now several times there is no legal requirement to pay any mitigation whatsoever, so I am not going to bother to argue that case at all.

1125 Why waste your time talking about legalistic matters when the moral case trumps it like the Benny in a game of euchre! (**A Member:** Hear, hear.) Legal matters might talk about contracts and suchlike, but I am talking about a partnership that has endured for probably seven or eight decades, (**A Member:** Hear, hear.) a partnership and very close working relationship between the States, the Dairy and the milk producers themselves. Not all that happy in recent years, maybe, but a longstanding relationship nevertheless.

1130 Legal contracts might not exist with milk retailers, but the long-established three-way partnership and, in particular, the relationship between the state and the milk distributors has, for decades, been as rich and as fruitful as any hard-nosed contract hammered out across a boardroom table.

The States has continually and steadfastly involved itself in every aspect of the dairy industry, from limiting the production of raw milk to the quality of that milk. From setting the price of milk paid to producers to setting the retail price paid by the consumer.

From how and where milk can be stored and at what temperature, to who can distribute that milk and the areas over which milk can be distributed. It has aided the purchase of milk rounds to an interest-free extended credit system and improved the transfer of rounds.

But lastly, and most importantly, the States have subsidised milk producers to the tune of tens of millions of pounds when it sought to limit over-production by the farming community that threatened the financial viability of the Dairy and therefore the industry itself.

By way of an aside, do not be persuaded that the Farm Contract Subsidy Scheme is exclusively designed to recompense farmers for behaving in a green and environmental manner. That might have been the vehicle to which this scheme was conveniently attached, but its over-riding purpose was a subsidy from the taxpayer to the industry to stop producing two million litres of milk a year, with a cash value of £1 million.

Not a bad deal, when you think that is a pound for every litre from a government paying for 50p's worth of milk! As the expression goes, 'nice work if you can get it'.

Quite clearly, the States can interfere by creating huge cash incentives to producers to behave in a responsible manner when the industry threatens to over-produce itself out of business, by taking advantage of a lack of control. However, it is less willing to act in a compassionate manner when it relaxes control that, in effect, will put some of its fellow partners out of business, in order to make the overall industry more efficient and cost competitive. (**A Member:** Hear, hear.) This moral inconsistency is at the centre of this amendment.

If the States can recompense producers to the tune of £15 million over 15 years, to ensure they do not damage the Dairy's finances, or indeed endanger the industry itself, why does the committee of Commerce & Employment consider it unreasonable to act similarly when the States itself acts in a manner that will endanger the livelihoods of many of its longstanding partners? I can think of no reasonable answer.

It is a relationship or unwritten partnership that cannot be morally swept away by the stroke of a pen, in this case option C, which will in all likelihood result in many milk rounds being gobbled up by some of the larger businesses at no expense.

We cannot pretend there is no evidence of this. The value of such rounds is already zero. They only survive because of the tenacity of the men and women who run them. (**Two Members:** Hear, hear.) Nobody, but nobody, would invest in one of these rounds. Their past investment might have had some resale value five or six years ago, but today it is gone.

When these operatives decide to pack it in, they will not be replaced unless they pass on what little is left of their round as a gift. Any hope milk retailers might have come to regarding retrieving some part of their original capital investment has been swept away by option C.

I am sure today we will hear arguments that there is no contract, that the milk retailers are all self-employed chaps, that as a business they all knew the risk, that it is something that happens every day in the hard world of private business, that life is hard, get used to it. Well, all those things might be true, but there is no escaping the fact that the Commerce & Employment Department, or more accurately, the Agriculture and Milk Marketing Board, did not take this hard line when it dealt with the other partner in this three-sided partnership.

As a Government, I do not think that we can simply pretend that this inter-relationship is as of nothing. No legal requirement to pay mitigation, so we are told, so let's walk away and pay no regard to 80 years of mutual beneficial partnership.

I think, and I am sure that I am not alone in my thoughts, that this sort of behaviour casts a shadow over the integrity of the States. (**Several Members:** Hear, hear.) (**A Member:** Absolutely.)

Now, I do not profess to know what the total amount of mitigation should be; none of us does. Commerce & Employment say nothing should be paid. An amendment which has been laid says £1.1 million, or thereabouts, my amendment suggests £750,000, milk distributors suggest a sum somewhat larger than that which I propose.

The only option that is wrong, in my opinion, is that of C&E. All the rest are a matter of degree. Whatever I say is probably not going to sway you one way or the other, but the amount I propose is the middle of the road mitigation amount relating to the figures in the KPMG report – probably too high for some and too low for others.

1190 I would like to take up the point that Deputy Stewart raised in his opening speech. He said that the money in the Dairy's coffers is from the taxpayer. (**A Member:** No.) No it is not, it is from the consumer. (**A Member:** Yes.) It is from the consumer.

Deputy Stewart: Point of correction, sir.

1195

The Deputy Bailiff: Point of correction, Deputy Stewart.

Deputy Stewart: It may have been from the consumer, but once it is in the Dairy account, it is then taxpayers' money and when there is a surplus, that goes back to T&R. (*Interjections and laughter*)

1200

The Deputy Bailiff: Deputy Le Lièvre.

Deputy Le Lièvre: When I got into the service station at Vale Garage, I do not say there is £1 for my milk and there is 15 pence, or whatever, for the Dairy from the taxpayer. The fact of the matter is that I pay for my milk, the profits made by the Dairy go into their account, go into their coffers, and it might well allegedly have to go back to the centre but, nevertheless, it is paid by the consumer. (**A Member:** Hear, hear.)

1205

The price we actually pay on our milk is plus the £2 million that goes out to the milk producers, so please do not get into arguments about that, because we could be here all day. The fact of the matter is the money in a pot at the Dairy is from the consumer.

1210

Deputy Stewart said that the Dairy has got a capital programme, it needs to replace its kit and so it does. But there are only three major pieces of kit in the Dairy. There is lots of kit; there are three major pieces. There is the separator, the pasteuriser and the milk packer. They might have one milk packer or two, I do not know. But they bought another one, a Shikoko in 2011 for £350,000, so I do not know how many milk packers the Dairy needs, but with £2.9 million in the pot, they can certainly afford to reduce that sum by £750,000 and still retain a very substantial sum for the replacement of those pieces of kit that are essential for the Dairy to manage properly. I have been there, done that, know all about it.

1215

But I would leave it to this States to decide what the level of compensation should be. I do not know what it is. My figure of £750,000 is most accurately defined as a stab at a level of mitigation. I would leave the detailed determination to the accountants as proposed in Proposition 2 of the amendment.

1220

I do not know what the amount is; I leave it to this Assembly to decide.

1225

Thank you, sir.

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

Deputy Langlois: Yes, I do, sir, and I would prefer to speak straight away.

1230

The Deputy Bailiff: You can speak straight away. Thank you.

Deputy Langlois: Thank you, sir.

1235

I would initially, in the right sort of spirit and way, like to dissociate myself from some of the more exaggerated language that has been used on both sides of the argument so far, because I think it will be a terrible shame if this debate simply descends into a form of slanging match as to whether one Department has done their job or not, (**A Member:** Hear, hear.) and whether the

other people putting a different point of view are aware of the legal position and so on and so forth. So can we just let's take a balanced look at this.

1240 I may be seen as being in rather unusual company, among the four people who are proposing these two amendments. The reason very much that I am involved in this is – I will remind Members, because I have declared this in here before; it is not a declaration of interest by any means, but – some 16 years ago, I think it was – I cannot put the exact date – my former company wrote, I think, one of the first reports on this for the Department of whatever it was then and, as it happens, at that time Deputy Le Lièvre was managing the Dairy. He took a couple of gap years from the social welfare agenda. (*Laughter*) It was four gap years actually and we spent many happy hours ... some of them were actually spent trying to work out the ideal production run size for the long-forgotten and long-lamented rhubarb yoghurt, (*Interjections*) as to how many should be made in one particular mix. Sorry, sir, I am straying from the subject. (*Laughter*)

1250 But no, my interest was very much in that and the part of what we did that has survived was the business models, the model one, two and three of the different types of businesses which were in existence then and which have continued, albeit that the figures are very different now from what they were then, as has been pointed out.

1255 So let's just take a simple, two-side balanced view of the debate that we are trying to have because, otherwise, we are in danger of a massive recycling operation here. As Deputy Fallaize has already pointed out, I think the decision in principle was already made; we are simply looking at a point on a scale. Commerce & Employment have said that point has been zero, the other two amendment proposers have said it should be £1.1 million and Deputy Le Lièvre and I are saying there is a middle way.

1260 On the one hand, this is based entirely on an ethical approach by the States, compared with C&E's proposals. That point has been made. There is no doubt in my mind that the investment that was made originally by the retailers was within a quasi-market, a pretend market, heavily influenced by States' employees. I put that in, not as a criticism of the people who did the job at the time. There were many reasons why they were doing it in that particular way. There were political pressures on them to protect the farmers and the green fields and all that other stuff that we all love, but it resulted in certain employees taking the decision to say this is the way the retailers will be organised in future.

That is why it makes it right for the States to use funds that have been accumulated through milk revenues to provide some compensation.

1270 I think, for that reason – and I will not keep on quoting the examples of the exaggerated language that I referred to – Deputy Stewart is unfortunately misguided in using phrases like, 'This is nothing to do with the Government' because it had an awful lot to do with the Government when that was happening. (**A Member:** Hear, hear.)

1275 Sir, on the other hand, we have heard much rhetoric from the retailers in making their claim. As owners of small businesses, they have taken responsibility for and taken on the risks of their own destiny, like anybody running a small business does. I have been there, I have done it and I know that you are constantly waking up thinking, 'Where does the risk lie today?'.

1280 So, for example, we have heard talk of the value of the round being their pension fund. Well, I have had a few things to do with pensions in the recent past and I think that is an unfortunate choice of words, because if the owner of a small business relies totally on the capital value of that business as their pension fund, they are taking enormous risks.

Risk needs to be diversified and it needs to be spread out and, if the sole value of a business which you have to divest yourself of it at a particular point in time, there are what investment people would call timing risks, there are concentration risks and so on and so forth.

1285 So let's not get too carried away with us taking away people's pension funds because, actually, I would put it to them that they should also have made some other provision along the way towards their pensions.

So there is always that level of risk. There are no clear rights and wrongs on this.

The proposed level of compensation has nothing to do with law. I do think it was unfortunate in the last debate that Deputy Harwood referred to, more or less, using the time-honoured phrase of 'see you in court', because what we are talking about here is a form of out-of-court settlement. There is so much uncertainty about the legal position. The certainty is that the Law Officers have said there is no legal obligation on the States to give that compensation. But that does not mean to say that they would not have a case through another route. In this case, I think it is right to settle out of court on ethical grounds, on moral grounds, as has been proposed.

That is why the figures which – as Deputy Le Lièvre has said, sir – are still negotiable in that sense, but in the region we are proposing they are about right. Can we please just, again, keep fairly calm about this, come up with this compromised figure, agree that the semantics about whether it is taxpayers' money or whether it is milk drinkers' money? It is fairly irrelevant, but nevertheless the money is there, it is in the reserves of the Dairy and I think we should definitely move in the direction proposed by *our* amendment, because the Queripel amendment will be too much and too much demand on that fund. (*Interjections and laughter*)

Deputy Lowe: Ladies first! (*Laughter*)

The Deputy Bailiff: Deputy Trott.

A Member: Should we book Saturday now, sir?

Deputy Trott: Thank you, sir.

I shall be brief and, before I make this brief speech, I would like to say that the men and women of the GMRA are, in my experience, jolly decent human beings. This is nothing to do with personalities and everything to do with reasonableness and fairness to all.

The reason I say 'fairness to all' is this: we are the custodians of the public purse; we have a responsibility to all stakeholders to ensure that we make objective, evidence-based decisions under our governance framework.

We know that there is no case in law and, no need, I think, at this stage, to repeat those arguments. But is there actually any case, morally, as well? Let's have a look, first of all, if we may, at the comments of the Policy Council on page 1833. Now, the Policy Council tell us, in their wisdom, that they consider that if *ex gratia* payments are agreed by the States, the logical source for them should be from Dairy funds, provided they say, this is key:

'... provided this does not have adverse effects on its capital investment programme and the price of milk.'

It is inevitable that if this money is taken from that source, it will have an effect on both. I listened very carefully to what my good friend – *very* good friend, in fact – Deputy Le Lièvre said, but it is inevitable that if those funds are severely depleted, possibly even exhausted, then they are going to have to be replenished.

There are two ways that can happen. One is from general revenue, as a consequence depriving other initiatives from funds; or through increasing the price of milk. But, in any event, the provided, the caveat that the Policy Council tells us to beware of cannot be met, so I conclude that they must be advising the States not to support these amendments.

But I think much more significant are the details contained on page 1824. Now, 1824 is the page within the KPMG report that deals with current market valuation. There are some very telling comments here that need to be, I think, understood with clarity.

The first is KPMG say the current market has been valued at a total market level using the GP Multiple method – the Gross Profit Multiple method. Now, I had to use gross profit, sir, because these businesses, as others have already told us – particularly both Deputies Queripel and Deputy Le Lièvre – make very little profit, if any. Once they have taken a subsistence wage, there is little left after they have invested in their vehicles and other essential items to discharge their duties as roundsmen.

1340 We also know, sir, that they cannot sell their rounds. We know they cannot do that and we even know that one has been given away.

Sir, there is no GP Multiple representing the value that the buyer is purchasing and, if Members look under note 2 of the KPMG report on page 1824, this is graphically illustrated. KPMG say:

'The GP Multiple represents the additional value the buyer is purchasing, namely the goodwill, contacts and ability to operate in a restricted area.'

The reality is that there is no GP Multiple. The reality is that these rounds are worthless and KPMG could, quite easily, have produced a report that said they were worth nothing.

1345 But KPMG, I believe, felt that they were under an obligation to come back with something for you and, in fact, when I asked them that direct question when they came in to see us, they answered precisely in the way that I have described.

1350 Commerce & Employment decided that it could not make an objective case for an *ex gratia* payment, by majority, and therefore it decided to leave it to this Assembly. That, I think, was the right thing to do but, in doing so, remember the Policy Council is effectively advising you not to support these amendments and we need to be able to justify to our electorate why, as custodians of the public purse, we considered, when there was no basis in law, that the moral arguments were substantial enough to get the cheque book out in the way in which some want us to do.

I give way, sir.

1355

Deputy Fallaize: On a point of correction.

The Deputy Bailiff: Point of correction.

1360 **Deputy Fallaize:** Far be it from me to defend the Policy Council, but the Policy Council's letter of comment says:

'By majority, the Policy Council is of the view that it may be argued that there is a case for fair and equitable *ex gratia* payments to milk distributors.'

1365 The following paragraph, from which Deputy Trott has quoted, refers to the source of the *ex gratia* payments, not the actual case for the *ex gratia* payments. I do not think that he should misrepresent the majority view of the Policy Council that there is a case for fair and equitable *ex gratia* payments to milk distributors, and I think he did.

The Deputy Bailiff: Deputy Trott to continue.

1370 **Deputy Trott:** I was doing no such thing, sir. In fact, I went to great lengths to explain – and both of these amendments are quite clear – the funds must come from the Dairy. Now, the Policy Council is equally clear that that can only be a justifiable source of funds, provided this does not have adverse effects on the Dairy's capital investment programme or the price of milk.

1375 Now, you do not have to be very bright, sir, to conclude that if you were going to take a dollop of dosh from somewhere that has been assigned for future capital expenditure, you have to replenish it somehow. You either take it from taxpayers' funds that should be allocated somewhere else under a proper prioritisation process, or you hike the price of milk. The Policy Council is advising unequivocally that you should do neither.

1380 Sir, what will be, will be. The States will make its decision and I certainly will not lose any sleep over either. But what I will be able to do is I will be able to stand in this Assembly in the future, should I be lucky enough to be elected, and continue to make the case for sensible and objective financial decisions.

The case is not made for an *ex gratia* payment and that is why, by a majority of 4:1, Commerce & Employment was unable to recommend one.

Thank you, sir.

1385 **The Deputy Bailiff:** Deputy Trott, you stood up earlier and indicated that you would be asking questions of H.M. Procureur. You have not. Are you no longer wishing to, because that was your opportunity to do so, during your speech?

1390 **Deputy Trott:** No, sir. I might wish to, sir, at some stage and that stage has yet to come.

The Deputy Bailiff: Well, you have already spoken now.
Deputy Lowe, to be followed by Deputy David Jones.

Deputy Lowe: Thank you, sir.

1395 'Unique' – I think that is probably the word that I want to use in several places here in my speech, because there are no other businesses that operate in a way that milk retailers operate. They are all under Government say-so. They cannot sell a round without the Government approving. Milk retailers – some – have had extended financial loans from Government. I am not aware of any other businesses being in that position, either.

1400 Unlike Deputy Stewart, I will, as Members know, be fully aware of what happened over the years gone by, so I can declare an interest that we were involved back in the 1980's, when the Dairy stepped in and decided that they would start to take control of the rounds that they had licensed previously. That, to me, is fundamental, sir, because that is what this is all about.

1405 Because Deputy Stewart said at the beginning, 'Nothing to do with Government'. Wrong! I do not know how many times he, and indeed Commerce & Employment, need to be reminded about it, because, unlike, as I said previously, we were involved with it. Possibly the staff at the time at Commerce & Employment, currently the staff at Commerce & Employment, were not the staff that were around when Government interfered and saw the right route to go and the sensible route to go, by making milk retailers unique.

1410 So part of it, as well as the uniqueness, if I buy a business and I want to buy from a wholesaler, I can go out and distribute wherever I like. If I buy a milk round, once the Government has approved I can buy that round, once the Government has recommended and endorsed that the round that I am purchasing is in the band of acceptable price to pay for that round, once the Government has approved that I can buy that round, because other rounds have been refused to be licensed by the Dairy, so I have not been able to sell a business because Government have interfered, even if Deputy Stewart says 'nothing to do with Government' – wrong! But anyway, if I was buying an ordinary business and I went to a wholesaler, I could go out and deliver where I like and it has got nothing to do with anybody else.

1415 Uniqueness of the Dairy and Commerce & Employment –

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Deputy Soulsby: Sir, point of correction.

The Deputy Bailiff: Point of correction, Deputy Soulsby.

1425 **Deputy Soulsby:** Just because a retailer has the right to sell products and obtain them from the wholesaler, very often wholesalers only allow that particular retailer to sell in a particular market. It does not give them the right to sell around the world.

The Deputy Bailiff: Deputy Lowe to continue.

1430

Deputy Lowe: When Deputy Stewart was on about supermarkets and shops, again, a milk retailer cannot just go and deliver to a supermarket and shops, the Government decides if they can, because – you can shake your head all you like – the Government inspects those shops and supermarkets. The Government, in the past, have refused to license one of those shops, because it was not up to standard to have milk sold in there by a milk retailer. Fact!

1435

Government has interfered in the business of the milk retailers of where and when the can operate. Fact! So to keep saying it is nothing to do with Government is absolutely, totally untrue.

1440 It is also in the KPMG report, where it says, 'perceived protection'. Well, there is no perceived protection about it. As I have just said, it was a protection installed and implemented by the Dairy, by the Government. There you go, shaking your head again. Fact! It was. There is nothing 'perception' about it.

1445 Originally, milk rounds used to say – and I will give an example of ours, our milk round said we could deliver in the Vale and St Sampson's. Look back to *Hansard* but I am going to repeat it again. We delivered in Vale and St Sampson's. That was our licence, once we had actually had our health check, because you had to have x-rays in those days as well, once they had had a reference from the bank that we were okay and all the other malarkey that went with it as well. We were then allowed ... and they checked to see how much we would pay and they advised us if that was the right amount to pay for our round as well. So there was an interviewing process. That is how Government interfered whether we could buy a round or not.

1450 However, our licence at Vale and St Sampson's: we could go anywhere in Vale and St Sampson's and our round took 41 miles per delivery day. That is when the Dairy stepped in, because several milk retailers were struggling financially. The rounds were not sustainable. There were six of us delivering in Rue Sauvage, following one another. The rounds were not sustainable and the Dairy stepped in because of the huge amount of debt and they said, 'This is the way that rounds are going to have to be operated in future and we need your co-operation.'

1455 I take my hat off, and I will name him, to Dave Chilton at the time, who was part of that as well, and George Sauvage when they were involved with the Dairy. They were strict with it and, when the zoning took place, it ended up that our round came down to, I think it was, 19 miles per delivery. Nobody else could deliver in Rue Sauvage.

1460 Deputy Laurie Queripel has the maps of it. He is absolutely right; you could not go outside of the roads that were now designated in that area. So, although my licence said I could go and deliver in Vale and St Sampson's, I could not. I could only go in the roads that were on the licence that had now been agreed by the Dairy.

1465 It was all on the computer system that disappeared up at the Dairy. Why? I do not know the answers to that. It was on the Dairy and this is the point where so much has been said that is just so misleading.

Stop shaking your head, Deputy Stewart! This is a fact, if you want to call me a liar, stand up and say so.

1470 **The Deputy Bailiff:** Deputy Lowe –

Deputy Lowe: Through the Chair, sir, I am very much saying –

1475 **The Deputy Bailiff:** I have not shaken my head once! (*Laughter*) But I might be getting close! (*Laughter*)

Deputy Lowe: All I am trying to say, sir, is please, Deputy Stewart, accept, through the Chair, the facts because that is how the Dairy and the States operated. It might be uncomfortable for you but it is the facts.

1480 It was also said just before about a round was given away. I think it was Deputy Trott. You are absolutely right. Tell the rest of the story, then.

The Deputy Bailiff: Deputy Lowe, I should not have to keep reminding you, please.

1485 **Deputy Lowe:** Sir, I beg your pardon.

Mother of the House has bitten her tongue. I apologise, sir, I do respect the Chair.

The Deputy Bailiff: Thank you.

1490 **Deputy Lowe:** It has been said by Deputy Trott that a round was given away. He is absolutely right. A round was given away but, of course, the full story needs to be said. That person absconded from the Island and left a trail of debt behind and you are all fully aware of that, or should be, as a member of Commerce & Employment.

1495 So, yes, the other milk retailers picked that up and offered to pay as well when they found out who that person was. *(Interjection and laughter)*
I just feel –

Deputy De Lisle: On a point of correction, sir.

1500 **The Deputy Bailiff:** Point of correction, Deputy De Lisle.

Deputy De Lisle: It is very disingenuous of the Member to be making those allegations on that particular individual as that particular individual, as I understand, is paying off any debt that they have incurred to the Dairy.

1505 **The Deputy Bailiff:** Deputy Lowe to continue.

Deputy Lowe: Thank you.
It was given away, just now.

1510 The point that I am making is that it is frustrating, the rounds are unique. It is the only business that I am aware of where the States have total control and have done so for many years and I can only speak from first-hand experience, unlike anybody else in this Assembly, because we were involved back in the 1980's when it happened.

1515 So to hear some of the things that are being said, which *are* untrue ... I fully support the way the milk retailers have operated in the past. There is no doubt that, in my opinion ... I mean there are business people in the Assembly here and I pose the question to you: you have a delivery business across the Island which is currently zoned and runs very efficiently, would you as business people say, 'I am not going to contract 23 of you any more, I am going to employ 23 of you; you can go anywhere, wherever you like, compete with one another and may the best one win at the end of the day'?

1520 Because that is what Commerce & Employment are now doing with the milk retailers. You would just not do it. No business person would actually take on staff and say, 'Off you go, all of you. Wherever you like, whenever you like.' That is not efficient and that is even worse than what happened before the 1980's. At least in the 1980's you had, on your licence, whether you could deliver in the Castel or whether you could deliver in St Sampson's or wherever, but at least you had a parish. This way, there are 10 parishes and 23 competing right across the Island. It is barking! It is irresponsible, but it is the answer that Commerce & Employment want, because they have wanted to get rid of the milk retailers for a long time and this is their way of doing it, to stop doorstep deliveries, because it will not be viable and the milk retailers will go to the wall.

1530 I have serious concerns about the way they have been treated, as have many in our community who feel about the dirty tricks that have been going on ... for the loyal people that have been governed by this Government on how they run their rounds and how they have had their backs turned ... and stabbed in the back for not being able to run their business in the future, with such irresponsible behaviour to say, 'Go wherever you like, whenever you like'.

1535 I support the amendments, sir.

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

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

1540 It is clear to me that the people of the Island support their dairy industry because they pay a very high price for Guernsey milk and they value that product beyond all others. My view is that this will actually lead to another part of the fabric of Guernsey life being destroyed.

Now, I have heard all sorts of arguments about, 'Well, the numbers of people who get doorstep deliveries is dropping off and people go and get their milk' and of course we have had
1545 lot garages now who have sprung up over the years and turned into shops and people pop in and get some petrol and pick up the milk and a loaf of bread. But who do they think delivers that milk to these garages in the first place? It does not magic its way there on a magic carpet from the Dairy.

I think that this whole industry, or certainly the delivery side of this industry, is being destroyed
1550 by the actions of a Government Department who are just hell-bent on getting rid of it. These people are out in all weathers. Deputy Lester Queripel covered some of the other things that they do. They are part of the backbone of our community and they provide a service. What is wrong with that? It is not a perfect service; there are all kinds of anomalies in it and Commerce & Employment members always say, 'Oh yes, but it is something that has grown up over the years and there are lots wrong with it.' It is unique to Guernsey. It is not perfect, but it is a Guernsey way of doing things and long may it continue. **(Several Members: Hear, hear.)**

Through you, sir, it is a bit rich for you – sorry, Deputy Trott! *(Laughter)* It is a bit rich, sir, for Deputy Trott to say that these rounds are worthless and disagreeing with the milk market report when 10 years of stress and worry and the actions of C&E is what made these rounds worthless in
1560 the first place.

Now you have got a current member of the board – my good friend, I have to say, on occasion – *(Laughter)* saying, 'Well, of course they are worthless now and KPMG have got this wrong.' But it was Commerce & Employment, with 10 years of stress and worry for these people, that have made these rounds worthless in the first place.

1565 It is disgraceful, I think, for a member of that board to make that comment. **(Two Members: Hear, hear.)**

We are talking about a moral issue and I thought Deputy Le Lièvre made one of the best speeches I have heard on this for a long time and that is that the trouble with the Government is that as soon as Government wants to renege on the morality of anything, it runs to the Law and goes, 'Well we do not actually have to do that, we will just get the Law and the Law Officers will
1570 find a way how we do not have to do that,'

That is wrong. We have a moral obligation to these people. Deputy Queripel in several other speeches past – and so has Deputy Lowe on occasions – has held up reams of paperwork on licences, on areas, showing that the Dairy and, as a result, the Government were heavily involved
1575 in this retail business, and to say, 'Nothing to do with us, guv. We are going to walk away' ... I know that some retailers did re-mortgage their homes and take out loans in order to buy these rounds, because they were the rules that we put into place as a Government and the Dairy used to interview people to see if they were fit. The Government was involved in it right up to its scrawny neck and for anybody to say that this is nothing to do with the Government and we should just abandon these people without any compensation whatsoever, is reprehensible in my view.
1580 **(Several Members: Hear, hear.)**

As Deputy Le Lièvre has said, it is morally wrong. I do not care whether it is legally right or not that we do not pay these people a penny; it is morally wrong. No wonder, as Deputy Le Lièvre referred to this morning, the people of this Island do not understand their Government.

1585 We betray the people out there time and time again and, by our actions as a Government, people who have worked for this community are thrown on the scrapheap just because it seemed like a good idea by some Government Department and they did not like the way the system works.

I hope you support this amendment and I hope that Commerce & Employment, who *have*
1590 ignored previous States' Resolutions, whether they agree or not ...

I give way to Deputy Trott.

Deputy Trott: Thank you.

I am very grateful to my good friend for giving way, sir, and as usual he is passionate in what he says, but would he mind if I was to ask H.M. Procureur, on a point of law, whether, if Government is at fault, why there is no case in law for an *ex gratia* payment?

The Procureur: The whole point of an *ex gratia* payment –

The Deputy Bailiff: Mr Procureur, no, it is up to Deputy Jones, whether he minds you being invited to answer that question.

Deputy Jones.

Deputy David Jones: Sir, I do not mind. The Procureur is here.

The Procureur: Well, I am here and I intend to speak.

The point of an *ex gratia* payment is it is, by definition, a payment which is not required to be made as a matter of law.

If Deputy Trott has any other questions, I would be very pleased to answer them.

Deputy Trott: The perfect answer.

The Procureur: Thank you. *(Laughter)*

The Deputy Bailiff: Deputy David Jones to continue.

Deputy David Jones: Thank you, Mr Deputy Bailiff.

But that covers the issue ... *(Laughter)* Sorry, that covers the issue of an *ex gratia* payment. The clue is in the title and I would have thought an ex-Treasury Minister and Chief Minister would have figured that out without asking the Procureur! *(Laughter and applause) (Interjection)*

But we are talking, as Deputy Le Lièvre said, about a moral issue here, in my view, and I think in many of the public's view. As I have said to you before and without repeating myself, and through you, these milk roundsmen, retailers, milk women, get up early in the morning, in all weathers, snow, ice, sleet, rain, to provide a service to this community.

I do not know if any of you have noticed, but the fabric of Guernsey is gradually being dismantled. States after States come in and they take away, they peel away the things that always make Guernsey special, the things that held us up above many others as a community. We used to be a community, *(Interjection)* we used to care about – Oh God! We used to care about what happens in our community and the longer I serve the people of this Island in this place, the more disillusioned I become and the more convinced I am that we are dismantling that community as we knew it. That is the thing I do not think that we should do.

But, getting back to the moral argument, we should support this amendment. We should, quite frankly, send Commerce & Employment away with a flea in its ear. It has not, in my view, done the job that it was asked to do. It has come back with a Report and that has been corrected by Thomas Cromwell – our resident Thomas Cromwell – Deputy Fallaize, who forensically examines every line and word in the Billet, and I am glad at times he does.

But we should this support this amendment and I ask you to do so. I have said enough. *(Applause)*

The Deputy Bailiff: Deputy Domaille.

Deputy Domaille: Thank you, sir.

Before I start my speech, two things first of all.

First of all, can I declare that I have family members that work at the Dairy. They are closely involved in the production of its excellent products. So I need to put that on record. I think they are two of the better employees, there, but of course I would say that! *(Laughter)* Actually, I think they are all good employees.

I also say, through you, sir, how pleasing it is to see Deputy Jones back to his very best **(Several Members: Hear, hear.)** and adding his own completely unique take on proceedings. How really, so good to see him back. He is wrong, but – ! *(Laughter)*

Seriously, sir, I too am going to concern myself with much more the ethical, the moral side. I do not think the legal side is anything to do with this. I understand why Members are sympathetic to the milk retailers, milk distributors – I will call them milkmen, I think – about this *ex gratia* payment.

I am sympathetic, but I am not in agreement, I am afraid. I cannot agree with payment of States' funds to the milkmen, either directly or through the Dairy.

Yesterday, we agreed significant changes to our benefit system. Those changes are unfunded and we have left it to the next States with our fervent hope that they will make those initiatives a priority and I have to question whether this proposed *ex gratia* payment is a priority.

That said, regardless of whether or not it is a priority, I have to question the rationale behind the payment. Firstly, while the distributors have paid monies to individuals to purchase their businesses, they have not paid any money to the States, or its agent, the Dairy, other than paying for milk supplies which they then sell on and make a profit; and not much of a profit and, actually, I do agree there that their businesses are on the edge and they do provide an excellent service.

But the distributors are no different to other businesses that rely on States' facilities to operate those businesses, such as port users, PSV operators and taxi drivers. In fact, PSV drivers and taxi drivers have – and, unfortunately, when I was Minister I had to do this – had their licences taken away without notice and without compensation.

I also question why distributors are different to businesses that do work for the States, which work can be removed by the States at any time. I have in mind businesses such as the kiosks, where the concessions may well not be renewed. There is no question of compensation there.

But perhaps, to me, the reason I think we are on the slippery slope here is the example where individuals and businesses suffer as a result of States' activities, such as roadworks and road closures. If we agree to an *ex gratia* payment to the milk distributors – milkmen – then shall we not recompense businesses who suffer considerable losses, and individuals, actually, as a result of roadworks. Would we, for instance, agree to an *ex gratia* payment to the Torteval Shopper?

Sir, I ask the proposers of the two amendments to state whether or not they would agree to *ex gratia* payments in the instances I have quoted. I remind the proposers those instances include taxi and PSV drivers and businesses affected by roadworks.

Finally, sir, I do repeat that if we agree to this *ex gratia* payment, I believe we are on a slippery slope.

Thank you, sir.

The Deputy Bailiff: Deputy Brouard, to be followed by Deputy Fallaize.

Deputy Brouard: Thank you, sir.

I am surprised we are only discussing two amendments in play. One is well over £1 million and the other one for compensation of about £750,000, but I believe that there is another amendment that may be placed if those lose.

Deputy Queripel mentioned the restricted market this morning, but I just would like to remind everybody, especially the listeners, the States never sold licences. The milk retailers created value between themselves as they sold their businesses. The States never had a pound or 50p or £20,000 for a milk retailer's licence. The value of the rounds was created by themselves as one sold to another.

Now, I am the one of the four. I am a little bit of a black sheep on this instant with my board. I am not completely black, sir, but more slightly grey, really, and with no roof either. *(Laughter)* That is another story.

Deputy Le Lièvre had it right really and I think a cross between what Deputy Le Lièvre was saying and Deputy Langlois was there is a moral ground and there is also a, 'Let's sort it out once and for all'. That is where I am coming from. I will probably step away from the legal issue.

I do not think ... how long would the milk retailers' agreement, if it is in the strength that Deputy Queripel has it enshrined, would it last another 50 years? Another 100? A thousand? Would it last longer than the Roman Empire? I do not know, but it just seems that you cannot have things for that length of time enshrined and no one can possibly touch it or change it or whatever.

There is an opportunity, and it is happening now, there is a lot of concern about doorstep deliveries and Deputy Stewart is absolutely right, the figures show that they are declining because people, out of convenience, are buying from shops and that. But there is nothing to stop a milk retailer to continue to do doorstep deliveries and a lot of people do like to have doorstep deliveries and there may be a case, I think many of the distributors do charge a different fee, or they have been charging a different fee, for if they delivered to a shop compared to if they deliver to a customer on the doorstep. I think I pay a pound here and there as an administrative fee or extra fee to get out to wherever I am. But that can continue and I very much hope it does.

I was a little surprised with Deputy Lester Queripel and his vision from yesterday to today, because yesterday, I think I got it right that Deputy Lester Queripel was saying that he was really concerned about the cost to Islanders of paying to help some of the Islanders who are in the most unfortunate circumstances and how dare you take more taxes or money off those people to help the very lowest who are really struggling in the private rented sector and no way will we have more money taken from Islanders.

How strange is 24 hours in politics? Because today the same gentleman is saying to us, 'Actually, take some money.' We can have the argument whether it is tax or whether it could be tax or not, but to me, if I pay my water board bill, yes I know it is for water, but for me that is a tax. If I pay my TRP, it is a tax. Some people say it is a service and this and that and you can spend ages – and I think Deputy Fallaize's comment usually will come out will be how many angels can dance on the head of a pin and that is basically where I can come from.

But I think it is a little bit ingenuous to say, yesterday, we cannot take any more money off our Islanders, they are being charged too much, but, *today*, to compensate, we can happily give £1 million out of the Dairy funds. If we did it to replace materials, if we do at the Dairy, if the Dairy has not got it, it will come from T&R and then through taxes and that is where all general revenue, all things, all funnel up to that position. So I am just a little bit strange ... that in 24 hours you can switch a whole argument around.

I am a little bit concerned, as well, that C&E has not done their job. We have put forward as best as we can, as we think it should be. You may not like it. There is a Report, there has been a full report from KPMG and I think also a great thanks to the milk retailers who helped fund, I think through a different accountancy firm, all the information at long last, to get some idea of the rounds and their size. So I do thank them for that.

I think probably a better way, which we probably cannot do but if I was ... we need to get milk retailers over a bridge, from the market place, however you perceive it to be now, to what it is going to be in the future: a freer, more flexible market place with more fluid pricing.

We need to get them over that bridge. We still want them there, because we have still got a fantastic product to distribute. In fact, the greatest protection, far greater than anything we have been talking about in here, for the milk retailers is the new Licensing Law, the new Milk Law, because if that does not work and that does not hold and that is not in place, then half the dairy industry will disappear and half the distribution will just disappear. So that is the real protection for both the dairy industry and for milk retailers, it is that protectionism for the Guernsey breed and that is one of the real planks that we have put in on the other side of the equation.

Taking the Deputy Bailiff's point, we are looking, in these amendments, not at whether we should be here or not here. We are here and it is just the size of the quantum. My colleagues on Commerce & Employment are very much at the lower end (*Laughter and interjections*) and there are other people who are in the millions, as with the amendment we have in front of us.

1750 I believe also there is a figure, I think – I have heard it spoken about, I have actually spoken about it myself – around the £400,000 mark which, perhaps, a lot more of States' Members would perhaps gather around, and then I would have thought it would have been better if we had had all the amendments and everything all available up front, sir.

1755 I do take the moral ground. I am not quite with my board, but I do appreciate where my board have come from and the journey that we have been on to be here. I think we do owe some moral duty to the milk retailers. It is such a hard thing to value, because the KPMG report almost goes from zero right up, so we have not got a definitive amount, if you cannot put a price on what we are trying to alleviate. We need to help the milk retailers over the bridge. I have a figure in my mind; I hope that figure will come up today so I can support it. I will be unable to support the
1760 amounts that I see being offered in these amendments, at this time, but even a few hours in politics can be a long time.

I think the milk retailers do a very good job. I think it is unique to Guernsey; I would be very sorry to see it go. But there is a price where I want to stand with them on the journey over the bridge. I have not seen that yet, today. I hope that will come at some time during our discussions.

1765 Thank you very much, sir.

The Deputy Bailiff: Deputy Fallaize, to be followed by Deputy Luxon.

Deputy Fallaize: Thank you, sir.

1770 I think the Deputy Minister of Commerce & Employment is absolutely right: the States do have a moral duty to milk retailers. He may be in a minority of one, but he is right, which ought to be some consolation.

I think this is the sixth, or possibly the seventh, debate that the States have had in the two terms I have been in the States and there were other debates before them. Effectively, it is the
1775 same debate and, every time, the States reach the same conclusion and Commerce & Employment are directed to go away and do the same thing and they do not.

It has now turned into a war of attrition, in my view, between the States and the Commerce & Employment Department. It is, I think, absurd that we have to go through this debate again. I came in here expecting to have a debate about the quantum of any mitigation but, no, no, the
1780 Commerce & Employment Department have chosen to turn it once again into a debate about the principle.

Now, what am I meant to do in that position other than, once again, try to make to the States the case that some financial mitigation is necessary? Deputy Perrot, understandably, is looking at me saying, 'Please don't.' He is right, but the Commerce & Employment Department are choosing
1785 to fight the debate on those grounds and unless those of us who have the contrary view – which for years has been the majority view in the States – (**A Member:** Yes.) put the case, then I fear that half past twelve on day seven, or whatever it is, of the last States' debate in this term, the States in the end, just to get rid of the issue, will just give in to Commerce & Employment, and I do not want the States to do that. (**Several Members:** No.)

1790 Deputy Langlois referred to a report which he, or his company, was involved in in 2000. Now, that report concluded that licences were issued by the Dairy to roundsmen for specific zones; that the territory of each round was defined and agreed by the Dairy and that the Dairy sat in committee with the Guernsey Milk Retailers' Association to issue zones.

For years, the Dairy wanted a distribution system – effectively the distribution system that is in
1795 place. It was put in place at their instigation, based on very clear zones. It was encouraged by the Dairy; it was facilitated by the Dairy.

Clearly, the legal advice is what it is. I do not think it is terribly important in this debate because, as the Procureur has said, we are talking about *ex gratia* payments and the law is not relevant when discussing *ex gratia* payments. But, if in practice, you have a system of one licence per zone and, attached to every licence, is a condition that a licensee cannot deliver outside his or her zone, it is hardly surprising that the perception and expectation of exclusivity is created and that is what the States did for decades.

It is no good Deputy Stewart saying, 'There was not exclusivity,' because Commerce & Employment and their predecessors did things which, quite clearly for decades, allowed the retailers to believe that there was exclusivity. We know that and we know that rounds were purchased on that basis and we know that the Dairy was involved in the purchasing of rounds on that basis.

One does not have to go back all the way to previous decades. In 2011 – and note the date, because the previous States went through exactly the same process, the same saga of debates that this States have had to go through – eventually in 2011, four years ago, Commerce & Employment did come to the States and propose that if the States wanted to move from one distribution network to a new distribution network then, what they call compensation, what we are now calling mitigation, was necessary.

That was Commerce & Employment's proposal and they put in play, or they suggested, a framework within which payments of mitigation could be set up.

So the role that was played by the States was a major contributing factor in the capital value of the rounds and another point which I think needs to be made is that I have always taken the view the capital value of some of these rounds has been excessive. I compare it with newspaper rounds. I owned a newspaper round for some years and the capital value, historically, of newspaper rounds, was nothing like milk rounds. Now, I contend that a major factor for that, a major reason behind that, was because the States were inherently central to the under-pinning of the milk retailers' rounds and never have been in the newspaper business. So I think the States have materially contributed to the arguably inflated capital value of milk rounds over the years.

It is abundantly clear the States have not been just involved in the milk distribution network; they have more or less designed the milk distribution network. They have upheld it; they have facilitated it. It is one thing for Deputy Stewart to say – as he has, as Commerce & Employment have, and as the States have backed them in this – we need to move to a new distribution network because the existing distribution network is too inflexible and too restrictive, but to pretend that the distribution network never existed is delusional. (**A Member:** Yes.) (**A Member:** Hear, hear.) Commerce & Employment is being delusional.

I know that Deputy Langlois does not want Members to get emotional – and, incidentally, I thought Deputy Langlois made the best speech of the debate so far and did set out a very balanced and dispassionate case for Deputy Le Lièvre's amendment – but I do not think it is emotional to say the Commerce & Employment Department is acting here, in this instance, in a delusional way. I think the evidence supports that. (**A Member:** Hear, hear.)

Deputy Brouard is right: there needs to be a way found to get us from one distribution network to another, so there is a pragmatic case behind the amendment, but there is an ethical case. I just do not think the States can behave in the way that the Commerce & Employment Department is recommending.

This was a *quid pro quo*. Deputy Stewart and his Members managed to get through, the last time they were in the States, changes to the distribution network. They were approved by the States and it was very much on a *quid pro quo* basis. Make changes to the distribution network, but return to the States setting out proposals for financial mitigation to be available to the existing milk distributors, to allow you to introduce the new distribution network.

That is quite clear, running right through the debate, encapsulated in the States' Resolution. It was a *quid pro quo* and I would say to the Commerce & Employment Department today, if they do not want their new distribution network to be undone, they have to stick to the other side of the bargain and to put in place financial mitigation to the distributors.

Deputy Trott says the price of milk could go up. But what Deputy Trott has not told us, is the profit that is being made by the Dairy at present. Perhaps the Minister, when he speaks on these amendments, or perhaps Deputy Queripel and Deputy Le Lièvre when they speak, summing up their amendments, will tell us just how long it would take the Dairy at its present rate of profit to generate the revenue that would be necessary to pay the sums of money set out in their amendment, because that is the key.

I do not believe the price of milk will have to increase, at all. I do not think that taxes will have to go up, at all, in order to pay the mitigation that is set out in this amendment. The existing price of milk is already sufficient to pay the mitigation that is set out in these amendments and I do not have the exact figures before me, but I am convinced that the proposers of these two amendments can show that.

So, sir, to me, the ethical case here is overwhelming. The Policy Council – despite what Deputy Trott says; he has mangled their letter of comment ... this is a surprisingly clear letter of comment from the Policy Council and it does say that a majority of the members of the Policy Council accept the case for *ex gratia* payments.

Deputy Brouard knows it. I think most of the States know it. Anybody who would read *Hansard* for the several debates the States have had over the last few years would know it. There is some financial mitigation due here and the Commerce & Employment Department is still trying to resist it and the States are going to have to force it upon them.

Please support at least one of these amendments.

Several Members: Hear, hear.

The Deputy Bailiff: Deputy Luxon.

Deputy Luxon: Sir, I am conscious of the time and I will be brief.

I would like to make just three points and ask four questions of those laying the two amendments. All of which I do not think have been raised so far in debate, sir.

The first point I would like to make, which is repetition, is that C&E have complied with the Resolution; they have set a policy letter before us with an independent KPMG report, which has led to these two amendments being laid. I cannot see how they have not complied with the Resolutions, as mentioned by the Members.

Sir, my second point is empathy – empathy for members of the 23 group of milk retailers. I call them retailers; I struggle to because I think they are distributors, but I will stay with acronym – well, not acronym, but the name – of retailers.

Members were written to by a young couple who live out west and are one of the 23. I will not mention their name. I have empathy. Their story and their situation, absolutely clarifies for me why we do have to think very seriously about the decisions we make. They are one quarter of the way through repaying a loan that they invested in a round that they bought and they believe that they now have a worthless investment, but they owe three quarters of the capital that they borrowed.

How can one not have empathy for any Guernsey family finding themselves in that situation, regardless of the reasons?

Sir, many Members today have quoted what is going to happen, what will happen, what will be a direct consequence of option C. Sir, it is a load of tosh! None of us knows what will happen, what is going to happen. We only can apply conjecture. None of us knows absolutely how things will pan out with the option C proposals over the coming years.

I only say that, sir, because it is factually correct.

The 23 roundsmen, businesses, we talk about them as a group of people, a club, but they are not all the same. They bought at different times, they bought for different values, they have made different levels of profit. They see their businesses in a different way. Their market positions are different. They are a federation of 23 but, sometimes, when we refer to them as one group, which is what we are doing here, we have to be conscious that provides difficulty.

Sir, my four questions to the amendment layers are: we have no idea, if we approve either of these amendments, whether or not the 23 roundsmen would accept these proposals; I would just like to understand those proposing the amendments, their views on that reality. What happens if they do not accept the proposals that are approved today?

1905 My second question, sir: what happens if we approve either of these amendments and not all of the 23 roundsmen accept that offer? What happens if only some, or a minority, accept the offer? What happens then?

The third question, sir, is: in these amendments, there is no mechanism to reflect, following option C changes, if we agree to one of these amendments and we make compensation payments, there is no mechanism to reflect that some of the 23 roundsmen may then, quite quickly after that happening, by the end of June this year, they may then sell their businesses to a willing buyer and actually recover the same amount as that of the compensation, or more or less, and I try to reconcile that with Deputy Jones' desire for us to treat taxpayer money fairly. Is it fair that we make a payment and then that payment, the reason for that *ex gratia* payment, actually remedies itself through the normal course of a willing seller and a willing purchaser?

1915 Sir, Deputy Le Lièvre said in his opening speech there will be some winners.

I will give way, sir, to Deputy Dave Jones.

Deputy David Jones: I appreciate the Deputy giving way.

1920 We have heard from a member of Commerce this morning that the rounds are worthless. *(Interjection)* So your scenario, in my view, does not hold any water. Or milk, in this case. *(Laughter)*

Deputy Luxon: Tetra-paks used to be good for that. *(Laughter)*

1925 Sir, Deputy Trott, I do not believe he said – and Deputy Trott can correct me ... he was not saying that he believed they are worthless, he was stating the fact that the GMRA have said that their rounds are worthless.

Sir, I give way to Deputy Trott.

Deputy Trott: I am very grateful to Deputy Luxon for giving way.

1930 That is precisely the point. The GMRA tell us that some of them have been trying to sell their rounds for years, unsuccessfully. They are, it would appear, in the open market, worthless.

Deputy Luxon: Thank you, sir.

1935 Deputy Le Lièvre said in his opening comments that there would be some winners, that there would be some losers. I think he said that some people, their businesses would fail; but he also said there would likely be some winners.

I just make the point about how do we reconcile, if we approve one of these amendments, we make an *ex gratia* payment and then some, or all of those 23 roundsmen –

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Deputy Le Lièvre: Point of correction, sir.

The Deputy Bailiff: Point of correction, Deputy Le Lièvre.

1945 **Deputy Le Lièvre:** I think Deputy Luxon is referring to a speech yesterday about benefit payments. I made no reference to winners or losers in this speech.

Deputy Luxon: Sir, I absolutely can assure Deputy Le Lièvre – my good friend Deputy Le Lièvre, from the track – that he absolutely said that some of the rounds would fail. Sir, I will eat my hat and apologise because I would not want to misrepresent Deputy Le Lièvre, and it is not an aggressive point, I was simply reflecting, Deputy Le Lièvre mentioned that there would be some

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winners. Some of the roundsmen would continue with their businesses and may well get bigger, was what he inferred.

1955 But anyway, sir, so again it is a question I ask those laying the amendment. My final question, sir, is: the run rate of the businesses of the 23 roundsmen has been in what one could describe as commercial, terminal decline, as a result of the marketplace. So, sir, the point that was made about worthlessness is, if no option C was approved, these rounds are deteriorating capital and profitability values, because of the market, coupled with a degree of a lack of new business development from the 23 roundsmen.

1960 Many of them have expressed the reasons they perhaps have not focussed on developing their rounds through delivering to more properties that they pass on their rounds or, indeed, selling more products, is because of a feeling of, frankly, fatigue, but nevertheless the run rate around this business sector is one of terminal decline due to market factor changes, as opposed to C&E's attempted proposals over the last 10 years.

1965 Sir, I am still listening, I have empathy for the situation, but I also have concern about protecting the public purse. I would appreciate answers to my four questions.

Thank you, sir.

Deputy Lester Queripel: Sir?

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The Deputy Bailiff: Deputy Lester Queripel, why are you standing?

Deputy Lester Queripel: Just to be sure, the fourth question, sir, being the seconder of the amendment, I was not really, completely clear of the fourth question from Deputy Luxon, sir.

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The Deputy Bailiff: Do you want to repeat your fourth question, just so that Deputy Lester Queripel can get it?

1980 **Deputy Luxon:** No thank you, sir. I will rely on the other three amenders and seconders to try and deal with it.

The Deputy Bailiff: We will now adjourn until 2.30 p.m.

*The Assembly adjourned at 12.36 p.m.
and resumed its sitting at 2.30 p.m.*

[THE BAILIFF *in the Chair*]

**Financial Measures to Mitigate the Likely Adverse Consequences
Upon Existing Milk Distributors of the Dairy Being Free
to Sell Milk and Milk Product to any Commercial Customer –
Debate continued –
Proposition as amended carried**

1985 **The Bailiff:** Members of the States, before we resume this afternoon, Deputy Burford, do you wish to be *relevée*?

Deputy Burford: Yes, please, sir.

The Bailiff: You may be *relevée*.

Deputy Hadley: Just on a point of order, Mr Bailiff, do we have to repeat everything we said before lunch? (*Laughter*)

The Bailiff: First of all, you do not have to. Secondly, please do not. (*Laughter*)
Deputy Sherbourne.

Deputy Sherbourne: Thank you, sir.

It is just a brief contribution to the debate. I found myself quite shattered after five days of the education debate and, certainly, for four of those, I would say that Deputy Dave Jones and I were on the opposing side.

So it really pleased me this morning to hear him actually sum up exactly how I feel about this situation.

For me, the ethical argument, issue, has been done and dusted. It is not an issue for me. As far as I am concerned, the arguments are very powerful for a just solution. The problem that I have, of course, is not really knowing what is a just solution. I certainly do not believe that zero comes anywhere near what I would find acceptable. (**A Member:** Hear, hear.)

However, I am not really sure whether the two proposers of these amendments are in a position to give me a fairly definitive figure to help me. But what I would say is that, I suppose I have got a simplistic approach to this, really, or maybe it is a biased approach, as far as I understand it, the taxpayer subsidises the producer £2 million a year, 30p a litre for the milk. We pay that, as taxpayers, or at least we authorise that on behalf of taxpayers.

We are told that the retailers have been a central, the third leg, if you like, of the service. Now, it seems that, because of time, and I understand some of the arguments about business risk and that sort of thing, but maybe their services are not needed as they were over the last 80 years. But practice has established a business which has been passed on from one person to another, sold for a certain sum.

Getting back to my maths, 30p a litre, £2 million a year subsidy to the producer and a surplus being made by the Dairy. A surplus which stands at nearly £3 million. Now, again, probably simplistic thinking, but it seems to me that is recycled money, in a way. In some way, that investment to the producers has come back and allowed the Dairy to accumulate a £3 million surplus.

Now, I do not know what they want it for, whether they actually need it, but I believe that they must have some plans. Why cannot one of those plans be to actually subsidise, sorry, pay for, not subsidise, the mitigation of the situation that we are in at the moment? The ethical argument is won, it is how much and where it comes from.

For me, it comes from the Dairy, from that accumulated surplus. The amount, maybe the two proposers can give me more guidance on, but I fully support and will wait and decide which of the two amendments that I vote in favour of.

Thank you.

The Bailiff: Deputy Conder. Yes, Deputy Conder.

Deputy Conder: Thank you, sir.

Fellow States' Members, I would like to start by saying I have enormous respect for the Department of Commerce & Employment, its Minister and its team. They are handling some very big issues on our behalf at the moment and they deserve our support and our respect. They certainly have mine.

Sir, over the many months of this debate and the various times it has come before this Assembly, I have occasionally found myself in the role, or the attempted role, of being a

2040 conciliator. I have been engaged with Deputy Fallaize and Deputy Soulsby, when she was a member of C&E, and the Minister, and indeed the milk distributors, in trying to find a resolution.

On occasions, I felt that the conciliator role had been successful, but on each occasion our hopes have been dashed.

2045 I do feel that the Commerce & Employment Department, for very good reasons, have somehow got themselves in a bit of a cul-de-sac and perhaps they need to recognise that and, maybe, some experience of the last few weeks has helped me to empathise with the position they are in. I will say no more, but you probably know what I mean.

2050 Sir, I just would like to address some of the issues that have come up from contributors. I do accept, as Deputy Stewart rightly said, that every business faces risks and businesses run themselves accepting there are risks. But they are commercial risks. When a government unilaterally changes the agreed or tacit contracts that have previously existed, then that changes the whole position in which business is operating and we do need to recognise that.

2055 Milk retailers, the milk distributors, have taken risks. They are facing a market risk now in terms of reducing demand for household deliveries. They will deal with that. But to have the whole nature of their tacit contractual relationship changed does require us, the Government, to recognise that and, I believe, do something about it.

2060 Sir, and I hope my friends behind me sitting in the public gallery will not take this amiss, but these are some businesses, these are people who have very little power. I just wonder how we might react, or how they might react, if, say, the accountancy profession, or, forgive me, sir, the legal profession suddenly were confronted with the Government saying, 'It's okay, anybody can be an accountant now, they do not need to train. They do not need any qualifications. Or, even, a lawyer. Carry on everybody, we are going to change the market conditions.'

2065 I suspect those fairly big people would have a fairly big stick with which to beat the Government and, probably, we would have a different outcome and a rather more speedy outcome to any change in their contractual terms than our friends the milk distributors have had to suffer.

2070 I would also just like to deal with the issue that Deputy Sherbourne raised just now and Deputy Trott alluded to earlier, about this surplus with the Dairy. Yes, it is quite right, it comes from what consumers have paid for their milk and, indeed, the Policy Council, as Deputy Trott quite correctly said, they could not support this if the price of milk went up.

2075 It does not need go up to replace those surpluses. The surpluses have been generated with the milk at the price it is now. So, if the price of milk stays where it is now, those surpluses will be replenished. Rather more slowly, yes, than if we put the price of milk up, but those surpluses, as Deputy Sherbourne very eloquently said, are there for a purpose and this is a very legitimate purpose in my view.

2080 I think this milk policy, if we call it that, which I think was a very good policy and I congratulate the department for this, has been stymied by our colleagues digging their heels over the milk distributors. It is sad, in some ways, because they have worked so hard and achieved so much, transforming the way we approach the whole production and protecting our dairy industry and it is a pity that you do get a sense that they have dug their heels in and over their dead bodies are they going to change this policy. I suspect they are going to have to change this policy.

2085 We do celebrate our farmers, we do celebrate the herd, we do celebrate the environment and, actually, as Deputy Jones I think said, we can perfectly well celebrate the other part of the milk chain and that is our distributors. They are no more or no less a part of our heritage that all the other parts. **(A Member: Hear, hear.)**

2090 So, sir, for myself, I will support the Deputy Laurie Queripel/Deputy Lester Queripel amendment, not because I expect the full amount to be utilised but I want to give those who are negotiating with our milk distributors a flexibility to recognise that some members of that community are affected in different ways and they had different financial penalties imposed upon them as a result of our changes, the changes we are proposing. Therefore, I do not want to limit it to £750,000, I want to go to the top of the range. That does not mean that I expect the

£1.1 million to be spent in total. I expect a robust negotiation between both sides in terms of each party what the expected contribution payment should be.

I just finish, I do not think this is a quote, but I think this is a mantra, more than anything.

2095 Big government has a number of roles. It is there primarily to protect the realm and protect its people. It does have another really important role. Big government primarily is there to protect small people, people who cannot look after themselves. Big people, big organisations, big parts of the community have the power, have the mechanisms, have the networks, have the finances to look after themselves.

2100 I hope my friends and colleagues behind my back, at this moment, will not object to me calling them small people. But they are. There are almost defenceless and what we impose upon them will affect their lives.

Therefore, sir, I think we are the big Government, it is beholden upon us to look after small people. (**A Member:** Hear, hear.) Therefore, I would urge you to support both these amendments but, particularly, the Deputy Laurie Queripel/Deputy Lester Queripel amendment.

Thank you, sir.

The Bailiff: Deputy Adam.

2110 **Deputy Adam:** Thank you, sir.

Sir, there have been some interesting speeches and I would like to highlight some of the points from them.

2115 First of all, we had Deputy Domaille and he said is this the slippery slope re compensation and highlighted other areas whereby the Government may have a degree of responsibility when someone loses their licence and expects compensation. One he mentioned was taxi drivers. He stated his department, when he was Minister, could take away a licence.

2120 I am fully aware of that because, even in my situation, I know that I could not have come here without the permission of the Health Department. They were the one that allowed the practice I was joining to have a housing licence, because they thought there was no requirement for a further obstetrician/gynaecologist on the Island. At the time there was a very senior partner who the older Members of this Chamber may remember, called Dr Tom Tucker, who argued the case with the then President of the Health Department that I was coming here as a GP with a special interest. Anyone who read my CV would know that was, maybe, a bit short of the truth.

2125 The next was Deputy Brouard and he said compensation. But, wait a minute, what is the purpose of this sum of money? Does it basically appear we are saying 'we are buying back the amount you paid for your business'? Or is it simply a generous handout?

I am sure the majority of the milk firmament will be able to continue in work. The Dairy has not come along and said, 'Right, stop now, you cannot do any more work in this field.' They are saying, simply, 'We are changing the terms, long-term wise.'

2130 Therefore, is it compensation so that, when they stop doing their round, they sell the round to the Dairy? It does not matter how big or small it is. Or do they give it away?

I shall give way to Deputy Brouard.

Deputy Brouard: Thank you very much.

2135 What I was trying to get across was I understand they are going from one model, which is the more restricted model we have now, into more of a commercial model and, I believe, there is a sum of money that is due to help them over that transition period.

We could call it compensation, you can call it an *ex gratia* payment, but that is the thought process.

2140 Thank you.

Deputy Adam: Thank you, sir.

Thank you for that, through you, to Deputy Brouard.

2145 Now, Deputy Luxon, he produced four very pertinent questions and I know Deputy Luxon did not repeat these four very pertinent questions, but I feel it is very valuable to this Assembly to have the answers from the two people proposing these amounts to answer questions, because they are important to understand fully what this is about.

2150 Now, Deputy Trott, he looked at a page of KPMG report. Maybe it was taken out of context, but I am not too sure. He is asking about the value of the business. Unfortunately, the value of a business, like the value when I sold my share in the practice, was what it was worth to someone else to buy. Basically, the house you are all sitting in, the value of that is nothing until you come to sell it and then you find out what the value is. At present time, that may be a value at less than what you have paid for it.

2155 Deputy Langlois, he mentioned pensions, because the lump sum that someone has paid for a practice and, yes, it applied to me as well, what I get out of the practice is expected to be part of the pension fund. He said, quite correctly, he knows about pension negotiations.

I think that is an important word. We are here making a decision. We have got three choices. One, nothing. Two, Deputy Le Lièvre's amount. Three, Deputy Queripel's.

2160 Now, Deputy Conder has just said he will go along with Deputy Laurie Queripel's amendment, but would not expect to spend all the money. Obviously he has not read an email that has been sent to him and everyone else. Now, what does this email say? It says:

'Any amendment you choose to support is only an offer which then has to be agreed by 23 individual milk retailers and doubtless would need to be approved by more than half this number in order to gain some form of tract sufficient to distract them from taking dubious advice off C&E.'

And then it goes on to say that, with the Propositions laid before you now, C&E, no way, Deputy Le Lièvre's unlikely, Deputy Queripel's maybe.

2165 Sir, how can, it is 46 of them now, 46 of them actually negotiate what is a very reasonable thing, the milk retailers are looking for compensation. I think we have all accepted that as a fact. The legal aspects can only be decided in a court of law. The suspicion is that it may not stand up, but the final decide of that would be in a court of law, because there is no written contract.

The pensions with the public workers, there was a written contract concerning it.

2170 Thus, I am in a very difficult position because are we negotiating, are we giving these sums of money? Are the milk traders in agreement with any of this or not? Where are we going? Should we actually be making a decision or actually stating that this is an inappropriate way to negotiate compensation for a group of people and therefore we should be saying to Commerce & Employment, give them the instructions this Assembly believes compensation is due, now go and negotiate a reasonable sum of money, determined by various things.

2175 KPMG does not give you definite advice. It gives you a variation across the road. BDO, who I believe gave the milk the retailers advice, likewise.

So, I think you would have to get proper negotiations, so there is a fair compensation amount which would be accepted by both sides.

2180 Thank you, sir.

The Bailiff: The Chief Minister and then Deputy Paint.

The Chief Minister: Sir, I will be brief.

2185 I was actually quite surprised to hear the references to the Policy Council comments, particularly from my very good friend Deputy Trott and my equally good friend Deputy Fallaize, because Deputy Fallaize, particularly, is normally a great mocker of Policy Council comments and he could have done so on this occasion because I think there were so many alternates when we came to this particular comment being put together that, in fact, the Minister of Commerce & Employment was absent on States' business, and his Deputy Minister, who had a slightly different view to his Minister, was one of those who voted. So, I would not read too much into it, as usual. (Laughter)

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Deputy Fallaize is one of those who normally says that.

2195 Having said that, my own personal view, being the only person that has not got an alternate to replace him, my deputy is always there anyway, he is Social Security Minister, I personally sympathise with the Deputy Le Lièvre position and that is simply for the reasons that he eloquently alluded to when he spoke to his amendment. On a moral basis, I think we need to do something. Similarly, sir, I think in order for this not to keep coming back again and again and again, we need to something.

2200 I do not want to revisit the arguments again. Nothing will be perfect, but I do think we need to do something. In my mind, what Deputy Le Lièvre and the Deputy Chief Minister have come up with is something that is appropriate. It may not go as far as some would like, but certainly my sympathies lie with that.

Thank you, sir.

2205

The Bailiff: Deputy Paint.

Deputy Paint: First of all, sir, thank you very much for noticing I was standing, when it may appear I have been sitting all morning. (*Laughter*)

2210 Sir, having been in a similar situation as the milk retailers are now, a few years ago, I have great sympathy with them. I was pretty upset when the Milk Law was passed recently so, what did I do, I doubled my milk order. So, instead of three litres a week, I am now getting six litres a week. Which we are using and still buying more.

2215 You all know that I am a Deputy who is consistently expressing concern about States' spending and will continue to question that. We have to make sure that we do not spend, as I keep repeating myself in this Assembly. But, in this case, I believe that we have a moral case for the milk retailers, if not a legal one, for compensation and that can only be fair to them.

2220 This might hold a little bit of credibility for the States as a whole. Many years ago, I was a participant in a situation very similar to this where I learned quite a bit of terminology regarding States' monies, which I would like to share with you now.

So, what is public money? It is a profit made by States' departments. What is taxpayers' money? It is money paid in by the taxpayer. So, you can see, there is a difference.

2225 The money earned by trading boards is public money, it does not belong to any one of us, it belongs to the public. Taxpayers' money, exactly the same, but there is a distinct difference in the two. I hope that has made it clear.

Thank you, sir.

The Bailiff: Deputy Le Clerc.

2230 **Deputy Le Clerc:** Thank you, sir.

I had no intention of getting up to speak. However, I have just had a couple of thoughts and, forgive me for expressing those thoughts without really thinking too much about it.

2235 Firstly, I just wanted to say that, if we do not pay the compensation, Deputy Queripel has said that these businesses will fold and they will not be sustainable. However, on the opposite side, if we do pay the compensation, what is preventing these businesses just saying, 'I have had my lump sum and I am not going to continue any more'?

2240 So, I think some of the arguments that we have heard from Deputy Lester Queripel about this being an essential lifeline to the community, I am just a bit confused there. I think, whatever happens, whether we do not pay or we do pay, I think the way the milk retailers are going to go. That was just a point I wanted to make.

The other thing is, and it does not say in either of the amendments, is whether this would be a lump sum payment and, just bearing in mind my previous thought about what would happen, even if compensation is paid out, and is there a possibility or has there been any thought to these being stepped payments? so that if we were paying out they would be phased in over a three or

2245 four-year period so that we did not actually see anybody take the money and run, because, hopefully, if there is still a business model on a day-to-day basis these business would run. I get the feeling these are capital sums that people have put in and retirement plans, so therefore the money is not needed on a day-to-day basis to fund the business.

I just wondered if anybody could answer that question when they sum up?

2250

The Bailiff: Deputy Harwood.

Deputy Luxon: Point of correction, sir.

2255

The Bailiff: Deputy Luxon.

Deputy Luxon: Just as a point of correction, sir.

The amendments do say that there would be capital payments by the 30th June, 2016.

Thank you.

2260

The Bailiff: Deputy Harwood.

Deputy Harwood: Thank you, sir.

2265 In his introduction, Deputy Stewart made reference to a comment I made when this matter was debated last year when, I think and to paraphrase, Deputy Langlois said, 'We will see you in court.'

Sir, I stand by the views I expressed then, which I believe this matter and Deputy Hunter Adam has also said, this matter should best be dealt with through the courts.

2270 I accept that the principle has now moved on. The States last year accepted the principle that there was a moral obligation and therefore we are talking about an *ex gratia* payment. We are not, actually, strictly speaking, talking about compensation or even mitigation. It is an *ex gratia* payment. As the learned Procureur said, *ex gratia* means it is not a contractual award, it does not arise out of a quantum of damages. It is purely an *ex gratia* payment.

2275 Sir, Deputy Langlois, also, this morning, referred to out-of-court settlement. Yes, of course, people do make out-of-court settlements, but usually that is on the basis both parties have actually made their claims and counter claims and made their presentation in court before they actually arrive at an out-of-court settlement. So it is slightly misleading.

Also, I find it somewhat confusing because, whilst people have argued that we should not view this as a matter of contract, the milk retailers themselves actually in the presentation which they gave us earlier this month, stated quite categorically that actually it should be regarded as a contractual position and I quote:

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'GMRA has urged C&E to consider properly the contractual position in order to find resolution to the situation.'

Further on, this is the GMRA:

'Our clear legal advice is that the obligation to make payment in order to break a contract is overwhelming.'

2285 So, notwithstanding that the States and this Assembly has taken the view that it is *ex gratia* we have to recognise that the GMRA themselves actually, perhaps, argue and recognise that there is a contract. If there is a contract, going back to what I stated last year, this really should be determined by the court. However, we have moved and that principle, I accept, has moved on.

Like Deputy Domaille, I also have slight concerns about the slippery slope that Deputy Domaille referred to because we are, undoubtedly, establishing a precedent.

2290

If we accept that there is a precedent to make an *ex gratia* payment here, to the milk retailers without requiring court intervention, and incidentally I accept that the milk retailers could probably substantiate a claim through the courts, then we have to be very cautious as to how far that goes because, if we pass legislation, remembering we are not only an executive but we also

are a legislature, that for example restricts fishing areas, are we then going to have the argument that we should be making *ex gratia* payments to the fishermen because we have had an impact upon their areas? Remember at the end of last year, we passed legislation on Sunday trading. A lot of independent corner shops said that they would lose money by virtue of that legislation. Now, again, do we accept therefore we should be considering making *ex gratia* offers to those corner shops who have arguably lost trade as a result of legislation that this sovereign body has enacted?

It is a dangerous precedent.

But, sir, we have moved on and I accept that we are now looking at a situation where the States has agreed there is a moral obligation to make an *ex gratia* payment. So, the argument then comes back to quantum. This, again, I suggest is where it would have been helpful had this matter gone to court, because the court can then actually make an award by way of damages for being in breach of contract and they could assess that and they would identify that in each and every case.

Here, we are being asked to identify a quantum and KPMG were asked to come up with some figures, but they are having to look across the entire industry. We are not able to drill down to each individual milk retailer to assess his or her claim for part of the *ex gratia* offer. One of the criticisms the milk retailers made when they gave their presentation earlier this month was they criticised the fact that the KPMG approach had been to look at the entire industry, whereas they, and as I recall, and we were briefly shown a couple of sheets of evaluation that the milk retailers themselves had commissioned, where actually, BDO, in that report, as I recall, was suggesting that the milk retailers should be entitled to receive the full capital value that they paid in to get their business.

Now, A, that is questionable over what period of time do you do that; B, it takes no consideration of the fact that, for a lot of cases, some of the businesses have lost a value, not by virtue of the intervention of the States of Guernsey, but by intervention of the sheer market, insofar as the doorstep deliveries have declined.

So, we are in this horrible situation, how do you actually arrive at the quantum?

Deputy Hunter Adam has referred to the email we have all received on behalf of the Guernsey Milk Retailers' Association putting out that, in any event, the association itself cannot enter into any binding commitments on behalf of its members. Any consideration of *ex gratia* payments is going to have to be looked at on an individual, retailer basis.

Now, we have no idea what basis is going to be applied to each retailer. Some retailers we understand will survive this. We do not yet know, actually, even for those who are pleading that their business will be irrevocably damaged, we will not know until after 1st April what actually is the impact on their business.

So, we are assessing an *ex gratia* payment in advance of actually knowing what damage, what loss the retailers themselves have suffered.

Both amendments, I think, refer to the fact that compensation should be paid with effect from 1st April.

I will give way.

The Bailiff: Deputy Lowe.

Deputy Lowe: Thank you for giving way, Deputy Harwood.

Commerce & Employment would know exactly how much each milk retailer, because they supply the milk to each milk retailer, so they know the quantity of milk supplied. It will be easy enough to work out.

Deputy Harwood: But what they will not know is the impact on the individual retailer of the change introduced as from 1st April, with Option C.

2345 Sir, the quantum, you can go from one extreme to the other. Commerce & Employment have actually done what we asked them to do. They have come up with a range of figures. Yes, they said, one end is zero, the other end of the spectrum is the maximum figure suggested by KPMG, £1.1 million. If and insofar as this is an *ex gratia* offer, I think it is entirely appropriate for Commerce & Employment to say to this Assembly, 'It is up to you to determine what actually is
2350 the amount of that *ex gratia* payment.'

They, as a department, would be criticised if they agreed an *ex gratia* payment which, as I say, probably does not have the basis of Law. It is for this Assembly, therefore, to determine that figure.

I cannot at this stage say whether or not £450,000, £750,000, £1.1 million is appropriate. We
2355 already know from the information we have had from the Milk Retailers' Association that they suggested that £750,000 certainly will not satisfy their members. Are they speaking for every single member? Do they know the impact upon the individual members?

They suggest £1.1 million may be getting closer to the figure. We still do not know, at the end of the day, if even that figure is going to be accepted.

2360 So we are placed in a very difficult situation.

One further point is, even if Commerce & Employment cannot negotiate that figure, and negotiating *ex gratia* sounds slightly odd anyway, with an individual retailer, that retailer still has recourse to come back to Law. So, you again would be going round in circles. Maybe the answer is, actually, at the end of the day, this really has to be sorted through the court. (**Several**
2365 **Members:** Hear, hear.) The court could then apply to each individual retailer the compensation which is appropriate to that retailer.

I am in a dilemma. I have to say, sir, that on the evidence before us, I accept that almost certainly the milk retailers do have a basis for a claim, even in contract. I think probably there will be a view that they are on their side.

2370 In terms of fixing the compensation, I think really that is a matter that should have been left to the court if compensation is recognised then really the quantum should be determined by the court. We have placed ourselves in an impossible situation.

I have to say I am going to have to vote against both the amendments.

2375 **The Bailiff:** Deputy Soulsby and then Deputy Perrot.

Deputy Soulsby: Sir, I will be extremely brief.

Before I make my point, I think I have to applaud Deputy Hunter Adam for getting gynaecology into a debate on compensation. (*Laughter*) Only he could do that.

2380 Sir, I am afraid I cannot support either amendment for one principal reason and that is they both want the money to come from the Dairy. Deputy Trott has made it very clear why that should not happen and the Guernsey Farmers' Association have said why they have serious concerns about that happening.

2385 It does just seem to me that the Dairy funds just make it all very convenient. On that note, I would like to quote from the letter from the president of the Guernsey Farmers' Association, who puts it perfectly:

'It is totally inappropriate to regard Dairy reserves as a pot to be used for questionable compensation payments.'

Sir, I cannot support either amendment.

2390 **The Bailiff:** Deputy Perrot.

Deputy Perrot: We have heard a great deal of windy rhetoric over the course of this debate and it is surprising, because just about every argument which has been made was made last year.

2395 This is a complete reprise of something which, actually, we had already decided last year when we gave direct instructions to the Commerce & Employment Department. I did not quite keep up

with what my, I suppose following Deputy Trott we have got to refer to everybody as my very good friend, my very good friend Deputy Harwood, he was speaking so incredibly quickly that I have only caught up with the first three sentences. (*Laughter*)

2400 From what he was saying, what I could gather, anyway, was that he was suggesting that, if one was going to deal with this properly, one ought to go to the Royal Court where one in this case is a milk retailer. The milk retailers, although they call themselves the Guernsey Federation of Milk Retailers, are a hotchpotch of businesses. They are quite different, they do not all act any way as a unified body, as we saw, in fact, last year in the events leading up to September.

2405 Deputy Harwood knows, or if he does not he jolly well ought to know, as well as I do, having been in practice for more years than he and I care to remember, as partners, going to the Royal Court these days is a very significant thing to do. The litigation risk is immense. Associated with that litigation risk is the possibility of eye-watering costs if you lose. One could not possibly expect milk retailers to take that risk.

2410 If one of these amendments is passed, and I hope at least one is passed, and the retailers are not sensible enough to come to a conclusion and accept this in full and final settlement, a retailer would be extraordinarily foolish to risk going to the Royal Court by not accepting the deal. If a milk retailer did that, I think he is foolish in the extreme.

2415 What this boils down to is this, isn't it? Either we think that there is a moral case or we do not. When we gave instructions last year to Commerce & Employment, we were not bothered about the legal side of things. We were accepting, at least I was accepting, that there was not a legal case. That was utterly irrelevant. The point was we felt that the States of Guernsey, by its conduct, had led a certain body of people to believe that a certain state of affairs existed, irrespective of whether or not it truly did exist. That was the reason why the milk retailers behaved in the way that they did and that is why they think that they ought to have value attached to their various rounds.

2420 So, if we think that there is a moral case, and we did last October, in giving those instructions to Commerce & Employment, that leaves only three things, it seems to me, absent any other amendment on our various desks. Either we think that there is a moral case but, actually, the payment ought to be purely nominal. In other words, we ought to go along with the present suggestion of Commerce & Employment and actually not pay anything at all. Or we pay something, up to an amount not exceeding £40,000, based upon the formula set out in whatever it is, paragraph 2(H), or we go along with that but say, no, it is going to be more than that at £60,000.

2430 All we have to do is make three choices. It is zero, £40,000 or £60,000.

As to whether this leads to some sort of unfortunate precedent, I do not think that is true at all. Every case turns on its merits and the peculiarity of this one was the way in which the States of Guernsey quite openly allowed the retailers to think that this state of affairs existed.

2435 So I do not believe that, in making some sort of compensation here, one is actually opening some sort of Pandora's Box for future payments. The point is, for those of us who last October thought that there was a moral right, I think that we will know in our own individual minds what is the sensible level of compensation.

2440 That is not something which can be argued one way or another. If there is no legal case, if we are not talking about the Law of Contract, either we think it is worth up to about £20,000, or £10,000 or £100,000 but, actually, what is on the table is the alternative of £40,000 and £60,000 and it seems to me, and there is no science to this, not really, that the appropriate level is to say go along with the basis of the proportion of milk sales and £40,000 as a maximum seems to me to be the right number. (*Applause*)

2445 **The Bailiff:** Deputy Hadley.

Deputy Hadley: It was interesting, listening to one lawyer talk after another and I must say, Mr Bailiff, that at lunchtime Deputy Luxon asked the HSSD Board what you called a ship full of lawyers when it sank and he told us it was a start. (*Laughter*)

2450 Assuming these eminent lawyers survived, I have to say I entirely agree with Deputy Perrot and he said exactly the same sort of thing I was going to say had he not got there first. Although, of course, he will have said it more accurately.

I think comparing the sort of businesses that Deputy Harwood did with milk retailers misses the point. The States has been so intricately involved with the milk retailers and I shall certainly be supporting the Queripels' amendment.

2455

The Bailiff: Deputy St Pier, then Deputy James.

Deputy St Pier: Thank you, sir.

2460 I would like to perhaps echo Deputy Trott's comments that, obviously, the members of the milk retailers in the Chamber, sir, I know one or two of them and none of the comments I have to say are remotely personal.

We do not have H.M. Procureur in the Chamber, but I do hope, as the Deputy Bailiff said before lunch, that he may be listening in, because I do have a couple of questions which I will perhaps relay now and hope that he is listening in, because I would like some advice on a couple of points.

2465 The questions are these: Has he or H.M. Comptroller had the opportunity to consider and advise on the legal risks and implications of making *ex gratia* payments? In particular, is there a risk that a decision by us, here today, to do so, in the absence of any legal authority to do so and founded only on a subjective and perceived moral obligation and paying an arbitrary *ex gratia* amount, is there a risk that that decision to do so could, in itself, be subject to judicial review, being potentially a wholly irrational decision by a public authority?

Could he reassure us that there is no risk of exposure for the States of Guernsey to a claim or the costs of managing such a claim if we are to agree to either of these amendments?

2475 I would be grateful if either H.M. Comptroller or Procureur could come to the Assembly to advise us on that, sir.

With regard to Deputy Lester and Laurie Queripel's comments about the merits of the doorstep deliveries and, indeed, Deputy David Jones' comments about the potential destruction of a way of life, I would be grateful if those moving these amendments could perhaps explain in their summing up how they believe that making these lump sum payments now will ensure the continuation of either of those events. Because it is not obvious to me, sir, that making a one-off capital payment will remotely assist with that. In fact, quite the reverse. It could well accelerate the exit of a number of retailers from the industry, so actually destroying the very thing that those Members are seeking to preserve.

2485 Deputy Luxon raised the question of will the milk retailers accept the *ex gratia* payments being offered and Deputy Adam asked are we negotiating. I think, clearly, the communications we have had from the Guernsey Milk Retailers are very clear. The earlier one we had with their presentation said the GMRA has always pressed for negotiations and the communication we had last night said, of course, I am not negotiating with you by email, any amendment you choose to support is only an offer. It is only an offer which then has to be agreed.

2490 So, for the avoidance of doubt, the Le Lièvre amendment is unlikely to gain support. It is unlikely to gain support. So I am really not at all convinced that this matter will be resolved by the passage of, certainly the Le Lièvre amendment, and quite possibly not the other either.

2495 With regard to the argument that these businesses have no value, well, of course, if they are profitable and have a customer book and so on, they will have a value. It is just we do not know what the value is and that is something that we will perhaps never know.

The argument that the money is just sitting there, that was a phrase that was used, forgive me, I did not note down by who. Money is sitting there. This is a comment that, picking up on what

Deputy Trott said, he is absolutely right, these profits have been generated by the consumer, but the surplus is owned by Islanders as a whole. This is not some kind of free money that is just sitting around in an account that is available. (**A Member:** Hear, hear.)

Deputy Trott is right that if that capital is depleted, it will need to be replenished. If, on the other hand, we say it is not required for the Dairy's capital needs, then it is surplus and it belongs to Islanders and will help us relieve pressure elsewhere. I simply cannot accept this idea that the money is sitting there and it is in some way freely available.

Finally, we have this question of the moral obligation and Deputy Harwood, I think, spoke to this quite clearly and gave a number of examples of where that argument, I believe, is flawed. I think I can give another one, sir, I think on this argument there is a good moral case that small horticultural businesses that have been put out of business as a result of the withdrawal of Low Value Consignment Relief, arguably that was as a result of the States of Guernsey's Government policy to encourage large fulfilment businesses. I think this would be another example where there could be a moral obligation to those small horticultural businesses, so I think it is deeply dangerous territory.

For me, sir, the moral obligation, if it does exist, to the 23 milk retailers is, I am afraid, trumped by our moral obligation, and I think it is more than that I think it is a fiduciary obligation, but let us call it a moral obligation for this argument, to the 63,000 Islanders. We are quite literally giving their money away. That is what *ex gratia* means and I cannot possibly agree to it.

The Bailiff: H.M. Procureur has arrived. Did you hear the question that was being asked of you or would you like the Minister to repeat it?

The Procureur: I did not hear the question, sir, no.

The Bailiff: Perhaps the Minister would repeat it, then.

Deputy St Pier: Thank you, sir.

My question, sir, was whether either H.M. Procureur or Comptroller have had an opportunity to consider and advise on the legal risks and implications of making an *ex gratia* payment. In particular, is there a risk that a decision by this Assembly this afternoon to do so, in the absence of any legal authority to do so and founded only on a subjective, perceived moral obligation, and of course paying an arbitrary *ex gratia* sum, is there a risk that that decision itself could be subject to judicial review as being a wholly irrational decision by a public authority and can he reassure us that there is no risk of exposure to the States of Guernsey to a claim, or the costs of managing such a claim, if we were to agree to *ex gratia* payments?

The Procureur: As the saying goes, I thank the Minister for that question, or those questions. (*Laughter*)

As Members will know, I never say that there is no risk of anything until a court and indeed a court of final instance has pronounced. What I am able to comment on the subject of judicial review is that that, of course, is a discretionary remedy and there are hurdles to be overcome by anybody who wishes to maintain an action for judicial review. The first is that leave to bring the action has always to be sought and an important consideration in the granting of leave is that the potential applicant is possessed of what lawyers like to call *locus standi*, which means that he or she has a legitimate interest of his own requiring to be protected or redressed in some way.

The form of action based on some sort of declaratory relief, merely because somebody thinks it is a nice question, is not one which is at all freely entertained by our courts. So, sticking to the judicial review, just to take an example, it is much more likely that a person might have *locus standi* whose business had been affected by some sort of decision than somebody, just a general member of the public, who asserts that something was done without authority and cannot demonstrate any loss or legitimate interest.

2550 In this respect, I think the States of Guernsey stand in a different position to, for example, local authorities in that jurisdiction over the water, which are creatures of statute and very bound to act within their own powers, expressly conferred powers, as in the series of cases a decade or so ago where local authorities got themselves into hot water because of various financial transactions and loan transactions that they entered into without authority.

2555 This Assembly is, in domestic affairs, a sovereign Government, and although I am not going to say no chance, because I never say no chance, I would have thought that the prospects of a legal challenge would be extremely thin.

The Bailiff: Deputy James.

2560

Deputy James: Thank you, sir.

I stand to support and reinforce Deputy Perrot's comments. It would seem to me, sir, that the pendulum of debate thus far is indeed swinging, from those that have spoken, of course, towards one or other of the amendments. I am a little perplexed at this stage which amendment this Assembly will in fact vote for. At this point, I am not even sure which one I will vote for.

2565 Should we get to that point, sir, I take Deputy Harwood's comments about who would be the negotiator and, whilst, on the surface of things it would seem that it would be sensible for the court to decide, but for the reasons clearly articulated by Deputy Perrot, I would not like to go down a costly and lengthy route of the court to make that determination.

2570 But I find myself thinking, if this Assembly gives the message that we want negotiations with the milk retailers, I think to be asking this Assembly to put it back in the hands of Commerce & Employment would be folly indeed. (**Several Members:** Hear, hear.) If we were going to be asking a board who, by majority, believed they should not get a jot, it would be folly indeed for us to be asking Commerce & Employment to pick it up and do some negotiation.

2575 Just a thought.

Thank you.

The Bailiff: Deputy Bebb.

2580 **Deputy Bebb:** Very briefly, Members, I am concerned as to hearing that we will be moving to one of the amendments or the other.

2585 It was interesting, I am sure Deputy Brehaut will regret having suggested that we each look at the Billets of the year of our birth but, in 1974, interestingly enough, one of the items was the removal of the rights of the Seigneurs. I raise that, now, because of course at that time the decision was made to give some compensation, but that was for a very simple reason. The amount of money that was being earned by them was known and the amount of money that was going to be earned by them post the change was also known, being zero. Therefore, there was an exact knowledge of exactly how much was earned beforehand and how much would be earned after the change.

2590 But I do think that this question of setting a precedent stands. If Members are looking for precedent, we have precedent, because the number of herds on the Island that produce the milk that we are talking about has been reduced to a quarter and no compensation has been thought of, no *ex gratia* payment has been suggested for those farmers who lost their livelihoods, despite the fact that the States itself was involved in a number of decisions which brought that about.

2595 Therefore, Members, I would argue that the right course is to reject both of these amendments and to actually state clearly that the States of Guernsey are not in a position that, regrettable as it is that businesses are no longer viable, the States of Guernsey are not, and neither do I think that the tax collection is there for the purpose, of recompensing a business that is no longer viable.

Thank you.

2600

The Bailiff: Deputy Quin.

Deputy David Jones: Sir, on a point of information.

2605 **The Bailiff:** There is no such thing as a point of information, Deputy Jones, so we will hear from Deputy Quin.

Deputy David Jones: There used to be.

2610 **The Bailiff:** Maybe there is in Europe, but there is not in Guernsey. *(Laughter and applause)*

Deputy Quin: I am glad to see that Deputy Jones is feeling better.

I went to the meeting recently given by the GMRA. Very informative. I came away there thinking that, if there is going to be compensation, I can see a good reason, it should come from general revenue, not the Dairy.

2615 Reading the papers that the GMRA gave me, it said at the bottom a distribution system has been actively supported by Guernsey farmers. Well, to my surprise, we then got an email, I think virtually everybody else got it, which says farmers not in support. They are saying money should come from general revenue.

2620 It went on to say if you back the Le Lièvre amendment, ask yourself this, would you back it if the Dairy had no reserves? Compensation from the Dairy may be a thank you gesture to the roundsmen, but it will be a stab in the back to the Dairy, the farmers and the consumers.

My support for the farmers is quite well known, I have got the tie on, if, for whatever reason the States decide compensation is deserved, it should be financed from States' funds, not the Dairy.

2625 The Dairy Farm Management Payments reduce from £2 million to £1 million over the next five years, in which time there is no request from the farmers for an increase, to minimise the impact to consumers.

2630 I am not quite sure where I am, now, because I thought they were all singing off the same song sheet and it is pretty obvious that they are not singing off the same song sheet, so I do not think I can support the amendment, unless Treasury, in its very generous way was to say never mind the Dairy doing it, we will do it.

Also in that email, we are being told that semen from the local herd cannot be exported because we do not have the system set up to do it all. It is going to be £24,000 to do it, which the Dairy are saying that they do not have that money to put forward.

2635 I am afraid my support is wavering very much and I will be interested to hear if someone comes up with something to clarify which to me has quite a bit of a mystery.

The Bailiff: Deputy Gillson.

2640 **Deputy Gillson:** Sir, thank you.

2645 If I could just pick up a couple of points before I make my main part of my speech. Mention has been made about the subsidy to farmers and it not being fair. I think, just to remind people, one of the objectives of the subsidy given to farmers was to keep the retail price of milk down, because our Milk Law was not robust enough to protect us against imports and it was thought that, by keeping the gate price down, you keep the retail price down, which made it less economic for people to import milk.

As former Deputy Tom Le Pelley used to say, that was really a subsidy to the consumer rather than the farmers.

2650 The next note, I will be very quick because it is something that Deputy St Pier has said, and I just say again, I have exactly the same question. If we are talking about the viability of rounds, how will a single one-off payment make them viable? If they are not viable because they have lost the shops, then a single one-off will not make them suddenly viable.

I think Deputy Harwood said some very good points about how do you work out the quantum of the loss of value. I think you can also look at this question in a slightly different way in that if a retailer has lost a shop from their round, we do not know why that is. Is it because it is cheaper or is it because the shop just did not have good service? We could end up compensating people for not having provided a good service. There is no way to know the answer to that question.

Going now to the main part of this, I just want to go back to look at this from almost the first reason. The basic reason that the milk rounds were protected and rationalised by the Dairy was to facilitate doorstep deliveries. This is what a lot of people have said: doorstep deliveries, we want to protect this. I think Deputy Lester Queripel said the social element in it. So the *raison d'être* was protect the deliveries and, when you look at the rationalisation that Deputy Lowe has mentioned, when there five or six delivering down at Rue Sauvage, the retailers benefited from that, not the Dairy. Because, to a degree, the Dairy does not matter if you have got three or four retailers delivering down a road, or just one.

We have got to remember, bear in mind, behind all of this was the idea, and behind a lot of comments, is we want to protect doorstep deliveries.

This brings on to the question of moral obligation and some people have mentioned that there is a moral obligation for the States. I would suggest that there is a moral obligation on behalf of retailers, which they have not fulfilled, which negates any States' obligation. This is something which I have mentioned in previous speeches on this subject. Given the fundamental intention was to ensure the continuity and viability of doorstep deliveries, by the actions the States have taken, there was an equal implicit moral obligation on the retailers to act in a way to maintain the viability of doorstep deliveries. I think that as a *quid pro quo* moral obligation is not unreasonable.

We know the volume milk deliveries to doorsteps has fallen significantly. But I have very little evidence of anything substantial that the retailers have done over the years to try and stem that flow away from doorstep delivery. I know of one, that in the last few years did a leaflet drop to people on their round, it was not followed up by any visits and I know that because my mum used to live in that round, but we have never seen adverts in the *Press* from the GMRA saying have your milk delivered.

If I had a milk round, I would know the houses I do not deliver to. It is pretty obvious. Well, I would go and knock on the doors on a Sunday, on the weekend, in the evening, ask people face to face. For most people they would have nothing to lose, so you would pick up business like that.

But I have not seen any evidence of the retailers actively and proactively trying to stop the flow of sales moving from doorstep delivery to the shops and, to me, that is a huge weakness in any moral argument because, since the whole of this system of rounds was designed around doorstep delivery, for them not to have taken that action, I think is a fatal flaw in their argument, so I think their lack of action there negates any moral obligation, if there is any, of the States.

I will not support either amendment.

The Bailiff: Deputy De Lisle.

Deputy De Lisle: Yes, sir.

I am very concerned with number five in these amendments, which is wanting to take money from the Dairy, because of the fact of ageing equipment in the Dairy and some suggesting, in fact, that we need a new dairy and knowing very well that, for example, just the SCADA system, which is a production and processing side of the operation, its equipment, if you like, for operations, that is currently requiring half a million and that is just software. That is a software operating system in the Dairy that is requiring renewal.

So, plant refit and, if we got to the main dairy line of carton production and so on and the filling of milk, that is a huge investment that has to be looked at in the very near future. So, we are looking at millions, actually, in terms of plant refit.

I think that is very, very important that money is not drawn from the Dairy reserves and money is drawn basically from general revenue rather than an operating business, which is so vital to the Island, actually.

The other point that I would like to make is that, while I empathise with the retailers, I have to say that first and foremost one has to be concerned with respect to the taxpayers' money and I think that one has to be concerned, also, that the money from taxpayers, to be paid to distributors before there is any impact, I think that is very difficult to actually come to terms with. There is currently no impact on their business, as seen, and therefore how can you then turn to a retailer and say we are going to give you £20,000, Deputy Perrot says £40,000, £100,000? How can you do that? What evidence is there, there, for providing any payment to a retailer?

There is a precedent there that would be made, because you could turn around and say that Sunday trading, for example, the legislation in terms of grocery and retail trade has been repealed, and that was really protecting the small retailer from the larger retail businesses. Now that there is an open system, which has been created by Government, are the small retailers that are closing very rapidly in town, there are several just this month, should they be claiming from Government too for actions taken by the States?

I think we have also got to realise that the new Milk Law is going to protect the dairy business like never before and that came in at the end of March, the new law. As a result of that, it provides security, if you like, to retailers, as well as the farmers and, as a result, provides security to those businesses. Whereas, when you think of the retail trade and the internet, I mean anything can come in from the outside, and compete directly with those retailers, whereas there is some protection, if you like, through the new Milk Law, to milk coming in from the outside.

So, already, retailers are being given some protection by the States.

I just bring up these few points with respect to guarding the States from opening up something that perhaps might run away into other areas in the future and also guarding our Dairy, that requires a phenomenal amount of investment; £2 million is nothing compared with what is required in a business of that magnitude and with that responsibility.

Thank you, sir.

The Bailiff: Members, H.M. Procureur has indicated to me that he would wish to go and attend to some other matters. Does anybody have any questions for him while he is in the Chamber?

No? In that case, I am sure you will be available and able to return if required.

Thank you for your assistance.

The Procureur: I am obliged, Members of the States.

The Bailiff: Are there any further speeches? Any further debate? Deputy Gollop.

Deputy Gollop: We have heard today some excellent and wise legal advice from both Deputy Harwood and Deputy Perrot and I agreed with both of them. (*Laughter*)

They said different things, but I understood the points. In a way it proves the point that legal advice is always taken from a base of learning but it is sometimes based upon how precedent has gone and judges, of course, might change the views of scope.

In a way, this has been a matter of contract. I am convinced that, in the mists of time, that we heard from Deputy Laurie Queripel, Deputy Lowe, that pre-2005, there clearly was an understanding, a gentleman's agreement, an arrangement, a situation whereby the States, not even Commerce & Employment, I do not in any way blame the present board, this is going back to the Agricultural Marketing Board, the Dairy and so on, they kind of allocated geographical areas to exclusive distributors and this was the basis on which milk retailers borrowed money and invested in the businesses.

2755 It was a typical Guernsey situation, almost semi-feudal, in that it was as much based upon rights as on ownership, and it was unsatisfactory for today's world. I think we know that. I think that is one of the reasons why we have had so many debates on the subject and there are a few parallels in other areas of public life, but I do not think we need to spend too much time on those, because we are specifically concerned with the milk issue.

2760 I would have welcomed, personally, either another Scrutiny review, I sat on the committee that had a Scrutiny review into the Milk Law, Deputy Domaille, you will remember that, but I think we could have done with a Scrutiny review on the history of the milk retailing sector and we could perhaps have done with a legal review, as well, a kind of commission to establish the facts. Because we never really had 100% overwhelming testimony from one side or the other. We just
2765 gained an impression that there was a relationship and I accept that where we are at now, the Resolutions of the past States, is we do have some kind of historic organisation, as Deputy Fallaize might put it, in the industry, an involvement, in which we shaped the very industry that it created. Of course, we were putting all kinds of artificial restrictions, subsidies and so on.

So, this lends me to support one or other of the two amendments. Clearly the Queripel
2770 amendment is more attractive to the milk retailers and I think I will support it, but I will not be that disappointed if it fails. I would definitely support the Langlois amendment as being perhaps more realistic but, I think, if you look at the loss that the milk retailers have had, the Queripel amendment is actually more accurate. In fact, it is woefully short, because it has been reported in the past, back in the day, 2008, a Commerce & Employment member, he may still be a member of
2775 this Chamber, said that perhaps the real value of the sector was £2 million or £3 million.

When we have heard from one or two Members today that the business has no value, well that is because of political decisions that have been made. (**A Member:** Exactly. Hear, hear.) One also has to assert that, when you look at the value of a business, and here I would disagree with the KPMG report in part, it should not be just on the loss based upon the changes in legislation
2780 brought about the States last autumn. It should be based upon the entire decade of change and uncertainty that we have had. (**Several Members:** Hear, hear.)

When one looks at this report in more detail, one wonders too, I mean we are talking about wasting taxpayers' money or whatever, why they commissioned the report at all. They had a set view by a majority that no compensation was necessary and when you look at the proposals that
2785 they made, you see on page 1808 in a more detailed and specific report, the specific report takes up 9p, 12p and 15p and so on. You see under 4.3(g)

'The States will need to consider various factors in deciding on the level of a settlement, should they so decide.'

Now that is sitting on the fence a bit.

'Including:

the protected market for milk both in the past and the future;

the legal basis for the adoption of Option C;

the distributors will be free to continue to operate their business in the future;

political and public sentiment.'

2790 Then you turn to the KPMG report itself, page eight, or page 1821 of the main Billet and you see on the foolscap sheet:

'Range of total political compensation ...

'In recommending the total level of compensation, if any, to be offered, the States should consider: the distributors have benefited from the perceived protected market for a number of years ... '

That is an acknowledgement, surely, that there was a special market that the States had created?

2795 Next point:

' ... the strength of the legal basis of adopting Option C ... '

Well, we have had a variety of legal opinions and ideas on *ex gratia* and so on.

Then we come on to 'political sentiment and public opinion'. How many accountancy reports have you read that brings that as a material consideration? How can you evaluate what political sentiment is, or public opinion?

And:

'The right for milk distributors to continue to operate post-Option C is not being removed. Any compensation amount appears therefore to be an *ex gratia* payment for increased risk of operating their businesses.'

Well, it has been said by Deputy De Lisle that they now have protection, but only as licensed milk distributors that have been approved. In reality, they are losing, if they have not already lost, the more lucrative trade to and from retailers, shops, commercial hotels and so on. The problem there, surely, is that the most viable parts of their businesses are gone and they are having to cross-subsidise.

Some of us were invited to a presentation, which was interesting. They revealed some information that they perhaps could not reveal in the public domain, but I think a salient point that was pointed out that not only might the compensation be more suitably at the Queripel level of £1.1 million, but that many of the existing rounds are being acted almost on a *pro bono* goodwill basis. There is no intrinsic viability in them, because the milk retailers were subsidising, in some areas, the community, parochial people they were serving, the proverbial little old lady, by distributing to larger customers. Now that that market has changed, we are entering more of a free market, that makes the whole industry uncertain.

So, although I would like to see the milk industry continue and, should this compensation be paid, some might retire but it will give confidence of a capital base for the existing distributors to continue, the most important point is that we honour, morally, ethically, the damage we have done to the industry and accept that we have had a special relationship with the sector that is very different from your corner shop retailer or garage shop.

A Member: Absolutely, hear, hear.

The Bailiff: Does anyone else ... Deputy Adam?

Deputy Adam: Sir, may I make a point of correction?

Deputy Gollop mentioned, I do not know if he was mentioning myself, that milk rounds had no value. What I personally was saying, sir, was that the value of something is not known until you try and sell it, whether it is your house, whether it is a milk round or business.

Thank you.

The Bailiff: Deputy Collins.

Deputy Collins: Thank you, Mr Bailiff.

I am, sir, a member of the Commerce & Employment Board, and I would like to be honest with this Assembly on this policy letter. I have with me three sets of Commerce & Employment minutes over which discussions and the approval of this policy letter in front of us today was made.

On 17th December, at which only three members were present, me and two others, the KPMG report was tabled by officers. Disappointingly, KPMG were not present to answer all our questions. The board met again, now four members present, me and three others, the following week to quiz KPMG on their report and, disappointingly, now due to illness, were still not able to be present.

So what a position to be in, sir. The deadline to submit a report for debate and not be in a position to quiz KPMG on their report.

At the time, the policy letter prepared by the officers included two options: no payment and a payment, which would allow Members here today to decide the issue. In fact, it was my

recommendation that the payment option was removed and the department quiz KPMG as soon as possible and, if necessary, lay an amendment on its own report.

2850 The board did, in fact, quiz KPMG on 21st January, by which all five members were present, but the board could not resolve its differences in the face of very clear legal advice.

2855 So, where am I, sir? I do have some major concerns that either figure quoted in these two amendments is not enough to satisfy the milk retailers and, as we have heard, Members received an email last night and the media press release from the GMRA on 4th March, saying that £750,000 was not good enough, or £1.1 million was not good enough. Perhaps, we as States' Members, should leave these situations to the courts to resolve, but I think that would be costly on all sides.

Personally, I am willing to settle and for this to be resolved. I cannot support the Queripel amendment, but I am, sir, hand on heart, going to support the Le Lièvre amendment.

Thank you.

2860

The Bailiff: Deputy Duquemin.

Deputy Duquemin: Mr Bailiff.

2865 There have been few, if any, debates in the last four years where I have been so undecided on how to vote, especially so late in the debate.

Sir, there are parallels to be drawn between the two policy letters and the amendment that we have been debating today. The Culture & Leisure Department, hugely grateful to the Vale Deputies led by Deputy Fallaize, aka Tom Cruise, successfully completed what at times felt like Mission Impossible at L'Ancrese Common and he deserves an Oscar, sir.

2870 But, now, the Commerce & Employment Department is also faced with its own mission impossible. Sir, we Deputies are, too. Because it has been virtually impossible to get to the facts or at least to what is a sensible, reasonable and appropriate solution.

2875 There is a similarity between the situation with the L'Ancrese Common and the milk retailers, because this is a problem that we want to go away, but the question I have got is, is this the way to get rid of the problem? I genuinely do not know.

Let me explain. This morning Deputy Fallaize brought to this Assembly, through his amendment, a solution that he knew was acceptable to both the Vale Commons Council and the golf clubs. They had agreed to it and all we needed to do was agree to it too.

2880 Mr Bailiff, I have attended what I think are all of the briefing sessions by both the Commerce & Employment Department and the Guernsey Milk Retailers' Association during the debates on milk during this term of the States. At times, to continue the movie theme, you feel like you are entering a parallel universe. We are talking about the same subject, but with a hugely different narrative.

2885 But, sir, the most important and crucial point is this: I do not know what the GMRA want. At the most recent presentation from the GMRA, at St James' two or three weeks ago, I, and I think lots of other Members, left not knowing what their members believe would be a satisfactory conclusion/solution/mitigation/compensation, whatever you want to call it, to this saga. We quizzed the GMRA and asked the question on a number of occasions, but we received no clear answer as to what they felt the appropriate financial mitigation would be.

2890 Safe to say, what I would consider would be one of the most bizarre assumptions that I have heard in my last four years in the States. What do they want? What will they accept? Has there been any negotiation? Is the GMRA properly mandated to negotiate on behalf of its members?

2895 Sir, Deputy Adam and also Deputy Harwood have both touched on this, but the GMRA had commissioned their own report from BDO to determine what would be appropriate financial mitigation for the milk distributors. We were unable to keep the document that was provided to us and only had a few minutes to glance at the four or five A4-type pages that they shared with us. But immediately I drilled down on two paragraphs which basically said that there was an

assumption and a clear recommendation that the milk retailers, as a minimum, should receive at least what they had paid for their round.

2900 Sir, I found this verdict from one of our leading accountancy consultancy firms to be incredulous. It was basically a money-back guarantee on buying a business. A no-risk business investment. Regardless of how much or, importantly, how little effort the milk distributor had put into his or her business, they felt the value of their business could not go down.

I wish I could buy a business where its value was guaranteed and this troubled me.

2905 Regardless of how much they paid for the business, their round, they may have paid over the top, they may have paid far too much. Regardless, the report produced by the GMRA suggests that they should get their money back. Are the GMRA saying that they want their money back and that they think this is the evidence that provides that detail? Would £60,000 be enough? Would £40,000 be enough?

2910 Sir, we do not know. Despite turning out in force in the gallery, we are not sure whether the individuals, the individual businesses that loosely make up what we wrongly regard as an official trade body, we do not know and have no indication whether the GMRA would accept the offer.

Despite being an *ex gratia* payment, point number six in the amendment reads:

‘Should a financial settlement payment be approved, the department considers that it is essential that any payments paid to milk distributors are explicitly given on the basis that they are in full and final settlement of all claims in this matter and the department is advised that distributors wishing to take a settlement should be required to sign an agreement by which they clearly waive their right to seek further damages through civil action.’

2915 I understand that, sir, but the question is whether the amendment that we pass today will solve the problem that we are facing.

Sir, I am concerned that voting for this amendment is a leap of faith and that some may choose to accept what is on offer through this amendment, but some may choose to take the legal option.

2920 As irony would have it, in a Meeting that has had more than its fair share of Sursis, this possibly is the debate that could have best benefited from a Sursis.

Precedents. Much has been said about the precedents that this agreement may have. Let me just also give you an example. The States recently closed down some primary schools. I am sure, to use Deputy Conder’s phrase, that there was a tacit agreement, a tacit contract, between
2925 Education, for schools, and the companies that provide the school uniforms. Logos would be provided, and so on, for embroidery, but should we be providing an *ex gratia* payment to these companies, who no doubt will have written off many thousands of pounds of stock because of political decisions that we made in here to close a school. Presumably, that St Andrew’s School cardigan in their stock room immediately had no value overnight. There are precedents, sir, to decisions that we will make in this Assembly and I think we do need to be aware of that.

2930 As I told the GMRA at their meeting, I am sympathetic and I do understand our moral dilemma, but this is a mess and sadly they, I do not think have helped themselves by playing their cards or, to borrow Deputy Le Lièvre’s words, their Benny so close to their chest. I am not often on the fence and I will listen to the rest of the debate and the summing up before I decide how to
2935 vote but, sir, it is a very difficult decision to make.

The Bailiff: Is there any more debate, before we close? No.

Well, Members, let me just explain what I propose and what I have agreed with the proposers of the amendments and with the Minister for the closing sequence.

2940 Deputy Stewart will now speak and he said he will speak on both amendments, so he will make one speech in respect of both amendments. I then propose that we close and vote on the Deputy Queripel amendment, on the basis that that goes further and, clearly, if that amendment is carried, I understand that Deputy Le Lièvre will then apply to withdraw his amendment, so that if people who think that £1.1 million is the appropriate sum vote for that amendment, if that amendment

2945 does not carry then Deputy Le Lièvre will close on his amendment and then we will then vote on his amendment and then we will have general debate.

Deputy Stewart.

Deputy Stewart: Thank you, Mr Bailiff.

2950 I think there is one thing we have all agreed on, Mr Bailiff, and that was confirmed by H.M. Procureur, that in the legal opinion the States is not at fault and I think we can probably all agree that. There is, as far as we can see, no real legal basis and that has been the consistent advice to my board.

2955 Just to turn to some of the comments that have been made. Whether we want to call them retailers or distributors, as Deputy Laurie Queripel raised, I think it is semantics, but I think what we must remember that not all the milk retailers are equal, all their rounds are so different and we are looking at one payment to everyone. There are some that only deliver to supermarkets, that do not deliver to any doorstep whatsoever and, in that respect, one size does not fit all and I think distributors actually fits, but I am not going to argue that point. But I just did. Yes, I did, sir, through the chair. *(Laughter)*

2960 I think, when we go back through history, we can argue all about that, but I see no reason why doorstep deliveries need to cease and I take the point that I think Deputy Luxon raised that, actually this may well accelerate the end of doorstep deliveries, because we know they are decreasing anyway and I think, if we pay out these capital amounts, people will just go, 'thanks very much and actually, we will call it a day now' because they know that consumer habits have changed and they continue to change and that was a point I made in my original speech.

Deputy Le Lièvre, who gave a very balanced speech, and what we are arguing now is about this moral issue, isn't it? Morally, should we make payments to business that are affected, for example has been raised, by road closures?

2970 Morally, and I think a very good recent example of this, where we talk about the fabric of Guernsey, you know what, I used to love it, we used to do occasionally of the Old Quarter pubs, I used to love doing that, the Helmsman and I forget the name of the pub that was over there in the market that we used to sometimes do that back in the day (**A Member:** Wellington Arms.) Wellington Arms, that is the one, thank you, sir, through the chair. Now those pubs, sir, a lot of them, as we well know, failed when we legislated a smoking ban and these were small businesses, these were family owned and, because of a change in the law, those types of pubs failed. They were not big enough to be made into restaurants or wine bars or anything like that. So, morally, should we have compensated them?

2980 Here is the thing. If we bring in GST, Guernsey Sugar Tax, will we be compensating sweet shops for loss of sales over their sweets and drinks?

I heard what Deputy Le Lièvre said and I hear all these moral arguments, I am not going to pick up on every single one, but one thing Deputy Le Lièvre did say is we do not know what level of mitigation, this has come out of the debate, so we pluck a figure out of the air or, as Deputy Le Lièvre said, we take a stab at the figure.

2985 You know, for me, taking stabs at things, not a good idea.

2990 Deputy Langlois, again, very measured, but I do fundamentally disagree, although he did make his points well. For me, it is just the Law is the Law and we took that legal advice. Deputy Trott, I agree milk prices will be affected if we raid the Dairy's coffers. There is a huge amount of forward investment and you only have to go around the Dairy to see how much equipment really, in my view, should be replaced and needs to be replaced and they recognise that too.

Deputy Domaille said we are on the slippery slope and I do agree with him. We will end up like the Viv Nicholson States: spend, spend, spend. We are, if we agree to this, I believe, making a dangerous precedent.

2995 Deputy Luxon, I do agree with him. Of course I have empathy with the milk retailers but I think it is for them to recognise what opportunities may come out of this. The fact that they can price

milk how they want to now and it is market forces, as Deputy Luxon put it, coupled with a lack of business development, in my view.

Deputy Le Clerc, I thought, also made some good points. There is no guarantee that they will fail or fold. I think I made a point in my opening speech that some of them may well do better. We do not know whether they are going to continue. We do not know what is going to happen and Deputy Harwood picked up on this. He was on point, not only about the legacy problems that a vote in favour of some sort of *ex gratia* payment may give, but also back on about the quantum, taking a stab at it again and his arguments were very logical.

Deputy Soulsby reminded us about the farmers and the Dairy and that was also picked up by Deputy Quin. You know, he supports the farmers' position but, similarly, the farmers support C&E's position.

Deputy Perrot, maybe we should make it easier for people to get legal remedies, but I will go back to a speech Deputy Perrot made earlier this week about his belief and why I have stuck, and some of my board members, have stuck to their position. My upbringing is in business and my belief is that handing out, particularly having to be careful with money and shareholders' money or others people's money, I just cannot, when we are taking a stab at things, picking a figure out of the air, it goes against everything I believe in and that is what I believe.

Deputy Perrot: Point of correction, sir.

The Bailiff: Deputy Perrot.

Deputy Perrot: It is good of Deputy Stewart to reinvent part of my speech but I never actually suggested, either expressly or by implication, that people ought to have cheaper legal remedies. As a person who was in practice at the Bar, I want to be as expensive as possible. (*Laughter*).

A Member: You were. (*Laughter*)

Deputy Stewart: Deputy St Pier, as always, logical, well thought through. You know, he feels what I feel. I think it will destroy, paying these capital payments, what Deputy Jones and others seek to preserve.

I think a lot of milk retailers, given a large capital sum, will just stick it in their back pocket and say, 'Actually, I know which way the wind is blowing, I can see we are not getting much on the doorsteps.' I think they will walk away and we will actually accelerate what we are, quintessentially, trying to preserve here.

I, for one, will continue getting my milk delivered on the doorstep, whatever decision we make at this Assembly today. It is not going to affect – (*Interjections and laughter*) Well, what people want to do with their business or not is up to them, but it will not affect me, whether I want to buy milk on the doorstep or not.

Deputy Bebb talks about what we know and the time-honoured and I will misquote everything: known knowns, known unknowns, unknown knowns and unknown unknowns, but we do not know. Deputy Bebb is absolutely right, we do not know, it is back to this stab again.

I cannot see that that is good government and Deputy Duquemin picked up on this point. We are going to give somebody a money-back guarantee on what they paid for their business. We do not know what the figure is. We absolutely do not know. So it is a stab.

Deputy Gillson, finally, on the moral obligation, I will finish my speech here, it is a two-way street and Deputy Gillson, in my view, was absolutely right there. I will be consistent in my position. We have too many unknowns, just taking a stab, and Deputy St Pier made the point, whichever way you want to cut it, I still believe this is taxpayers' money. I cannot spend taxpayers' money this way.

I will not be supporting these amendments, sir.

The Bailiff: Deputy Laurie Queripel.

3050 **Deputy Laurie Queripel:** Thank you, sir.

I really do not want this to take too long and I am going to try not to reply to all the points and all the contributions made by Members, but I am going to have to touch on quite a few.

3055 Firstly, sir, I will not go in order, because I want to start with Deputy Domaille and Deputy Luxon, sir. Now, they really are wily politicians, sir, because both these Deputies know that I cannot possibly answer all their questions in detail, because to some extent this is an open-ended issue, but I will make these comments.

3060 First of all, you cannot make direct comparisons between this current milk distribution system and anything else, sir. As Deputy Lowe said, this is a unique system and this has been a common theme throughout this debate. You cannot make comparisons to kiosks and taxis because, licensed or not, they operate within a free market. They are not zoned. (**A Member:** Hear, hear.) A taxi driver is not told you have got a licence but by the way –

Deputy Domaille: Point of correction, sir.

3065 **The Bailiff:** Deputy Domaille.

Deputy Domaille: The taxi drivers do not operate within a free market. The number of taxi licences are restricted by the States.

3070 **Deputy Laurie Queripel:** Deputy Domaille has missed my point, sir. They operate in a free market in the sense that they are not zoned. A taxi driver from the Forest is not told, 'You have got a licence but, by the way, you can only pick up passengers from the west of the Forest.'

3075 **Deputy Domaille:** I am sorry, sir, it is unlike me to keep rising with points of correction, but I have to in this case. The taxi drivers' licences are issued by the States and the maximum payment they can charge is set by the States. They do not operate in a free market.

3080 **Deputy Laurie Queripel:** They are not zoned, sir, geographically they can go anywhere they wish across the Island. That is my point. When a taxi driver is given a licence he is not told he can only pick up passengers from the west of the Forest, he can go all over the Island. The same with a kiosk, sir. If somebody is given the permission to operate a kiosk, say at Rousse, in the Vale, they are not told, 'Yes, you have got a licence or you have got the franchise, but by the way you can only serve customers from one side of the Braye du Valle.' They can serve customers from across the Island, they are not restricted to a zone.

3085 I understand what Deputy Domaille is saying, but it is like, I am sorry to use the cliché, comparing apples and pears. The only thing is that they have got a licence to operate. It is an entirely different system, sir. Milk retailers are restricted to a zone. They cannot go outside of that zone. Taxis can. People that operate kiosks can serve anybody they wish, sir, they are not told they can or cannot serve somebody.

3090 Sir, I cannot say this enough, it is the States' involvement in the creation of this system, which includes regulations, specific zoning, etc, that has created an asset, a commodity. (**A Member:** Hear, hear.) That has been acknowledged by the Dairy and the States all along and they were happy to play their part in that, but of course now they are not because they want to make changes.

3095 Deputy Luxon spoke about, once again this is an open-ended question, some milk retailers may survive and thrive. Yes, that could be the case, but why should the majority of milk retailers miss out on mitigation payments because a few may be able to carry on.

Now, the best evidence we have proves that will be the case, sir. I mentioned Jersey before, there are only now two distributors in Jersey, sir. I am just going to refer to the Billet for a second,

3100 sir, there are only two distributors in Jersey. Only one is prepared to carry out doorstep deliveries of milk, sir, and only then in a very select way.

Once again, I just want to refer to the KPMG report in the Billet, sir, if I can find it. So the best evidence we have is if we change to this free market model then many retailers, sir, businesses will become unviable. Jersey, number one, is my first exhibit. My second exhibit, sir, is the KPMG
3105 report, as commissioned by Commerce & Employment. It says:

'It is possible some geographical pockets within Guernsey may no longer be provided a door to door service.'

Then it says:

'Based on this analysis, in summary, it is likely that the total industry net milk revenue currently enjoyed by the 23 milk distributors will fall once Option C is adopted. This would reduce the expected business valuation associated with milk distribution in Guernsey.'

Then, sir, on the next page, it says:

3110

'There will inevitably be winners and losers from the policy change. However, ultimately, all distributors, are facing increased risk for their revenues from moving to Option C.'

Those are comments, sir, from C&E's own report, commissioned from KPMG.

Now, sir, C&E say that they want the milk retailers, and I am quoting Deputy Brouard here, it was a very nice phrase, I think he said to transit the bridge and continue to operate. But they know that by creating a free market, open market system, that some will fall by the wayside. That
3115 is the point. They want market forces to come into play. They want to create greater competition. There will be casualties, there is no doubt about that.

We, sir, as a States, and Commerce & Employment and the Dairy need to accept that and they know that. They are playing hardball. As I said this morning, they are digging their heels in and they have their head in the sand at the same time. (*Laughter*)

3120 This change of system, sir, is not just moving the goalposts, it is asking the players to play on a different pitch under a different set of rules.

I thank many of the speakers who have spoken in favour of either this amendment or the Deputy Le Lièvre amendment. Deputy Dave Jones, Deputy Sherbourne, sir, I thank him for his comments and support. He is right to say that up until now, and it has been acknowledged by
3125 everybody, the milk retailers are an integral part of the industry, until now, because it apparently does not suit now for them to be classed as an integral part of the industry.

Of course, the other point that he made, that he feels that the sum of monies should come from the Dairy reserves, I absolutely agree with him. What we seem to be forgetting is the milk retailers have contributed towards the Dairy's profits by their efforts. They have contributed
3130 towards those profits, sir.

Deputy Perrot, sir, I think him for explaining the difference between the commercial market and a Government-controlled and restricted market. He agrees, also, that making the payment from the Dairy reserves would be a legitimate use of that fund. I agree with him also, sir. I think it was Deputy Perrot that said this, big organisations are able to look after themselves, the smaller
3135 businesses have a much more difficult time in looking out for themselves when facing a change of policy from Government, sir.

I think it is beholden upon a government, sir, to help that transition to be a smooth one and a considerate one.

Deputy Adam, sir, I think he made a lot of points. I am not going to comment on all those, but
3140 I think, actually, we have no choice. The States have been put in this position. C&E were asked to go away and do this work. They are not coming back to recommend mitigation payments or any kind of figure. It is up to us to do that and I think this £1.1 million figure is not a figure plucked out of the air, it is straight from the KPMG report and it does represent a kind of mid-way point, actually, because the milk retailers have also received independent advice that provides a much

3145 higher value figure, between £2 million and £3 million, so actually it is quite a good mid-way figure.

The Chief Minister, also, sir, he feels, I think I have heard him right, that there is a moral obligation for the States to pay a figure and I thank him for that. But, once again, I think he spoke about the figure in the KPMG report and he said that the £1.1 million figure was the maximum
3150 one in the report, but as I say, the milk retailers have received a figure or a quote that is far above that. So I think, actually, that £1.1 million figure represents a good compromise.

Deputy Paint, sir, is notorious for being fiscally conservative and he believes there is a strong moral case for mitigation measures. Actually, I had a conversation with Deputy Luxon a few days ago. He observed, he had noted that, in many cases during the course of this term, I had voted in
3155 a fiscally conservative manner and I agree with him, sir. There are a number of policies that have come before this Assembly I have quite liked, but I just did not feel we had the money or the funds to justify adopting those policies.

So Deputy Paint, sir, who has been fiscally conservative, he goes along with this £1.1 million payment, he thinks there is a strong moral obligation. I do too, sir. That actually strengthens the case as far as I am concerned. As I say, there are many things I have resisted this year because I
3160 have been concerned about the outlay, sir, but I think there is an absolute justification for this payment.

Deputy Harwood, sir, I think he has come down on the side of saying there is a moral argument for saying this should be settled in this way but he also mentions ... I am going to give way for Deputy Harwood.
3165

The Bailiff: Deputy Harwood.

Deputy Harwood: I thank Deputy Laurie Queripel for giving way.

3170 I did not say that. What I said was that the States had previously accepted that there was a moral argument. I did not say that I necessarily accepted.

Deputy Laurie Queripel: That is fair enough, thank you.

But he spoke about the courts being a way to deal with this situation but, as other Members
3175 have said, we are talking about small businesses here. What a position to put them in. What a way to treat our fellow Islanders. What a way to treat small local businesses, sir, to put them in that position when we could deal with them fairly and justly now by coming to an agreement, sir.

Once again, when Deputy Harwood spoke, we had this point coming into play where we are talking about a unique system. This is very different to any other relationship that the States have
3180 with local businesses, sir, which is why I think these comments about kiosks and taxis are sort of erroneous, really.

I think it was Deputy Harwood, too, that spoke about gradually doorstep deliveries are dropping off and that value of that business is gradually going down that way but, of course, it is States' intervention. As soon as this review was announced, sir, it was States' intervention,
3185 intervention on behalf of the States of Guernsey, that had a devastating effect on these businesses, sir.

Market changing, of course, over time, can make a difference, but these businesses under the current system could operate for many, many years. But, once these changes come in, that will have an immediate impact upon these businesses, sir. It is these changes that are coming into
3190 play, that have been mooted for so many years, sir, that is having that devastating effect.

Deputy Soulsby spoke about the Dairy was not the right source for the sum of money, but as I said in my opening speech, I think it is. I think it is Commerce & Employment and the Dairy who have wanted to embark on this journey. This is their journey. They have commissioned this journey, sir, I think it is only right that they pay the price of the fare in regard to any mitigation
3195 measures.

Going back to Deputy Perrot again, sir, he is absolutely right, the majority of the States accepted that financial mitigation is the correct outcome. I thank him for the learned observations that he made. He is right, it is a massive risk for milk retailers, cost-wise, going down the route of legal action. Why would we put them in that position, sir, when we can settle with them in a fair and just way? There is certainly a moral case.

Actually, sir, yes, when we made that decision last time, 33 Members voted *pour*, they voted yes. They agreed that there was a moral obligation on the States to reach some kind of financial settlement.

Deputy Perrot, once again, is right. There is no science to this. We have to step up to the plate and make a judgement and I am asking Members to accept that this amendment, the figure in this amendment, is the correct figure.

I thank Deputy Hadley, sir, for his support. There are Members who have spoken in support, because we are debating two amendments, they may be going to support this one or Deputy Le Lièvre's, but either way I thank them for their support and Deputy Hadley was right, the States have been intricately involved in this system from the very start and they have an obligation.

Deputy St Pier, sir, once again I cannot answer his questions. Of course, he has asked H.M. Procureur to answer the questions. Once again, he is putting a great deal of emphasis, and I understand, of course, on legal advice given to the States. But, as I have said before, that is not gold plated, it is not guaranteed. There is a risk in taking legal advice, just as there might be a risk in deciding we are going to pay a payment today.

I do not think we should use that, not as an excuse, but as a reason not to go down this road.

There is no doubt, sir, that the change of system, it has been proved in Jersey, it has been shown very clearly in the KPMG report, it will destroy many, many businesses, and it will certainly destroy doorstep deliveries in many cases, sir. It will hasten the end of these businesses and their viability.

So, there was some talk about, rather than giving the milk retailers a one-off payment, perhaps we should find some other way to do it. Are we talking about here, perhaps as we have done for the farmers, sir, providing some sort of subsidy so that the milk retailers can carry on? I do not think that we can be even considering that. We have to accept the realities of the situation, sir, and we have to decide today if we are going to make a payment or not, sir, and I think it is the right thing to do and we have a moral obligation to do so.

Deputy James also said, sir, that we should not go down the costly legal route. There is a risk to that and I agree. Surely that is not in either party's interest, surely we should try and come to some sort of negotiated and agreeable, acceptable agreement?

Now, Deputy Quin, sir, he spoke about the fact that any compensation or mitigation payments forthcoming, they should come from general revenue and not the Dairy, because it will be a stab in the back for the Dairy. Now, I do not like using terms like stab in the back, sir, but if anybody is going to be stabbed in the back, it is the milk retailers. (**A Member:** Hear, hear.) It is not the Dairy.

The milk retailers, at least, are being very much short-changed by the changes to the system.

Now, Deputy De Lisle, he spoke against the amendment, but he kind of made my case for me, actually. He does not want the money to come from the Dairy reserves, either, but he spoke about the changes to the Sunday trading laws, or the de-regulation of Sunday trading, and he said because of those, smaller businesses are suffering and they are closing rapidly. Well, exactly. You create a free market and the smaller businesses suffer so that, actually, as far as I am concerned just strengthens the case for either this amendment or the Le Lièvre amendment. As a result of a change in the market set-up, sir, smaller businesses are suffering in regard to Sunday trading and they will, when this change of system comes into play in regard to milk distribution.

Deputy Gollop, sir, he feels that there is not just a moral obligation but in fact there might be some merit to say there is a contractual obligation and he feels that some of the documents we have all seen and been privy to indicate that. He is absolutely right, zones etc. are a reality. The States played a part in drawing those zones up, sir. That is a fact. That is a reality. We cannot get away from that.

That has all contributed to creating these rounds, which are a commodity or an asset. He was right, we have an obligation to the milk retailers and I thank him for his support and he feels that the £1.1 million figure, as I do, is a more accurate figure, sir.

Once again, sir, he spoke about this being a unique system, a special market. That has been an absolute common theme throughout this debate. We cannot compare this system to any other system, to any other situation. It is a unique one. That is why we need to reach this kind of settlement to this kind of agreement.

Deputy Collins, sir, I think I have taken correctly what he said. He felt that £1.1 million could well be enough and he would be willing to settle.

Now, Deputy Duquemin wants the problem to go away. Well, sir, I do not believe it will go away by us procrastinating and not making a decision and looking for other routes. I believe we need to make a decision today, sir. I think we need to decide to support this amendment. At one point he was talking about he was not sure what the retailers would be prepared but, of course, we have had the advice from the retailers that the £1.1 million is most likely to be acceptable. We know they are separate businesses and one person cannot really speak for all the businesses, but that is the indication we have had, that that is going to be the more acceptable figure, sir.

There is a definition for an *ex gratia* payment and the definition is it is done from a sense of moral obligation rather than because of any legal requirement. So, regardless of all the talk we have had about legal cases today and legal claims, there is a moral obligation, sir.

I think the view of C&E is if we go in this direction, that is the market for you, competition, market forces come into play. Almost as if that is something that is almost virtuous whereas, in fact, what it means in reality is the closure of a number of local businesses and the loss of several jobs, sir. Just what we do not need in the current economic climate, sir, businesses going under, jobs being lost, tax take being affected. In some ways it seems to me that we are going down the wrong direction. We are going down that direction anyway, we need to get this sorted out.

It is most certainly the case, the evidence strongly suggests from the KPMG report and the Jersey experience that these changes will put the majority of our milk retailers between a rock and a hard place. As a responsible Government we should not be applying further pressure for that rock, sir, we should actually be accepting that situation and coming to a decent and reasonable settlement with the milk retailers, sir.

I will not refer to any more comments, I will just simply ask Members, please bear in mind what this change of system will lead to. It will most certainly lead to the demise of most milk retailers' businesses and I think we have to acknowledge and accept that and we have to come to a fair and reasonable settlement, sir.

Be a reasonable Government, accept those things and, as that is the case, I ask Members to support this amendment.

Thank you, sir.

Can I have a recorded vote, please, sir?

The Bailiff: Members, you are voting on the amendment proposed by Deputy Laurie Queripel, seconded by Deputy Lester Queripel.

There was a recorded vote.

Not carried – Pour 13, Contre 32, Ne vote pas 0, Absent 2

POUR

Deputy Gollop
Deputy Sherbourne
Deputy Conder
Deputy Lester Queripel
Deputy David Jones
Deputy Laurie Queripel
Deputy Lowe

CONTRE

Deputy Harwood
Deputy Kuttelwascher
Deputy Brehaut
Deputy Domaille
Deputy Langlois
Deputy Robert Jones
Deputy Le Clerc

NE VOTE PAS

None

ABSENT

Deputy Spruce
Deputy Le Tocq

Deputy Le Lièvre	Deputy Parkinson
Deputy Green	Deputy Bebb
Deputy Paint	Deputy St Pier
Deputy James	Deputy Stewart
Deputy O'Hara	Deputy Gillson
Deputy Hadley	Deputy Le Pelley
	Deputy Ogier
	Deputy Trott
	Deputy Fallaize
	Deputy Collins
	Deputy Duquemin
	Deputy Dorey
	Deputy Adam
	Deputy Perrot
	Deputy Brouard
	Deputy Wilkie
	Deputy De Lisle
	Deputy Burford
	Deputy Inglis
	Deputy Soulsby
	Deputy Sillars
	Deputy Luxon
	Deputy Quin
	Alderney Rep. Jean
	Alderney Rep. McKinley

3290 **The Bailiff:** Members, the voting on the Deputy Laurie Queripel/Deputy Lester Queripel amendment was 13 in favour and 32 against. I declare it lost.
Deputy Le Lièvre will now reply on his amendment.

3295 **Deputy Le Lièvre:** There are times when you regret submitting an amendment, but we are now in a downward bidding war.

I think I will raise some of the comments people have made, but I want to explain to the Members how I got to the figures that I used and I used, as a starting point, the mid-point on the KPMG range of mitigation and then, utilising one column of data that was given to me for the BDO report, I then *pro rata* applied it to all milk distributors, which found that 15 or so would end up with the £40,000 amount and then there would be some lesser sums.

3300 It was not just a stab at it, although I did use the term, because I was referring to the way I selected the £750,000. No, it was slightly more technical than a stab at it. More in the just do it range, I would have thought, but nevertheless, it is as I said in paragraph 19 of my speech, although nobody will know that, (*laughter*) I do not profess to know what the total amount of mitigation should be. None of us does. Commerce & Employment say nothing should be paid, an amendment yet to be laid at that stage was £1.1 million, my amendment suggested £750,000 and the milk distributors, we know, want considerably more than that. The only option that is totally wrong, in my opinion, was that of C&E.

3310 I still find myself very much in that situation, not knowing any more than anybody else in here, whether £750,000 is right or wrong. But it is an offer and, as a leap of faith goes, it has to be better than an offer which says nothing. Nothing is going to take us to the courts quicker than an offer of zilch per cent of zero.

3315 Deputy Gillson made a virtue of the fact that giving a subsidy to the farmers protected the consumer and, to some extent, I can see his argument. But, as the milk consumer is invariably the taxpayer and vice versa, it is pretty spurious. The reason the milk price was held at £1 was because, when I was the Dairy manager, they would not go beyond £1 because they feared imports, so the only way to do that was to collect money from the taxpayer and give it to the milk producers, thereby creating a milk price significantly above what we pay already. In fact, if the milk consumer had to pay for the Dairy, he or she would now be paying £1.48 a litre and that would, I suggest, bring in imports.

That takes me on to the point raised by Deputy St Pier. Where do you take the money from? Do you take it from general revenue, direct from the taxpayer, or do you take it from Dairy reserves? Of course Dairy reserves, when they are held by the Treasury, become the same thing. But, of course, they are not quite the same thing, because the consumer has effectively paid for some of that money and he has paid twice. He has paid through tax and he has paid through his milk price. I could not recommend that the money ever comes out of general revenue. I could not do that because the consumer, or rather the taxpayer, has already paid. But I could recommend it comes out of Dairy reserves, even though it is held by the Treasury and even though it might be used for something else. But I think that would be a bit dodgy, really, when you think about it.

When you buy your litre of milk, me from Vale Garage, I do not think that there is eight pence of tax on that milk and that is effectively what we are saying, the extra half a million a year that the Dairy is making is approximately eight pence per litre profit which is going and not being used. It is just building up in reserves, being held by the Treasury, which may be used for some other purpose. That cannot be right in my mind.

It would appear, to me at least, that we are being over-charged for our milk, but that is another issue.

Let me assure Deputy De Lisle, the Dairy does not need £3 million of reserves for its milk line. There are only a number of key pieces of equipment from the collection to the farm to the storage to production, through all the processes in production, to packaging and then onward transmission to the retailer and then the consumer –

Deputy De Lisle: On a point of correction, sir. I was not saying that the milk line wanted that money, I was saying that the Dairy wanted it in order to refit all of its equipment.

Deputy Le Lièvre: Fortunately, for the Dairy, like rather at home, when our white goods go on the blink, when items of electrical equipment go on the blink, and they do not all go at the same time unless you are struck by lightning, the chances are that the television will go at a different time from the dishwasher or the tumble dryer or goodness knows what else, and, blow me down with a feather, the Dairy is in exactly the same position. The pasteuriser, the milk line, the packaging machine, the crate stacker, the cold store, do not all go down the tube at the same time. They wear out gradually. That is the nature of manufacturing business, Deputy De Lisle, and let me assure you, you do not need £3 million worth of reserves to replace the items on the milk line.

I have listened to the debate clearly and I have some sympathy with some of the things that have been raised, particularly the legal opinion that has been raised by Deputy Harwood and indeed by Deputy Perrot and by H.M. Procureur. This is an extremely complex, confusing situation we are in and I think it might have been helpful if Commerce & Employment had done a slightly better job in their policy letter by not saying, 'Well, we are not going to give you a penny, go to court.' I do not think that was particularly helpful and I find myself, not really changing my stance, I still believe this is a credible, moral argument for this.

The Dairy and the milk retailers, milkmen, milk distributors, call them what you will, and the farmers, the milk producers, have been in a tripartite business for decades, probably the best part of a century and the Dairy and the States has protected the milk producers, because it wanted to keep the Island green, it has done its best to protect the consumer by keeping the price down by taking money from the taxpayer, and it has always, always, always supported the milk distributors because there was no cheaper way of getting the milk to the consumer than by the private businesses that did it on the Dairy's behalf. If you look at the same report that talks about giving the milk producers £2 million, it also says, in that same report, how valuable the milk retailers were to the business, to the global business of the dairy industry in Guernsey.

I stand by that. That position has not changed, despite the fact that report was written very many years ago. The milk retailers held the situation together for the Island, for the consumer, for the Dairy, for the milk producer.

It is only right, in my mind, that they should seek some compensation for a change of business plan from the Dairy to ensure the overall profitability of the business, which cannot be a bad thing, but if one of the tripartite partners falls to the ground as a result of that improvement in the business plan, surely to goodness this Government owes them some sort of recompense, some mitigation, some *ex gratia* payment for the years and years, the decades of work that they have done on behalf of the industry and therefore I would plead with Members to actually agree with this amendment and grant them the £750,000, even though they might not accept it. If they do not accept it, we know where we are. But if they do accept it, we are out of a hole.

Several Members: Hear, hear.

The Bailiff: Members, you are to vote now on the amendment, proposed by Deputy Le Lièvre, seconded by Deputy Langlois and there is a request for a recorded vote again.

There was a recorded vote.

Carried – Pour 28, Contre 16, Ne vote pas 1, Absent 2

POUR

Deputy Kuttelwascher
Deputy Brehaut
Deputy Langlois
Deputy Robert Jones
Deputy Gollop
Deputy Sherbourne
Deputy Conder
Deputy Parkinson
Deputy Lester Queripel
Deputy Ogier
Deputy Fallaize
Deputy David Jones
Deputy Laurie Queripel
Deputy Lowe
Deputy Le Lièvre
Deputy Collins
Deputy Green
Deputy Dorey
Deputy Paint
Deputy James
Deputy Perrot
Deputy Wilkie
Deputy Burford
Deputy Inglis
Deputy O'Hara
Deputy Hadley
Alderney Rep. Jean
Alderney Rep. McKinley

CONTRE

Deputy Harwood
Deputy Domaille
Deputy Le Clerc
Deputy Bebb
Deputy St Pier
Deputy Stewart
Deputy Gillson
Deputy Le Pelley
Deputy Trott
Deputy Duquemin
Deputy Brouard
Deputy De Lisle
Deputy Soulsby
Deputy Sillars
Deputy Luxon
Deputy Quin

NE VOTE PAS

Deputy Adam

ABSENT

Deputy Spruce
Deputy Le Tocq

The Bailiff: Well Members, the voting on the Deputy Le Lièvre/Deputy Langlois amendment was 28 in favour, with 16 against and one abstention. I declare it carried. (*Applause*)

Next, general debate, if anybody wishes to speak in general debate.

Everything has been said. Deputy Fallaize.

Deputy Fallaize: Sir, I just wondered if the Minister, now the amendment has passed, if the Minister could perhaps advise the States how he sees the department now taking this issue forward?

The Bailiff: Deputy Trott will reply to the debate, I understand.

Deputy Fallaize: Perhaps, in the absence of the Minister, if somebody who is not the Minister (*Laughter*) but might be, could advise the States. It could be a dry run. If he could advise the States how the department will take the issue forward now that the amendment has been successful, particularly in view of the department's reluctance, up to this point, to take heed of States' Resolutions on this point?

The Bailiff: Any further debate?
Deputy Trott.

Deputy Trott: Sir, in our unique system of Government, it is incumbent upon me to seek the advice of fellow Members of the Commerce & Employment Department. I can give an undertaking that it will be discussed at the next meeting. But, right now, I can offer no further assurances than those that I have given.

Thank you, sir.

The Bailiff: Members, we vote, then, on the Proposition, as amended. Those in favour; those against.

Some Members voted Pour, others voted Contre.

The Bailiff: I am sure that was carried, but if anybody wishes a recorded vote, we will have a recorded vote? No. I declare that carried.

HEALTH AND SOCIAL SERVICES DEPARTMENT

V. Review of Adoption Law – Second Phase – Propositions carried

Article V.

The States are asked to decide:

Whether, after consideration of the Policy Letter dated 16th December 2015, of the Health and Social Services Department, they are of the opinion:

1. To agree that The Adoption (Guernsey) Law, 1960 and all relevant legislation relating to adoption be repealed.

2. To agree that new primary legislation relating to adoption be enacted based, insofar as reasonably practicable, on the provisions of the Adoption and Children Act 2002 including, for the avoidance of doubt, provisions to implement or enable the implementation of the following specific matters and principles:

a. that the paramount consideration of public authorities shall be the child's welfare, throughout his or her life (as set out in paragraphs 5.1-5.6);

b. that public authorities shall have regard to a child welfare checklist, consistent with that in The Children (Guernsey and Alderney) Law, 2008, to ensure that decision making has regard to appropriate aspects of a child's welfare, in particular avoiding delay in finding permanence (as set out in paragraphs 5.7 - 5.13);

c. that adopters must be at least 21 years of age to adopt a child (paragraphs 6.12 - 6.16 refer);

d. that, adopters must have been habitually resident for at least one year or at least one adopter must be domiciled in Guernsey or Alderney (as set out in paragraphs 6.17 - 6.24);

- e. that in order to qualify for adoption, a child must have lived with the prospective adopter(s) for at least three months prior to the granting of an Adoption Order, or other such time period(s) as the States may prescribe by Ordinance (as set out in paragraphs 7.2 - 7.11);*
- f. that the court should have power to make Placement Orders which, once made, restrict any further opportunity for birth family to contest an adoption save for an exceptional and significant change in circumstances, ahead of the child being placed with prospective adopters (as set out in paragraphs 7.12 - 7.22);*
- g. that consent of the parents to the adoption of their child may be dispensed with if the welfare of the child requires it (as set out in paragraphs 7.23 - 7.29);*
- h. that the Health and Social Services Department (and its successor Committee) shall be required to:*
- investigate a child's circumstances when notice of intention to adopt is given; and*
 - in 'non-notice cases', monitor the child's welfare under private fostering provisions as a child living with somebody who is neither a relative nor has parental responsibility for him;*
- i. that the Health and Social Services Department (and its successor Committee) shall be required to discharge or provide the following functions and services:*
- maintain an Adoption Panel with an independent chair and specialist advisors;*
 - provide information, advice and support to prospective adopters and adoptive families;*
 - undertake assessment of children and prospective adopters;*
 - provide advice and support to birth families;*
 - maintain information relating to adopted children and their birth families; and*
 - Any other functions or services as may be prescribed in secondary legislation. (as set out in paragraphs 9.3 - 9.6);*
- j. that the Health and Social Services Department (and its successor Committee) is enabled to authorise other agencies, besides the Department itself, to provide any of the functions of an adoption agency (as set out in Section 9);*
- k. that the provision of an adoption support service be provided to those prescribed by regulations (as set out in Section 10);*
- l. that the right is granted to prescribed adopted children and adoptive parents to request an assessment for adoption support services at any time (as set out in Section 10);*
- m. that the Health and Social Services Department (and its successor Committee) is required to consider requests for access to information from any person with the paramount consideration being the adopted person's welfare and the wishes of any person named in the records sought. The only person with a right to information being the adopted person (as set out in Section 11);*
- n. that the court is empowered to grant a Special Guardianship Order that gives the carer(s) overriding parental responsibility without entirely severing the child's legal relationship with birth parents (as set out in Section 12 refers); and*
- o. that suitable provision is included for adoptions with an international element, to comply with the Hague Convention of Inter-Country Adoption, with similar safeguards applied to adoptions from non-Hague countries (as set out in Section 13 refers).*
- 3. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.*

The Greffier: Article V – Health and Social Services Department – Review of Adoption Law – Second Phase.

3420 **The Bailiff:** Deputy Luxon, the Minister, will open debate.

Deputy Luxon: Thank you, Mr Bailiff.

Sir, what can be more important in a caring society than to facilitate a new family life for a child, or children, who for no fault of their own find themselves outside of their birth family care.

3425 I ask Members to focus, please, on that one main, core feature of this policy letter, the best interests of those children. A second chance at enjoying, throughout their lives, the wonderful under-pinning fabric of a family.

Sir, the 1960 Law reflects the reality of 60 years ago. It is no longer fit for purpose, let alone fair. In June 2015, this States of Guernsey approved unmarried and same sex couples to adopt and
3430 this policy letter is the fulfilment of that second phase, full review of legislation.

The main reasons to review are captured on page 1835 and just, very briefly, sir: removing unnecessary restrictions on potential adopters to widen the pool; removing duplication and other possible barriers to an effective and efficient process; investigating alternatives to adoption to achieve permanence and ensuring that the adoption process is supported by fair, easy,
3435 understandable legislation.

Sir, I do not intend to labour the history behind these adoption law change proposals, the policy letter does this very well, but I would point out just a few of the key aspects contained within.

The creation of an adoption panel for independent and expert advisers. Permanency planning to avoid hiatus for kids in terms of their next steps. Vulnerable children, especially, being looked after. The child's welfare being established as the prominent consideration. The uniform checklist, as per the Children Law indications and, also, to enable adoption by adopters rather than have restrictions in the way.
3440

Sir, it also deals with other issues around gender restrictions, age restrictions, residences, also the time to adopt and placement orders but, overall, the 17 recommendations proposed here by HSSD, I hope you will find to be fair, reasonable and absolutely, sir, putting what could be more important in a caring society than to facilitate a new family life for a child or children who, through no fault of their own, find themselves outside of their birth family care.
3445

Sir, I ask Members to support the proposals.

3450 Thank you.

The Bailiff: Deputy Lester Queripel.

Deputy Lester Queripel: Thank you, sir.

3455 I rise to seek clarification on Paragraph 14.1. We are told that the States of Alderney will be considering the proposals in due course in order that they may determine whether they wish the provisions of the new Law to be applied to Alderney. I just wondered how that would work if a case from Alderney, for whatever reason, came to court in Guernsey? Presumably the advocates, the judge, Safeguarder, ICPC, etc. would simply approach the case from the basis of whether
3460 Alderney had decided to implement the Law or not.

I ask that, because we are told in Paragraph 13.7 that:

'Amongst other matters, Guernsey and Alderney will need to provide a Central Authority to administer the requirements of the Hague Convention or utilise the Central Authority in the United Kingdom. The Central Authority will need to certify potential adopters as suitable for inter-country adoption in cases where a child is being brought into the country for the purpose of adoption and to maintain a list of children suitable for inter-country adoption.'

I am in need of clarification on that, please, how that would work, should Alderney decide not to implement the Law?

3465 I presume that, should Alderney decide not to implement the Law, then nothing relating to the Law would actually apply to them, but I think it would be irresponsible of me, sir, to vote on something I do not fully understand.

I do have another two questions for the Minister on this issue, which are as follows:

3470 Does he foresee any problems occurring, should Alderney decide not to implement the Adoption Law?

If Alderney does not implement the Adoption Law, will they still be complying with the Children Law?

In closing, sir, I would just like to ask a question I have asked before in this Chamber, but I sincerely hope I get a different answer this time. My question relates to what we are told in Paragraph 5.3. It states that work is underway and nearing completion to submit an application for signing up to the United Nations Convention on the Rights of the Child.

It concerns me greatly, sir, that we are not already signed up to that Convention. In fact, I was shocked to learn not long ago that we are not signed up to it. That is not just my view, it was also the view of Professor Kathleen Marshall, who recently wrote the report for the Review of the Implementation of the Children Law, undertaken by the Scrutiny Committee.

So, it is a two-part question: when are we going to submit the application and why is it taking so long?

In asking that question, sir, I fully appreciate that HSSD have got a multitude of issues to deal with at the moment, but we spend days debating how we educate our children to prepare them for adulthood, yet we lag woefully behind almost every other part of the world in signing up to a Convention for the Rights of the Child.

So, I am very much looking forward to an assurance from the Minister that this application is not slipping down the list of things to do.

To end by focussing on just how far behind the rest of the world we actually are, in response to a question I put to Professor Marshall during a recent review hearing, Professor Marshall replied:

'I was really surprised when I discovered that Guernsey is not signed up, because for years we have been saying at conferences of the UN Convention itself, that everyone in the world has signed up to it, apart from the USA and Somalia. Nobody ever mentioned Guernsey.'

'Since the Convention was introduced in 1989, it really has fuelled developments in child law and policy and, also, every few years, the governments have to appear before the United Nations Committee and be questioned on its progress in implementing the Convention and the UK government misunderstood the Convention before they ratified it, because their approach was, "We will ratify it once we are sure all of our laws complied with it."

'But nobody is in the situation where all their laws comply with it, so you do not have to wait until all your laws comply with it here in Guernsey.'

That answer can be found on page 20 of the *Hansard* report, sir, so I look forward to the Minister's response to my questions.

The Bailiff: Deputy David Jones.

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

I was quite interested in this particular policy letter, in my interest in fostering and adoption. I thought it was a fairly well written policy letter, especially for me, who has difficulty in understanding some of them and I could not find anything in it that was controversial or you would not automatically want to support.

Without answering the Minister's question for him, there are issues of course that need further discussion and international child adoption is one of them and signing up to certain conventions. For the benefit of Deputy Queripel, it is not as if the Island has no child protection laws at all. So we are not as if we are out there on a limb, apart from everybody else.

So, I hope the States do support this and we can get on with more controversial matters like referendums.

Several Members: Hear, hear.

The Bailiff: Deputy Bebb.

Deputy Bebb: Thank you, Monsieur le Bailli.

I agree Deputy David Jones. There is nothing here that is not to like. It is a very well-drawn one. But, and this is where I do have some concern, now that we are reaching the end of this particular Meeting, being the end of these four years, I am reminded that at the beginning of four years, I

was horrified as to the amount of legislation that was outstanding and how much legislation there was to be written and my concern here is in this meeting, the Health and Social Services Department have presented two policy letters, compelling policy letters, that displayed the urgent need for reform. First of all, to create a Law that is lacking and, in this instance, to reform and to have a completely new Law, to replace what is obviously a Law that was very much of its time.

My concern is that we become complacent in just imagining that this amount of Law that is left to be written is normal, is acceptable, and we forget that, with each passing day, someone is being deprived of what we believe is the right thing to do, because we have not created the laws.

Realistically, it is to ask of the Minister, what will the department be doing in order to try and prioritise as best as possible for its successor committee?

Also, whether the department considers that there might be a need, and I know that it is difficult to ask the Health and Social Services Department, of all departments, whether they feel there is a need for them to reorganise their own resources, in order to try and deal with these outstanding legislations, or whether in deed they feel that there is a compelling case that they may need to draw greater resources from St James' Chambers, or from another place?

The only other point that I would like to make in relation to this policy letter is, on this occasion I feel that Deputy Queripel has actually hit on something which is appropriate, the UN Convention on the Rights of the Child. But I think that is for the Policy & Resources Committee to be dealing with in the next committee, because of course it is to do with conventions that this Island signs up to and, in this case, I think that CEDAW is a similar one, that we are lacking in this regard.

Therefore, could I seek an assurance from the Minister that, in the handover of the Policy Council's work, there is also some prioritisation given to those conventions that we are so evidently committed to but, for some reason, we simply fail to make that final commitment and, therefore, what will the Policy Council be doing in terms of its prioritisation in handing over to the Policy & Resources Committee?

But, on the whole, I must commend the department on two policy letters in this Meeting, which are so wonderfully written, obviously to bring us into alignment with what is already the experience and the hope of our community.

Thank you.

The Bailiff: Deputy Gollop.

Deputy Gollop: In relation to Deputy Bebb's last point, I think it was Deputy St Pier who raised actually quite a horrifying argument yesterday, one that probably Deputy Fallaize will chuckle at, that one of the issues in implementing SWBIC in a timely manner might be the envelope restraint we placed on the overall size of Government.

Now, it follows, logically, from that that some of the conventions that we have failed to sign may not be able to be moved ahead in a timely manner, precisely because they could involve extra resources or extra cost that would, at least temporarily, take us beyond the that limit. That, I think, is a concern that we will have to look at and re-address in the future.

Indeed, Deputy Bebb's other point, about legislation means that, I think I heard Deputy Fallaize say in what was an interesting IoD breakfast the other morning, the simplest solution to the legislation logjam, which I think has improved, especially in the era of Deputy Robert Jones as being chairman in getting this to the States, I am afraid much of the solution might be employing additional lawyers, but that is not popular either in some quarters.

Moving back onto this, I do support the policy letter very much, but there certainly are a few points that need to be flagged up as potential questions, because it is the kind of thing that may require more detail, second reading, of the legislative stages.

One of those issues relates to the right of children who have been adopted to locate their parents. Guernsey clearly has a different legal regime than England and Wales, but it is not entirely clear from this at what stage a natural birth parent is able to block such contact. It is not

like the proverbial Hollywood film where somebody goes onto the door and says, 'Hello, I am your long-lost son.' That does not seem to be possible in this scenario, but there clearly are lots of sensitivities that need to be addressed and, I must admit, I was not aware of how different Guernsey was from England and Wales and it is something we will have to clearly look at, especially in a small community.

The other area of concern, I was surprised in one respect Deputy Lester Queripel did not mention this, because it is a crucial area in the middle of the text, to do not just with multi-national family arrangements but making adoption orders and protecting children, the placement of children for adoption.

We are clearly having placement orders, which will be new, and a placement order before the child is placed with prospective adopters. Now that, in one sense, will prevent some unfortunate, perhaps, legal difficulties and streamline the process, but it also means, if you are a parent who does not like, perhaps, another subtle change, from the inability of a parent to cope, with the welfare of the child being the main criteria. Clearly, the natural birth parent who runs the risk of losing contact with the child, or the child passing permanently into the guardianship or adoption of a new family, surely has rights in that respect? I could envisage a scenario where mothers or fathers will feel that this Law goes rather more strongly to protecting the interests of the child in the eyes of the professionals over traditional family parental rights.

Some would say that is a good thing, but of course a balance has to be maintained to ensure parents do not lose out.

I think, too, that this makes adoption much more streamlined and I would recommend it to the States.

The Bailiff: I see no one else. Deputy Luxon will reply to the debate.

Deputy Luxon: Thank you, Mr Bailiff.

Thank you to Members for those comments.

Sir, Deputy Lester Queripel raised the point about Alderney and he was very fair to do so. If I can direct him to Paragraph 2.6, I do not profess to know the intricacies of the Law but it does, in 2.6, set out how currently The Alderney (Application of Legislation) (Adoption) Ordinance, 1974, and The Adoption (Alderney) Rules, 1974, that is what is in place at the moment, so pending Alderney making their decisions, then that regime would still apply.

I, happily, will look further into it for him, but that is the best I can do.

In terms of his requests about when will the application to the UN Convention be made, again in Paragraph 5.3, I would direct Deputy Lester Queripel, he will see there that the department very clearly confirms that work is already well underway and is nearing completion to submit the application for signing up to the Convention and we would absolutely agree with him that it is important that we do that. The Children's Diagnostic that Ruby Parry wrote a year ago absolutely indicated that this was essential.

I thank Deputy David Jones very much for his very positive comments that there is nothing controversial and, in fact, these are a good set of proposals and again would just refer him to 13.8 which actually talks about the department is recommending that under this new Law that further consideration will be given to issues around the international element of the Hague Convention and non-Hague countries, so I can assure him that that is to be included.

Again, thank you to Deputy Bebb, who also valued the policy letter in terms of its content and, yes, the prioritisation of critical pieces of either new legislation or reform or, indeed, signing up to conventions, I think sir, it is more regarding resources within the department than, to be fair, in St James' Chambers, who have been very supportive. I would use Ruby Parry, who I have mentioned before, who sadly we will lose later this year, her year contract will come to an end, this Island has been very well served by many experts coming from elsewhere and helping us to kick-start a very important area of policy reform and development and certainly the work that she did, so I think what we have to do, sir, is to make sure clearly we want to promote from within and grow our

own, but we need to introduce expertise that allows us proportionately to actually bring ourselves up to a much more modern, compliant place.

3625 I accept his point about the issue in the new system of Government from 1st May, between Policy & Resources and individual committees, in terms of where will the responsibility be to drive those policy developments forward, especially around these Law reforms. All I can say to him, again, is 5.3 clarifies the position that we are at on the UN Convention sign-up, but I recognise that the new P&R Committee must give this area some thought.

3630 I thank Deputy Gollop for his positive comments and agree that with SWBIC, SLAWS, CYPP, there is an element of overload and, of course, we have to get that balance right between costs and need and resources and importance for looking after vulnerable people in our community. I recognise his comments that the new legislation chairman, Deputy Robert Jones, has been far better and more effective than the previous chairman of the Legislation Select Committee, which I think was Deputy Gollop. (*Laughter*) Only joking, sir. We all love him.

3635 What I would say is, I disagree with his final point. Nobody should come more important, and Deputy Gollop talked about the parents of the child who is being adopted. No, they should not come first, the welfare of the child should be first and foremost, to the centre of this policy letter, but of course the child should have the easy ability to be able to locate their birth parents should they want to, absolutely and, again, I cannot remember which paragraph, but it does talk about an actual birth parent having the ability to make an appeal and if, subject to that appeal for that 3640 information being in the best interest of the welfare of that child, who may well now be an adult, then there is the mechanism for birth parents to be able to identify their child.

Sir, thank you very much. I hope Members will support these proposals.

Thank you.

3645 **The Bailiff:** Members, the detailed Propositions are on page 1867 through to 1869, I put all of them to you together. This in favour; those against.

Members voted Pour.

The Bailiff: I declare them carried.

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

VI. Code of Conduct – Submission of Reports to the States – Proposition carried

Article VI.

The States are asked to resolve:

That the Code of Conduct for Members of the States of Deliberation shall be amended with immediate effect as follows:

In section 34 delete all the words after the second occurrence of the word 'Committee' and replace them with 'who, in turn, shall submit that report to the Presiding Officer for inclusion in a Billet d'État with the recommendations of the Panel'.

The Greffier: Article VI – States' Assembly & Constitution Committee – Code of Conduct – Submissions of Reports to the States.

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The Bailiff: The Chair of the Committee, Deputy Fallaize, will open debate.
Deputy Fallaize.

Deputy Fallaize: Sir, I have nothing to add to what is in the policy letter.

3655 **The Bailiff:** Any debate? No. In that case, we go straight to the vote on the Proposition, that is a single Proposition, to be found on page 1872. Those in favour; those against.

Members voted Pour.

The Bailiff: I declare it carried.

One of your shorter speeches, Deputy Fallaize! (*Laughter*)

3660 **A Member:** And one of his better ones, at that.

SCRUTINY COMMITTEE

VII. Legacy Report for the Term of Office May 2012 to April 2016 – Proposition carried

Article VII.

The States are asked:

To note the Legacy Report of the Scrutiny Committee.

The Greffier: Article VII – Scrutiny Committee – Legacy Report for the Term of Office May 2012 to April 2016.

3665 **The Bailiff:** Deputy Robert Jones, will open this debate.

Deputy Robert Jones: Thank you, sir.

I am aware that it is a 'to note' Proposition, but I would like to say a few words. I do not get that chance to speak as often as Deputy Fallaize, so I will take a little bit longer than that.

3670 Sir, when I reflect on the achievements since May 2012, I believe that the Committee has been working diligently to review matters which hold Ministers, government departments and the agencies to account, within the constraints of our available resources and our mandate.

3675 The reviews undertaken have looked at key policy areas, including the security of strategic air links, a review of the implementation of the Children Law, a review of Guernsey's security of electricity supply and, of course, the urgent investigation into the AFR affair.

The Committee believes that these reviews have had a direct influence on the shaping of future policy within these areas. The recommendations that have been made have largely been accepted by government departments, which we believe demonstrates effective, credible and proportionate scrutiny.

3680 I also believe that the application of soft power by the Committee Members has led to a significant action within the Government on a number of occasions. This response has been precipitated by the Committee writing letters, asking questions and holding face-to-face meetings throughout government, all of which we believe have influenced the actions of those in power and has enabled key issues to be progressed.

3685 The role of the Committee is to ensure that all government departments and committees are meeting the policy objectives and are delivering their services effectively. This role, within our system of government, is undertaken in conjunction with the collective parliamentary scrutiny process that is undertaken by individual Members of the States' Assembly. This is an important point, that the scrutiny provided by the Committee should be complementary, rather than all-encompassing.

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Guernsey cannot afford a scrutiny function to cover all government activity, it has to be selective.

3695 The Scrutiny Committee and its successor, the newly created Scrutiny Management Committee, within our system of government, will always be complementary to the ongoing scrutiny that is undertaken by our Members, as I have just said. It is my view that the new Scrutiny Management Committee should focus on areas that cannot be effectively addressed by individual Members through the tools at their disposal, rather than trying to address every transient issue of media and public concern.

3700 This will require real strength of character from those charged with leading this function and the alternative will be a consistent waste of scarce resources.

Apologies, that is my phone going off. It is on silent. (*Laughter.*)

The Bailiff: I am glad it was on silent.

3705 **A Member:** Deputy Fallaize had no idea he was doing that! (*Laughter*)

3710 **Deputy Robert Jones:** Now I have to find my point in the speech again. The current level of resources and the absence of powers available to the Committee have undoubtedly limited the volume and scope of the work undertaken. With the benefit of hindsight, it is clear that the general public and the media have unrealistic expectations on the level of activity that can be undertaken with the current level of resources.

According to some commentators, all the problems within the Government should rapidly be resolved by the Committee.

3715 We believe the recommendations agreed by the States' Review Committee to significantly strengthen the powers and hopefully the resources available to the new Scrutiny Management Committee will start to address the imbalance between expectations of the public, the media and some of the Members of the States' Assembly.

3720 However, in Guernsey, there has been a tendency by some to reach for the Committee mandate in the hope of finding a technicality through which scrutiny can be avoided. This is a problem which can only be answered by a change in culture.

3725 Parliamentary scrutiny must be seen as a legitimate part of Guernsey's democracy and a process which benefits all. Good scrutiny means good government. The Committee believes that over the last four years it has played a major role in scrutinising a number of key areas of policy, (**A Member:** Hear, hear.) and have done so, not just through increasing public hearings and reviews, but also when possible through influencing government policy.

The Committee will pass on a number of ongoing issues to its successor, the Scrutiny Management Committee, in the new political term. These include continuing to keep an eye on the essential air links, the implementation of the Children Law and an early consideration of a government service plan or its equivalent.

3730 In addition, I have no doubt that the new committee will also examine the progress made on major areas of government policy, such as the waste strategy and issues of public concern, such as the future plans for the Island's ports.

3735 In conclusion, I would like to thank all Members who have served on the Scrutiny Committee during this term for their commitment, support and recognising the importance of working as a team. Chairing a committee of nine political Members is a challenge that only falls to this role. It is a challenge that I have enjoyed, though on reflection I believe it can be done either by trying to generally take on board the individual concerns of all nine members, as I have tried to do throughout my tenure, or perhaps by ruling with the firmest of hands.

3740 Finally, I feel it is important we acknowledge the major part played by the late Paul Arditti, (**Several Members:** Hear, hear.) the former Scrutiny Committee Chairman and Alderney Representative, who championed political scrutiny across the Bailiwick and whose unique drive and commitment was central to the progress made throughout this political term. He believed,

like Winston Churchill, that however beautiful the strategy, you should occasionally look at the results.

3745 Thank you, sir. (*Applause*)

The Bailiff: Is there any debate?
Deputy Lester Queripel.

3750 **Deputy Lester Queripel:** Sir, I merely rise to put on record I have nothing but admiration and the utmost respect for my Committee colleagues on Scrutiny.

Even though we have had some fairly heated exchanges at committee meetings, we all harboured the same intention, of course, which was to be as effective as we possibly could.

3755 I would just like to put on record by saying I have nothing but admiration and the utmost respect for the staff at Scrutiny, because the amount of work they get through never ceases to amaze me.

It seems to me, sir, I do not think I am exaggerating, they have had to go beyond the call of duty sometimes to be able to deliver and all credit to them for doing so.

3760 Thank you, sir.

The Bailiff: Any further debate? No. We go to the vote. There is a single Proposition on page 1893 of the Billet, namely to note the report. Those in favour; those against.

Members voted Pour.

3765 **The Bailiff:** I declare it carried.

PUBLIC ACCOUNTS COMMITTEE

VIII. Legacy Report for the Term of Office May 2012 to April 2016 – Proposition carried

Article VIII.

The States are asked:

To note the Legacy Report of the Public Accounts Committee.

3770 **The Greffier:** Article VIII – Public Accounts Committee – Legacy Report for the term of office May 2012 to April 2016.

The Bailiff: The Chair, Deputy Soulsby will open debate.

3775 **Deputy Soulsby:** Sir, I am pleased to present the Legacy Report of the Public Accounts Committee for this term and it is not my intention to go through the contents of this report, given the late hour both in terms of the time of day and in respect of the length of this Meeting.

It is a comprehensive record and Members are only being asked to note it, after all, and more on that later.

3780 What I will do is focus on just three aspects of the report and then look to the future. The present Committee had only just put its feet under the table when we were informed of a fraud committed against the States of £2.6 million. In fact, it was just a month into this term.

This States has often been blamed for that event. However, as I said at the time the Committee published into its first Report into the State of Financial Controls and Risk Management, this was

an incident waiting to happen. Reports produced in the past, including those from previous PACs have, for whatever reason, been ignored.

3785 I am pleased that this States has acted on the findings of this Committee's report, which reflects the understanding, particularly of the Chief Minister and PSD Minister at the time and the Treasury & Resources Minister, in particular, as to the seriousness of the issue, as well as the pressure from the Committee to ensure our recommendations were acted upon.

3790 Our second report on financial controls demonstrated the improvements made. However, the Committee is concerned that the focus on risk management will be lost as attention turns to public service reform. It is therefore critical that the Scrutiny Management Committee monitors developments closely.

3795 I would now like to turn to the FTP, which has dominated much of this term. The Committee has spent a considerable amount of time reviewing progress, or otherwise, of what was one of the most significant programmes of work ever undertaken by the States of Guernsey. The Committee took various approaches, in order to cover various aspects of what was a very complex area. The Committee on a regular basis called in the T&R Minister and officers for updates, as well as having a direct input on improving reporting for the Policy Council.

3800 The cost benefit review, which looked at the largest projects in the FTP, acknowledged that savings have been made and found evidence of some excellent initiatives, but expressed concern over some of the calculations and, most importantly, whether certain savings would indeed be sustainable.

3805 In addition, the committee fought vociferously and successfully against a payment of commission to a consultant in respect of the transfer of £650,000 from general revenue to the Health Service Fund, as it did not represent any savings to the taxpayer.

Finally, in relation to the FTP, and subsequent to this report, the Committee held a public hearing when it questioned the T&R Minister and States' Treasurer, principally on the legacy of the programme and lessons learned. More particularly, on the transformational aspect.

3810 I would like to thank the Minister for his openness at that hearing and I would recommend that the Hansard record be read by those involved in the public service reform, both politicians and officers. I want to see public service reform work. I think we have a great opportunity to make it work, but we need to understand the lessons learned.

3815 Much of the Committee's work has been, by necessity, undertaken behind the scenes. This has included developing a more robust annual audit of accounts production process, inviting greater value for money for the taxpayer, as well as providing advice and recommendations which have considerably improved the States of Guernsey's financial and resource management policies and procedures.

3820 The last area I would like to focus on is post-implementation reviews. Some recent headlines implied that projects undertaken by this States have been wasteful. However, I think it is important to make clear that several projects we looked at took place in the previous terms and one, the airport terminal, over a decade ago.

3825 There has been significant improvement in the management of projects, certainly since then. However, it is true that lessons do still need to be learned and money is still being spent unnecessarily. It is for that reason that the Committee recommended that the Policy & Resources Committee in the next term look at post-implementation reviews and putting them in the public domain.

Sir, I do believe that this Committee has punched above its weight and that financial scrutiny is in a better place than it was at the start of this term, (**A Member:** Hear, hear.) despite the woefully inadequate resources.

3830 I am pleased to have been able to be involved in increasing the powers and resources of the scrutiny function and thankful to this Assembly for approving the recommendations of the joint committee.

I believe we have set the conditions to enable the future Scrutiny Management Committee to take financial scrutiny to the next level and I wish it well.

3835 Before ending, I would like to leave a message for the future Scrutiny Management Committee. First, and it was touched on by Deputy Jones, work together as a team. It has been a pleasure working with a bunch of intelligent people who have worked together, who can have robust conversations but listen and respect each other's views and come to a consensus.

3840 The Committee has certainly demonstrated it can be done. We live in a consensus system and it is important for the Scrutiny Management Committee, as it is for every other committee of the States, and I just hope that continues in the next term.

Secondly, do not follow your own personal agenda. This will be even more important to be aware of where the whole scrutiny function is concentrated in just three Deputies and two non-States members.

3845 Thirdly, remember that what you want is to make government perform better. That can mean a balance between making a quick headline and working behind the scenes to make things happen.

A recent report into the effectiveness of Westminster committees in the last term stated that whilst some committees took the big bang approach and got the headlines, they did not necessarily produce long-term improvements. In fact, it can lead to the bunker syndrome. A balance needs to be struck.

3850 Finally, and without wanting to make this sound like an Oscar acceptance speech, I would like to thank those members of the Committee during this term. It has been a relatively stable committee, with changes only arising from the untimely death of Alderney Representative Paul Arditti and the departures of Deputies James and Le Clerc for an easier life on HSSD. *(Laughter)*

3855 I thank everyone for the positive contribution they have all made. I have been honoured to represent you in this Assembly.

Sir, there is an old adage that says, 'If it should be noted that you have something to note, then note it. Do not note that the item you wish to note should be noted.'

With that in mind, I ask Members to note this report. *(Applause)*

3860 **The Bailiff:** If there is no debate ... Deputy Harwood.

Deputy Harwood: Thank you, sir.

3865 Can I just, as current vice-chair of the Public Accounts Committee, acknowledge the significant amount of work that has been put in by the chair, Deputy Heidi Soulsby, but also I think it is important to acknowledge, actually, the valuable contribution that we have all received from the non-States members of the Public Accounts Committee. If ever there is an example of the positive contribution to be made by non-States members to the affairs of this Assembly, the Public Accounts Committee is an excellent example and I would ask, actually, that the future States do take advantage of the contributions that have been made from non-States members. It is invaluable.

3870 Thank you, sir.

Several Members: Hear, hear.

3875 **The Bailiff:** Deputy Gollop.

Deputy Gollop: I would say, too, that I think the Committee has benefited considerably from the financial expertise of most of its members, too, including the chairwoman. I attended the public review, the first one in the history of the Public Accounts Committee. I think a lesson to be drawn from it was the transitional phase from one States to another, it is crucial to manage that effectively because that was clearly a problem in the FTP.

3880 My one wish for Public Accounts and its successor in the Scrutiny Management system is the new system is better resourced and is able to be more proactive. That does not mean chasing the headlines, but it does mean giving States' Members the opportunity to have sessions before events occur and during, rather than several years later.

The Bailiff: Deputy Soulsby, do you wish to reply?

3890 **Deputy Soulsby:** No, sir, all I would want to do is confirm, as Deputy Harwood said, how grateful we are to our non-States members.

The Bailiff: Members, there is a single Proposition on page 1923, to note the Legacy Report. Those in favour; those against.

Members voted Pour.

3895 **The Bailiff:** I declare it carried.

**Procedural –
Motion to extend sitting until 6.30 p.m. –
Proposition carried**

The Bailiff: Now, it has just gone 5.30 p.m. There are three further articles to be debated. It has been suggested to me that perhaps we continue until 6.30 p.m. to see whether that would be sufficient to conclude the business. The alternative will be to come back tomorrow.

3900 So what I am going to put to you is the Proposition that we continue until 6.30 p.m. Those in favour; those against.

Members voted Pour.

The Bailiff: Well, that is overwhelmingly carried, so we will carry on.

Billet d'État IX

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

III. Declaration of Unspent Convictions – Propositions carried

Article III.

The States are asked:

After consideration of the Policy Letter dated 23rd February, 2016, of the States' Assembly & Constitution Committee:

1. To approve that the Rules of Procedure of the States of Deliberation and their Committees be amended as follows:

Replace the existing title of Rule 29 with 'Register of Members' Interests and Register of Members' Unspent Convictions'; and

In Rule 29(1) replace 'declarations of interests' with 'Declarations of Interest' and Insert immediately after Rule 29(4) new paragraphs in the following terms:

'(5) The Greffier shall maintain (in paper form only) a Register to be known as the Register of Members' Unspent Convictions in which shall be kept all Declarations of Unspent Convictions lodged in accordance with paragraph (7).

'(6) The Register of Members' Unspent Convictions shall be available at the Greffe for public inspection whenever the Greffe is open for normal business.

'(7) All persons elected shall within seven days of being elected or re-elected and subsequently during the month of May annually make and lodge with the Greffier a Declaration of Unspent Convictions.

'(8) All Declarations of Unspent Convictions required to be lodged with the Greffier under paragraph (7) shall be in the form set out in Schedule 3 to these Rules.

'(9) The unspent convictions which must be declared are any criminal convictions in a court in any jurisdiction which resulted in sentences of imprisonment which are not to be treated as spent pursuant to the provisions of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002, unless they were in respect of conduct which would not constitute an offence if committed in Guernsey.

'(10) A Member in whose case a conviction becomes spent may immediately provide a revised Declaration to the Greffier. The Greffier shall remove from the Register and immediately destroy any Declaration which has been superseded by another.

'(11) The Greffier shall remove from the Register and immediately destroy any Declaration which relates to a person who is no longer a Member.'

In Rule 46(2) insert immediately before the full stop 'and a completed Declaration of Unspent Convictions as set out in Schedule 3'; and

In Rule 46(5) replace the words 'or if there was potentially one it could be managed. The Declaration' with 'or if there was potentially one it could be managed, and had also seen a Declaration of Unspent Convictions and was satisfied that any declared unspent criminal convictions of the person elected were compatible with his or her holding that office. The Declarations'; and

Insert immediately after Schedule 2 a new Schedule 3 in the following terms:

'Schedule 3

'Declaration of Unspent Convictions

"Enter 'none' in the box if there are no unspent convictions to declare."

"Declare here any unspent convictions which resulted in a sentence of imprisonment imposed by a court in any jurisdiction.""

'Explanatory note:

'Rule 29 requires disclosure of any criminal convictions resulting in sentences of imprisonment which are not to be treated as spent pursuant to the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 ("unspent convictions"). In broad terms, such a conviction is "unspent" until the end of the following periods, according to the length of prison sentence imposed in respect of it:

'Imprisonment (including a suspended sentence of imprisonment) for a term exceeding 6 months but not exceeding 30 months 10 years after the date of conviction, or 5 years if the person was under 18 when convicted.

'Imprisonment (including a suspended sentence of imprisonment) for a term not exceeding 6 months 7 years after the date of conviction, or 3 ½ years if the person was under 18 when convicted It is important to note that convictions recorded outside the Bailiwick are equally subject to rehabilitation, and are "unspent" for the same periods. The only exception is that these Rules do NOT require the unspent conviction to be declared if the conduct concerned would not be an offence if committed in Guernsey at the time the declaration is made.

'A conviction resulting in a sentence in excess of 30 months' imprisonment is never spent, and must be declared irrespective of its date.'

2. To approve that the Code of Conduct for Members of the States of Deliberation be

amended as follows:

Insert a new Rule 15A in the following terms:

'A Member shall not knowingly or recklessly make a false statement in a Declaration of Unspent Convictions.'

3. To approve that the Reform (Guernsey) Law, 1948, as amended, be further amended to provide that candidates for the office of People's Deputy must make a declaration of all unspent convictions which resulted in sentences of imprisonment as defined in the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 in any jurisdiction anywhere in the world unless they were in respect of an act which would not constitute an offence if committed in Guernsey; that candidates must agree that appropriate verification of the information declared could be undertaken by the Returning Officer for the election; and that the declaration form would be available for inspection by the electorate at that election; and that Declarations would be destroyed as soon as the election to which they related had concluded; and that provisions would be included to enable the States to prescribe rules as to the publication of this information; And that a specific offence be created of knowingly or recklessly making false statements, the penalty for which, in addition to any fine, imprisonment or other sentence imposed in the event of a prosecution and conviction, be that the States, once any legal proceedings and appeals, if appropriate, had been concluded, could by Resolution declare any person convicted of the offence ineligible to hold office as a People's Deputy or as a member of a States' Committee who is not a Member of the States until the next General Election.

4. To agree that the States' Assembly & Constitution Committee consult with the Douzaines and, if considered necessary, report back to the States on the merits or otherwise of extending these provisions to the holders of parochial offices.

5. To direct the preparation of such legislation as may be necessary to give effect to the above decisions, including further amendments to The Reform (Guernsey) Law, 1948, as amended.

3905 **The Greffier:** Billet d'État IX – Article III – States' Assembly & Constitutional Committee – Declaration of Unspent Convictions.

The Bailiff: Deputy Fallaize.

3910 **Deputy Fallaize:** Sir, I have nothing to add to what is in the policy letter. *(Cheers and applause)*

The Bailiff: Is there any debate? Deputy Bebb.

Deputy Bebb: Thank you, Members. Thank you, sir.

3915 Members, I think the general position of trying to look for excuses in order to be recording in this way is a great error.

I am getting a look from Deputy Fallaize that he seems to be perplexed. Sorry, I give way to Deputy Fallaize.

3920 **Deputy Fallaize:** I always look like this when Deputy Bebb is speaking. *(Laughter)*

Deputy Bebb: The question with regards unspent convictions is one that I have always been quite opposed to on the committee and Deputy Fallaize will not be surprised in that regard.

3925 I have, in my past, actually had a number of occasions to be involved with organisations in Wales which promoted quite heavily, the Welsh Language Society in particular, the use of the Welsh language. They participated in non-violent actions against various government departments and government organisations.

One of the things that I participated in, in my youth, was the occupation of the then Welsh Office in Cardiff. Now, there was no violence committed against any person, but it was an act where we broke into the Welsh Office and there was an occupation of the office and it was conducted in order to highlight the inadequacies of the Welsh language.

Of course, ultimately, that action and many other actions conducted over a number of years led to the creation of S4C, which is the only Welsh-speaking language ... in Wales. It led to the removal of the cap as to the number of hours that could be broadcast in the Welsh language on the radio station. But such measures and such achievements are hardly likely to be considered to be laudable in a jurisdiction such as Guernsey, where of course the Welsh language quite obviously is not an important political factor and the nuances would not be understood.

Therefore, my concern is that in seeking to place the restrictions that were suggested, we would be seeking to vilify people for conducting action which I believe would be considered to be fully laudable within their own jurisdiction.

I am concerned that, during the last election, there was a witch-hunt conducted on social media against one candidate about an issue where he faced conviction but was found not guilty in court. I am concerned that any measure in order to try and increase such scrutiny really does lead to unpleasant behaviour on behalf of some members in our community and I think that any record, such as what was originally suggested, would be a grave error and, therefore, I think it is very important that no such measure is undertaken.

People who stand for election in this Island should stand and should be elected on the merits of the character as they are now. My actions when I was young, was when I was 16, and yet when I stood for election, I was double that age at 38. As David Cameron said in the UK, everybody is entitled to a past and I think that sometimes we forget that and that is why I have consistently objected to the suggestion of having such a register.

Thank you,

The Bailiff: No one else is rising. Deputy Fallaize will reply.

Deputy Fallaize: Yes, sir.

I think all I will do is draw Members' attention to Paragraph 28 of the policy letter, which reads:

'The Committee wishes to make it clear that it did not initiate the need for this policy letter. It brings it to the States as directed by the terms of a States' Resolution.'

This is the product of an amendment which was laid by Deputies Spruce and Gillson, which the States approved in a previous debate on a Rules of Procedure report. So it is clear that there are mixed views inside the committee.

I do not think any member of the committee is particularly enthusiastic about it, otherwise the committee would have brought it of its own volition.

Some Members feel more strongly than others and that paragraph notes that Deputies Conder and Bebb will certainly vote against the Propositions. But, other than that, these are simply proposals to give effect to a direction that the committee is under.

Thank you, sir.

The Bailiff: Deputy Ogier.

Deputy Ogier: Sir, just to seek clarification on voting against these proposals. These proposals actually mitigate an existing situation which is worse than these proposals.

So, if Members wish to make things better, in my understanding, vote for these proposals rather than leave them un-amended.

The Bailiff: Do you wish to reply to that, Deputy Fallaize?

Deputy Fallaize: Well, I am not quite clear what Deputy Ogier means, but I do not think that is the case. The proposals would, effectively, bring into effect a new regime requiring Members to declare unspent convictions. Now, there is nothing like that at the moment.

3980 The qualifications on standing for election, which are set out in the Reform Law, would still apply, irrespective of what is approved or otherwise on this policy letter, but if the States reject these Propositions, there will be no declaration of unspent convictions regime introduced.

I think, sir, that is the best way that I can answer Deputy Ogier's question.

3985 **The Bailiff:** Members, the Propositions are set out on pages 2002 through to 2005. Unless anybody requests that they be taken separately, I will put them all together but, because they involve an amendment to the Reform Law, we will have to have a recorded vote if there are going to be some persons voting against. Nobody is requesting any separate vote on any of the Propositions, so you are voting on all of the Propositions, 1-5.

There was a recorded vote.

Carried – Pour 35, Contre 7, Ne vote pas 1, Absent 4

POUR

Deputy Harwood
Deputy Kuttelwascher
Deputy Brehaut
Deputy Domaille
Deputy Langlois
Deputy Robert Jones
Deputy Le Clerc
Deputy St Pier
Deputy Gillson
Deputy Le Pelley
Deputy Fallaize
Deputy David Jones
Deputy Laurie Queripel
Deputy Lowe
Deputy Le Lièvre
Deputy Collins
Deputy Duquemin
Deputy Green
Deputy Dorey
Deputy Paint
Deputy Le Tocq
Deputy James
Deputy Adam
Deputy Perrot
Deputy Brouard
Deputy Wilkie
Deputy De Lisle
Deputy Burford
Deputy Inglis
Deputy Soulsby
Deputy Luxon
Deputy O'Hara
Deputy Quin
Alderney Rep. Jean
Alderney Rep. McKinley

CONTRE

Deputy Gollop
Deputy Sherbourne
Deputy Conder
Deputy Parkinson
Deputy Bebb
Deputy Lester Queripel
Deputy Ogier

NE VOTE PAS

Deputy Hadley

ABSENT

Deputy Stewart
Deputy Trott
Deputy Spruce
Deputy Sillars

3990 **The Bailiff:** There were 35 votes in favour, with 7 against and one abstention. I declare those Propositions carried.

Billet d'État X

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

I. Submission of Items to the States – Propositions as amended carried

Article I.

The States are asked to decide:

Whether, after consideration of the Policy Letter dated 25th February, 2016, of the States' Assembly & Constitution Committee, they are of the opinion:

1. To approve that the Rules of Procedure of the States of Deliberation and their Committees which were approved conditionally on the 27th of November, 2015 come into effect on the 1st of May, 2016 subject to the following amendments:

(i) replace the provisional Rule 2 with:

'Convening of Meetings

'2. (1) A Meeting of the States shall be convened by the Presiding Officer for each of the dates agreed by the States after consideration of a policy letter submitted under the terms of Rule 1. Each Meeting shall be convened by means of a Billet d'État containing, as determined by the provisions of Rule 3, the titles of original Propositions designed to enable the States to make resolutions thereon after being debated at the Meeting.

'(2) Subject to paragraph (3) below, a Billet d'État shall be issued by the Greffier on behalf of the Presiding Officer as soon as possible after the States' Meeting at which its contents were decided.

'(3) The Billet d'État for a special Meeting shall be issued by the Greffier on behalf of the Presiding Officer as soon as possible after the original Propositions which it will contain have been published.

'(4) Notwithstanding the provisions of Rule 1 and the foregoing provisions of this Rule the Presiding Officer may, if in his or her opinion circumstances so require, convene a Meeting in such manner and at such notice for such date as he or she shall decide. Before convening a Meeting under the provisions of this paragraph, the Presiding Officer shall inform His Excellency the Lieutenant Governor and Commander-in-Chief of the date proposed for the Meeting.'

(ii) replace the provisional Rule 3 with:

'Submission of items to the States

'3. (1) Any supporting policy letter or requête or motion must be attached to the original Proposition at the time of submission.

'(2) Any Proposition in respect of an election to a vacant office shall be submitted by the Presiding Officer who alone shall have the right to determine the Billet d'État in which the Proposition shall appear.

'(3) A Committee of the States may submit a report for inclusion as an appendix to a Billet d'État which Committee alone shall have the right to determine the Billet d'État in which the appendix shall appear. The Greffier shall circulate and publish it as set out in paragraph (5) as if it were an original Proposition.

'(4) The submission of secondary Propositions shall be subject to the provisions of Rule 24(1).

'(5) On receipt of an original Proposition submitted for consideration by the States the Greffier shall cause it to be published as soon as possible on the States' website and in such other form as he or she may determine. The Greffier shall also notify all Members that the item is on the website and send it to them by the method which the Member has chosen. The Greffier shall simultaneously transmit the item to the Presiding Officer and the Policy & Resources Committee and shall also cause a notice of its title to be posted on the noticeboard in the Royal Court building.

'(6) On receipt of an original Proposition or set of original Propositions the Greffier shall allocate it an identification number which shall be used in all official references to it. This shall be in the form "P. year / serial number of Proposition" (e.g. P. 2016/1). Any matter relating to the original Proposition or set of original Propositions, that is to say an amendment, sursis, letter of comment or other motion on it, shall have the same identification number as the principal item with a distinguishing code (e.g. P.2016/1 Amdt 1).

'(7) On receipt of a new matter for consideration by the States, the Policy & Resources Committee shall determine the future States' Meeting at which it proposes that the item should be debated and the order of the debate, having taken into account the nature and significance of the item, the volume of the other business already arranged for future Meetings, and any preferred date which might have been expressed by the Committee or group of Members, as the case may be, under the provisions of Rule 4(2).

'(8) The Policy & Resources Committee shall have the right to propose the Meeting and the order of debate with each Meeting in respect of the following categories of business only as listed in Rule 9: Rule 9(1)(g). Amendments under the provisions of paragraph (16) are permitted only in respect of those categories of business or items within them. Those categories of business shall be marked in the Schedule with an asterisk ("").*

'(9) The Policy & Resources Committee shall propose at an ordinary Meeting only of the States the future Meeting at which it proposes that an item be considered, by means of the inclusion of the item (that is to say the title only of the original Propositions concerned) in a Schedule for future States' business.

'(10) Any original Proposition which has been submitted to the Greffier before 15.00 on the working day preceding the seventh clear day (excluding Saturdays, Sundays and public holidays) before an ordinary Meeting shall be included in the Schedule for future States' business considered at that Meeting.

'(11) Any original Proposition which proposes the approval of any of:

'(a) a Projet de Loi or draft Ordinance; or

'(b) a Policy & Resource Plan; or

'(c) a draft Strategic Land Use Plan, or any amendment to such a Plan, which is laid before the States pursuant to section 5(3) of the Land Planning and Development (Guernsey) Law, 2005; or

'(d) any proposals for a Development Plan, Subject Plan or Local Planning Brief or any amendment to such a Plan or Brief, which is laid before the States pursuant to section 9(4) of the Land Planning and Development (Plans) Ordinance, 2007; or

'(e) the annual policy letter proposing social insurance rates of contribution and benefits shall be published not later than five weeks before the States' Meeting at which they are debated.

'(12) Original Propositions in respect of the States' Accounts shall be published not later than three weeks before the States' Meeting at which they are debated.

'(13) Original Propositions in respect of the annual Budget of the States shall be published not later than four weeks before the States' Meeting at which they are debated.

'(14) A Schedule for future States' business shall be provided by the Policy & Resources Committee to the Greffier before 15.00 on the day before the second clear day (excluding Saturdays, Sundays and public holidays) before the ordinary Meeting at which its contents will be debated as an item under Rule 9(1)(i) and shall be issued by the Greffier as soon as it is received.

(15) Any item which was listed for consideration at the Meeting but consideration of which, either in part or in whole, was adjourned or deferred to the next Meeting under the provisions of Rule 6(3)(c) shall be treated as automatically included in the part of the Schedule for future States' business in respect of the next Meeting as an item under Rule 9(1)(f).

'(16) Subject to the provisions of paragraph (8), when the proposal in paragraph (9) is considered, any Member may propose by means of an amendment an alternative Meeting or a different order of business within a Meeting at which the item will be listed for consideration.

'(17) The provisions of Rule 24(2) shall not apply in respect of an amendment laid under the provisions of paragraph (16).

'(18) In respect of an amendment laid under the provisions of paragraph (16), speeches shall be permitted only by the proposer of the amendment, the President of the Committee concerned, or the lead requérant in the case of a requête or the lead Member of the seven Members who have brought a motion under the terms of Rules 21 or 22, and the President of the Policy & Resources Committee and shall be restricted to a maximum of two minutes each and no other debate shall be permitted on the amendment.

'(19) The Policy & Resources Committee shall have the right to submit letters of comment on items submitted for consideration by the States. The Scrutiny Management Committee shall also have the right to submit letters of comment on items submitted for consideration by the States. Any letter of comment shall be submitted to the Greffier for publication and he or she shall cause it to be circulated as if it was an original Proposition under the terms of paragraph (5) and it shall be given the same identification number as the principal item with a distinguishing code (e.g. P.2016/1 PRC Lett Com or P.2016/1 SMC Lett Com).

'(20) The dates and purpose of special Meetings of the States shall be listed in Schedules for future States' business as soon as the dates on which they will be held have been determined by the States in accordance with the provisions of Rule 1(1). No amendment to their proposed place in the Schedules shall be permitted except by the President of the Policy & Resources Committee.

'(21) Every original Proposition for the approval of a Projet de Loi or a draft Ordinance, and every Ordinance or Statutory Instrument laid before the States, shall be accompanied by a brief explanatory memorandum approved by H.M. Procureur.

'(22) Any States' Member of a Committee who dissents from all or some of the original Propositions submitted by that Committee may deliver to the Committee a minority report which shall be published as an annex to the policy letter.

'(23) The Greffier, in consultation with the Presiding Officer, shall issue directives setting out the conditions with which the submission of a Proposition and any accompanying policy letter or requête or motion must comply, including, but not restricted to, template, font, font size, margins, layout, etc.

'(24) Any Proposition the effect of which is to note the contents of an accompanying policy letter shall be construed as a neutral motion, neither implying assent for, nor disapproval of, the contents of the policy letter concerned.

'(25) Any Proposition which contains the words "the States" shall be construed (unless defined to the contrary) as meaning the States of Deliberation of the Island of Guernsey.'

(iii) replace the text of Rule 1(2) with:

'Ordinarily the first day of a Meeting shall be a Wednesday, except for the Meetings held to consider the annual Budget of the States which shall begin on the first Tuesday in November, the States' Accounts which shall begin on a Tuesday before a Meeting in June, and a Policy & Resource Plan which shall begin on a Tuesday.'

(iv) delete Rule 1(3) then renumber Rule 1(4) as Rule 1(3) (v) replace the existing Rule 4 with the following:

'4. (1) Every original Proposition laid before the States shall have appended to it a statement that it has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

'(2) Every original Proposition laid before the States may be accompanied by a statement from the Committee or group of Members, as the case may be, expressing its or their preferred date when the item should be considered by the States.

'(3) Every Proposition laid before the States which has financial implications to the States shall include or have appended to it in a policy letter or requête or otherwise an estimate of the financial implications to the States of carrying the proposal into effect;

'Provided that: 'the proposer(s) of such a Proposition may request from any Committee any information required to enable such an estimate to be included or appended and the Committee shall thereupon provide complete and accurate information to enable the proposer(s) to set out the estimate.

'(4) A policy letter accompanying an original Proposition shall include a statement clarifying whether each of the Propositions is supported unanimously or by a majority of the Committee and, if the latter, which member or members are not in support of which Propositions should be identified.

'(5) A policy letter accompanying an original Proposition shall include a statement setting out how the Propositions contained therein relate to the Committee's purpose and policy responsibilities (in the case of a Principal Committee) or to the Committee's duties and powers (in the case of any other Committee), how they contribute to the States' objectives and policy plans, and what joint working or consultation has taken place with other Committees in the preparation of the Propositions.'

(vi) replace Rule 9(1) with:

'9(1) Unless the States resolve otherwise, the business at an ordinary Meeting shall be taken in the following order:

'(a) communications by the Presiding Officer including in memoriam tributes;

'(b) statements;

'(c) questions;

'(d) elections and appointments;

'(e) motions to debate an appendix report (1st stage);

'(f) items adjourned or deferred from previous Meetings of the States;

'(g) all other types of business not otherwise named;

'(h) motions to debate an appendix report (2nd stage);

'(i) Schedule for future States' business."

(vii) renumber Rule 9(2) as Rule 9(4) and insert a new Rule 9(2) in the following terms:

'An ordinary Meeting shall not be closed until any matters to be considered under Rule 9(1)(i) have been resolved.'

(viii) insert a new Rule 9(3) in the following terms:

'The only business at a special Meeting shall be the Annual Budget of the States or the States' Accounts or the Policy & Resource Plan, as the case may be.'

(ix) in Rule 18 insert after the first 'Committee' 'or by the Presiding Officer in his or her own right' and after the second 'Committee' '/ Presiding Officer.

(x) in Rule 23(4)(b) replace 'October' with 'November';

(xi) rename Rule 24 as 'Secondary Propositions – amendments, sursis, etc'.

(xii) replace Rule 24(1) with the following:

'Any Member who intends to lay before the States a secondary Proposition shall submit it to the Greffier and it must state the names of the proposer and seconder. As soon as possible thereafter, the Greffier shall cause it to be published on the States' website and in such other form as he or she shall determine and shall circulate it simultaneously to the Presiding Officer and all Members of the States.

'If the secondary Proposition was submitted to the Greffier by 15.00 on the day preceding the seventh clear day before the Meeting (excluding Saturdays, Sundays and public holidays), the Greffier shall circulate it in the way the Member has requested. If the secondary Proposition was

submitted between that time and the day of the Meeting the Greffier shall circulate it by electronic means. The Greffier shall provide a paper copy of each secondary Proposition, whenever it may have been submitted to him or her, at the start of each Meeting or as soon as practicable if he or she receives it during the Meeting.'

(xiii) in the paragraph following Rule 24(2)(h) delete the words from 'the Presiding Officer ... ' to 'H.M. Procureur; and' inclusive;

(xiv) in Rule 28(1), delete all the words after 'Meeting' in the first sentence and replace them with: 'they shall submit it to the Greffier who shall treat it as an item to be put to the States for consideration in accordance with the provisions of Rule 3'.

(xv) replace Rule 28(2) with 'Upon notification of a requête the Policy & Resources Committee shall:

'(a) consult any Committees appearing to that Committee to have a particular interest in the subject matter of the requête; and

'(b) if considered necessary, set out its opinion in a letter of comment, appending thereto the views of all Committees so consulted.'

(xvi) in Rule 30(1) add the following definitions:

""ordinary Meeting" means any Meeting of the States which is not a special Meeting;

""original Proposition" means any of the following: Propositions from the Presiding Officer; Propositions from a Committee of the States; Propositions arising from a requête; Propositions proposing the approval or adoption of legislation; motions of no confidence; motions of censure; urgent Propositions; and Propositions in relation to the adoption of the Schedule for future States' business;

""secondary Proposition" means any of the following: amendments; sursis; motions to withdraw; motions to annul an Ordinance or Statutory Instrument; motions to debate an appendix report';

""special Meeting" means any Meeting of the States convened to consider the Annual Budget of the States or the States' Accounts of the Policy & Resource Plan;'

(xvii) in Rule 37(7) replace 'recommendation' with 'Proposition';

(xviii) in Rules 17(9) and 53(2) replace 'recommendations' with 'Propositions'.

2. To rescind resolution 3 of the resolution of the States of the 27th November 2015 on Article I of Billet d'État XXII and to agree that States' Meetings between the 1st May 2016 and the 31st August 2017 shall begin on the dates set out in the following schedule:

Proposed dates for the first day of States' Meetings in 2016 (all Wednesdays, except where indicated):

May 4th (election of the President of the Policy & Resources Committee only)

6th (Friday) (election of the Members of the Policy & Resources Committee only)

11th (election of the Presidents of other Committees only)

18th (election of the Members of other Committees only)

June 8th

28th (Tuesday) (States' Accounts Meeting only)

29th

September 7th

21st

October 12th

November 1st (Tuesday) (Annual Budget Meeting only)

2nd

15th (Tuesday) (Policy & Resource Plan Phase 1 debate only)

30th

December 14th

Proposed dates for the first day of States' Meetings in 2017

January 11th

February 1st

15th

March 8th

29th

April 26th

May 17th

June 7th

20th (Tuesday) (States' Accounts Meeting only)

21st

27th (Tuesday) (Policy & Resource Plan Phase 2 debate only)

N.B. The States' schools' term dates as far as July, 2017 are as follows:

Term starts - 26th April, 2016

(pupils)

Half term - 30th May to 3rd June

Term ends - 21st July

Term starts - 6th September

(pupils)

Half term - 24th to 30th October

Term ends on 20th December

Term starts - 5th January, 2017

(pupils)

Half term - 20th to 24th February

Term ends - 7th April

Term starts - 25th April (pupils)

Half term - 29th May to 2nd June.

Term ends - 21st July

3. To agree that the first Schedule for future States' business be issued on the 13th of May, 2016 for consideration by the States at the end of the Meeting on the 18th of May 2016 and that the deadline for submission of original Propositions or sets of original Propositions for inclusion in that Schedule be 15.00 on the 6th of May 2016.

4. To note that the Meetings of the States held in May, 2016 to elect Members and others to positions on Committees of the States be convened by means of Billets d'État issued under the present Rules of Procedure of the States of Deliberation

The Greffier: Billet d'État X – Article I – States' Assembly & Constitution Committee – Submission of Items to the States.

The Bailiff: Who is going to open this on behalf of the committee, in the absence of its chairman?

Deputy Fallaize.

Deputy Fallaize: Thank you, sir. *(Laughter)*

Right, I do not have much more to say on this one than I had on the previous two. The States in November of 2015 agreed a new set of Rules of Procedure to come into effect on 1st May, to coincide with the new States' term, of course, and also the changes to the organisation of the States' committee structure.

But, those new Rules of Procedure, well it was meant to be at their January 2016 Meeting, and I apologise to Members for it being in March rather than in January, were conditional on the States approving Rules of Procedure which relate to the submission of items for consideration by the States.

Now, the States have already approved this new set of arrangements in principle. They were set out extensively in the November 2015 policy letter, so what is proposed here is, in effect, the detailed Rules which are necessary to give effect to the in principle submission regime which the States have already approved.

Obviously, I am happy to answer any questions, if Members have them, but other than that, sir, I have nothing to add and I hope Members feel able to support these proposals, not least of all because if they are not approved, then the new Rules of Procedure, in their totality, which need to come into effect on 1st May will not have been approved.

Thank you, sir.

The Bailiff: Right, we have a number of amendments, the first one to be laid by Deputy Lowe, seconded by Deputy Hadley, but that requires that Rules 13(2), 15(2) and any other provisions of the Rules of Procedure necessary be suspended.

Do you propose that motion?

Deputy Lowe: Yes, please, sir.

The Bailiff: And Deputy Hadley, you second it?

So I put that procedural motion to you, first. Those in favour; those against.

Some Members voted Pour; others voted Contre.

Deputy Lowe: Can we have a recorded vote, please, sir.

The Bailiff: We will have a recorded vote on that procedural motion.

There was a recorded vote.

Not carried – Pour 19, Contre 24, Ne vote pas 0, Absent 4

POUR

Deputy Conder
Deputy Lester Queripel
Deputy Gillson
Deputy Le Pelley
Deputy Ogier
Deputy Trott
Deputy Fallaize
Deputy David Jones
Deputy Laurie Queripel
Deputy Lowe
Deputy Le Lièvre
Deputy Collins
Deputy Green
Deputy Paint
Deputy Brouard
Deputy O'Hara

CONTRE

Deputy Harwood
Deputy Kuttelwascher
Deputy Brehaut
Deputy Domaille
Deputy Langlois
Deputy Robert Jones
Deputy Le Clerc
Deputy Sherbourne
Deputy Parkinson
Deputy Bebb
Deputy St Pier
Deputy Duquemin
Deputy Dorey
Deputy Le Tocq
Deputy James
Deputy Adam

NE VOTE PAS

None

ABSENT

Deputy Gollop
Deputy Stewart
Deputy Spruce
Deputy Sillars

Deputy Hadley
Alderney Rep. Jean
Alderney Rep. McKinley

Deputy Perrot
Deputy Wilkie
Deputy De Lisle
Deputy Burford
Deputy Inglis
Deputy Soulsby
Deputy Luxon
Deputy Quin

The Bailiff: The voting on that procedural motion was 19 in favour and 24 against. I declare it lost.

4035 Deputy Lowe.

Deputy Lowe: Thank you, sir.
Thank you to Members for stopping democracy.

4040 **Several Members:** Shame!

The Bailiff: Deputy Lowe, there is no opportunity for a speech at this point. You should know that.

4045 **Deputy Brehaut:** Sir, could Deputy Lowe perhaps withdraw the remark? It was not a particularly kind remark to have made.

The Bailiff: Deputy Lowe?

4050 **Deputy Lowe:** I thought it was a debating chamber, that was all, sir.

The Bailiff: Yes, but you had no right to speak at that point. If not, we will have everybody commenting on every vote afterwards if they do not agree with it, (**Several Members:** Hear, hear.) Do you withdraw the remark?

4055

Deputy Lowe: I apologise, sir.

The Bailiff: You have withdrawn it. Thank you very much.

4060 **Deputy Lowe:** Thank you, sir.

The Members: The next amendment is to be proposed by Deputy Le Tocq and seconded by Deputy Langlois.

Amendment

In Proposition 1 (ii) (10), to delete 'the seventh clear day' and substitute 'the eleventh clear day.'

4065 **The Chief Minister (Deputy Le Tocq):** Sir, it is a very simple, short amendment with a very long explanatory note.

Basically, it is a logistical, technical amendment to deal with the issue regarding in Proposition 1 (ii) (10), which is the timing of the laying of a Proposition with the Greffier in the future.

4070 With regards to Policy & Resources, if we do not change it what could happen is that the P&R Committee, which has to obviously come back with recommendations to this Assembly in future, as to when debates should take place. We would only have perhaps a working hour or so before they were able to do that. That might be appropriate if there is only one or two, but if there are several particular policy letters and Propositions to bring then they will need longer than that, so it

is just to extend that time and to therefore delete the 'seventh clear day' and substitute 'the eleventh clear day'.

Thank you, sir.

The Bailiff: And Deputy Langlois, you second that?

Deputy Langlois: Thank you, sir.

I second it and I would like to say a few words.

The Bailiff: Does Deputy Fallaize wish to speak at this point, because he is entitled to do so?

Deputy Fallaize: Not at this point, thank you, sir.

The Bailiff: Deputy Langlois, then.

Deputy Langlois: Just a few words, sir. When this came before the Policy Council, Deputy Le Tocq kindly asked me to second it and, about half way through reading the explanatory note, I realised that I have made the right decision not to stand again (*Laughter*) as the logic of the whole thing totally eluded me!

But I trust the Chief Minister in his judgement of diaries and one and two hours and so on and so forth.

Given the late time, I will be brief, but I ask your indulgence for a few short words of farewell as this will be my last speech in the Assembly.

I cannot pretend that the actual time spent in this Assembly, in this room, has been the favourite occupation of my job representing St Peter Port South over the last eight years, because it is on occasion, I find, a very frustrating process. I cannot help that.

However, sir, I would heartily encourage all my colleagues who return and all newcomers joining them to do everything possible to protect this unique Assembly. (**Several Members:** Hear, hear.)

It is here and during these days that 47 diverse, I should say very diverse individuals learn to find the right level of tolerance with each other's views, without which the civilised progress towards Government decisions and compromise would not be possible.

I make one politically related point. There is much talk of loose alliances through to political parties for Guernsey. Please do not take that so far that you are no longer able to reach the compromises that are needed in a small community.

Careful what you wish for. (**Several Members:** Hear, hear.)

Of course, there is one other vital contribution to the process which I so much admire, despite my frustrations. That is your own. I thank you, sir, for your endless patience and good humour which has kept us on track through thick and thin.

So, finally, sir, I wish to say thank you, through you, to all the Members of this Assembly, as friends and with that it is goodbye from me. (*Applause*)

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

Deputy Bebb.

Deputy Bebb: All I would say is that the Propositions, as originally drafted, were done so with specific intentions in mind. There are seven clear business days. It does not actually include the bank holidays or the weekends and I would suggest that that should be sufficient, although I do recognise the concerns that the Policy Council currently have.

Of course, what is being proposed with Policy & Resources would be a far more streamlined, far more efficient body of consultation.

4125 Personally, I would suggest that, of course, a short period of time gives greater advantage for those people who are not on Policy & Resources. Although understanding the concerns that are currently being laid by the Policy Council, my suggestion is that the seven clear days be kept with an understanding that these Rules in their totality must be reviewed after, I would suggest, a two-year period of operation, because of course there is a measure of trying to understand how they will work and the only way to really test that is to try them out.

4130 I understand, of course, that it is not really the greatest matter, but I do think that seven days gives the greater priority to those Members of this Assembly who will not be members of the Policy & Resources Committee and, therefore, will obviously have far less resources at their disposal in comparison. Therefore, I would suggest seven days to be the appropriate time line.

4135 Thank you.

The Bailiff: I see no one else. Deputy Fallaize, do you wish to speak before Deputy Le Tocq replies?

4140 **Deputy Fallaize:** No, I do not think the committee has a clear view on this, because it really is a matter of detail.

It is fair to say that the timelines that are set out in the policy letter were the subject of quite considerable discussion inside the committee, although I do not think that the amendment, if it were approved, would have quite the effect that Deputy Bebb suggests, because the policy letter would still be published at the same time and would still be made available to all States' Members. It is just that the Policy & Resources Committee would have more time than they otherwise would to decide the dates on which they proposed the policy letter to be debated.

4145 I mean, I must say I am fairly indifferent to this amendment. I think, probably, on balance, I would rather stick with seven clear days as set out in the policy letter, but I do not think that if the amendment goes through it is going to have any material effect on the process.

The Bailiff: Chief Minister.

4155 **The Chief Minister:** I think the sort of review that Deputy Bebb suggested needs to happen anyway. We are moving into a new era and I think we need to have a little bit of understanding of staff who are trying to balance the new regime, thinking about timing of meetings and it is planned that the new Policy & Resources Committee would meet on a Monday morning.

4160 As a result of that, that is why this particular amendment helps to give some time for that sort of system to bed in and it may well be that, in due course, it could be tightened up further. But, in order for staff to have that appropriate time to advise the committee, then this amendment makes sense. So I do encourage Members to support it, please.

The Bailiff: So you are voting, then, on the amendment proposed by Deputy Le Tocq, seconded by Deputy Langlois. Those in favour; those against.

Members voted Pour.

4165 **The Bailiff:** I declare it carried.

Then, finally, there is an amendment to be proposed by Deputy Fallaize and Deputy Conder, and I must apologise to them, because normal convention would have required this to have been taken first. I think we have reached it slightly quicker in this meeting than I expected. I have only had seven days to prepare and I had not quite prepared for this! *(Laughter)*

4170 Deputy Fallaize, do you wish ... ?

Amendment:

1. In Proposition 1(ii) for "with" substitute "within" in the new Rule 3(8);

2. Insert a new Proposition 1(xix) as follows:

"(xix) in Rule 19(5)(b) after "any business" delete the remaining text and instead substitute "which would be debated in category 9(1)(g)."

3. Insert a new Proposition 1(xx) in the following terms:

"(xx) insert the word "to" at the beginning of Rule 24(2)(f) and of Rule 24(2)(g)."

4. Insert a new Proposition 1(xxi) as follows:

"(xxi) in Rule 24(10)(a) and (b) for "2(e)" substitute "2(g)"."

5. Insert a new Proposition 1(xxii) in the following terms:

"(xxii) in Rule 28(1) after "therein" delete the comma and the rest of the sentence."

Deputy Fallaize: It is not very efficient is it, sir? (*Laughter*) It is not as if you have had much else to prepare for the last couple of weeks.

4175 This is perhaps the most mundane of all amendments laid in this term of the States. It is obviously just effectively to correct a few typographical errors in the new Rules of Procedure and I hope Members will support it.

The Bailiff: Deputy Conder, you second it?

4180 **Deputy Conder:** I do, sir, and I do not reserve my right to speak.

The Bailiff: Any debate? No. We vote on the amendment, then. Those in favour; those against.

Members voted Pour.

The Bailiff: I declare it carried.

I am not aware of any other amendments? No.

4185 So, we can come to general debate. Is there any general debate?

Deputy Dorey.

Deputy Dorey: Thank you, Mr Bailiff.

4190 I will be very short. I would just like to thank the committee for adjusting some of the dates for the States' Meetings during the first year of the new States. I was particularly concerned when we debated before about some debate, particularly when the Policy & Resource Plan and Budget were a week apart and I think it is important that there is, ideally, three weeks between each Meeting.

4195 We still have some Meetings with just two weeks apart, which I think is tight, but I am prepared to give this programme a chance for the first year.

4200 But I think, ideally, we should always allow three weeks between Meetings, particularly when we have Budgets and Policy & Resources Plans, so that people can properly prepare and also listen to the public, because undoubtedly focus will be on the next Meeting, as we have seen in the time leading up to these debates we have had recently. I think it is important that the public do have a chance to air their views on a particular issue and Members have the time to properly prepare.

But, I will support this, although I have some slight reservations that some Meetings are only two weeks apart.

Thank you.

4205

The Bailiff: Deputy Lowe.

Deputy Lowe: Thank you, sir.

4210 It is a similar vein to Deputy Dorey, where they have been condensed into a smaller, closer period, which I mean, that is all very well and good, but if there are some complex reports like we have had and we are squashing them all together that might not necessarily be the good way to go forward.

4215 I am a little uncomfortable that the States think it is appropriate to have all of July and August off, two months without having a States' debate. I just think that is a little bit too long and something the private sector and most people out there working are not in that fortunate position to have two months. I just think that we should be at least be meeting in July, sir, that is my personal view.

4220 I just think it does not send out a very good image that the States is not meeting through July and August, but we are planning Meetings closer together to allow all that time off. I know there will be committee meetings in between, sir, but I just think this Assembly really should be meeting.

The Bailiff: Deputy Bebb.

Deputy Bebb: Thank you, Mr Bailiff.

4225 I think that it is an excellent thing that the States will not be meeting in July and August because, primarily, the decision not to meet in July and August is centred on the fact that the States will no longer meet during school holidays (**A Member:** Hear, hear.) and I think that it is a great message to send out to the community that this Assembly is making the steps necessary to be a family friendly Assembly (*Applause*) in order to encourage those people who have children to show that they do not have to have the most public area of being a Deputy, to miss those Meetings, because they would like to be on a school holiday, which is a very difficult thing, to balance a work and life balance.

4230 I think that it is a wonderful thing that the next Assembly will have the opportunity to say that they are finally adopting family friendly policies and I wholly commend the whole of this report to the Assembly. I hope that it will be supported wholeheartedly and it will only be the beginning of measures in order to see better policies adopted to encourage more people who have families, who currently find it difficult, to stand for election and I wish them all good luck. (*Cheers and applause*)

4240 **The Bailiff:** Deputy Gillson.

Deputy Gillson: Just a very quick one, referring to Paragraph 3 on page 2016, it mentions about the Greffier notifying all Members when something is posted, when a report is posted, I just think it would be nice if that was expanded to include Douzeniers as well and possibly even create a mailing list that the members of the public can subscribe to, so that they would also be notified when something is added.

Thank you, sir.

4250 **The Bailiff:** Deputy Brehaut.

Deputy Brehaut: Just a response to Deputy Bebb, sir. Don't go! (*Laughter*)

The Bailiff: Deputy Fallaize to reply.

4255 **Deputy Fallaize:** Thank you, sir.

I think Deputy Gillson makes a very good point and I can tell him that the present committee would be happy to pass on that recommendation to its successor committee.

I thank Deputy Dorey for the very useful suggestions he made to the committee after the initial debate in November and some of his suggestions have been incorporated in these proposals and one or two of the dates of States' Meetings have, as he said, changed, I think for the better, so I thank him for that.

Deputy Lowe does not think the States should go two months without a meeting. Well, the States go two months without a meeting now, because the States meet at the end of July and at the end of September. All that is happening is that that period is being brought forward in the year so that the States will meet late in June, spilling over into July, and then very early in September, so the period of the summer adjournment is not changing at all, it is just that it is moving slightly earlier in the year. I think Deputy Lowe wants me to give way.

The Bailiff: Deputy Lowe.

Deputy Lowe: Thank you, Deputy Fallaize.

Yes, I am aware the time period is exactly the same, but I have always promoted that we should not even have that long. I know we are changing the dates, but it is actually August. I have tried before; I have written letters to SACC. I will go through the chair and not directly to behind me, sir. *(Laughter)*

Deputy Fallaize: It is good to end on a harmonious note, isn't it? *(Laughter and applause)*

In closing, sir, obviously as well as asking the States to support the policy letter, I just want to take this opportunity to thank the other members of the States' Assembly & Constitution Committee, Deputy Conder, Deputy Bebb, Deputy Harwood and Deputy Adam and, before them, Deputy Dorey and Deputy Gillson, who have served on the committee in this term and to thank the other Members of the States who in the main have supported almost all of the committee's policy letters.

Finally, sir, I would like to thank you, because the committee has to work very closely with the presiding officer and the deputy presiding officer and the committee is very grateful for your advice and the Deputy Bailiff's advice and support throughout this four-year term.

Thank you.

Several Members: Hear, hear.

The Bailiff: Thank you very much.

Members, the Propositions are to be found on 2041 to 2050 and, of course, they have been amended. I will not read them out to you, I put them all to you together. Those in favour; those against.

Members voted Pour.

The Bailiff: I declare them carried.

Billet d'État IX

PAROCHIAL AND ECCLESIASTICAL RATES REVIEW COMMITTEE

IV. Dissolution of the Committee – Propositions carried

Article IV

The States are asked:

After consideration of the Policy Letter dated 15th February, 2016, of the Parochial and Ecclesiastical Rates Review Committee:

- 1. To dissolve the Parochial Ecclesiastical Rates Review Committee on 30th April 2016.*
- 2. That the Policy and Resources Committee assume any duties of the Parochial Ecclesiastical Rates Review Committee as may remain outstanding.*

The Bailiff: Greffier, the final Article please.

4300 **The Greffier:** Billet d'État IX – Article IV – The Parochial and Ecclesiastical Rates Review Committee – Dissolution of the Committee.

A Member: Hear, hear.

4305 **The Bailiff:** Deputy Gollop.

Deputy Gollop: Perhaps ironic that the final Article of this 47-Member States should be me dissolving myself! (*Laughter*)

4310 Especially as I did not know I was going to be dissolved, or the committee, because I suspected this would have to happen before the end of this term, but it was a shock to me when somebody from the BBC said: 'What do you say about your Parochial Ecclesiastical Rates Review Committee being dissolved?'

4315 Actually, it had been flagged up earlier, by the staff, but nevertheless it is an example of, perhaps, the end of term feeling taking precedence over what might otherwise have occurred. Because, although we have completed our work, I too thank Deputy Lowe, my vice-chairman, Deputy Conder, Deputy Green, Deputy De Lisle, again a varied and balanced team and their predecessors, Deputy Lewis, Deputy Le Pelley, Deputy Gill and the Procureur and his predecessor, and advocate Hodgett for helping us, but I think we might have continued a half-life in limbo a little bit longer if it was not for the end of term.

4320 The reason I say that is because, as it says clearly in the report, special States' committees shall continue in office until they have fulfilled their mandate and any legislation designed to give effect to such recommendations of the special committee may have resolved to adopt and be presented to the States, yes; approved, yes; and where necessary, registered. The final part of that triad has not yet occurred, as far as I know. The Chief Minister might know different because this, of course, was written and signed off by the committee in February.

4325 But, effectively, as the policy report says, the legislation is currently with the United Kingdom Ministry of Justice and is due to go to the Privy Council for approval and transmission to the Royal Court for registration in due course. A commencement ordinance will duly be needed to be approved by the States of Deliberation.

4330 So I am sure the new Scrutiny body will look forward to that. We are transferring the functions and any correspondence to the new Policy & Resources Committee and, of course, I have

forgotten to thank Dr Darryl Ogier, for the incredible help that he has given and the intellectual help, as well as the administrative help and the team at Sir Charles Frossard House.

So, if people want us to continue, I would happily accept that verdict, but I doubt that is the case. *(Laughter)*

4335

The Bailiff: Chief Minister.

The Chief Minister (Deputy Le Tocq): Sir, I just rise to confirm that that is the case with regards to the legislation being put through the Ministry of Justice to the Privy Council and, obviously, because we are exceedingly keen that this committee is dissolved, it is being prioritised. *(Laughter)*

4340

The Bailiff: Deputy Conder and then Deputy Domaille.

Deputy Conder: Could I confirm that the committee, most members and the majority of it, are also exceedingly keen that this committee should be dissolved? Can I thank the former Chief Minister for inviting me to join this committee and as this will be my last speech, may I thank you, sir, for your graciousness and great kindness to me and to this Assembly and to all of my colleagues, sir, their kindness to me?

4345

The name is Con-der! *(Laughter and applause)*

4350

The Bailiff: Deputy Domaille.

Deputy Domaille: Thank you, sir.

My name is always pronounced properly, so I am okay. *(Interjection)* Yes, I did not comment on the school holidays. *(Laughter)*

4355

Just like the committee that we are just about to dissolve, I too am going off into the sunset. I echo everything that Deputy Langlois and Deputy Conder have said, particularly in regard to you, sir.

I would just add one other comment. People talk about 'worst States ever' and the 'most naïve States ever' and so on. I happen to think this has been one of the best-natured States ever and, generally speaking, I think the debates have been good-natured. I certainly think the behaviour of Members, certainly to me, has been very greatly with respect. I really wish all those people that are hoping for re-election I hope they get re-elected. I hope all those new Members that come into the States enjoy it as much as I have and I wish everybody well.

4360

Thank you, sir. *(Applause)*

4365

The Bailiff: Deputy Bebb.

Deputy Bebb: Thank you, sir.

Given that the Parochial and Ecclesiastical Rates Review Committee was one of the main reasons for me deciding to stand in the first place, it is a great sense of serendipity that one of the last things that I will be doing in the Chamber is dissolving the committee and, realistically, I would want to ask all Members that return to this Chamber, and any other person thinking of standing, to pay great heed and pay attention to what happened with this committee.

4370

It was created, it has in my opinion, brought a great degree of uncertainty to special committees because of the length of its time and the cost that was involved in a venture that was initially intended to deal with the Torteval Church repairs.

Now, I have heard many a person say, 'careful going to see a doctor, because by the time you get a hospital appointment you are either better or dead' but, on this occasion, you really were. Because, of course, the Torteval Church resolved their financial issues far before this legislation came to pass.

4380

It has cost possibly in the region of millions due to the amount of time involved from very respected and senior members of staff and what I would further say is that, of course, if you look at the legislation, what has been achieved is that half the cost of cleaning which used to be costed to the parish no longer is and they will be at one with larger committees.

I would suggest that such an outcome of such a lengthy process was not exactly the finest hour. I would ask all Members in future to be very careful of wanting to try and amend ancient legislation and the course of things. Realistically, what can be achieved is usually far less than what was ideologically thought to be possible at the very beginning and, therefore, I would like to finish with that note of caution.

Thank you, goodbye. (*Applause*)

The Bailiff: Alderney Representative McKinley.

Alderney Representative McKinley: Thank you very much, sir.

As one of the only two people who are going to still be on the States in the next couple of months – not quite true – I just say that it is a great honour and privilege for me, as very much a new boy in the States, to have been sitting in this Assembly for the last 15 months and witnessing some highly professional, highly dedicated debates from really very highly qualified and Island-minded people.

I am terribly sorry that some of the people are standing down, who will not be standing again, coming back again, and wish the rest of you the very best of luck in your elections and know that my friend Louis and I would like that to be passed on to all of you.

Thank you very much, sir, and the best of luck in your elections. (*Applause*)

The Bailiff: Deputy Quin.

Deputy Quin: Thank you, sir.

It is wonderful that I shall be standing here after 16 years and see a dissolution of a committee I never knew existed! (*Applause and laughter*)

The Bailiff: Alderney Representative Jean.

Alderney Representative Jean: If I may, sir, I would like first of all to thank you for the way that you have looked after me in every need and treated me with such courtesy and respect.

It has been an honour to work for you this term.

There are so many people here that I am going to miss, who have become such firm friends of mine and my colleague Graham. You have all been so good to us. Many of you have come into Alderney to help us, you have assisted us.

I have found you to be a wonderful States and I am very respectful. There are many of you I am going to miss. I wish those who stand in election well, as my colleague did, and I thank you for everything and the time that I have been with you and how much I have enjoyed it.

You are a pleasure to work with, you really are.

Thank you. (*Applause*)

The Bailiff: Deputy Sherbourne.

Deputy Sherbourne: Isn't it lovely to finish on a really good note? (**Members:** Hear, hear.)

Well, as one who is here today and gone tomorrow, I have enjoyed immensely the last four years. It has been a privilege working with you all. We have had our differences. I have really enjoyed my committees. The two reports from the two scrutiny committees, PAC, Scrutiny, just indicate a little bit of the way things have actually moved on.

You made an old man very happy with your decisions on selection. Hang in there. (*Applause*)

4435 **The Bailiff:** Deputy Harwood.

Deputy Harwood: Thank you, sir.

4440 Can I, through you, sir, apologise to Deputy Conder for nominating him for PERRC, which was meant to be the subject of this debate. I thought it was a very good idea at the time and I felt he brought to the deliberations of this well-established committee a measure of intellectual prowess and academic rigour.

4445 Through you, sir, may I thank the Members of this Assembly for the opportunity that was afforded to me some almost four years ago. I have thoroughly enjoyed that but I have also actually thoroughly enjoyed the role of a backbencher and working on committees. The contrast is quite interesting but I have thoroughly appreciated it and generally enjoyed the last four years.

Thank you, sir. (*Applause*)

The Bailiff: Deputy Gollop, do you wish to reply to the debate? (*Laughter*)

4450 **Deputy Gollop:** I certainly concur with Deputy Harwood that Deputy Conder did bring a great research, academic rigour and integrity, and that will be true of all the other retiring States' Members who we will miss very much for their gentlemanly behaviour and erudition.

Related to Deputy Quin's point of view. In some ways we are rather a low profile committee, perhaps surprisingly so. (*Laughter*)

4455 We have not had a very long life, only 11 years, under three different chairmen. So, we have done our work. We could have gone on. We could have done new heights of looking at the relationship of Winchester and Canterbury and Kent and many other questions, but we will leave those to another state.

4460 So, all it leaves to me is to thank you, sir, and wish all the retiring States' Members and, of course, none of us know whether this should be a retiring speech as well.

The Bailiff: Members, we vote on the two Propositions to be found on page 2008. I put both to you together. Those in favour; those against.

Members voted Pour.

The Bailiff: I declare them carried.

MESSAGE FROM THE BAILIFF

End of States' term – Thank you to Members – Members' thanks to Presiding Officers and staff

4465 **The Bailiff:** It is getting late, but if you will just bear with me for another couple of minutes, I would just like to bid farewell and say thank you to you all.

4470 Thank you for what you have contributed to the Government of this Island. Thank you for serving as Deputies. It goes without saying that if people were not prepared to stand for the position of Deputy then we could not have a Government. Democracy requires it. Thank you very much for having done so and I wish you all well.

The four years we have spent together seem to have passed extremely quickly. (**Several Members:** Hear, hear.) Deputy Harwood a moment ago referred to the position that was offered to him four years ago. It does not seem like four years ago that that happened.

4475 I would just like to thank you all for the great respect that you have always shown towards me personally and towards the chair, the position that I occupy. It is an honour and a privilege to preside over the States of Deliberation and like many of you who have said you have enjoyed sitting in the States, I enjoy presiding over it. You sometimes seem surprised when I say that (Laughter) but I do enjoy presiding over the States.

4480 I thank you very much for all the support you have given me. I wish you all well, whatever your future may hold.

Deputy Stewart earlier today referred to the known knowns and the unknown unknowns, some of you will not be here in a few months' time and you know that will not be here. Some of you will not be here, or may not be here and do not yet know that you may not be here! (Laughter)

4485 Whatever, whether you are one of the known knowns or one of the unknown unknowns or the known unknowns, I wish you all very well and I thank you very much for the contribution you have made. (Sustained applause)

Deputy Lowe.

4490 **Deputy Lowe:** Thank you, sir.

Sir, on behalf of the States I would like to thank you for your patience and, indeed, the way you have conducted all of us here, through the chair. It has been a huge honour, as well, working with you.

4495 Indeed, if you could pass our thanks to the Deputy Bailiff and to the Greffier and the Deputy Greffiers and the Sheriffs and all the ushers that help us, the Procureur and indeed all the staff involved with the States, because none of us could do our job without those who serve us and work hard for us.

4500 I would like to pass on my thanks and, indeed, everybody else's thanks here to the staff and hope the message goes through that the last four years has been a very difficult time for them. We are still looking for cutbacks and it is very difficult to find where the money is going to come from and they have had some difficult work to do for us and my thanks to all of them and thanks again to you, sir, for all your patience and understanding.

4505 **The Bailiff:** Thank you for all your kind words and I will pass those words on to the various staff to help to support and ensure the running of the States of Deliberation.

Thank you very much. (Applause)

The Assembly adjourned at 6.22 p.m.