



XXII
2009

BILLET D'ÉTAT

WEDNESDAY, 15th JULY, 2009

REQUÊTE - DISPUTE WITH AIRPORT FIREFIGHTERS –
ESTABLISHMENT OF TRIBUNAL

B I L L E T D ' É T A T

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE, on WEDNESDAY, the 15th JULY, 2009**, immediately after the meeting already convened for that day, to consider the item contained in this Billet d'État which has been submitted for debate.

G. R. ROWLAND
Bailiff and Presiding Officer

The Royal Court House
Guernsey
10 July 2009

REQUÊTE

DISPUTE WITH AIRPORT FIREFIGHTERS – ESTABLISHMENT OF TRIBUNAL

WHEREAS the mandate of the Public Sector Remuneration Committee states:

- "(a) to be responsible for*
- (i) collective bargaining, on behalf of the States as employer, in respect of the remuneration and conditions of service of all staff employed by the States;*
 - (ii) the remuneration and conditions of service applicable to all employees of the States who are not subject to collective bargaining arrangements."*

WHEREAS at page 465 of Billet VII 29th March 2006 deferred to and approved on 26th April 2006 entitled 'Review of the Machinery of Government' it was recommended by the Policy Council:

"8. Amend the mandate of the Public Sector Remuneration Committee (PSRC) as set out in appendix 6 to clarify that:-

- (a) The pay and conditions of employment of all States employees are matters which the Committee **must** determine"*

WHEREAS, in respect of the Emergency Powers Authority, the Constitution and Operation of States Departments and Committees states:

"17. (5) The Bailiff shall be given prior notice of all meetings of the Authority and shall be entitled to advise and warn the Authority with regard to any matter relevant to its deliberations"

THE HUMBLE PETITION of the undersigned Members of the States of Deliberation SHEWETH THAT:-

1. On 25th May 2009, against the background of a long-running dispute with the States of Guernsey about their terms and conditions of employment, which had involved negotiations taking place between the trade union representing the Fire Fighters at Guernsey Airport, Unite, and the Public Sector Remuneration Committee, and which had also engaged the Deputy Industrial Disputes Officer, the Fire Fighters took industrial action. That action resulted initially in the withdrawal of Category 6 cover at the Airport and subsequently there was a further reduction in cover leading to the Airport being closed for business save for emergency cover. 25th May 2009 was a public holiday at the beginning of the school half-term break.

2. The Airport remained closed for business save for emergency cover until the late afternoon of 26th May 2009, at which time the Airport Fire Fighters restored Category 6 cover. This level of cover was restored after a meeting at the Airport with the Airport Fire Fighters had taken place, which was attended by the Chief Minister, the Head of Human Resources and the Editor of the *Guernsey Press*. A separate meeting was convened later that day with the Chief Minister as Chairman, attended by the six Ministers from amongst whom the members of the Emergency Powers Authority could be drawn. It was subsequently reported publicly that no resolution was taken at that meeting declaring that a state of emergency existed.
3. On 27th May 2009, it was announced publicly that the meeting on 26th May 2009 had been a meeting of the States Emergency Powers Authority (the “26th May EPA meeting”), consisting of seven members of the Policy Council including the Chief Minister as Chairman. By a majority decision of 6-1 of those members present, the States Emergency Powers Authority had agreed with the proposal that the Public Services Department, as the employing body of the Airport Fire Fighters and having responsibility for the provision and administration of facilities and services in respect of the Airports, would make a ‘recruitment and retention’ payment spread over the next 12 months to the Airport Fire Fighters. This payment was stated to have no bearing on discussions on the Airport Fire Fighters’ future pay claim for 2009, which had not yet been tabled, and was being made in addition to their current salary and was not being considered as part of base pay. It was also agreed that both sides would work towards concluding discussions over terms and conditions and that the States of Guernsey would bring in new negotiators.
4. Your Petitioners consider that the facts and circumstances leading to and surrounding the breakdown in negotiations between Unite and the States of Guernsey, resulting in the taking of this industrial action by the Airport Fire Fighters, and the resolution thereof by the agreement to make those payments to each Airport Fire Fighter, in addition to those payments previously made, are sufficiently unclear as to warrant further independent investigation. Your Petitioners believe that there is considerable public concern both about how this position was reached and how it was resolved. Accordingly, clarifying factually who performed what acts on which occasions, in what capacity and on what authority, and who might have omitted to act at any given time will be of benefit to the public’s understanding of these events and the manner in which the States of Guernsey act and ought to act. Your Petitioners are further concerned that the integrity of the States of Guernsey has been brought into question by this episode and that steps are required to be taken to restore that integrity.
5. In the foregoing circumstances, in the opinion of your Petitioners the facts and circumstances leading up to and surrounding the industrial action taken by the Airport Fire Fighters at Guernsey Airport in May 2009, including the circumstances in which that industrial action was resolved, constitute a matter of urgent public importance and that accordingly it is expedient that a Tribunal of

Inquiry should be established to enquire into relevant matters under the provisions of the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended. In the opinion of your Petitioners, such an Inquiry should also extend to examining the actions and omissions of Departments and Committees of the States of Guernsey, relevant statutory bodies, other organisations and responsible individuals concerned in the dispute that led to the industrial action being undertaken and the steps that were taken to resolve it. The purpose of that examination would be to identify any lessons that can be learned by the States of Guernsey.

6. Without prejudice to the generality of the foregoing, in the event of the establishment of a Tribunal of Inquiry, your Petitioners believe that some or all of the following issues might appropriately be considered by it:
 - (a) the circumstances commencing at, or a short period before, the beginning of 2008 which culminated in a Letter of Agreement dated 20th February 2009 between Unite representing the Fire Fighters and Crew Commanders at Guernsey Airport and the States of Guernsey Public Services Department and Public Sector Remuneration Committee,
 - (b) the terms of that Letter of Agreement, whether they were complied with and the consequences arising therefrom,
 - (c) whether and, if so, the basis on which the Public Sector Remuneration Committee and Public Services Department lodged any dispute with the Deputy Industrial Disputes Officer,
 - (d) whether appropriate contingency planning in respect of the services required at the Airport, including but not limited to contacting resources external to Guernsey, was undertaken by, or on behalf of, the States of Guernsey prior to the industrial action that took place in May 2009,
 - (e) whether appropriate action was taken by, or on behalf of, the States of Guernsey on becoming aware in the days preceding the taking of industrial action on 25th May 2009 of the real possibility of there being restricted operations at the Airport due to the Airport Fire Fighters no longer guaranteeing to provide the necessary Category 6 cover and whether there was any contractual obligation for them to do so,
 - (f) whether appropriate steps, with the assistance of the Deputy Industrial Disputes Officer, were being taken at or around the time of the Airport Fire Fighters' industrial action to utilise the dispute resolution mechanisms available under the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993, as amended,
 - (g) the extent to which all those involved in seeking a resolution of the industrial action, and in particular the Chief Minister or any civil servant

supporting him and/or the Minister of the Public Services Department or any civil servant supporting him, the Chairman of the Public Sector Remuneration Committee or any civil servant supporting him and/or Unite representing the Fire Fighters and Crew Commanders at Guernsey Airport, were informed about, or aware of, any steps taken by the Deputy Industrial Disputes Officer and the consequences, if any, arising from any party's non-participation in that process,

- (h) the circumstances of, and consequences arising from, the meeting at the Airport on 26th May 2009 attended by the Chief Minister, the Head of Human Resources and the Editor of the *Guernsey Press*,
- (i) the circumstances of, and consequences arising from, the convening of the 26th May EPA meeting and the basis on which that meeting actually proceeded and the means by which it purported to carry out any functions or exercise any powers, and whether in the circumstances then prevailing it could have functioned differently to the way it did,
- (j) whether appropriate consideration was given to seeking the convening of an emergency States of Deliberation meeting, either as an open meeting or in camera, to discuss the serious problems arising from the lack of adequate cover by the Airport Fire Fighters,
- (k) whether any notes and/or minutes taken during the 26th May EPA meeting assist in clarifying the processes followed, including any legal advice tendered to those present, both then and subsequently, whether such advice was confirmed in writing and adhered to, and whether any outcomes of that meeting required subsequent ratification by another body and, if so, whether that occurred,
- (l) whether appropriate procedures were followed to reach formal resolutions to make the £4,000 per man 'recruitment and retention' payment over the next 12 months following the Airport Fire Fighters' return to work after their industrial action and the conditions or terms, if any, on which those payments would be made,
- (m) the appropriateness of making the 'recruitment and retention' payment of £4,000 to each Airport Fire Fighter and the manner that it was agreed,
- (n) whether a comparable payment is being paid to other Fire Fighters not directly involved in the dispute and, if so, the appropriateness of that course of action,
- (o) notwithstanding the mandate of the Public Sector Remuneration Committee, the basis on which the Public Services Department and/or the States Emergency Powers Authority acted following the 26th May EPA meeting to agree to make these payments to the Airport Fire Fighters,

- (p) the extent to which those who attended the 26th May EPA meeting and/or their civil servants communicated as appropriate with the Minister of the Public Services Department and other members of the Board of that Department and/or their civil servants following the 26th May EPA meeting, and whether appropriate legal advice was sought by the Public Services Department prior to taking any consequential action,
- (q) whether any other discussions about the resolution of the industrial action, either in person by way of a meeting or any other form of communication, took place following the 26th May EPA meeting, or in the days immediately following and, if so, who participated in those discussions, where they took place, the subject-matter and any outcomes, including whether any outcomes needed to be, and were, subsequently ratified at a meeting of the Board of the Public Services Department or any other relevant body,
- (r) the extent to which the Airport Fire Service was fully staffed over the relevant period of the dispute up to the end of May 2009 and the circumstances of any occasions over that period on which the number of Airport Fire Fighters was insufficient to maintain Category 6 cover,
- (s) the extent to which the payments that have been agreed to be made to the Airport Fire Fighters may be regarded as binding on the States of Guernsey and setting a precedent within the public sector and the effect of those payments on future pay claims,
- (t) the manner in which the resolution of the dispute with the Airport Fire Fighters was announced publicly.

THESE PREMISES CONSIDERED, YOUR PETITIONERS humbly pray that the States may be pleased to resolve as follows:-

1. That it is expedient that a Tribunal be established under the provisions of the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended, to inquire into a definite matter of urgent public importance, namely, the facts and circumstances leading up to and surrounding the industrial action taken by the Airport Fire Fighters at Guernsey Airport in May 2009, including the circumstances in which that industrial action was resolved.
2. That the Terms of Reference for the Tribunal shall be-
 - a. to inquire into the circumstances leading up to and surrounding the industrial action taken by the Airport Fire Fighters at Guernsey Airport in May 2009, including the circumstances in which that industrial action was resolved,
 - b. to examine the actions and omissions of Departments and Committees of the States of Guernsey, relevant statutory bodies, other organisations and

responsible individuals concerned in the dispute that led to the industrial action being undertaken and the steps that were taken to resolve it, with a view to identifying any lessons to be learned by the States of Guernsey,

- c. to make such recommendations as may be considered appropriate,
- d. to deliver a report on its findings to the Presiding Officer of the States of Deliberation as soon as practicable.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY

This 29th day of June 2009

M M Lowe
S J Maindonald
B J E Paint
A R Le Lievre
R W Sillars
I F Rihoy
M W Collins
C A Steere
J M Le Sauvage

R Domaille
D de G De Lisle
R R Matthews
S L Langlois
A H Brouard
J A B Gollop
G G Guille
A Spruce
G P Dudley Owen

(NB In pursuance of Article 17 of the Rules of Procedure the views of the Departments and Committees consulted by the Policy Council, as appearing to have an interest in the subject matter of the Requête, are set out below.)

COMMERCE AND EMPLOYMENT DEPARTMENT

The Deputy Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

2nd July 2009

Dear Deputy Flouquet

AIRPORT FIRE-FIGHTERS : (REVISED) REQUÊTE ON THE ESTABLISHMENT OF A PUBLIC TRIBUNAL

Thank you for your recent letter with the revised Requête, which differs to some degree to the original and has caused the Department to review the response it intended to send.

The Department is conscious that there is an interest in the States for an examination of the actions and decisions that resulted in the cessation of industrial action by Airport fire fighters in late March, and which averted what was fast becoming a damaging disruption to the Island's air transport links and in turn to the Islands' economy and its reputation.

The Commerce and Employment Department is mindful of its mandate and role in promoting good employment practices and policies and the need to encourage a climate of good industrial relations because of the economic benefits this brings to the Island and its people.

After careful consideration of this matter and of the changed wording set out in the revised Requête, a clear majority of members do not support the call for an investigation as suggested by the Requête. There was majority support for the proposal that the Scrutiny Committee should conduct an independent inquiry into this matter.

A Balance of Benefits

There can be no doubt that the events surrounding the fire-fighters' dispute seem to reveal strikingly different views of the way Department and Committee mandates should be discharged. Further, there is clearly disagreement between members of the Assembly as to what constitutes an appropriate way to conduct this type of negotiation

on pay and conditions, in a pragmatic fashion. In the light of that, an examination of actions, to identify any lessons to be learned, is an attractive prospect.

In this case a majority of the Department's members take the view that the Requête of 29th June, is not of sufficient value to put at risk the establishment of a durable solution to the matter of the fire-fighters pay and conditions of employment, which has run on and remains unresolved, after nearly two years. It is felt there is a significant risk that an Inquiry of this nature will drag these matters into the public arena and not allow the necessary discussions between management and staff to take place over the next 11 months in an appropriate and conciliatory manner.

A protracted and public analysis of events surrounding the fire-fighters dispute will have a negative and unhelpful impact on the process of arriving at a final agreement. It seems possible it will do little to support long term good relations both in the specific area of concern and the wider area of public employment.

One member of this Department is a signatory to the Requête. However the remaining members are convinced that this process should not be agreed by the States as it is a time and resource consuming process quite out of proportion with the problem needing to be investigated or the benefits it might bring.

Unwelcome Scrutiny and Dispute Resolution

While there seems to be the appetite for this form of investigation in some parts of the States, there does not appear to be a matching interest in this happening in the workplace in question where it is clear, from the reports and statements made in the media by the Unite Regional Organiser, that, industrial relations between the Union, the Public Services Department and Airport Management are very good. The PSD and Airport Management have not contested this view.

Collective bargaining is normally conducted by employers/managers and trade unions/staff in a private forum. If agreement cannot be reached, a number of voluntary, third party mechanisms can be invoked to help the parties to try and reach agreement. These processes can involve joint working parties, conciliation or mediation, and are all protected by duties of confidentiality to create a climate of openness in which options and alternatives can be explored. They aim to reach agreement, without formal positions being established that can be used by one party against the other at a later date if the process breaks down.

If a Tribunal investigation ventures into this 'confidential' territory, the employer, employees, the trade union, and the independent third parties are likely to be required to breach confidences by having to give evidence. A majority of the Department's members are convinced that there is a significant risk that long-term industrial relations will be damaged, as inevitably, some blame will be apportioned to one side or the other, or both. It can be anticipated that a result of this may be suspicion and concern from both employers and trade unions and loss of trust in the processes.

If the processes to assist dispute resolution, which other than in exceptional situation works away from the spotlight, do suffer a loss of trust, this could lead to them becoming redundant. We could, as a result, leave a significant void in the availability of dispute resolution processes in the Public Sector.

Too Many Reviews?

The Department is aware that the role and responsibilities of PSRC were under examination anyway and to be the subject of a review prior to the escalation of the Airport Fire Fighters situation. That the current system was not working well and needed attention was something that has already been identified by the Robinson Report in 2008. Earlier the Clark report in 2000, proposed an alternative route to pay negotiation even before the re-organisation of the Machinery of Government in 2004. This begs the question of what important new insights at a policy level will be revealed by the envisaged investigations.

Consultation

This Department has a mandated responsibility for the Industrial Disputes Officers (albeit they are independent statutory officials appointed by the States) who are empowered to act independently of the Department when a dispute is lodged via the Department's offices. Bearing that unique perspective and insight in mind, the Department's members unanimously agreed they would canvass opinion from the Industrial Disputes Officer and his Deputy on the general issue of the possible effect of this public investigation process on the furtherance of good industrial relations. In the event the Industrial Disputes Officers were minded to reply and a copy of their letter of comment is enclosed with this letter.

In conclusion, I can say that, in the opinion of a majority of members of this Department, the Requête brings with it a significant risk that it will have a negative impact on industrial relations and that it should not be accepted by the States.

Yours sincerely

M Lainé
Deputy Minister

Enc.

Deputy C McNulty Bauer
Minister
Commerce & Employment Department
PO Box 459
Raymond Falla House
St Martins
Guernsey
GY1 6AF

2nd July 2009

Dear Deputy McNulty Bauer

AIRPORT FIRE FIGHTERS – REQUÊTE DEALING WITH THE ESTABLISHMENT OF A TRIBUNAL (OR PUBLIC ENQUIRY)

We write in response to the invitation by Commerce and Employment to comment on the second draft of the proposed Requête, for the establishment of a tribunal to look into the Airport Fire Fighters dispute. We do so with the understanding that our statutory role as Industrial Disputes Officers requires us to maintain impartiality and independence from all parties and, in addition, certain aspects of the dispute resolution process are protected by a duty of confidentiality.

It is our view that any public inquiry or tribunal must seek to understand why it has been convened. Given that the issues which brought about the current public (and political) interest in the Airport Fire Fighters situation have not yet been resolved, a public inquiry or tribunal may have an adverse effect on any progress that might be made towards resolving the outstanding issues.

Some six weeks has already elapsed since the Airport Fire Fighters and the ‘employer’ agreed to try and resolve the outstanding issues within a twelve month period. If a public inquiry or tribunal were convened, this is unlikely to be concluded until the Autumn, at which point valuable time will have been lost, as the parties may find they need to spend time preparing for the inquiry/tribunal.

We also have strong concerns that any summons to attend by parties who may not wish to participate in the process voluntarily, could result in further industrial action by way of a protest, or at worst ‘secondary’ action by other related public sector employees. **We must stress however that this is our opinion and highlight this to you as a concern which may or may not happen.**

We reiterate that the issues relating to the Airport Fire Fighters have not yet been resolved. Any public inquiry or tribunal could, in our opinion, severely jeopardise any talks or negotiations yet to take place and may well undermine the already fragile relationship between the parties. It is our view that any public inquiry or tribunal will be detrimental to maintaining a positive industrial relations climate, not only with the

current discussions with Airport Fire Fighters but possibly for other public sector groups involved in future negotiations.

If industrial relations and dispute resolution mechanisms (many of which are conducted in a private, mutual and confidential arena) are likely to be subjected to public scrutiny, there is a significant risk that these valuable and proven processes will become devalued and potentially ineffective, as both employers, employees and trade unions would lose trust in the process. In our view, this situation could lead to a further risk of industrial unrest and industrial action.

Should the States decide to progress with a public inquiry or tribunal it might be better to consider delaying that process until the outstanding issues with the Airport Fire Fighters have been finally resolved through the mutual agreement of the parties concerned.

Referring back to the point about understanding why a public inquiry or tribunal has been convened, the risks associated with further damaging the current, fragile nature of industrial relations in the public sector, could be significantly reduced if any public inquiry or tribunal were restricted to looking at the role of 'government' in relation to the processes which have been set up and under which mandates they have to work/comply'.

We hope you will find these comments helpful in responding to the Policy Council. In addition, we are both in agreement that you may use any part of this letter, attributed to the Industrial Disputes Officers, or indeed, if you felt it appropriate, use the complete letter if your Board sees fit to do so.

Yours sincerely

Mr M A Fooks
Industrial Disputes Officer

Mrs M Tiffin
Deputy Industrial Disputes Officer

PUBLIC SERVICES DEPARTMENT

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

02 July 2009

Dear Deputy Trott

REQUÊTE – DISPUTE WITH AIRPORT FIREFIGHTERS – ESTABLISHMENT OF A TRIBUNAL

I refer to the letter dated 29 June 2009 from the Deputy Chief Minister enclosing a copy of the proposed Requête.

The Board of the Public Services Department acknowledges the concerns which have led to the calls for some form of Review. In this respect, the Board raises no objections to an appropriate independent, objective and formal review, as it is content to give a full account of its actions and decisions.

It remains however to be convinced that this Review needs to take the form a Tribunal under the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949. The main concern is that a legally based Tribunal will be less productive, and lead to less` openness by the participants. If a legal process is followed it is reasonable to expect that many witnesses will, quite understandably, wish to obtain legal representation and advice, and somehow this will have to be funded.

It is also most important that the Review, in whatever form, should be sensitive to the current situation, recognising the ongoing nature of the industrial relations issues between the States and this group of employees.

With regard to the wording of the Requête, Board Members have observed that in many areas it contains considerable detail and yet appears to overlook references to other potentially relevant matters, such as the review conducted by Professor Frank Burchill. Nonetheless the Board accepts that the Terms of Reference set out in the Requête are written in fairly broad terms which should allow every necessary avenue and decision to be explored.

Finally, the Review needs to be seen as impartial. To that extent the Board trusts the States in considering what form any Review will take, will consider very carefully who

would serve on it, with the strong preference that it not be made up of local politicians or civil servants.

Yours sincerely

S Ogier
Deputy Minister

SCRUTINY COMMITTEE

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

2nd July 2009

Dear Deputy Trott

REQUÊTE - DISPUTE WITH AIRPORT FIREFIGHTERS – ESTABLISHMENT OF TRIBUNAL

Thank you for your letter dated 29th June 2009 addressed to Deputy Brehaut, Chairman, Scrutiny Committee, inviting comment on the proposed Requête. Deputy Brehaut decided to absent himself from the Committee's meetings in which this issue was considered. As you will know, Deputy Brehaut has declared a special interest in this matter, as a former member of the Public Sector Remuneration Committee, and will not be taking part in appointing the Panel or in the review process. Therefore, future correspondence relating to this matter should be addressed to the Vice-Chairman until further notice.

The Committee does not wish to comment in this letter on the specifics of the Requête but has directed me to inform you of the process by which a Scrutiny review will be conducted and how that process might be modified in the event that the States were to approve the establishment of an alternative form of enquiry.

The Committee has appointed me and Deputies Kuttelwascher and McManus to the Panel and has selected two appropriate non-States members to serve for the purpose of

this review. One is formerly the National Conciliator and Director of Operations at ACAS (Advisory, Conciliation and Arbitration Service) and the other is a local advocate specialising in employment law.

The Panel's remit has been made public and is shown in the Appendix to this letter. The Committee has given the Panel a broad objective and guidance on the processes and procedures it should follow, but it will be for the Panel, once fully established, to determine what aspects it may or may not wish to examine, which will then also be made public. The Panel will appoint its chair from within its members.

The Panel will begin with immediate effect to seek the cooperation of all interested parties in examining the actions of all those involved in the events surrounding the industrial action at the Airport. Allowing for the summer recess, the Panel anticipates holding its public hearings in September. The Committee is aware that the Requête is likely to be debated in July, subject to the agreement of the Policy Council under the Rules of Procedure. The Committee considers that, in the interest of achieving clarity and certainty, the earlier the debate the better. However, until such time as the States debate the matter, the Committee's work will continue.

If at its mid-July meeting the States were to establish a Tribunal of Inquiry, or some other mechanism that the Policy Council or States Members may be recommending the States to commission, the Committee has agreed that it would suspend its review pending the outcome of that process, in order to avoid duplication of effort. The Committee would maintain an interest in the proceedings and once the tribunal/enquiry had reported its findings, it would then be open to the Committee to recommence its own review if it felt there were any issues outstanding that would merit attention.

If the Requête is not considered in July, then there seems little sense in considering an alternative review process until the completion of the Scrutiny review, so that any terms of reference may be set in the light of the Scrutiny Panel findings and recommendations (given that the earliest the States may debate the issue is likely to coincide with the planned Scrutiny hearings and the review report would be published soon thereafter.).

I append for States Members' information a document that the Committee is issuing that seeks to answer some of the queries that have been raised about the Scrutiny-led mechanism of review.

In summary, the Committee is confident that this issue falls squarely within its mandate; that the Panel provides the necessary independence from the subject in hand and draws upon both political and external knowledge; and that the Scrutiny process provides a framework established by the States for carrying out a review in a public forum and making recommendations to the States for improving government policies and services for the benefit of the community. For these reasons, the Committee has initiated a review but, as indicated in this letter, will modify its actions accordingly should the States approve the appointment of an alternative mechanism at its July meeting.

The Committee trusts this information is useful to States Members in considering

whether a review under an alternative mechanism is necessary considering the Scrutiny process has already been initiated.

If you have any queries on any aspect of the Committee's position on this matter, please contact me or the Committee's staff.

Yours sincerely

M J Fallaize
Vice-Chairman



SCRUTINY COMMITTEE

THE STATES OF GUERNSEY

The Airport Dispute Scrutiny Review

There has been general agreement from States Members, the media and members of the general public that some sort of investigation is required into the recent disruption of services at the airport due to industrial action taken by the airport fire-fighters. However, there has been little agreement on what the focus of such a review should be and who should carry it out.

This paper sets out answers to some of the questions being asked in respect of the review initiated by the Scrutiny Committee.

1. What are the terms of reference for the Scrutiny Review?

The Panel's remit has been made public and is appended to this paper. The Committee has given the Panel a broad objective and guidance on the processes and procedures it should follow, but it will be for the Panel to determine what aspects it may or may not wish to examine, which will then also be made public.

2. What is the focus of the Scrutiny Review?

Scrutiny is forward-looking, with the objective of identifying positive outcomes for improving the delivery of government services to the community. Therefore, the primary focus of this review is to consider how similar serious disruptions to essential services may be avoided. This will include identifying the roles, responsibilities and accountability of all of those involved; considering the implications for the sustainability of airport and other life-line services; considering what measures might be taken for the avoidance of further serious disruptions of life-line services; and making recommendations for improvement in how such risks are managed.

3. Who will carry out the Review?

A Panel of five members comprising three Scrutiny members and two non-States members.

Deputies Fallaize, Kuttelwascher and McManus have now served for over a year in the States of Guernsey and were elected by the States to the Scrutiny Committee precisely to conduct investigatory reviews such as this one. They provide knowledge of the workings of the States as well as being independently minded, inquisitive scrutineers.

Terry Lippiatt was formerly the National Conciliator and Director of Operations at ACAS (Advisory, Conciliation and Arbitration Service). Louise Hall is a founding partner of the local firm AO Hall and is an advocate specialising in employment law.

The Panel are supported by the Scrutiny Committee staff and also have access to legal advice from St James' Chambers.

4. How does this Review fit with the Committee's mandate?

The Committee's mandate comfortably covers every aspect as defined in the appended Panel remit. The mandate directs the Committee to "*subject Departments and Committees to regular reviews*" (in this instance principally in relation to the Policy Council, the Public Services Department, the Public Sector Remuneration Committee and the Emergency Powers Authority) and states that it may hold "*reviews into such issues and matters of public importance that the Committee may determine from time to time*". This review is also likely to be relevant to the following criteria identified for "*particular emphasis*" in the Committee's mandate:

"(i) Determining the effectiveness of the policies of, and services provided by, Departments and Committees" [in this instance in relation to airport services, personnel and risk management policies]

(ii) Assessing the performance of Departments and Committees in implementing policies and services" [it is perceived that the closure of the airport due to strike action was a significant failing in a public service and so there must be a performance issue to examine]

(iii) Identifying areas of policy or service delivery that may require implementation" [with a view to identifying a path to resolve the outstanding issues in a timely fashion]...

...(vi) Promoting changes in policies and services where evidence persuades the Committee that these require amendment. [with a view to preventing future disruptions in life-line services]."

5. What format will the Review take?

The Panel requests any relevant documentation to be submitted (e.g. minutes or notes of meetings, correspondence etc.) from those involved in the issue and reviews the information already in the public domain. This is used as a basis to formulate questions to ask of the relevant parties in the public hearing.

The Panel convenes a public hearing (which is likely to be in several sessions) in which the Panel will question those involved. The transcripts are subsequently published.

The Panel then produces a report of its findings together with recommendations for departments and committees based on the evidence.

The departments and committees that are the subject of scrutiny are given an opportunity to append a letter of comment to the report.

The report will be referred to the next meeting of the States of Deliberation by the Scrutiny Committee and published.

Any information submitted to the Panel in the course of the review that is relevant to the Panel's findings is published or otherwise made available to the public alongside the review report, unless it is considered by the Panel that it would not be in the public interest to do so.

6. How public and transparent will the Review be?

As noted above, the sessions of the hearing will be held in public and all relevant information is published or made publicly available (e.g. at the Greffe and/or Scrutiny offices), unless it is not considered in the public interest to do so. The Committee has *Guidelines on Disclosure and Protection of Information* for this purpose, which are available to download from www.gov.gg/scrutiny.

The review report is published both separately and in the Billet d'Etat of the next available meeting of the States of Deliberation.

7. Who might be asked to contribute to the Review?

This will be a matter for the Panel to determine based on where the investigation takes them. By way of an indication, but without pre-empting the Panel's decisions, the review will likely include examination of the policies, services and actions of the Policy Council, the Public Services Department, the Public Sector Remuneration Committee, the Emergency Powers Authority, the industrial relations functions under the auspices of the Commerce and Employment Department, and the Treasury and Resources Department.

The Scrutiny process draws in contributions from non-government bodies or individuals (for example, as the milk distribution review encompassed evidence from milk retailers, farmers and the general public) in order to reflect key stakeholder interests in government services. In this instance, this review will likely include analysis of contributions from individual airport fire-fighters and union representatives, particularly from Unite. In doing so, by exposition of the bigger picture and exploring differing points of view, the review may highlight the actions of non-States groups or individuals inasmuch as they interact with government service provision, with a view to identifying positive outcomes for improving the delivery of government services.

8. What powers does the Panel have?

The Panel does not have any power to compel people to give evidence. The Committee has always had cooperation with its investigations to date and those that refuse to cooperate speak

volumes with their absence. It is in the interest of those involved to present their side of the story and be assured a fair hearing alongside other contributions. It is important to maintain a sense of proportion; we are not trying to establish guilt or innocence in a court of law, we are trying to establish how government policies and services can be improved.

9. Is the Panel and Scrutiny process sufficiently objective?

Yes, the political Panel members have been selected on the basis that they have had no close involvement in the issue to be considered, whilst the two non-States members of the Panel bring an external and politically independent viewpoint. The Panel Remit (see Appendix) is designed to ensure that the Scrutiny report will be objective, transparent and its recommendations evidence-based. People will be able to judge the degree of independence for themselves, as the review is designed to be a public process with the Panel's findings published in full.

It is recognised that scrutiny is a political process, which some may perceive to be a weakness for the purpose of this review. However, the Committee would urge a sense of proportion; this is a localised industrial relations issue for particular departments of our government to resolve. That being the case, it is only necessary for the reviewers to be independent of the issue in hand, which is the case for the chosen Scrutiny Panel members.

In any event, the issue is essentially a matter for political judgement as, whoever conducts the review, their conclusions will be reported to the States of Deliberation, which is the only authority that can act on the resulting recommendations.

In this context, a political review through the established Scrutiny process is entirely appropriate.

10. How long will the Review take?

The length of time a Scrutiny review takes can vary dramatically depending on the subject-matter, the breadth and quantity of information gathered and whether other work streams are being pursued.

The Committee has agreed to make this review its first priority. Allowing for the summer recess, it is intended to hold the public hearing in September 2009 and publish the report as soon as practicable thereafter.

11. How much will the Review cost?

This is very difficult to estimate as the nature of every review is different, but the cost will definitely be within the existing budget of the Committee, which is published in the annual accounts. Costs incurred might include fees and expenses of the two non-States Panel members; a venue for the public hearing and some outsourced administration, for example in producing transcripts of the hearings. The majority of administrative work will be provided in-house by the three members of Scrutiny Committee staff.

12. Is there room for more than one Review?

Different types of review are not necessarily mutually exclusive, but the Committee is of the view that there would be little sense in two separate reviews that cover the same territory running concurrently. However, should the States decide to instigate an alternative review mechanism then the Committee would do everything it could to avoid duplication of effort by all parties.

13. Is a Scrutiny Review the best mechanism for reviewing this issue?

The Committee believes so, yes. This is because:

- The Scrutiny Committee was set up by the States of Deliberation in 2004 precisely for the purpose of carrying out reviews into issues such as this one;
- The Panel provides the necessary independence from the subject in hand and draws upon both political and external knowledge;
- Of the possible mechanisms available, the Scrutiny Review is highly likely to be the least expensive option and take the shortest length of time to complete;
- Scrutiny provides an established framework for carrying out a review in a public forum, with clear processes and procedures that are now familiar to most departments and committees;
- Scrutiny has a proven track record of providing objective analysis and making recommendations to the States for improving government policies and services for the benefit of the community¹.

Further Information

Further information about the Scrutiny Committee and its processes and procedures is available at www.gov.gg/scrutiny or by writing or telephoning the Scrutiny offices. The contact details are:

The Scrutiny Committee
PO Box 43
La Charroterie
St Peter Port
Guernsey, GY1 1FH

Tel: (01481) 717000
Direct line: (01481) 717133
Fax No: (01481) 717271
E-mail: scrutiny@gov.gg

¹ Previous reviews include *Complaints Policies and Appeals Procedures*, *Milk Distribution Proposals* and *Staff Number Limitation Policy*.

SCRUTINY REVIEW – AIRPORT DISPUTEPANEL REMITINTRODUCTION

The Scrutiny Committee has appointed a Panel to review the circumstances surrounding the industrial action taken by the Airport firefighters on 25th May 2009.

This document sets out broad terms of reference, as determined by the Scrutiny Committee. This provides direction to the Panel to ensure that its work meets the Committee's objective in carrying out this review and follows Scrutiny principles, processes and procedures. However, it deliberately avoids being prescriptive about what the Panel should consider.

The Panel is free to develop its own more detailed terms of reference and scope, which will then be made public.

OBJECTIVE

In all aspects of its work the Panel must be directed by the following objective:

To review the circumstances surrounding the airport firefighters' recent industrial action, in order to:

- **Identify the roles, responsibilities and accountability of all of those involved;**
- **Assess the implications for the sustainability of airport and other life-line services;**
- **Determine what measures might be taken for the avoidance of serious disruptions to life-line services in the future; and**
- **Make recommendations for improvements as to how the risks of such serious disruptions are managed.**

PANEL MEMBERSHIP

The Scrutiny Panel will comprise three Scrutiny Committee members and two non-States members co-opted for this particular review, as follows:

- Deputy Matt Fallaize
- Deputy Jan Kuttelwascher
- Deputy Sean McManus
- Terry Lippiatt
- Louise Hall

PROCESS

- The Committee works on the presumption that all relevant information it is provided in the course of its investigations will be made publicly available unless it is in the public interest not to do so. The Panel must follow the Committee's Guidelines for the Disclosure of Evidence in considering what documented evidence should be published and in what format.
- The Panel must convene a public access hearing as part of the evidence gathering process.
- The Panel must complete a report documenting the evidence it has considered and making recommendations based on that evidence for improvement of government policy and/or service delivery.
- The review report must be delivered to the Scrutiny Committee, which in turn will present the Panel report, in its entirety, to the States of Deliberation at its next available meeting.
- The Panel must conduct its review in accordance with the Committee's "A Guide to Scrutiny in Guernsey" and must at all times ensure the objectivity and integrity of the Scrutiny process.

TIMING

The Panel must hold its public meeting and report back to the Scrutiny Committee (for submission of the report to the States) as soon as is practicable.

The target is for the public hearing to be held in early September and the review report published soon thereafter.

PUBLIC ACCOUNTS COMMITTEE

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

2 July 2009

Dear Deputy Trott

REQUÊTE – DEALING WITH AIRPORT FIREFIGHTERS – ESTABLISHMENT OF A TRIBUNAL

Thank you for the letter dated 29 June 2009 from the Deputy Chief Minister, which invited comment from the Public Accounts Committee in relation to the prayer of the Lowe Requête and the establishment of a tribunal under the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949.

The Committee has briefly discussed the matter at its recent meeting together with the advisory note on the inquiry from the Chief Executive of the States of Guernsey and Contrôle délégué.

The Committee considers that its mandate precludes it from making comments on the inquiry initiated by the Scrutiny Committee or on the proposals suggested in the Lowe Requête.

However, the Committee recognises that there might be financial implications and therefore would concur with the final recommendation of the advisory note:

“and that is any method of inquiry should be judged against the following criteria:

1. It must have, and be seen to have, total independence
2. The Terms of Reference must not be restricted
3. The “rules of engagement” for those participating in the inquiry must be as clear as possible at the outset.”

Yours sincerely

Leon Gallienne
Chairman

PUBLIC SECTOR REMUNERATION COMMITTEE

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

1 July 2009

Dear Deputy Trott

REQUÊTE - DISPUTE WITH AIRPORT FIREFIGHTERS – ESTABLISHMENT OF TRIBUNAL

I refer to your letter of 29 June concerning the above.

Given that all five members of this Committee have signed the Requête its position on it as a collective is the same.

The Committee welcomes the Council's agreement to the Requête being debated at the mid-July Meeting.

Yours sincerely

A H Brouard
Chairman

(NB By a majority, the Policy Council acknowledges and supports the need for an independent inquiry into the facts and circumstances leading up to and surrounding the industrial action taken by the Airport Fire Fighters at Guernsey Airport in May 2009, including the circumstances in which that industrial action was resolved, acknowledging that such an inquiry will require sensitive handling so as not to have a negative impact on industrial relations. The precise form of that inquiry is a matter for each individual member of the States of Deliberation to determine and the Policy Council has no settled view on that issue.

In the event that members choose to support the Requête, the Policy Council further believes that the subject-matter of this inquiry is of such potential significance for the States of Guernsey that it would be desirable for the Tribunal to be, and most particularly to be seen to be, independent and objective. Whilst fully recognising that the appointment of the Tribunal membership is the function of the Royal Court, the Policy Council believes that the Tribunal process will be regarded most favourably by the public through the appointment of someone with appropriate qualifications, experience and independence to chair the Tribunal – such as a current or retired Court of Appeal judge.)

(NB The Treasury and Resources Department Resources Department supports the need for an independent Inquiry into the circumstances surrounding the recent difficulties involving the Airport Fire Service. Whether or not the form of Inquiry envisaged by the Requête is the right one is a matter for the States to determine. The Department would wish to see put in place the most efficient and effective form of Inquiry which provides both the right outcomes and value for money. Irrespective of the form of Inquiry, it is inevitable that significant costs will be incurred by the States.)

The States are asked to decide:-

Whether, after consideration of the Requête, dated 29th June, 2009, signed by Deputy M M Lowe and seventeen other Members of the States, they are of the opinion:-

1. That it is expedient that a Tribunal be established under the provisions of the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended, to inquire into a definite matter of urgent public importance, namely, the facts and circumstances leading up to and surrounding the industrial action taken by the Airport Fire Fighters at Guernsey Airport in May 2009, including the circumstances in which that industrial action was resolved.

2. That the Terms of Reference for the Tribunal shall be-
 - a. to inquire into the circumstances leading up to and surrounding the industrial action taken by the Airport Fire Fighters at Guernsey Airport in May 2009, including the circumstances in which that industrial action was resolved,
 - b. to examine the actions and omissions of Departments and Committees of the States of Guernsey, relevant statutory bodies, other organisations and responsible individuals concerned in the dispute that led to the industrial action being undertaken and the steps that were taken to resolve it, with a view to identifying any lessons to be learned by the States of Guernsey,
 - c. to make such recommendations as may be considered appropriate,
 - d. to deliver a report on its findings to the Presiding Officer of the States of Deliberation as soon as practicable.

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 16th DAY OF JULY, 2009

**The States resolved as follows concerning Billet d'État No XXII
dated 10th July 2009**

REQUÊTE

After consideration of the Requête, dated 29th June, 2009, signed by Deputy M M Lowe and seventeen other Members of the States:-

1. That it is expedient that a Tribunal be established under the provisions of the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended, to inquire into a definite matter of urgent public importance, namely, the facts and circumstances leading up to and surrounding the industrial action taken by the Airport Fire Fighters at Guernsey Airport in May 2009, including the circumstances in which that industrial action was resolved.
2. That the Terms of Reference for the Tribunal shall be
 - a. to inquire into the circumstances leading up to and surrounding the industrial action taken by the Airport Fire Fighters at Guernsey Airport in May 2009, including the circumstances in which that industrial action was resolved,
 - b. to examine the actions and omissions of Departments and Committees of the States of Guernsey, relevant statutory bodies, other organisations and responsible individuals concerned in the dispute that led to the industrial action being undertaken and the steps that were taken to resolve it, with a view to identifying any lessons to be learned by the States of Guernsey,
 - c. to make such recommendations as may be considered appropriate,
 - d. to deliver a report on its findings to the Presiding Officer of the States of Deliberation as soon as practicable.

**S M D ROSS
HER MAJESTY'S DEPUTY GREFFIER**