



**IX  
2010**

# **BILLET D'ÉTAT**

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**WEDNESDAY, 28th APRIL, 2010**

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**APPENDIX 3 – TRIBUNAL OF INQUIRY  
– INQUIRY INTO INDUSTRIAL ACTION  
BY AIRPORT FIRE FIGHTERS AT  
GUERNSEY AIRPORT**

**INQUIRY INTO INDUSTRIAL ACTION BY AIRPORT FIRE FIGHTERS  
AT GUERNSEY AIRPORT**

**REPORT OF THE TRIBUNAL OF INQUIRY**

Members of the States:

I am publishing herewith the Report to me of the Tribunal of Inquiry appointed by the Royal Court under section two of the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended, pursuant to the Resolution of the States of 29<sup>th</sup> June, 2009. The Tribunal was established to inquire into the facts and circumstances leading up to and including 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.

I had considered whether it would be appropriate for me to include a proposition "...to note that Report" but that would have raised issues as to the role and powers of the Presiding Officer who is the servant of the Assembly.

It is, however, appropriate for me to observe that the recommendations made by the Tribunal are numerous, diverse and far reaching. Careful consideration will be merited and so I anticipate that in due course there will be a further debate or debates. It will therefore be for Members and, in due course, the Assembly to consider what action, if any, will flow from the Report.

I am sure you will wish to place on record your thanks to Mr David Hogg CB, the Chairman, and Professor Gillian Morris LLB, PhD, and Mr John Lee TD, FCIB, the other members of the Tribunal, for serving on the Tribunal, for dealing speedily with the matters referred to them and for presenting a most thorough Report.

G. R. ROWLAND  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey  
15<sup>th</sup> April, 2010



Inquiry into Industrial Action by Airport Fire Fighters  
at Guernsey Airport

Report of the Tribunal

to

The Presiding Officer of the States of Deliberation

Mr David Hogg CB, Chairman  
Professor Gillian Morris LLB, PhD  
Mr John Lee TD, FCIB

March 2010



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## ABBREVIATIONS USED IN THE REPORT

<b>ACAS</b>	Advisory, Conciliation & Arbitration Service
<b>AFFs</b>	Airport Fire Fighters
<b>AFS</b>	Airport Fire Service
<b>CAA</b>	Civil Aviation Authority
<b>DIDO</b>	Deputy Industrial Disputes Officer
<b>EPA</b>	Emergency Powers Authority
<b>EPAG</b>	Emergency Powers Advisory Group
<b>ERS</b>	Employment Relations Service
<b>FTO</b>	Full-time Official
<b>HR &amp; OD</b>	Human Resources and Organisational Development
<b>IDO</b>	Industrial Disputes Officer
<b>IDT</b>	Industrial Disputes Tribunal
<b>IRAO</b>	Industrial Relations Advisory Officer
<b>JWG</b>	Joint Working Group
<b>PC</b>	Policy Council
<b>PSD</b>	Public Services Department
<b>PSRC</b>	Public Sector Remuneration Committee
<b>SIRAO</b>	Senior Industrial Relations Advisory Officer
<b>TRD</b>	Treasury and Resources Department



## CHAPTER 1

### INTRODUCTION

- 1.1 At their meeting on 16 July 2009, the States of Deliberation resolved to establish a Tribunal under the Tribunals of Inquiry (Evidence)(Guernsey) Law, 1949, as amended to inquire 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 the dispute was resolved.
- 1.2 The Resolution followed presentation of a Requête dated 29 June 2009 petitioning for a Tribunal of Inquiry to be established, signed by Deputy M M Lowe and seventeen other members of the States shortly after the events under investigation.
- 1.3 On 2 October 2009 the Royal Court, in accordance with section 2 of the above Law, appointed us, with David Hogg as Chairman of the Tribunal and Professor Gillian Morris and Mr John Lee as Members.
- 1.4 Our Terms of Reference were:
  - 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;
  - 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;
  - to make such recommendations as may be seen to be appropriate;
  - to deliver a report on its findings to the Presiding Officer of the States of Deliberation as soon as practicable.
- 1.5 In the event the Inquiry was delayed by the need to await the outcome of a second Requête which was debated by the States in October and the Preliminary Hearing of the Tribunal took place on 16 November 2009.
- 1.6 Our aim has been to conduct an independent inquiry into the circumstances surrounding the dispute and its resolution, the actions of those involved and, in the light of our conclusions, to make recommendations.
- 1.7 The Inquiry focused on facts and not on personal perceptions of those facts. The themes we identified at an early stage were those of governance and process and the

lessons to be learned from the handling of this matter by various bodies and institutions and their actions. As such we focused as much on the future as the past.

- 1.8 We have not sought to allocate blame or to criticise individuals. In particular we did not concern ourselves with the substantive merits of the Airport Fire Fighters' dispute or the reasonableness of the negotiating position of those involved, not least because we took the view that to have done so would have been outside our terms of reference. The overriding concern on the part of the Tribunal was not to do anything which might prejudice industrial relations.
- 1.9 This Report was delivered four months after the Inquiry was launched.

## **THE INQUIRY'S PROCEDURES**

- 1.10 Letters were sent in November 2009 to a variety of States Departments, organisations and individuals whom the Tribunal believed would be able to provide evidence which could assist the Inquiry, inviting them to give an indication of the evidence that they could provide. Following consideration of the material submitted in response, the Tribunal identified a number of persons whom it wished to invite to give oral evidence. In many cases, contained within the invitation to give evidence, were a series of questions which the Tribunal requested the witness to deal with in his or her written statement.
- 1.11 La Gazette Officielle Notices<sup>1</sup> were inserted in the Guernsey Press inviting all persons who believed they may be in a position to assist the Inquiry to provide a short written summary of the areas of evidence they believed they could give, together with copies of all material documents within their control. The majority of written submissions and evidence was received by 14 December 2009 but throughout the Inquiry material continued to be received.
- 1.12 On 16 November 2009, at a Preliminary Hearing the Chairman explained the procedure the Tribunal would adopt and this was expanded by Counsel to the Inquiry Mr Jon Barclay. At the hearing likely participants were given an opportunity to raise questions and Counsel to the Inquiry encouraged anybody to approach him directly in the course of the proceedings with any issues they wished to raise. In addition to the Preliminary Hearing on 16 November 2009 there were a further eight days of public hearings between 14 December 2009 and 8 February 2010 at Les Cotils, St Peter Port, save that on Day 5 the Tribunal moved to Guernsey Airport to facilitate hearing the evidence of the Airport Fire Fighters.
- 1.13 Counsel to the Inquiry made an opening statement on 14 December, Day 1 of the Inquiry, in which he stressed the public nature of the process, identified the bodies that had been asked to give evidence and described the lines of inquiry the Tribunal would follow.

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<sup>1</sup> Appendix 4, p 127

- 1.14 Oral evidence was given by 31 witnesses.<sup>2</sup> They included a number of the firefighters and their Union representative, Ministers, Deputies, civil servants, a Law Officer and private individuals including a commercial user of the airport.
- 1.15 The Inquiry set up its own website, [www.tribunalofinquiry.gg](http://www.tribunalofinquiry.gg), on which were posted transcripts of the daily proceedings; the written statements of those who gave evidence, together with accompanying documents; and core documents. It is worth commenting that for Guernsey, where there is no Freedom of Information Law, this constituted an unparalleled degree of openness and accountability. One of the benefits of a Public Inquiry, which may seem in hindsight to be a blunt instrument and an expensive one, is that the very act of having to account for their actions leads individuals and institutions to contemplate how they make and justify their decisions and how they may do better in future. This in turn leads to better decision-making and hence more effective government.
- 1.16 The industrial action in May 2009 was the culmination of long-standing difficulties relating to the provision of fire-fighting cover at Guernsey Airport. Under the regulatory framework governing the airport, the airport cannot operate without the Airport Fire Service. In Chapter 2 we explain the regulatory framework and the role of Airport Fire Fighters within it. There are a number of Departments and Committees of the States of Guernsey which have roles relevant to the Inquiry. In Chapter 3 we outline the mandates and roles of those Departments and Committees and discuss the legal significance of those mandates. There are two statutory provisions which are fundamental to the Inquiry: The Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993, as amended and The Emergency Powers (Bailiwick of Guernsey) Law, 1965, as amended. In Chapter 4 we outline the legislation and its application. We describe in Chapter 5 the legal framework governing the provision of fire cover at Guernsey Airport and the minimum staffing levels required to guarantee that cover. We then explain the background to the events that culminated in the withdrawal of cover on the May Bank Holiday weekend 2009. Chapter 6 details the events immediately leading up to and following the industrial action on 25 May 2009. Chapter 7 covers 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. Our observations in relation to public sector pay determination are contained in Chapter 8 and in Chapter 9 we set out the lessons which we consider can be learned from the AFS dispute as well as our broader Recommendations.
- 1.17 We place on record our thanks to all those who submitted information and evidence to the Inquiry. The Civil Service in particular made available large amounts of material from their files to tight deadlines. We would also like to thank those who gave oral evidence to the Inquiry, in some cases at short notice. No one declined to assist the Inquiry and without exception we received full co-operation. Indeed, everyone approached to assist seemed not only prepared but pleased to be able to give an explanation of their part in the events under investigation.

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<sup>2</sup> Witnesses, Appendix 2, p.123.

- 1.18 We would like to express our gratitude to the Inquiry Team: Jon Barclay, Counsel to the Inquiry and Mrs Jo de Garis and Sophie Hawkins who comprised the secretariat. Each made a valued contribution to the work of the Inquiry and we are most grateful to them.

## CHAPTER 2

### GUERNSEY AIRPORT

- 2.1 In this chapter we explain key points relating to Guernsey Airport: its significance to the Island; its status and management structure; the regulatory framework within which it operates; and the role of Airport Fire Fighters ('AFFs') within that framework.

#### THE SIGNIFICANCE OF THE AIRPORT TO GUERNSEY

- 2.2 As an island Guernsey is heavily dependent on air service connections, to the UK in particular. These connect Guernsey to key international markets. The Commerce and Employment Department summarised the position as follows:

As an island with an open economy and where its past economic growth has been driven by international trade, connectivity with key international markets is paramount for Guernsey's continued economic prosperity. This is particularly relevant for the finance industry which is competing against near neighbours in an extremely competitive global market....

Air service connections ... have been of critical importance in sustaining the tourism industry and in attracting businesses in the financial and insurance sectors. In particular, the financial services sectors contribute to high average earnings and in turn one of the highest GDPs per capita in the world. Retaining companies generating high salaries is important as income tax represents the primary source of revenue for the funding of public services on the Island. The airport is a key element of Guernsey's infrastructure and is a key asset for the island's economic sectors and businesses.<sup>1</sup>

The airport is also critical to Island residents wishing to travel to the UK or elsewhere for health or leisure reasons, for example.

- 2.3 In 2009 a review by York Aviation LLP of the options for development of Guernsey Airport reported that, if the quality of air service provision were reduced, financial services organisations would quickly relocate to other jurisdictions.<sup>2</sup> The review found that the airport itself supports 649 full-time equivalent direct jobs and an income injection of £31.2 million into Guernsey through direct, indirect and induced employment and operations. However it concluded that 'the main economic benefit

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<sup>1</sup> Jonathan Buckland, Chief Officer, Commerce and Employment Department, Witness Statement, paras 16 and 17.

<sup>2</sup> York Aviation, *The States of Guernsey Policy Council: Airport Development - Economic Assessment of Options: Final Report*, June 2009, para 2.30.

from the Airport comes from the contribution it makes to the connectedness of the Bailiwick as a place to live, work and visit'.<sup>3</sup>

## THE STATUS AND MANAGEMENT OF THE AIRPORT

2.4 Guernsey Airport is owned and managed by the States of Guernsey. The Public Services Department ('PSD') is responsible for the 'provision and administration of [its] facilities and services'. The airport is an operating business unit of the PSD which is required to act in a commercial manner. As a 'trading entity', it has the authority to raise income to cover its expenditure requirements.<sup>4</sup> Strategic matters relating to the airport, including its financial targets, are decided by the PSD Board. The airport is currently expected by the Board to make a five per cent net annual return on turnover.<sup>5</sup> The airport is asked to prepare a budget which is submitted to the Treasury and Resources Department ('TRD') and subjected to a high level review for overall reasonableness but TRD is not involved in establishing the airport's budget, its revenue raising activities or its expenditure plans.<sup>6</sup> The airport is free to spend the revenue it raises on day to day operational activities (ie excluding capital expenditure) but wages are determined by the Public Sector Remuneration Committee ('PSRC').<sup>7</sup>

2.5 The delivery of a functioning airport is the responsibility of the Airport Director, who reports to the Chief Officer of PSD. The Airport Director attends regular meetings with the PSD Board to discuss strategic and policy matters.<sup>8</sup> There is a Deputy Airport Director whose role includes managing human resources at the airport. He is advised on HR matters by PSD and the HR unit of the Policy Council.<sup>9</sup> Below the level of Airport Management, the line management structure in relation to the firefighting role is as follows:

- Station Commander
- Station Officer
- Crew Commander
- Firefighter

The Station Commander, a former Station Officer, has a Monday-Friday management role, as does a Training Officer, who has the rank of Station Officer. Apart from the Station Commander, all these individuals can contribute to providing cover for the purposes described in para 2.8.<sup>10</sup>

2.6 The employing department for staff employed by the States of Guernsey at the airport is PSD with the exception of established staff, for whom it is the Policy Council.<sup>11</sup>

<sup>3</sup> York Aviation, *The States of Guernsey Policy Council: Airport Development - Economic Assessment of Options: Final Report*, June 2009, para 7.1.

<sup>4</sup> Dale Holmes, Chief Officer, Treasury and Resources Department, Witness Statement, para 3(f).

<sup>5</sup> Evidence of Colin Le Ray, Airport Director, Day 1, p 20A-C.

<sup>6</sup> Dale Holmes, Witness Statement, para 3(f).

<sup>7</sup> Evidence of Dale Holmes, Day 7, pp18G-19H.

<sup>8</sup> Evidence of Colin Le Ray, Day 1, pp 39H-40B.

<sup>9</sup> Evidence of Simon Macphail, Deputy Airport Director, Day 3, p 2E.

<sup>10</sup> Evidence of Colin Le Ray, Day 1, pp 10H-11C.

<sup>11</sup> The term 'established staff' refers to civil servants.

The Station Commander and Station Officers (including the Training Officer) are established staff; the remaining AFFs are not. TRD processes the payroll of staff employed at the airport but wages are paid from the airport's budget.<sup>12</sup> Airport Management requires approval from PSD to recruit non-established staff<sup>13</sup> or to change the terms of employment of existing staff.<sup>14</sup> We explain the terms and conditions of employment of AFFs in Chapter 5.

## **THE REGULATORY FRAMEWORK GOVERNING THE AIRPORT AND THE ROLE OF AFFs**

2.7 The responsibilities of the Airport Director include the provision of fire cover at a pre-determined level at all times when the airport is operational. The requisite equipment and staffing levels derive from the regulatory framework governing the operation of the airport. The basic elements of this framework are as follows:

- (1) The person in charge of the operation of Guernsey Airport is required by statute to hold a licence (the 'Aerodrome Licence') issued by the Director of Civil Aviation.<sup>15</sup> The current licensee is the Minister of the PSD.
- (2) A licence application must be accompanied by a copy of the 'Aerodrome Manual' which, *inter alia*, identifies the name and status of the official in charge of the day to day operation of the airport and other senior operating staff, and includes provision for the implementation of a safety management system.<sup>16</sup> An adequate Aerodrome Manual is one of the conditions which must be met for an Aerodrome Licence to be granted.<sup>17</sup>
- (3) Aircraft may take off and land at Guernsey Airport only in accordance with the conditions of the Aerodrome Licence, and the licensee must not contravene, or cause or permit to be contravened, any such condition.<sup>18</sup> One of these conditions is that:

No aircraft shall take off or land at the aerodrome unless such rescue and fire-fighting services and such medical services and equipment as are required in respect of such aircraft in the publication CAP 168 (Licensing of Aerodromes) published by the United Kingdom Civil Aviation Authority ('the CAA') are provided there. Such services and equipment shall at all times when the aerodrome is available for the

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<sup>12</sup> Evidence of Colin Le Ray, Day 1, p 20D-G.

<sup>13</sup> Evidence of Simon Macphail, Day 3, p 5D-E.

<sup>14</sup> Evidence of Colin Le Ray, Day 1, p 40B-D.

<sup>15</sup> The Aviation (Bailiwick of Guernsey) Law, 2008, as amended, s 105(1).

<sup>16</sup> As above, s 105(7)-(12); Sched 17.

<sup>17</sup> As above, s 105(2)(c).

<sup>18</sup> As above, ss104(1), 105(5). The aircraft covered by this provision are specified in s 104(2) and include most commercial operations. For example, section 104(2)(b) designates "*aircraft having a type certificated maximum passenger seating capacity of 10 or more which are flying for the purpose of public transport operations*". The definition of "public transport" includes most acts of carriage of passengers or cargo for value: see ss 139-145.

take-off or the landing of aircraft be fit and ready for immediate turnout.<sup>19</sup>

- (4) CAP 168 provides that the level of protection provided at an aerodrome for rescue and fire-fighting must be equal to the aerodrome category as determined from the following table<sup>20</sup>:

<b>Aerodrome Category</b>	<b>Aeroplane overall length</b>	<b>Maximum fuselage width</b>
3	12m up to but not including 18m	3m
4	18m up to but not including 24m	4m
5	24m up to but not including 28m	4m
6	28m up to but not including 39m	5m

- (5) CAP 168 does not specify the number of staff required to maintain these categories of cover. Rather it requires minimum staffing and supervisory levels to be identified by reference to a Task Resource Analysis at the individual airport, whose basic contents should be determined in accordance with a list of factors set out in CAP 168. The staffing levels arrived at following the Task Resource Analysis must be agreed with the CAA and detailed in the Aerodrome Manual. These levels should not be reduced without a further assessment being conducted and submitted to the CAA for acceptance. All personnel forming part of the minimum staffing level must hold a Certificate of Competence appropriate to their task and role.<sup>21</sup>
- (6) The Guernsey Aerodrome Manual and the Guernsey Airport Manual of Air Traffic Services provide that any depletion of Rescue Fire Fighting Services cover must be reported by the Station Officer to Air Traffic Control, which should, in turn, inform relevant aircraft. If cover is depleted, operations must be suspended for all aircraft in categories above that stated by the Station Officer.<sup>22</sup> The Airport Director told us that the Manuals are subject to inspection by the CAA and non-compliance with their requirements could ultimately result in revocation of the Aerodrome Licence by the Director of Civil Aviation.<sup>23</sup>

<sup>19</sup> Licence issued 1 February 2009, condition 2.

<sup>20</sup> Civil Aviation Authority, Safety Regulation Group, *CAP 168: Licensing of Aerodromes*, Chapter 8, Section 2; Table 8.1. Only categories relevant to Guernsey Airport have been included here.

<sup>21</sup> Civil Aviation Authority, Safety Regulation Group, *CAP 168: Licensing of Aerodromes*, Chapter 8, section 6.

<sup>22</sup> Guernsey Airport, *Manual of Air Traffic Services* Part 2, Chapter 3, para 2.2, May 2009. See also *Aerodrome Manual* Part 2, section 2, App C, RFF-001, January 2009.

<sup>23</sup> Evidence of Colin Le Ray, Day 1, p 8D-G. The power to revoke a licence is contained in The Aviation (Bailiwick of Guernsey) Law, 2008, as amended, s 118(2).

- 2.8 The Airport Director explained that, pursuant to the latest Task Resource Analysis, the following requirements apply at Guernsey Airport:

The maximum fire category of cover is Category 6, which is required for Dash8-Q400 aircraft and some freighters. Passenger aircraft currently flown by Flybe to and from the UK require category 6 cover.

In order to provide Category 6 cover, Guernsey Airport must provide a minimum of 2x mainline fire appliances plus the following staff numbers:

1 Station Officer, 2 Crew Commanders and 6 Firefighters.

If the number of staff falls below this number, the category of fire cover has to be reduced in accordance with the following sliding scale:

1 Station Officer + 2 Crew Commanders + 5 firefighters = Category 5

1 Station Officer + 2 Crew Commanders + 4 firefighters = Category 4

1 Station Officer + 2 Crew Commanders + 3 firefighters = Category 3

Category 5 aircraft are typically ATR72 aircraft and some freighter aircraft. Aurigny passenger aircraft to and from the UK are category 5.

Category 4 aircraft are typically ATR42 aircraft.

Category 3 aircraft are typically Trislander aircraft and smaller.<sup>24</sup>

We detail how these staffing requirements are met in paras 5.8-5.10.

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<sup>24</sup> Colin Le Ray, Witness Statement, para 5, answer to Q 7, supplemented by oral evidence, Day 1, p 40D-G.



## CHAPTER 3

### MANDATES OF DEPARTMENTS AND COMMITTEES

- 3.1 In this chapter we provide a broad overview of the mandates and roles of the States of Guernsey Departments and Committees which are relevant to this Inquiry, followed by discussion of the legal significance of those mandates.

#### RELEVANT DEPARTMENTS AND COMMITTEES

- 3.2 The States of Guernsey acts through Departments and Committees which are mandated to perform specific functions. Our Inquiry concerns the activities of several of these Departments and Committees. In the paragraphs which follow we outline briefly the relevant aspects of their mandates and, where appropriate, how these mandates are exercised in practice in areas relevant to the Inquiry.
- 3.3 The **Commerce and Employment Department** is responsible for promoting the interests of all sectors of the economy and for the 'promotion, provision and regulation of air and sea links to and from the Bailiwick'. It is also charged with promoting 'good employment practices and policies, good industrial relations and Health and safety at work'. The Employment Relations Service ('ERS') is located within the Commerce and Employment Department. Its functions include providing an advisory, conciliation and arbitration service for employers, workers and trade unions. The ERS also supports the Industrial Disputes Officers in the exercise of their statutory powers (see paras 4.2 and 4.3).
- 3.4 In 2005 the States approved the creation of the **Emergency Powers Authority ('EPA')**. The mandate of the EPA includes the exercise of powers and duties conferred by The Emergency Powers (Bailiwick of Guernsey) Law, 1965, as amended. We therefore discuss the EPA in the context of that Law in paras 4.7-4.9.
- 3.5 The mandate of the **Policy Council** spans constitutional affairs, strategic and corporate policy, and co-ordination of States activities. 'Strategic and corporate policy' includes 'corporate human resource policy including terms and conditions of employment'. Specifically the Policy Council is responsible for fulfilling the States' role as the employer of established staff and the provision of corporate human resource services and advice to Departments and Committees as appropriate. The Head of Human Resources and Organisational Development heads the Policy Council HR unit and line manages the officers who support the PSRC. The 'co-ordination of States activities' includes the 'co-ordination of non-operational matters in the event of an emergency, to preserve life and the well being of the community and the preservation of law and order'.
- 3.6 The Policy Council consists of the Chief Minister and Deputy Chief Minister together with the Ministers of Commerce and Employment; Culture and Leisure; Education; Environment; Health and Social Services; Home; Housing; Public Services; Social

Security; and Treasury and Resources. In a 2009 report the Wales Audit Office described the **Chief Minister** as 'first among equals' on the Policy Council but with no 'executive departmental role' and 'no executive authority arising from his office to act on behalf of the Island'.<sup>1</sup> In oral evidence the Chief Minister concurred with this description of his powers save that it did not deal with the role of Chief Minister as Chair of the Emergency Powers Authority, a capacity in which he did hold executive powers.<sup>2</sup> However, HM Procurer considered it unduly narrow in excluding functions specific to the Policy Council such as matters relating to external relations where the Chief Minister had a role.<sup>3</sup>

- 3.7 The provision and administration of the airport is the responsibility of the **Public Services Department (PSD)**. It is part of PSD's mandate in relation to the airport, as in relation to the other services for which it is responsible, to ensure that 'public resources are used to best advantage, through co-operative and flexible working practices'. Like other States Departments, the PSD receives an annual revenue budget allocation from **Treasury and Resources Department (TRD)**. Once this allocation has been approved by the States, departments have the authority to spend their budget without recourse to TRD<sup>4</sup> but under their general mandates they are accountable to the States for the management and safeguarding of public funds and other resources entrusted to them.
- 3.8 The **Public Sector Remuneration Committee (PSRC)** is responsible for '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'. We were told that PSRC decides on its approach to public sector pay on an annual basis. It liaises with the TRD, which explains the general economic situation and state of public sector finances, but PSRC has an overriding discretion to set its own pay policy free from any remit or guidelines from TRD.<sup>5</sup> This policy does not require approval by the States.<sup>6</sup> PSRC consists of a Chairman and four members who must be sitting members of the States and up to two non-voting members nominated by the Committee who must not be sitting members of the States. The PSRC is assisted by full-time negotiators who, between them, conduct negotiations with the various public sector groups within the remit granted to them by the Committee. Unions may also be invited, or seek, to put their case to the PSRC itself. Any agreement reached by the negotiator is subject to ratification by the PSRC.<sup>7</sup>

## **PSRC AND EMPLOYING DEPARTMENTS: THE STATES RESOLUTION OF 2006**

- 3.9 Whether public sector pay should be determined on a centralised basis by a single body, or whether it should be decentralised to employing departments, has been a

<sup>1</sup> *Review of Good Governance - The States of Guernsey*, Wales Audit Office, 4 September 2009, [www.wao.gov.uk](http://www.wao.gov.uk), paras 1.29-1.31.

<sup>2</sup> Evidence of Deputy Trott, Day 5, pp 68F-69A.

<sup>3</sup> Evidence of Howard Roberts, Day 4, pp 39F-40B.

<sup>4</sup> Dale Holmes, Chief Officer, Treasury and Resources Department, Witness Statement, paras 3(a)-(d).

<sup>5</sup> Evidence of Dale Holmes, Day 7, pp 20E-F, 21C.

<sup>6</sup> Evidence of Jonathan Le Tocq, Chairman of the PSRC May 2004-April 2008, Day 1, p 45C-H; Evidence of Deputy Brouard, Chairman of the PSRC May 2008-July 2009, Day 2, pp 11H-12F.

<sup>7</sup> Evidence of Stephen Naftel, Chief Negotiator, PSRC, Day 2, pp 50G-51D, 67G-69F.

long-standing issue of debate in Guernsey.<sup>8</sup> In 2006 the PSRC published a report which recommended that the PSRC should continue to be responsible for collective bargaining but that it should adopt a series of measures designed to create 'new and productive relationships' with employing departments. Specifically the PSRC stated that it was committed to:

- discussing issues associated with its own constitution with the House Committee;
- meeting every department to agree specific future consultation arrangements with each;
- holding regular meetings with departments to discuss the pay and conditions of their staff;
- making sure that departments are fully aware of any claims formally submitted by trade unions or staff associations that relate to their staff;
- asking departments in advance of any annual negotiations whether they have any pay and conditions issues they would wish to have raised;
- and, wherever practical, inviting departmental representatives to attend all negotiating meetings.<sup>9</sup>

These proposals were approved by the States on 26th October 2006.

## **MANDATES OF DEPARTMENTS AND COMMITTEES: LEGAL SIGNIFICANCE**

3.10 The legal significance of the mandates of the States Departments and Committees, and the implications of a States body acting outside its mandate, do not appear to have been formally addressed prior to this Inquiry. We explored this area in some detail with HM Procureur (who was, at the time of the events in question, HM Comptroller) and the summary which follows is based on his responses to the questions which we raised.

3.11 HM Procureur explained that in legal terms States Departments and Committees are agents of the States of Guernsey, mandated to perform specified functions which fall to be exercised by the States.<sup>10</sup> In general these mandates are conferred by resolutions of the States, although a minority derive from statute.<sup>11</sup> The States itself (which

<sup>8</sup> See Professor Jon Clark, *Mechanisms for Determining Public Sector Pay in Guernsey: Report to States of Guernsey, Board of Industry*, April 2001; PSRC, *Mechanism for Determining Public Sector Pay in Guernsey*, 15 August 2006; Dr. Graham Robinson, *Report of a Review of the Role of the States of Guernsey as an Employer*, February 2008; Policy Council, *Consultation Paper: Creating a States Employment Board* (no date given: consultation closed 19 June 2009).

<sup>9</sup> PSRC, *Mechanism for Determining Public Sector Pay in Guernsey*, 15 August 2006, para 10.18. The Report was published in the form of a letter to the Chief Minister.

<sup>10</sup> Howard Roberts, Witness Statement, para 10. HM Procureur stated that a Department is technically a States Committee.

<sup>11</sup> Evidence of Howard Roberts, Day 4, p 12B.

includes the whole undertaking and committee structure administered by the States)<sup>12</sup> has legal personality; Departments and Committees do not.<sup>13</sup> The mandates prescribe the area in which each Department and Committee is authorised to act both internally and *vis-a-vis* third parties.<sup>14</sup> HM Procureur considered that:

to the extent that a particular States function is clearly and exclusively conferred by resolution on a particular States Committee, one can imagine that in some circumstances the States might be entitled not to recognise that a different States Committee or other body which purports to exercise that function in fact has authority to bind the States. But I believe such circumstances would be extremely rare, not least because there is some overlap between Committee mandates.<sup>15</sup>

HM Procureur drew a distinction in this context between the relationships between States and third parties, on the one hand, and 'matters of governmental proper procedures' and 'good corporate governance' on the other. Although the two sometimes overlapped, they were 'not necessarily coterminous'.<sup>16</sup>

- 3.12 HM Procureur considered that the position between the States and its agent committees if there had been a breach of mandate was 'very largely a ... political issue'. He did not:

totally rule out the possibility that if politicians, in the name of a particular department of the States, knowingly exceeded the authority given to them by the States and in the result occasioned some damage to the States, that action might at law lie against those politicians but you would have to be ... at least fairly close to a position of misfeasance in public office for that situation to arise in law.<sup>17</sup>

- 3.13 In the specific context of remuneration, HM Procureur commented that 'various Committees are mandated to deal with matters which may involve remuneration'.<sup>18</sup> He considered that the mandate of PSD, in covering the provision and administration of facilities in respect of the airport, included the maintenance of fire service cover and that it could 'undoubtedly' use its budget to defray the cost of such cover.<sup>19</sup> This approach did not, however, 'entirely address the good governance angle of how things are mandated to be done'.<sup>20</sup>

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<sup>12</sup> Howard Roberts, Witness Statement, para 10.

<sup>13</sup> Evidence of Howard Roberts, Day 4, p 12C-D.

<sup>14</sup> Evidence of Howard Roberts, Day 4, pp 12E, 21 B-C.

<sup>15</sup> Howard Roberts, Witness Statement, para 12. See also Evidence of Howard Roberts, Day 4, p 25G where he withdrew the underlining of 'might'.

<sup>16</sup> Evidence of Howard Roberts, Day 4, pp 23H-24H.

<sup>17</sup> Evidence of Howard Roberts, Day 4, p 13B-C.

<sup>18</sup> Howard Roberts, Witness Statement, para 12. As well as PSD, these included the Policy Council, Health and Social Services Department and Education Department: Evidence of Howard Roberts, Day 4, pp 26D, 27E.

<sup>19</sup> Letter of 2 June 2009, p 2, attached to the Witness Statement and contained in Appendix 1 of this Report.

<sup>20</sup> Evidence of Howard Roberts, Day 4, p 26B; see also p 28B-D.

## CHAPTER 4

### RELEVANT LEGISLATION AND ITS APPLICATION

- 4.1 In this chapter we outline the legislation which is material to the Inquiry: The Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993, as amended, and the Emergency Powers (Bailiwick of Guernsey) Law, 1965, as amended. We also make some general points about the application of those provisions which relate to the events we describe in chapters 5 and 6.

#### **THE INDUSTRIAL DISPUTES AND CONDITIONS OF EMPLOYMENT (GUERNSEY) LAW, 1993, AS AMENDED**

- 4.2 The Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993, as amended, ('the 1993 Law') provides for the appointment of an Industrial Disputes Officer ('IDO') and Deputy Industrial Disputes Officer ('DIDO') by the States. The DIDO acts if the IDO is unable to perform his functions.<sup>1</sup>
- 4.3 Where an 'industrial dispute, actual or apprehended, is notified' to the IDO, he is required to use his best endeavours to prevent or settle the dispute:
- (a) by giving such advice and assistance as he thinks necessary or expedient,
  - (b) by conciliation;
  - (c) by arbitration, voluntarily submitted to by the parties, or
  - (d) by referring the dispute to the Industrial Disputes Tribunal ('IDT') with the agreement of the parties.

In addition, the Law provides that the IDO shall refer an industrial dispute to the ... [IDT] -

- (a) if, in his opinion, the dispute cannot be settled by the methods set out ... [above] or
- (b) if the dispute is not settled within six weeks of being notified to him, unless in his opinion negotiations, conciliation or arbitration proceedings are in progress with a view to a settlement.<sup>2</sup>

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<sup>1</sup> ss 1, 2.

<sup>2</sup> s 3(1), (2).

Where the IDO refers an industrial dispute to the IDT, he is required to deliver written terms of reference to it identifying each issue in the dispute which is required to be investigated and upon which the IDT is required to make an award.<sup>3</sup>

- 4.4 The IDT is a statutory body, constituted anew for each industrial dispute, consisting of a chairman and two members, drawn from an Employers' and Employees' Panel respectively.<sup>4</sup> The IDT has the same powers as the Royal Court in respect of the attendance and examination of witnesses; the administration of oaths or affirmations to witnesses; and the production of documents and exhibits. However nothing said in evidence to the IDO (or to any member of the Commerce and Employment Department) is admissible in evidence in IDT proceedings except with the consent of the individual who communicated it.<sup>5</sup> It is an offence to fail without reasonable excuse to attend the IDT on being duly summoned before it or without reasonable excuse to obstruct or hinder the IDO or DIDO in the exercise or purported exercise of their functions under the 1993 Law.<sup>6</sup> A decision or award of the IDT is binding on the employer and employee to whom it relates and is 'an implied condition in the contract of employment between them until varied by a subsequent decision or award, by a subsequent negotiated agreement between the parties' or in another specified way.<sup>7</sup>
- 4.5 Although the 1993 Law requires the IDO to act when a dispute is 'notified', we were told that the services of the IDO could also be offered prior to a dispute being officially 'notified'.<sup>8</sup> We were also told that 'notified' in practice meant notified by a party and that notification was required to be in writing,<sup>9</sup> although these requirements do not appear on the face of the legislation. 'Industrial dispute' is defined in the Law as 'any dispute or difference between an employer and an employee or between an employee and employees, connected with the employment or non-employment, or the conditions of employment, of any person ....'<sup>10</sup> Both the current IDO and the DIDO interpret a 'dispute' as requiring a claim and rejection of that claim, in accordance with UK case law summarised in an article exhibited to us.<sup>11</sup> They also take the view that they should look at all the circumstances in deciding whether or not to 'accept' a dispute, not merely whether the statutory definition of 'dispute' is satisfied.<sup>12</sup> The decision as to whether a dispute is an 'industrial dispute', or whether the requirements for referral to an IDT have been met, are expressed in the 1993 Law to be 'final'.<sup>13</sup> HM Procureur told us that, although the matter had not been tested, he would not rule

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<sup>3</sup> s 3(4).

<sup>4</sup> s 4; Sched.

<sup>5</sup> s 3(6).

<sup>6</sup> s 16.

<sup>7</sup> s 10.

<sup>8</sup> Michael Fooks, Industrial Disputes Officer, Witness Statement, para 22.

<sup>9</sup> Michael Fooks, Witness Statement, paras 21 and 27.

<sup>10</sup> s 18(1). Certain disputes under specified legislation are excluded from the definition.

<sup>11</sup> Michael Fooks, Witness Statement, paras 32 and 33 (where this is described as 'fundamental aspects' to consider); Evidence, Day 4, p 80C-D; Evidence of Michele Tiffin, DIDO, Day 4, p 65G-H. The article, by Keith Elliott of Trett Consulting, is attached to Mr Fooks' Witness Statement.

<sup>12</sup> Evidence of Michele Tiffin, Day 4, p 69E-G; Evidence of Michael Fooks, Day 4, p 90F-G.

<sup>13</sup> s 3(3).

out the possibility that the IDO's decision on these matters could be susceptible to judicial review.<sup>14</sup>

- 4.6 We raised with HM Procureur, and with the IDO and DIDO, the question whether the stipulation that a decision or award of the IDT will be an implied condition in the contract of employment meant that only matters that were capable of taking effect as implied conditions could be the subject of an 'industrial dispute'. HM Procureur and the DIDO considered that this was the case.<sup>15</sup>

#### **THE EMERGENCY POWERS (BAILIWICK OF GUERNSEY) LAW, 1965, AS AMENDED**

- 4.7 We referred in para 3.4 to the establishment of the Emergency Powers Authority ('EPA') in 2005. The Emergency Powers (Bailiwick of Guernsey) Law, 1965, as amended, provides that if at any time it appears to the Emergency Powers Authority:

that there have occurred, or are about to occur, events of such a nature as to be calculated, by interfering with the supply and distribution of food, water, fuel or light, or with the means of transport, or with the provision of telecommunication services ... to deprive the community within the Bailiwick of Guernsey or any substantial portion of that community of the essentials of life, or events of such a nature as to jeopardise the economic interests of the Bailiwick of Guernsey or any part thereof

the EPA may, by order, declare that a state of emergency exists. Threats to security, public order or public health may also give rise to a state of emergency.<sup>16</sup> Once a state of emergency has been declared, the EPA may make regulations for securing the essentials of life to the community and for other specified purposes. However such regulations may not impose any form of industrial conscription or make it an offence for any person to take part in a strike or peacefully to persuade any other person or persons to do so.<sup>17</sup> Failure to comply with regulations is a criminal offence (unless otherwise provided); the maximum penalty is an unlimited fine and two years' imprisonment, together with forfeiture of any goods or money in respect of which the offence was committed. The order declaring the state of emergency and any regulations made pursuant to it must be laid before a meeting of the States 'as soon as may be' and the States may resolve that the order or Regulations be annulled.<sup>18</sup>

- 4.8 The mandate of the EPA is to:

take such steps as it may consider necessary or expedient to ensure, in the event of a state of emergency arising under any circumstances, the preservation and maintenance of supplies and services essential to life in, the

<sup>14</sup> Evidence of Howard Roberts, Day 4, pp 5C-G and 40D-G.

<sup>15</sup> Evidence of Howard Roberts, Day 4, pp 41H-43E; Evidence of Michele Tiffin, Day 4, p 70G; Evidence of Michael Fooks, Day 4, p 91C-D.

<sup>16</sup> s 1. There is also specific provision in the Schedule for the declaration of a 'food hazard emergency'.

<sup>17</sup> s 2(1).

<sup>18</sup> s 1(2), 2(2). Annulment is without prejudice to anything done under the order or regulations or the making of a new order or regulations by the EPA.

protection of the economic interests of, the Bailiwick or any part thereof, the well-being and security of the community, the safeguarding of public health, the maintaining of security and law and order, and the carrying out of all executive and administrative acts of government.

The EPA is also required to exercise the powers and duties conferred by the 1965 Law. HM Comptroller has expressed the view that the first paragraph of its mandate, in referring to taking steps to ensure specified objectives 'in the event of a state of emergency arising' could be seen as mandating the EPA to act at an earlier stage in a scenario of mounting concern than that at which catastrophic events are 'about to occur' for the purposes of the 1965 Law. However he emphasised that its role at that stage would be limited to taking steps to ensure the specified objectives were met; it could not, for example, carry out executive and administrative acts of government without declaring a state of emergency.<sup>19</sup>

- 4.9 The EPA consists of three Ministers: the Chief Minister, who chairs it; the Minister of the Home Department; and one other member of the Policy Council chosen by the Chief Minister having regard to the nature of the emergency, drawn from a Panel of five Ministers appointed by the Policy Council.<sup>20</sup> The quorum is two members.<sup>21</sup> Members and officers of the EPA are required under the 1965 Law to take an oath or affirmation before the Bailiff prior to performing their functions or having access to the records of the EPA. Breach of the oath is a criminal offence.<sup>22</sup> The Bailiff must be given prior notice of all meetings of the EPA and is entitled to advise and warn it with regard to any matter relevant to its deliberations.<sup>23</sup> In addition one of the Law Officers must be present at all meetings.<sup>24</sup> It is specifically provided that resolutions of the EPA shall not be subject to ratification or other review or approval by the Policy Council.<sup>25</sup>
- 4.10 Although the EPA itself consists of three Ministers, there have been a number of occasions when all seven of the Ministers qualified to serve on the EPA have met as a group. This body does not have a States mandate; it was described by the Deputy Chief Executive as a 'practical invention', a 'tried and tested approach ... to try and bring some useful focus to an event where there's been a serious systems failure'.<sup>26</sup> It seems to have been the practice to refer to such gatherings as meetings of the 'Policy Council - Emergency Powers Authority'.<sup>27</sup> However, as we indicated in para 6.81, it was eventually decided that the term 'Emergency Powers Authority Panel' was apt to describe the meeting that occurred on 26 May 2009.
- 4.11 On 12 June 2009 the Chief Minister wrote to HM Comptroller asking for advice on a number of matters relating to the operation of the EPA, including the status of the

<sup>19</sup> Howard Roberts, letter of 10 July 2009 to the Chief Minister, Appendix 1, p 117.

<sup>20</sup> The Constitution and Operation of States Departments and Committees Rule 17(1).

<sup>21</sup> Above, Rule 17(3).

<sup>22</sup> The Emergency Powers (Bailiwick of Guernsey) Law, 1965, as amended, s 2B.

<sup>23</sup> The Constitution and Operation of States Departments and Committees Rule 17(5).

<sup>24</sup> Above, Rule 17(4).

<sup>25</sup> Above, Rule 17(2).

<sup>26</sup> Evidence of Nigel Lewis, Day 6, pp 20A-21A.

<sup>27</sup> Letter from Deputy Trott to HM Comptroller 12 June 2009, Appendix 1, p 113.

wider 'EPA Panel'. This letter, and HM Comptroller's response of 10 July 2009, are contained in Appendix 1 of our report. HM Comptroller advised that, although there was no obstacle in law to a wider group of Ministers meeting to discuss how an emergency may be averted, they had no collective executive authority to take action. He pointed out that, although these Ministers may limit themselves to making recommendations to Departments, Committees and other bodies that had the requisite executive authority, there was a danger that they could be perceived as acting outside the spirit of States Resolutions concerning the mandates of such bodies. That being so, there may be merit in seeking clarification as to how the States expected an 'extended EPA' to operate. In his letter HM Comptroller stated that whether such Resolutions should be sought at the earliest opportunity or should await the outcome of inquiries relating to this area was largely a matter of political judgment. In oral evidence he stated that it was 'unfortunate' that the term 'EPA' was used both for the three-member body with powers under the 1965 Law and 'a quite different, broader strategic planning body which ... in a sense could just as easily be the full Policy Council'.<sup>28</sup>

- 4.12 There is a staff level group, the Emergency Powers Advisory Group ('EPAG'), which advises the EPA and carries out its instructions. EPAG's work predominantly involves monitoring, horizon scanning, and preparing and testing of plans for a variety of potential emergencies. In its normal 'peace time' mode EPAG is chaired by the Chief Officer of the Home Department; in 'active' mode, when an emergency is imminent or has occurred, it is chaired by the Chief Executive or his or her Deputy.<sup>29</sup> From the evening of 25 May 2009 EPAG was described by the Deputy Chief Executive as being in an 'interim stage'; the 'readiness mode and trying to avoid a situation that will need the EPA to be fully invoked'.<sup>30</sup>
- 4.13 The Deputy Chief Executive told us that he considered that the 1965 Law was anachronistic and unable properly to address strategic threats to the States.<sup>31</sup> HM Procurer was also of the view that 'the whole approach of how Guernsey monitors and addresses situations of potentially serious concern would benefit from further analysis and development'.<sup>32</sup> On 30 March 2005 the States approved a resolution to direct the EPA to develop proposals to replace the 1965 Law with new legislation along the lines of the UK Civil Contingencies Act 2004. We understand that work in this area is currently in progress.

<sup>28</sup> Evidence of Howard Roberts, Day 4, p 36B.

<sup>29</sup> Nigel Lewis, Deputy Chief Executive, Witness Statement, para 1.

<sup>30</sup> Evidence of Nigel Lewis, Day 6, p 15G-H.

<sup>31</sup> Evidence of Nigel Lewis, Day 6, pp 30, 36C-38C; Witness Statement, para 32.

<sup>32</sup> Evidence of Howard Roberts, Day 4, p 19E.



## CHAPTER 5

### THE AIRPORT FIRE SERVICE

- 5.1 We described in Chapter 2 the legal framework governing the provision of fire cover at Guernsey Airport and the minimum staffing levels required to guarantee that cover. In this chapter we explain the background to the events which culminated in the withdrawal of cover on the May Bank Holiday weekend of 2009.
- 5.2 We start by explaining the documents relevant to the employment of AFFs; how these relate to the provision of cover at the airport; and the practical difficulties that arose. We then describe the history of the negotiations in which attempts were made to agree an alternative basis for providing adequate cover. As we emphasised in Chapter 1, our concern here is with the negotiating process and not with the content or merits of negotiating positions.

#### DOCUMENTS RELEVANT TO THE EMPLOYMENT OF AFFs

- 5.3 The letter of appointment of an AFF states the current level of pay and periodicity of pay; the pension scheme and employee contribution; the period of probationary service; and requirements relating to training, fitness, medical examinations, Right to Work documentation and employment history. It states that AFFs are required to hold a category C driving licence and become 'A' division Special Constables for the Airport. In relation to working hours, it states that:

you will work a 38 hour week on a shift system which rotates every six days. The Airport is open every day of the year except for Christmas Day although there could be occasions when circumstances would require you to work on that day.

It further states that:

It was explained to you at interview that the Airport needs to be fully manned to operate correctly and there will be occasions that require you to work overtime at short notice, including rest days.<sup>1</sup>

- 5.4 The letter of appointment refers to two additional documents in the following terms:
- (a) The terms and conditions attaching to the post are as per the agreement between the T&G section of Unite the Union and the Public Sector Remuneration Committee. The Airport Fire Service Union Representative holds a copy of the agreement and there is also a copy in [the office of the Deputy Airport Director]

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<sup>1</sup> Sample dated 6 February 2009 supplied by Simon Macphail, Deputy Airport Director. We were also supplied with a 2003 sample letter. This was the same in material respects in relation to matters relating to our terms of reference but did not include the paragraph in the text to which this footnote is attached.

- (b) The duties and responsibilities attaching to the post are as per the agreement dated 26 September 1990 between the Airport Fire Service staff and the Airport Director. These duties may be amended from time to time by agreement between the staff and Airport Management. A copy of this agreement is enclosed.

We were told that there is no further documentation issued at the time of appointment.<sup>2</sup>

- 5.5 The agreement between Unite the Union and the PSRC, referred to in (a) above, is that of the Public Service Employees' Joint Council.<sup>3</sup> It is commonly known as the 'Black Book'. It includes grievance and disciplinary procedures and provisions relating to working hours; incremental scales and acting up payments; payments applicable when work is undertaken at weekends, on rest days, at night and on public holidays; shift and part-time working; overtime working and recalls to work; holidays and other leave provisions; and sickness benefit. Its provisions are not material to our terms of reference and we do not explore them further in this report.
- 5.6 The 1990 Duties and Responsibilities agreement ('the 1990 Agreement') referred to in para 5.4(b) above is central to our terms of reference and is contained in Appendix 1 of our report. The Agreement opens with the statement that:

The Guernsey Airport Fire Service is required to provide:

- Fire Cover
- Rescue Services
- First Aid

in respect of aircraft accidents

It is also required to provide specialist equipment and manpower, when required, to the States Fire Brigade at the discretion of Air Traffic Control.

The Agreement then sets out a list of specific duties and responsibilities. The first of these, under the heading 'FIRE STATION', is:

To maintain at all times sufficient manpower and equipment to respond immediately to any aircraft accident or emergency.

The Agreement concludes with the provision:

Although every effort has been made to produce a comprehensive list of duties and responsibilities, it is unlikely that the above list is exhaustive. It is

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<sup>2</sup> Evidence of Simon Macphail, Deputy Airport Director, Day 3, pp 3H-4B.

<sup>3</sup> *Constitution and Schedule of Terms and Conditions of Employment Relating to Able Bodied Workers Not Covered by Any Other Specific Agreement*. The agreement also includes the Constitution of the Joint Council and other provisions relating to the relationship between the collective parties. AFFs were, at one time, within the remit of the Joint Council.

therefore expected that employees will carry out such other duties appropriate to the Airport Fire Service as may reasonably be required by Management from time to time, subject to consultation and agreement concerning any major changes.

- 5.7 The legal status of the 1990 Agreement, and its implications for individual firefighters, has not been tested. However, the Airport Director and his Deputy told us that, whilst in their view it placed responsibilities on the workforce collectively, it could not be enforced against any specific individual.<sup>4</sup> The view that it could not be enforced against individuals was shared by the AFFs themselves.<sup>5</sup> Members of Airport Management currently in post had not attempted to take disciplinary action against any individual who refused to work overtime or provide cover while on annual leave.<sup>6</sup>

## COVER UNDER THE 1990 AGREEMENT

- 5.8 We explained the minimum staffing levels for cover at Guernsey Airport in Chapter 2. We summarise them here again for convenience:

Category 6: 1 Station Officer, 2 Crew Commanders and 6 Firefighters.

If the number of staff falls below this number, the category of fire cover has to be reduced in accordance with the following sliding scale:

1 Station Officer + 2 Crew Commanders + 5 firefighters = Category 5  
 1 Station Officer + 2 Crew Commanders + 4 firefighters = Category 4  
 1 Station Officer + 2 Crew Commanders + 3 firefighters = Category 3

We were told that AFFs were divided into three 'watches'. On any particular day one watch covered the morning shift and a second the afternoon; the third was on leave.<sup>7</sup> The Airport Director told us that by custom and practice the total establishment has been determined at 10 AFFs per watch to afford two 'spares' plus one Station Officer.<sup>8</sup> His Deputy explained that in case of any shortfall in cover the Crew Commander or Station Officer would endeavour to find a volunteer from the off-duty watch. They would start with the 'overtime list' of those whom it was known wanted to do overtime. In the event that no one volunteered from that list, they would then telephone those who were not on that list.<sup>9</sup> Safeguards were in place to prevent unsafe levels of overtime being worked.<sup>10</sup>

- 5.9 In early 2007 Airport Management recognised that there were serious issues with the 1990 Agreement due to the fact that the maintenance of the minimum staffing levels

<sup>4</sup> Colin Le Ray, Witness Statement, para 2; Simon Macphail, Witness Statement, para 2.

<sup>5</sup> Evidence of Ron Le Cras, FTO of Unite the Union, Day 5, p 5F-G.

<sup>6</sup> Evidence of Colin Le Ray, Day 1, p 13H.

<sup>7</sup> Evidence of Colin Le Ray, Day 1, p 16B. The Burchill Review, attached to the Witness Statement of Colin Le Ray, explains in detail how shifts are organised.

<sup>8</sup> Evidence of Colin Le Ray, Day 1, p 11D.

<sup>9</sup> Evidence of Simon Macphail, Day 3, p 9F-H.

<sup>10</sup> Evidence of Colin Le Ray, Day 1, p 17F-G.

could not be enforced against individuals.<sup>11</sup> When overtime working was required for cover to be maintained, some individuals were unwilling or unable to undertake it. This manifested itself in the airport on occasions not having sufficient firefighters on duty and averting disruption only by using Station Officers to provide short notice cover.<sup>12</sup> 2007 and 2008 also saw a period of staff turnover that was significantly higher than that previously experienced.<sup>13</sup> Airport Management told us that AFFs were leaving to pursue skilled occupations in the private sector;<sup>14</sup> the AFFs told us that the impact of working additional hours, with little reward, was the major factor.<sup>15</sup> Due to high turnover it was not possible to recruit and train staff quickly enough to maintain a full complement of fully trained and serviceable staff. We were told that it can take several months before a newly-appointed firefighter could be counted towards the 'riding strength'.<sup>16</sup> This put further pressure on the remaining qualified firefighters to work overtime to cover the resulting shortfalls. The AFFs told us that in 2007 more than 300 man shifts were covered by firefighters working overtime; in 2008, more than 400, including two months where more than 60 shifts were covered in a single month.<sup>17</sup> Depletion in the overall experience of the Airport Fire Service ('AFS') (which has to be maintained at a certain level) was also a concern for Airport Management.<sup>18</sup> The Airport Director told us that the airport was facing 'uncontrollable costs' in the recruitment and training of new staff; there were five new joiners (one of whom left) in 2007 and three in 2008 up to August.<sup>19</sup> He estimated that it cost £10,000 to train a firefighter, including £8000 for a mandatory six-week UK Aviation Firefighters Course.<sup>20</sup> The Deputy Airport Director told us that they were not getting the right calibre of applicant during this period; applicants did not have driving licences or were not suitable for Special Constable status.<sup>21</sup> AFFs told us that in their view individuals were being employed who would not in other circumstances have been considered.<sup>22</sup>

- 5.10 The Union told us that it shared the view of Airport Management that the 1990 Agreement was no longer fit for purpose and, in particular, that arrangements for cover needed re-negotiating to place specific obligations on individuals.<sup>23</sup> From the Union's perspective this was a management issue which, if it were to be resolved, required a funded deal.<sup>24</sup> Discussions on replacing the 1990 Document started in 2007 and there were two temporary agreements (in August 2008 and February 2009)

<sup>11</sup> Colin Le Ray, Witness Statement, para 2. The difficulties were identified by Mr Le Ray in May 2005 but as explained in para 5.11, he did not attempt to change the agreement at that time.

<sup>12</sup> The Airport Director told us that there had not been problems recalling staff to work at night but this was a relatively rare occurrence: Evidence of Colin Le Ray, Day 1, pp 14C-E and 26D-E.

<sup>13</sup> The Burchill Review, para 24, discussed at paras 5.17 and 5.18, states that turnover was 30% between 2006-2008.

<sup>14</sup> Evidence of Colin Le Ray, Day 1, p 18D.

<sup>15</sup> Evidence of Paul Ozanne, AFS Watch Representative, Day 5, p 8D.

<sup>16</sup> Evidence of Colin Le Ray, Day 1, p 19A-C; Evidence of Simon Macphail, Day 3, pp 6A-B, 7G.

<sup>17</sup> Figures supplied by Paul Ozanne.

<sup>18</sup> Colin Le Ray, Witness Statement, para 3.

<sup>19</sup> Above.

<sup>20</sup> Evidence of Colin Le Ray, Day 1, p 19E-F.

<sup>21</sup> Evidence of Simon Macphail, Day 3, p 7E-F.

<sup>22</sup> Evidence of Paul Ozanne, Day 5, pp 10G-12D.

<sup>23</sup> Evidence of Ron Le Cras, Day 5, pp 15H-17D.

<sup>24</sup> Above, Day 5, p 16B-D.

which provided for guaranteed cover in return for payments outside the annual pay round to allow work to be undertaken on a replacement. However the Union and the PSRC were unable to reach agreement and, on each occasion, the position reverted to the 1990 Agreement when the temporary agreement expired. In the section which follows, we explain the process followed by the parties. It should be noted that the negotiations in question were not subject to a written procedural agreement except during the currency of the two temporary agreements. Meetings outside these periods were, therefore, arranged between the negotiators on an *ad hoc* basis rather than on the basis of a pre-arranged schedule or procedure.

## NEGOTIATIONS ON ALTERNATIVE COVER ARRANGEMENTS

### **The position prior to 2007**

- 5.11 We indicated in para 5.9 that Airport Management recognised that there were serious issues with the 1990 Agreement in 2007. The Airport Director had considered trying to redraft the Agreement in 2005 following a reduction in cover on 9 May, when no AFFs were available for overtime. However, he told us that he could see that this would lead to a 'complicated renegotiation process' whose outcome would be uncertain. He considered that a memorandum to him from the then AFS Shop Steward stating that members of the AFS wished to continue working under the existing provisions constituted an 'assurance that there was a generic understanding on the part of the workforce that they had ... a responsibility to provide cover at all times'. Although 'with the benefit of hindsight it probably would have been worth' revisiting the 1990 Agreement, at that time he was 'relatively satisfied that the assurances ... [he] had were sufficient'. He did not, therefore, initiate discussions on the Agreement at that time.<sup>25</sup>

### **2007 - August 2008**

- 5.12 The position changed in 2007 when staff turnover became an issue at the airport. A series of meetings between the Airport Director and AFF representatives on a Review of Duties and Responsibilities commenced on 19 July 2007, with an agreement at the first meeting that 'momentum should be maintained on discussions'. At the fourth meeting on 9 August 2007 it was agreed that the next step would be to brief the HR Unit of PSD and then to decide on the format of an initial approach to PSRC. The AFFs were involved in discussions with PSRC in the latter part of 2007 and pay was a part of those discussions.
- 5.13 On 6 December 2007 the Airport Director advised the Board of PSD that Airport Management was attempting to negotiate an agreement with PSRC on pay relating to a new formalised rota cover scheme. The Board agreed that a strongly-worded Ministerial letter should be sent to the Chairman of PSRC setting out the importance of an early settlement to avoid any disruption to airport services. A letter dated 14 December 2007 was drafted in these terms. It expressed the view that, due to the particular circumstances at the airport, AFFs should be treated independently of any overall debate on Public Service Employees pay. In an email to the Chief Officer of PSD dated 6 February 2008 the Airport Director expressed concern at the application by PSRC of a 'one size fits all' solution to the AFFs. In oral evidence he said that he

<sup>25</sup> Evidence of Colin Le Ray, Day 1, pp 15, 21H-22F.

'understood where PSRC were coming from' in that they 'had a structure of pay in which the firefighters were fitting' with 'implications ... in their mind over changing that structure if any one particular group ... were treated any differently'. However, he said he was frustrated 'at the process which for us was unable to address a specific operational need'.<sup>26</sup>

- 5.14 In January 2008 Unite put in a pay claim in respect of AFFs. There was a series of meetings of PSRC which were attended by Airport Management and, on occasion, by AFS representatives, at which the claim was discussed. In the year preceding the events of May 2009 the Policy Council was kept advised during their regular meetings of the progress of negotiations with the AFFs by the Minister of the PSD, Deputy Flouquet. The Policy Council had asked to be kept advised of developments as it was anxious that real progress should be made in order to avoid the closure of the airport.<sup>27</sup>
- 5.15 Following a meeting between the PSRC, PSD and AFFs on 3 July 2008 the AFFs withdrew their pay claim and advised the PSRC that they would settle in line with Public Service Employees, leaving the issue of cover to be resolved separately. On 21 July 2008 there was Island-wide industrial action by Public Service Employees. Cover was withdrawn by AFFs for one hour in the morning and one hour in the afternoon. The Public Service Employees' pay claim was resolved by an Industrial Disputes Tribunal ('IDT') in September, with the award taking effect from the review date of January 2008.

#### **The August 2008 Agreement**

- 5.16 In early August 2008 meetings took place at both staff and political level with representatives of AFFs about cover. It was agreed between PSRC and Unite that, in return for the maintenance of 'minimum manning levels' until 31 January 2009, each AFF would receive a non-pensionable payment of £1000, to be made in six equal monthly instalments. This was confirmed in a letter dated 7 August 2008 from Deputy Brehaut to the Unite full-time official ('FTO') which is contained in Appendix 1 of this report. The letter also stated that shop stewards and/or other watch representatives needed to discuss manning arrangements with Airport Management over the next few months, focussing on the way that minimum manning levels would be maintained in the future.
- 5.17 PSD commissioned Professor Frank Burchill to undertake a review of operational arrangements of the AFS. The review was expected, in particular, to examine and make recommendations on the necessary total establishment; the optimum working arrangements; the most appropriate duties to be undertaken during working hours; and the arrangements for overtime to be worked as and when required. It was expected to consider all current working practices and to consult fully with representatives of Airport Management and AFS personnel.<sup>28</sup> The Airport Director told us that he

<sup>26</sup> Evidence of Colin Le Ray, Day 1, pp 28G-29A.

<sup>27</sup> Nigel Lewis, Deputy Chief Executive, Witness Statement, para 14.

<sup>28</sup> *Guernsey Airport: Airport Fire Service Management Review*, paras 4 and 5. This Review is appended to the witness statement of Colin Le Ray.

drafted the terms of reference for the review.<sup>29</sup> The PSRC was invited to meet Professor Burchill but the PSRC negotiator said that he did not know what PSRC could add to the review given that it was about operational matters not about pay and conditions. In the light of this Professor Burchill decided that a meeting with PSRC would not be necessary.<sup>30</sup> The report was delivered to the Airport Director at the end of November 2008 and forwarded to PSD. It was sent by PSD to PSRC on 19 December 2008. Negotiations were put on hold pending the conclusion of the review,<sup>31</sup> although we were told that PSRC regularly asked how matters were progressing and 'were very conscious that the six months was going to run out far faster than we would like'.<sup>32</sup>

#### 5.18 The Burchill Review concluded that:

In the abstract there is no such thing as what might constitute the best shift arrangements, ideal overtime patterns and so on. Working arrangements have to be determined within the parameters of supply and demand relationships. This is also true of pay and terms and conditions. These all interact to provide a context. To some extent they can be manipulated to improve the situation for all parties, but ultimately there will emerge a compromise which does not necessarily totally satisfy everybody but which might be perceived to be the best in the circumstances. In other words, working arrangements are negotiated and based on exchanges. Evidence suggests that the firefighters perceived the negotiations to be adversarial and not conducive to securing agreed changes in working practices.<sup>33</sup>

The Review stated that the firefighters had expressed:

extremely strongly, a complete distrust of the PSRC ... rooted in a belief ... that they have been 'strung along' and that recent bargaining has not been in good faith. This perception may or may not reflect reality but the perception itself is a reality and will impact on the prospect of reaching any agreement in negotiations. It will affect the possibility of securing changes in working arrangements.<sup>34</sup>

The Review found that there was 'willingness' among the AFFs to consider the issues that need to be addressed 'but not in a vacuum. They need to be involved in wide ranging negotiations relating to all the issues raised within a Partnership Agreement which recognises that nothing is agreed until everything is agreed'. It recommended that Airport Management should negotiate directly with the AFFs 'with the intention of minimising the problems of the ... [AFS] ... through a process of cost effective productivity bargaining based on mutual gains'.<sup>35</sup>

<sup>29</sup> Evidence of Colin Le Ray, Day 1, p 34G.

<sup>30</sup> Evidence of Terry Harden, Day 2, p 97C-H.

<sup>31</sup> Evidence of Colin Le Ray, Day 1, p 35E.

<sup>32</sup> Deputy Brouard, Witness Statement, para 22; Evidence, Day 2, p 15G-H.

<sup>33</sup> *Guernsey Airport: Airport Fire Service Management Review*, para 22.

<sup>34</sup> Above, paras 21 and 23.

<sup>35</sup> Above, paras 53 and 59.

- 5.19 The Deputy Airport Director told us that he saw the outcome of the Burchill Review as of value and supported it.<sup>36</sup> The PSD Board did not reach a concluded view on its merits; there were differing views among its members,<sup>37</sup> although the Minister of PSD told us he would have welcomed direct negotiation between PSD and employees if PSD could have employed appropriate negotiators on its behalf.<sup>38</sup> The PSRC was 'very disappointed' that there was nothing to price at the end of the review<sup>39</sup> and considered that Professor Burchill had failed to address the issues required by the terms of reference.<sup>40</sup>

#### **Expiry of the August 2008 Agreement**

- 5.20 There were a number of discussions between Airport Management, the Chief Officer of PSD and the PSRC negotiators in January 2009 for endorsement by PSRC and PSD prior to negotiations with the AFS representatives.<sup>41</sup> On 20 January 2009 the Chief Minister wrote to the Chairman of the PSRC, Deputy Brouard, setting out the views of the Policy Council in relation to the matter. The letter recognised that resolving industrial relations issues with AFFs was a matter for PSRC working in concert with PSD. However it registered concern about the economic and reputational impact of prolonged closure of the airport, to which the Policy Council would need to respond. It suggested engagement of an experienced off-Island negotiator and offered to facilitate this, given that the Minister of PSD had suggested that fielding the same negotiating team as in the past could be an impediment to progress. On 21 January 2009 the Minister of PSD also wrote to the Chairman of the PSRC reporting a 'generic concern' over the continued involvement of specific PSRC staff in the negotiation process and the need for the 'unhelpful baggage of history' to be set aside. The letter also asked whether 'a different and hopefully collaborative approach could be adopted to the negotiations. Perhaps a more creative way of addressing these problems, without necessarily setting precedents could be found'. Deputy Flouquet confirmed to us that this was a response to the Burchill recommendation.<sup>42</sup> In the event the suggestion that alternative negotiators be brought in was not taken forward prior to the May Bank Holiday weekend. There were further meetings between PSRC, PSD and the representatives of the AFS between 29 January and 2 February. The AFFs told us that, in their view, negotiations before the August Agreement expired had not been given the time, and treated with the urgency, such negotiations warranted.<sup>43</sup> On the expiry of the August Agreement cover was reduced on three occasions: 1 February, when it was reduced to category 5 from 09.35hrs until the airport closed; on 7 February, when it was reduced to category 4 from 13.00hrs until the airport closed; and on 8 February, when it was reduced to category 4 from 06.00hrs until 13.00 hrs.<sup>44</sup>
- 5.21 On 29 January 2009 the Industrial Disputes Officer ('IDO') was notified by the Chairman of the PSRC by telephone that the agreement with the AFFs was about to

<sup>36</sup> Evidence of Simon Macphail, Day 3, pp 18E-19A.

<sup>37</sup> Evidence of Adrian Lewis, Chief Officer, PSD, Day 6, pp 56G-57A, 67G-68B.

<sup>38</sup> Evidence of Deputy Flouquet, Day 6, p 78D-E.

<sup>39</sup> Evidence of Deputy Brouard, Day 2, p 14F.

<sup>40</sup> Deputy Brouard, Witness Statement, para 23.

<sup>41</sup> Terry Harnden, Witness Statement, para 29.

<sup>42</sup> Evidence of Deputy Flouquet, Day 6, p 78C.

<sup>43</sup> Evidence of Kevin Rabey, Watch Representative, Day 5, pp 31A-32H.

<sup>44</sup> Colin Le Ray, Witness Statement, para 5, question 1.

expire and that this could lead to difficulties in providing full fire cover. As the IDO was due to leave the Island the following day he notified his Deputy (the 'DIDO') and the Employment Relations Service.<sup>45</sup> He took the view that, as he managed a commercial operation at the airport, he should ask the DIDO to lead the process. On 30 January PSRC officers requested meetings with Industrial Relations Advisory Officers ('IRAOs') at which differences with Unite were outlined.<sup>46</sup> On 1 February a PSRC officer contacted the Senior Industrial Relations Advisory Officer ('SIRAO')<sup>47</sup> at home requesting a meeting as AFS cover had dropped a category at the airport. A meeting took place later that afternoon attended by the DIDO, IRAOs, and representatives of PSRC and PSD.<sup>48</sup> Deputy Brouard told us that he advised the DIDO at that meeting that he would have to register a dispute with her should the disruption at the airport continue.<sup>49</sup> The SIRAO told us that there appeared to be some confusion among the employer representatives as to whether the dispute was about the AFFs' contractual responsibilities and obligations to provide the required cover or whether it was, in fact, a pay claim issue. He said that there was no information provided that would indicate that the AFFs had made any formal claims for an increase in pay.<sup>50</sup>

- 5.22 Following a meeting between PSRC, PSD and the AFFs on 2 February 2009 at which no agreement was reached, on 3 February 2009 the Chairman of PSRC wrote to the DIDO stating that 'there is a difference between the members of the Service and the Committee over the appropriate pay and conditions which should apply and that this difference is so wide that no agreement can be achieved through further direct negotiations'. He stated that the difference had already resulted in some disruption to the airport and that in view of the situation the PSRC had concluded that it had 'no option' but to formally notify her of a dispute and to use her offices to facilitate a resolution of the differences in accordance with the Industrial Disputes and Conditions of Employment Law. On receipt of this letter the DIDO sought an early meeting with nominated union representatives of the AFS. The FTO of Unite was currently off-Island. He wrote to the DIDO on 4 February stating that 'as far as Unite the Union is concerned there is no dispute over pay and conditions at this time and the ... [AFS] ... staff are working to their Agreement. The only difficulty is with overtime cover'. He asked the DIDO to contact him on his return on 9 February should she wish to do so. On 6 February the DIDO wrote to the FTO arranging a meeting for 9 February. On 6 February the IDOs issued a press release stating that PSRC had formally notified them of a dispute and that, having met representatives of the employer, their view was that the present circumstances revolved around a 'management issue'. It was emphasised that this decision could change. The press release stated that the IDOs 'consider all aspects of the circumstances in the widest context, eg in this instance, the travelling public, the airlines and their staff, the States as Employers and the Fire Fighters'.

<sup>45</sup> Michele Tiffin, Witness Statement, para 3 and Michael Fooks, Witness Statement, paras 3 and 4.

<sup>46</sup> Evidence of Michele Tiffin, Day 4, p 47F.

<sup>47</sup> Now known as the Senior Employment Relations Advisory Officer.

<sup>48</sup> Michael Mahy, Witness Statement, paras 12 and 13.

<sup>49</sup> Deputy Brouard, Witness Statement, para 28.

<sup>50</sup> Michael Mahy, Witness Statement, paras 14 and 15.

5.23 On 9 February 2009 the DIDO received an email from the Chief Negotiator of PSRC explaining why, in the view of PSRC, there was a difference over pay and conditions. The DIDO met the Unite FTO and AFS representatives that afternoon; there was then a meeting between PSD and the AFFs, which the IDO was invited by Unite to attend as an independent witness, which led to a way forward being agreed. On 10 February 2009 the Minister of PSD outlined the proposed agreement to PSRC and sought PSRC consent to the payment of £24,000 to be distributed to the AFFs. PSRC agreed to this.<sup>51</sup> The same day the IDO issued a press release stating that, following a meeting on the previous day between PSD, the AFFs, including Unite's FTO, and representatives of the Industrial Relations Services including the IDOs, an agreement had been reached between the AFFs and the PSD on 'the way forward to resolve the long standing issue' at the airport. Over the following days the agreement 'in principle' was reduced to a formal Letter of Agreement. This Letter of Agreement was drafted by the Senior Negotiator of PSRC; amended by officers of PSD; forwarded for comment by representatives of the AFS and amended to take account of their comments.<sup>52</sup> We outline the terms of this Agreement in para 5.25 and it is contained in Appendix 1.

5.24 On 10 February 2009 the DIDO wrote to the parties stating that she had decided not to accept the notification as an 'industrial dispute' for the purposes of the 1993 Law. In her letter to the Chairman of PSRC she said that, having made inquiries of both sides, she had been unable to find any compelling evidence of (a) constructive dialogue or negotiations between the parties relating to terms and conditions and pay as outlined in the Burchill report or (b) any formal claims. She commented that 'to attempt to resolve the impending risk of losing firefighter cover when the temporary agreement ran out on 31 January so late in the process and by not taking the initiative to discuss it earlier, left the ... [PSD] ... in an invidious situation with little chance of resolving the matter'. On 11 February 2009 the Chairman of PSRC replied to this letter, stating that he agreed with a large part of the DIDO's letter and affirming that PSRC had not sought to stop constructive dialogue or meaningful negotiations by referring the matter to her. He continued:

I had always understood that one of the main reasons Guernsey has an Industrial Disputes Law was to protect the community's vital services if ever they faced disruption as a result of an industrial relations problem.

Surely the realisation of such disruption simply has to override any considerations about whether or not meaningful and constructive dialogue has taken place.

If disruption had continued (or continues) surely this must be a matter for you and the Law to resolve because that is the Law's purpose.

On 18 February 2009 the DIDO wrote to the Chairman of PSRC affirming her original decision and her conclusion that the manning levels were a 'management

<sup>51</sup> Deputy Brouard, Witness Statement, paras 31 and 32.

<sup>52</sup> Terry Harnden, Witness Statement, para 34; Evidence, Day 2, pp 99H-100B

issue'. She also stated that there was nothing in the Law to prevent industrial action being taken.

### **The February 2009 Agreement**

- 5.25 The Letter of Agreement referred to in para 5.23 (the 'February Agreement') was signed for and on behalf of Unite, PSD, and the PSRC on 20 February 2009. It concerned 'the procedure for consultation, discussion, agreement and resolution of all operational personnel and associated pay and conditions related issues for the proper and necessary provision of Airport Fire Services at Guernsey Airport and the determination of these issues'. The agreement is contained in Appendix 1 of this report. It provided for a forum, chaired by an independent facilitator provided through the offices of the IDO and acceptable to all parties. It specified that representatives of Unite, the AFS and Airport Management and officers from both the PSD and the PSRC would be entitled to attend the meetings. It provided that members should enter the process with the express intention of concluding proceedings by no later than 9 May 2009. In the event that any issues remained outstanding by that date, or at the facilitator's discretion an earlier date, then 'unless the facilitator believes there is a realistic possibility of agreement through an extension of the forum's proceedings they shall be submitted for resolution by binding arbitration'. In recognition of acceptance of this procedure and on the understanding that AFFs would maintain minimum manning levels until 9 May, the sum of £24,000 would be available for payment on a basis agreed between Unite and PSD.

### **Joint Working Group**

- 5.26 The SIRAO was asked to act as the independent facilitator and to chair what became known as the Joint Working Group ('JWG') meetings. Eight meetings were held between 23 February and 7 May 2009. At its first meeting the JWG agreed that it would look at all relevant issues over the next few months, including recruitment and retention; on call systems; minimum manning levels - temporary depletion; reviewing the 1990 Agreement; recognition of the AFFs and the value of the work undertaken; consideration of the Burchill report and financial implications. The SIRAO said that many of the next six meetings were constructive. Outside the JWG process, Airport Management and AFFs continued to look at the management issues agreed at the first JWG meeting but the SIRAO said that, despite significant progress both outside and within the JWG, by late March it was clear that the remuneration package was going to be a 'significant sticking point'.<sup>53</sup> The Deputy Airport Director, who represented both Airport Management and the PSD in the JWG, said that 'towards the end of the process there was an agreement between airport management, the Fire Station Commander and the men as to how the bones of the new working practices would be'.<sup>54</sup> However there was 'a difficulty in that the PSRC had a mandate and airport management had a mandate, and our mandates were different'.<sup>55</sup>
- 5.27 On 5 April 2009 one of the AFS representatives, Paul Ozanne, sent an email to the Chief Minister stating that any confidence the AFFs had in the process reaching some form of amicable conclusion before the deadline had already been lost and asking him

<sup>53</sup> Michael Mahy, Witness Statement, para 29.

<sup>54</sup> Evidence of Simon Macphail, Day 3, p 14C.

<sup>55</sup> Above, p 19H.

to intervene in the negotiations. The Chief Minister undertook to discuss this message with Policy Council members. The email was tabled at the Policy Council meeting on 6 April 2009. On 8 April 2009 the Chief Minister wrote to Mr Ozanne stating that the Policy Council agreed that it was in the interests of all parties to resolve the matter in the next few weeks and encouraging them to work together in an attempt to find a lasting solution. He stated that in the circumstances the Policy Council was 'quite clear that it would be inappropriate for it to intervene in the process'. On 19 April 2009 Mr Ozanne again wrote to the Chief Minister expressing his concerns. The Chief Minister replied that this matter was a permanent agenda item at Policy Council meetings.

5.28 On 24 April 2009 a final offer was communicated to the AFFs by the Deputy Airport Director. On 30 April 2009 the SIRAO was asked by the PSRC negotiator to convey to the AFFs that the offer would remain valid until midday 1 May 2009 after which it would be withdrawn. The SIRAO communicated this by email to the AFFs, copied (among others) to the FTO. He also stated in the email that if the offer was rejected or the deadline was not met, he had been asked by PSRC/PSD to organise an arbitration hearing in accordance with the joint agreement. At around 15.00hrs on 1 May the SIRAO received a telephone call from the FTO stating that he had not received any official offer from the PSRC or PSD, neither had he been advised directly of any deadline so he was not in a position to advise the AFFs either way. He said that he would be happy to discuss any formal offer at the JWG meeting the following week. This meeting was subsequently set for 7 May. The SIRAO communicated this message to the PSRC negotiator who stated that the PSRC/PSD position was that a negotiated settlement was not possible and that the arbitration clause needed to be activated 'without delay'. The SIRAO wrote to the parties on 1 May stating that he had concluded that there was no longer any possibility of the issues being resolved through further discussion and negotiation and explaining the process by which arbitration by an ACAS arbitrator could be arranged. The letter stated that the parties would need to sign agreed terms of reference, which may be drafted by the parties themselves or with the aid of a conciliator.<sup>56</sup>

5.29 A final meeting of the JWG took place on 7 May. The Union representatives confirmed that they would not be present at any arbitration as the central issues concerned difficulties in providing cover, which were management issues. By implication terms of reference could not, therefore, be agreed.<sup>57</sup> The SIRAO told us in oral evidence that there would, in any event, have been a difficulty in arriving at terms of reference for an arbitrator because of the sheer volume of factors that were involved in this process. Both he and ACAS with whom he had discussed the matter took the view that the parameters for arbitration were too wide.<sup>58</sup> He also commented that the February Agreement was unclear as to the form of arbitration that was envisaged; whether it should be a single arbitrator or board of arbitration, for example.<sup>59</sup>

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<sup>56</sup> Michael Mahy, Witness Statement, paras 38 and 39.

<sup>57</sup> Above, paras 41 and 42.

<sup>58</sup> Evidence of Michael Mahy, Day 4, pp 97E-F, 99D-100B.

<sup>59</sup> Above, p 98C.

- 5.30 At the JWG meeting on 7 May the Union said that AFFs would return to their former working practices under the 1990 Agreement once the February Agreement expired.<sup>60</sup>

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<sup>60</sup> Simon Macphail, Witness Statement, para 9.



## CHAPTER 6

### EVENTS OF 25-27 MAY 2009

- 6.1 In this chapter we detail the events leading up to and following the industrial action on 25 May 2009.

#### EVENTS LEADING UP TO 25 MAY 2009

- 6.2 On 7 May, following the final meeting of the JWG, the Chairman of PSRC wrote to the DIDO reporting that it had not proved possible to reach a negotiated settlement and that in these circumstances PSRC and PSD requested her 'to take the necessary action in accordance with the Industrial Disputes Law without delay'.
- 6.3 Airport Management wrote to Mr Le Cras on 11 May requesting that the Union confirm that it would work alongside contract staff. Mr Le Cras replied the next day that as airport staff were complying with the existing agreement [the 1990 Duties & Responsibilities Document] and that all shifts were at present covered, the Union saw no need to discuss the provision of firefighters from the UK.
- 6.4 On 12 May Deputy Trott wrote to the DIDO supporting an early reference to an Industrial Disputes Tribunal.
- 6.5 On 14 May the DIDO wrote to Deputy Brouard and Mr Le Cras reporting on meetings she had had with representatives of the PSRC, PSD, Airport Management, the Union and the AFS to establish the facts. She stated that she had been unable to establish the precise nature of the matters in dispute, or any evidence of either a claim or rejection of a claim, which she considered to be fundamental aspects in determining whether or not a dispute exists. In the light of this she intended to progress the matter as an 'apprehended' dispute in accordance with s 3(1)(a) of the 1993 Law. She indicated an intention to proceed by requesting that AFS meet with PSD and the Airport Management to discuss working practices, then for there to be meetings between AFS and PSRC on pay, all under her chairmanship.
- 6.6 The first meeting was fixed for 19.00hrs on 21 May. In the course of the meeting the DIDO indicated that should cover drop it might be necessary for her to step in and move the industrial dispute resolution process forward with greater speed on terms she would determine.<sup>1</sup>
- 6.7 Following the end of the February Agreement in which firefighters had guaranteed to provide minimum manning levels in return for a temporary payment, overtime had been worked on a voluntary basis by the firefighters from 9 May until 21 May. This was in spite of the fact that on 7 May JWG talks had collapsed, following which

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<sup>1</sup> Michele Tiffin, Witness Statement, para 12; Evidence, Day 4, p 59B-E.

Airport Management issued a press release advising of the possibility of flight disruption.

- 6.8 On Friday 22 May, a member of staff who was booked to work overtime failed to report for duty. A telephone call suggested that he was unwell and unable to attend. On that day, cover would have reduced to Category 5, had a station officer not agreed to work an early shift with the result that cover was restored to Category 6. The airlines were aware of the situation, but no flights were affected.<sup>2</sup>
- 6.9 The previous evening the first meeting chaired by the DIDO and attended by Airport Management, the Unite FTO and firefighter representatives was held at the airport. In the course of these discussions Airport Management was made aware that cover would be reduced to Category 5 for one shift because of shortage of staff. The parties at the meeting were also told that Mr Le Cras, the Unite FTO, would be on leave over the Bank Holiday.<sup>3</sup> The result was that both the airlines and Airport Management were aware, certainly by the following morning, 22 May, that cover would be short on Monday 25 May and Tuesday 26 May for part of each day, such that only Category 5 cover would be provided.
- 6.10 Advice was issued to airlines of potential disruption on the following Monday and Tuesday. Attempts were made to see whether anyone was willing to provide cover for the gaps. These were not successful. It is not uncommon for Airport Management to experience difficulty in finding staff willing to work Bank Holiday weekends as it is traditionally one of the least popular times to be worked voluntarily.<sup>4</sup> A press release was issued at 17.45hrs on Friday 22 May advising of disruption during the afternoons of Monday and Tuesday.<sup>5</sup>

#### **EVENTS OF MONDAY 25 MAY 2009**

- 6.11 In light of the above no-one should have been surprised when, as had been intimated, cover dropped at 13.00hrs on Monday 25 May to Category 5. The DIDO was informed and she immediately called a meeting, initially to be held at Raymond Falla House. The firefighters were reluctant to attend in the absence of Mr Le Cras, their FTO, who was on leave and could not be contacted. However, they agreed to attend provided that the meeting was switched to the airport so that the firefighters on duty could be present. This meeting was attended by Deputy Brouard, PSRC Chair; Steve Naftel and Terry Harnden, negotiators; Deputy Flouquet, PSD Minister and Adrian Lewis, his Chief Officer; the airport director and his deputy; the entire watch of firefighters and two elected staff representatives; the DIDO and the Industrial Relations Advisory Officer. During the course of the discussions that afternoon a number of breakout sessions took place in different areas of the fire station. The DIDO held discussions with the States party and at one stage there was a session with the DIDO, the States party and all the firefighters on the station. The DIDO called for a break in the discussions as it was clear that the round-table meeting was not making

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<sup>2</sup> Colin Le Ray, Witness Statement, exhibit p 12.

<sup>3</sup> Evidence of Michele Tiffin, Day 4, pp 58F-59A.

<sup>4</sup> Evidence of Colin Le Ray, Day 1, p 37B.

<sup>5</sup> Colin Le Ray, Witness Statement, exhibit p 12.

progress towards resolving the issue of returning the airport to full operations. The firefighters then left the room, leaving the DIDO and the States representatives.

- 6.12 The DIDO asked the Minister of the PSD whether he would be prepared to make an interim payment to the firefighters in order to keep them at work and for discussions to continue. The Minister replied that to his knowledge this was not within his gift. In terms of payment it was a matter for the Chairman of the PSRC.<sup>6</sup>
- 6.13 The Chairman of the PSRC declined to make a payment on the grounds that payments had previously been made to allow talks to continue but no conclusion had been reached and even in this current situation where there was a means of concluding the issue if agreement could not be reached, that option [Arbitration]<sup>7</sup> had not been followed.
- 6.14 Mr Adrian Lewis told us<sup>8</sup> that the meeting continued and was later joined by Mr Ozanne, the principal spokesman on this occasion for the firefighters. When mention was made by the Chief Officer of PSD that consideration had been given to some form of temporary payment, Mr Ozanne commented that the firefighters were not interested in a temporary payment in any event. This contrasts with the firefighters' evidence<sup>9</sup> that they believed that the meeting had been called to find a temporary solution for the next week, at the end of which discussions chaired by the DIDO would have resumed, following the return of the FTO from leave.
- 6.15 The States representatives persisted in asking the firefighters to put forward a figure for a pay claim. The firefighters were unwilling to do so in the absence of their FTO. The firefighters were nevertheless pressed to put forward a figure, which they did, but this was not acceptable to the States representatives who made a counter-offer in the same terms as those which had previously been rejected by the firefighters.
- 6.16 After discussions with the on-duty crew and the other firefighters, at around 17.00hrs, Mr Ozanne advised that cover was immediately being dropped to Category Zero, effectively closing the airport. The firefighters remained on station and provided a service for emergency and medical flights allowing those flights to take off with a full complement of passengers. Nevertheless there were significant levels of distress, anger and frustration experienced by people left stranded.
- 6.17 The firefighters contended in their evidence<sup>10</sup> to the Inquiry that the DIDO should not have called the meeting on 25 May. Their view was that notice had been given of the likely fall in cover and that the airport would have continued to operate at the reduced level for two shifts.
- 6.18 The evidence of the DIDO<sup>11</sup> was that she had said at the meeting on 21 May, having apprehended the dispute, that she would immediately call a meeting of all parties,

<sup>6</sup> Evidence of Deputy Flouquet, Day 6, pp 78H-79C.

<sup>7</sup> The February Agreement, Appendix 1, p 85.

<sup>8</sup> Evidence of Adrian Lewis, Day 6, p 60C.

<sup>9</sup> Evidence of Paul Ozanne, Day 5, p 52H.

<sup>10</sup> Evidence of Kevin Rabey, Day 5, p 45D.

<sup>11</sup> Evidence of Michele Tiffin, Day 4, p 59E.

should the category reduce, to understand the reasons for the fall in category, and if necessary to take appropriate action under the 1993 Law. If the station officer had not stepped in on Friday 22 May to provide cover she would have called the meeting then. The firefighters were extremely uncomfortable attending a meeting without their FTO and felt that they were pressured to attend. The staff representatives were unwilling to meet the DIDO and all the States representatives on their own. Feelings were running high amongst the firefighters who were unhappy at being called to a meeting in these circumstances.

- 6.19 At what stage and in what circumstances this anger and frustration amongst the firefighters, who felt the meeting had been a waste of time, led to cover being reduced to Category Zero is unclear. The firefighters' evidence<sup>12</sup> was that they reduced cover when they saw the States party leaving the premises. The evidence of the States' representatives<sup>13</sup> was that Mr Ozanne returned to the room they were occupying to advise them that the cover was immediately being dropped to Category Zero and that they did not leave the airport until some time later. The evidence of the DIDO was that talks broke down when the PSRC indicated that nothing more could be done and the firefighters too refused to move.<sup>14</sup>
- 6.20 Following the cessation of talks the DIDO put in hand arrangements for an Industrial Disputes Tribunal and started to draft the terms of reference. Drafting was completed overnight. The IDT was asked to determine:
- (a) Whether or not a 'formal' system to maintain minimum manning levels should be put in place, and if so, to determine whether or not a payment should be made and how much that payment should be
  - (b) The basic pay rates for Airport Fire Fighters and Crew Commanders and the date from which they are to be effective.

And to make an Award.

- 6.21 The DIDO did not recall ever being asked not to convene an Industrial Disputes Tribunal, although she was aware that Unite contended that it was not in dispute. There was no evidence before the Tribunal that the terms of reference drawn up by the DIDO were ever submitted to Unite and Mr Le Cras gave evidence that he had never seen them, nor was he aware of their contents until they were read out to him at the Inquiry.
- 6.22 Adrian Lewis, the Chief Officer of PSD, telephoned Nigel Lewis, the Deputy Chief Executive at approximately 21.00hrs that evening to advise that talks had ended that afternoon with firefighters dropping cover to Category Zero and that the DIDO was attempting to set up a tribunal but the firefighters were unlikely to attend.

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<sup>12</sup> Evidence of Paul Ozanne, Day 5, p 54C.

<sup>13</sup> Evidence of Adrian Lewis, Day 6, p 60A.

<sup>14</sup> Evidence of Michele Tiffin, Day 4, p 60C-D.

- 6.23 Nigel Lewis informed Mike Brown, the Chief Executive, but was unable to speak to the Chief Minister and sent him an email informing him of the situation. At approximately 22.30hrs Nigel Lewis contacted Catherine Veron, the Emergency Planning Officer, who confirmed that Paul Whitfield (Home Department) and other Emergency Powers Advisory Group ('EPAG') members had been contacted.

#### **EVENTS OF TUESDAY 26 MAY 2009**

- 6.24 There was a meeting at 08.30hrs attended by Nigel Lewis, Adrian Lewis, and Simon Elliott to consider how to address matters. A meeting was then arranged for all relevant States officials at 13.00hrs.
- 6.25 In the morning the airlines and others were trying to make arrangements to accommodate stranded passengers. Mr Hart of Aurigny told us that he understood from conversations with civil servants that the employers were determined to see out the strike and were planning to close the airport for ten days. (This is likely to be a reference to the fact that it was thought that it would take up to ten days to set up the IDT, whereas in the event it was fixed for 28 May).
- 6.26 The Chief Minister and the Commerce and Employment Department were receiving telephone calls and emails from businesses affected by the closure demanding action to resolve the issue. In the course of a telephone conversation between the Chief Minister and Mr Hart of Aurigny Air Services, in which the Chief Minister was making an enquiry on behalf of one of his constituents, Mr Hart informed the Chief Minister that he should use his good offices to bring the industrial action to an end. Mr Hart said that the situation required strong leadership. The Chief Minister responded that involvement by him would lead to the PSRC resigning but he gave no commitment as to his future action.<sup>15</sup>
- 6.27 At approximately 10.45hrs, a meeting took place at Les Vardes House between Nigel Lewis, Paul Whitfield and Catherine Veron at which it was agreed that they would await developments at the meeting of States officials scheduled for 13.00hrs (see para 6.41) before calling an EPAG meeting. It was also agreed that James Falla would act as media co-ordinator.
- 6.28 At 11.00hrs Deputy Trott telephoned Nigel Lewis to report that Richard Digard, editor of the Guernsey Press, had been invited by the firefighters to the airport to hear their story and that he, Deputy Trott, had also been invited to attend. He and Nigel Lewis decided that, because of the strategic impact on the Island of the closure of the airport and the fact that PSRC's efforts to resolve the issue had come to an end pending the Industrial Disputes Tribunal, the date of which was then unknown, it would be worthwhile Deputy Trott hearing the concerns of the firefighters and thus keeping open contact with the States. It was agreed that Simon Elliot, the newly appointed Head of Human Resources and Organisational Development ('HR & OD'), should accompany Deputy Trott which would allow Simon Elliott to meet the firefighters and assist him in forming his own view about the issue. Nigel Lewis

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<sup>15</sup>Malcolm Hart, Witness Statement, para 9.

agreed to advise Deputy Brouard of the request for the meeting which he did at 12.00hrs at a meeting with him and Steve Naftel.

- 6.29 At 12.30hrs Nigel Lewis accompanied Deputy Brouard to Radio Guernsey and to interviews with Channel TV and Island FM.
- 6.30 At the same time the meeting at the airport between the firefighters, Richard Digard, Deputy Trott and Simon Elliott commenced.
- 6.31 We heard evidence in relation to this meeting from Mr Le Cras and the firefighters<sup>16</sup>, Deputy Trott<sup>17</sup>, Mr Elliott<sup>18</sup> and Mr Digard.<sup>19</sup> The initiative for this meeting came from Unite and the firefighters. Mr Digard said it was attended by 30 or more firefighters (his estimate), Mr Le Cras, the Chief Minister, Mr Elliott and Mr Digard. The meeting commenced at approximately 12.30hrs and lasted for 3-3½ hours. Mr Digard had been invited to the meeting by the firefighters to hear their story at first hand following what they felt to be a hostile and inaccurate account in the Guernsey Press under the headline 'Held to Ransom'.
- 6.32 Deputy Trott and Mr Digard told us that Deputy Trott had been invited to attend the meeting by Mr Le Cras, which Mr Le Cras confirmed.
- 6.33 At the outset of the meeting Deputy Trott made it clear that he was not there to negotiate, that his status was that of observer in order to listen to the concerns so as to be able to convey them to a wider audience if called upon to do so. In his evidence Mr Digard painted for us a graphic picture of the mood of the meeting, which he described as 'emotionally charged'. Mr Le Cras outlined the men's grievances and described the negotiating history, the relationship with the PSRC and the breakdown of trust between the firefighters and the PSRC. Assisted by contributions by the firefighters themselves, Mr Le Cras went into detail in relation to shift patterns, shift cover, overtime and earnings and a lot of ground was covered.
- 6.34 According to Mr Digard's evidence Mr Elliott asked numerous questions of the firefighters by way of clarification, whilst Deputy Trott observed. Mr Digard said that the issue they struggled with was that the firefighters asserted strongly that the issue was not pay but retention and so was not a dispute, but that the retention issue could be solved by more pay. A lot of Mr Elliott's questions went to this issue.

**Payment of £4000 per AFF to Guarantee Cover for One Year**

- 6.35 Mr Le Cras told us that in his view more time was needed to carry on discussions between Unite and PSRC. He said that, using information about costs expended on overtime and advertising for and training new staff, he had previously put forward to PSRC the proposal that if each man was paid £4000 as a retention payment it would guarantee cover for one year and would give sufficient time to iron out all the difficulties. He told us that he reiterated that solution to Deputy Trott at the meeting.

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<sup>16</sup> Evidence of Ron Le Cras and firefighters Ozanne, Rabey and Redwood, Day 5, pp 57-59.

<sup>17</sup> Evidence of Deputy Trott, Day 5, pp 74F-76F.

<sup>18</sup> Evidence of Simon Elliott, Day 2, pp 77E-78G.

<sup>19</sup> Evidence of Richard Digard, Day 5, pp 91G-96F.

Mr Le Cras and Mr Rabey in their evidence told us that nothing was promised to them at the meeting, but as a gesture of goodwill Category 6 cover was restored as Deputy Trott and Mr Elliott left the building.

- 6.36 Deputy Trott's<sup>20</sup> and Mr Elliott's<sup>21</sup> recollections are that the suggestion that the firefighters wanted a payment of £4000 came in response to a question posed by Mr Digard along the lines of 'Whilst these gentlemen can't ask what you want, they're not here to negotiate, you know I can [ask]. What is it that you would want?'
- 6.37 Deputy Trott<sup>22</sup> told us that Simon Elliot undertook to ensure that the message (i.e. they wanted a payment of £4000) would be taken back to Frossard House. He also told us that he suggested to the firefighters that they needed to return to work as soon as possible and that in his judgement they were doing their cause no good whatsoever. They were haemorrhaging public support and the sooner they showed a gesture of goodwill and returned to work the better.
- 6.38 Mr Digard's recollection,<sup>23</sup> supported by his contemporaneous note, accords with the evidence given by Mr Le Cras, namely that Mr Le Cras came forward with the solution. There is no evidence before us to support a view that the proposal was made as a result of negotiation or that any commitment was given by Deputy Trott or Mr Elliott.
- 6.39 What is clear is that the presence of Mr Elliott, with his HR experience and expertise, had an immediate beneficial effect on the firefighters. Mr Ozanne told us:<sup>24</sup>

We'd never had anyone with HR experience and it was a breath of fresh air to speak to someone. I think that's a major cog in the whole mechanism that's been missing for a long, long time.

- 6.40 In a particularly revealing passage of evidence Mr Digard mentioned<sup>25</sup> that Mr Le Cras had described negotiations as being confrontational and aggressive. Mr Digard told us that Mr Elliott had listened to the men complain to this effect and say that the current negotiators had gone over the same ground many times and that no movement had occurred and that Mr Elliott had said:

Well look, we can get fresh negotiators on the scene.

Mr Digard told us that the room went quiet, because the firefighters couldn't believe it:

Phew, this has never happened before.

and they actually questioned him and said:

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<sup>20</sup> Evidence of Deputy Trott, Day 5, p 75H.

<sup>21</sup> Evidence of Simon Elliott, Day 2, p 78A.

<sup>22</sup> Evidence of Deputy Trott, Day 5, p 76C.

<sup>23</sup> Evidence of Richard Digard, Day 5, p 95A.

<sup>24</sup> Evidence of Paul Ozanne, Day 5, p 56H.

<sup>25</sup> Evidence of Richard Digard, Day 5, pp 96H-97.

Sorry, are you serious about this?

Simon Elliott said:

Yes, of course. Where I come from, if you can't make progress then it's quite common to change the negotiating team and to bring in fresh minds and perhaps a fresh approach to it.

- 6.41 At 13.00hrs Adrian Lewis chaired an operational group comprising officers of various departments to review the situation and consider how the departments should respond at the operational level to the disruption.
- 6.42 In the afternoon there was a telephone conversation between Nigel Lewis and Deputy Trott and another between Nigel Lewis and Simon Elliott whilst Deputy Trott and Simon Elliott were at the airport. Simon Elliott indicated serious concerns about the picture that was emerging which indicated a major breakdown in employee relations, with a clear indication from the firefighters that they were not prepared either to attend a tribunal or to return to work following its decision. Prolonged action was therefore likely, with little prospect of repairing relations and creating time and space in which to organise proper working arrangements. In all likelihood, therefore, the tribunal would reach a decision without representation from the firefighters and this would not resolve what was a deep-seated problem.
- 6.43 Nigel Lewis confirmed to Simon Elliott that the firefighters could be told that their message would be relayed to the Emergency Powers Authority ('EPA'), including a suggestion that emerged during their explanation of their concerns that there was an opportunity to create space for negotiations with a fresh face.
- 6.44 Nigel Lewis agreed with Deputy Trott that an 'EPA'<sup>26</sup> should be convened at 16.30hrs and that Deputy Brouard should be invited at 17.15hrs. Nigel Lewis requested Paul Whitfield to convene 'an extended EPA' meeting to include a law officer.
- 6.45 At 15.35hrs cover at the airport was restored to Category 6.
- 6.46 In the course of a meeting at 16.00hrs between Nigel Lewis, Adrian Lewis and Deputy Flouquet concerning the officials' meeting at 13.00hrs and the fact that talks were in progress at the airport, a message arrived from Colin Le Ray indicating that Category 6 cover had been restored. At 16.30hrs the 'extended EPA meeting' took place.
- 6.47 At 16.55hrs Deputy Brouard received confirmation that an IDT had been arranged for 28 May along with the terms of reference.

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<sup>26</sup> On this and subsequent pages of this Report the nomenclature used by us to describe the meeting is that adopted by the participants.

### **Meeting of the Emergency Powers Authority Panel**

- 6.48 It was to this meeting that Deputy Trott communicated the proposal from the firefighters. The meeting was minuted<sup>27</sup> (2 identical copies signed by Deputy Trott exist dated 6 and 14 July respectively) and the full minutes are at Appendix 1. The persons invited to the meeting chaired by Deputy Trott were Deputies Flouquet, Adam, Mahy, McNulty Bauer, Parkinson and Sirett. In addition the following officials were present: Howard Roberts, Nigel Lewis, Paul Whitfield, Jonathan Buckland, Adrian Lewis, Simon Elliott, Colin Le Ray, James Falla, Catherine Veron and Doug Guilbert.
- 6.49 An issue on which the Tribunal heard much evidence was whether the meeting was properly a meeting of the EPA exercising executive powers. The minutes of the meeting are headed 'Emergency Powers Authority Panel' and they record the Deputy Chief Executive as saying at the outset:
- ... although membership of the meeting consisted of the Panel Ministers entitled to serve on the Emergency Powers Authority in his view the current strike by the airport firemen did not at this point constitute an emergency in the full sense of the Law. Nevertheless the Chief Minister had agreed that a meeting was required to decide pragmatically what might be done and whether circumstances could develop whereby an 'emergency' would exist. Up until the present time, the matter had been dealt with by the Public Services Department and the Public Sector Remuneration Committee. However, there was now a strategic threat requiring corporate solution as the Island's reputation was at stake. The Deputy Chief Executive drew comparisons with the status of the meeting and those meetings held in 2008 to address fuel supply issues and the steps taken by the Policy Council in its decision to purchase the tankships.
- 6.50 The Tribunal of Inquiry spent a considerable amount of time taking evidence on the topic of the status of this meeting, which has been described to us variously in minutes, correspondence and evidence as a meeting of the Emergency Powers Authority, a meeting of the Emergency Powers Authority Panel, a meeting of the Shadow EPA, a meeting of the Extended EPA and even a meeting of the Policy Council. The relevance of this distinction is that it is only if it was a meeting of the EPA, properly constituted, that it could declare a state of emergency and exercise executive powers which would have been outside the mandate of the Policy Council.
- 6.51 We have no doubt, having considered all the evidence, that the meeting on the afternoon of 26 May was NOT a meeting of the EPA exercising executive powers. It was not properly constituted either under the 1965 Law or under Rule 17 of the Constitution and Operation of States Departments and Committees Rules and a state of emergency was not declared.
- 6.52 The fact that the meeting had no executive powers meant that when a consensus was reached it was expressed in the form of support for PSD to make the payment to the firefighters as it was that department that, on the advice of HM Comptroller, was able,

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<sup>27</sup> Appendix 1, p 87.

within the terms of its mandate, to make the payment given that the PSRC was unwilling to do so.

- 6.53 However, given the various labels used to describe the body meeting that afternoon, which were all variations on the theme of the EPA, it would not be surprising if anyone who had not heard Nigel Lewis indicating the nature of the meeting had the impression, as Deputy Brouard did, (having been called in for only part of the meeting) that it was the Emergency Powers Authority acting as such that had reached a decision to pay the firefighters. This impression would have been strengthened by the terms of the press release<sup>28</sup> issued the next day which was read by Deputy Trott to the States at about the same time. In their evidence to us both Deputy Trott and HM Comptroller, neither of whom had approved the terms of the press release, acknowledged that it was wrong. The Comptroller did not think there was any reason, though, why Deputy Brouard should have been confused as to the status of the meeting, given the persons who were in attendance.

- 6.54 The minutes of the meeting further record as follows:

In response to a question from the Deputy Chief Executive who asked whether the current meeting would be acting ultra vires if it agreed to support the provision of the suggested payment to the airport firemen, HM Comptroller advised that the mandate of the PSRC included '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'. ..... HM Comptroller referred to comments made earlier in the meeting by the Head of Human Resources & Organisational Development from which he understood that the financial element of the retention arrangements, under which the airport firemen had indicated that they would be prepared to co-operate with a full review and guarantee cover for 12 months, was not properly classifiable as remuneration. The Head of HR & OD confirmed that this was his understanding of the position.

HM Comptroller further advised that the mandate of the Public Services Department included the operation of the airport, part of which was the maintenance of fire cover. The Department could undoubtedly use its budget to defray the cost of such cover. The only question was whether the PSRC's responsibility for collective bargaining in respect of remuneration totally precluded the Department from making any payment to the airport firemen beyond what had been agreed by the PSRC as remuneration.

HM Comptroller concluded that the Public Service Department's mandate could be interpreted as permitting the Department to make a payment on the basis that this was not classed as remuneration and in [the] light of the Department's responsibility to do everything to keep the airport open and the very real danger that, without making the payment, the airport would not be open the following morning and for a period of uncertain duration.

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<sup>28</sup> Press Release dated 27 May 2009, Appendix 1, p 101.

- 6.55 In his evidence to us Mr Elliott<sup>29</sup> told us that prior to the Inquiry he had not previously seen the minutes of the meeting. He told us that the message he had been trying to get across at the meeting on 26 May was that the payment of £4000 did not form part of the 2009 pay deal but he did not recall making the statement that it was not remuneration. However, Mr Roberts in his evidence was clear that Mr Elliott had said that it was not part of remuneration and in his letter<sup>30</sup> of 2 June to Deputy Trott which was written in close proximity to the events in question he said that:

...., the Head of Human Resources, had I believed, stated that the financial incentive element of the retention arrangements under which the airport firemen had indicated that they would be prepared to co-operate with a full review and guarantee cover for twelve months, was not properly classifiable as 'remuneration'. I asked Mr Elliott if I had correctly understood what he had said, and this he confirmed.

- 6.56 At 17.15hrs Deputy Brouard and Terry Harnden were called in to the 'extended EPA' meeting. It was explained to them what had transpired at the meeting earlier with the firefighters and that it was felt that the most pragmatic way to proceed was to pay the firefighters £4000 each as a temporary arrangement, separate from their 2009 pay claim, for which they would guarantee full cover for the next year during which HR would undertake a review of their jobs. Deputy Brouard set out a number of reasons why the payment should not be made and stated that an IDT had been arranged that week on 28 May. He and Mr Harnden then left the meeting.
- 6.57 At approximately 19.00hrs Deputy Brouard was briefed by the Chief Minister on the outcome of the meeting and Deputy Brouard's evidence<sup>31</sup> to us was that the Chief Minister told him that the EPA had decided that it was going to make the payment to the firefighters. Deputy Trott's recollection of their conversation<sup>32</sup> differs. He did not say that the EPA had met and determined (*sic*) but rather he explained the extended Panel's support for the action that the PSD would be taking.
- 6.58 At approximately 19.30hrs the decision of the meeting was conveyed on the telephone by Colin Le Ray and Simon Elliott to Mr Ozanne. They explained that the meeting was recommending to PSD payment of £4000 per firefighter in exchange for which the firefighters would have to return to work and maintain full cover at Category 6 for the next year whilst meaningful negotiations took place. Simon Elliott said that the PSD Board would be meeting the next day to discuss the payment that was being recommended and that the payment could not be confirmed until the following day. Mr Ozanne confirmed that the firefighters would stay at work that evening to clear the backlog and would work normally the following day, pending consideration of the agreement.
- 6.59 Deputy Flouquet contacted the political members of the PSD and convened a Board meeting for the following morning.

<sup>29</sup> Evidence of Simon Elliott, Day 2, p 80H.

<sup>30</sup> Letter, HM Comptroller to Deputy Trott, Appendix 1, p 109.

<sup>31</sup> Evidence of Deputy Brouard, Day 2, p 28B.

<sup>32</sup> Evidence of Deputy Trott, Day 5, p 80G.

## EVENTS OF WEDNESDAY 27 MAY 2009

- 6.60 At 08.45hrs Nigel Lewis briefed the Chief Executive of developments.
- 6.61 The Board of the PSD met at 09.00hrs and agreed,<sup>33</sup> with reluctance, to make the payment to the firefighters. Deputy Flouquet reported that the previous afternoon a meeting had taken place of seven members of the Policy Council acting as the EPA. He said that at that meeting Deputy Trott and Simon Elliott had reported on the meeting that they had had with the firefighters. It had not been a negotiation but it had been ascertained that a one-year payment of £4000 per man would secure the return to work of the firefighters, a resumption of Category 6 cover, and that this would be guaranteed for twelve months while further talks continued about the employment contract. He added that the EPA had concluded that PSD should pay this recruitment/retention payment on a temporary basis over the next twelve months. The Minister said that he understood that the Union and the firefighters had made it clear they would not attend the IDT and that industrial action would not stop as a result of the Tribunal being held. Nor would they give any assurance that they would return to work after the Tribunal had delivered its decision.
- 6.62 One of the Board members questioned whether the EPA had the right to instruct that a payment be made and said that he was uncomfortable with the arrangement and unclear about the role of the EPA. The Chief Officer's response is minuted in the following terms:

The Chief Officer explained that the States members who constituted the panel from which the EPA was drawn had all met and had decided that the severity of the situation with the Airport being closed by industrial action, combined with the prospect of closure carrying on for an extended period, would have catastrophic economic implications for the Island. It had decided at its meeting the previous day that it could declare a state of emergency and thereby take such powers as were necessary to take action, including making payments in order to respond to that emergency. It had reservations however about the economic and reputational implications of the very act of declaring a state of emergency. As such, the full panel of EPA Members had met to consider the facts of the situation and had reached the decision to direct, or make a very strong recommendation, to the [PSD] that it pay the Airport Firefighters £4000 for the year to secure continued operations at the airport and a dialogue to address the updating of the Contract and working arrangements. That strong recommendation/direction from the EPA or whatever body it was sitting as, was before the Board for it to decide whether or not to accept and implement. If it chose not to implement it was almost certain that the Firefighters would resume industrial action and the Airport would again be closed. If this happened the odds were that the EPA would convene that afternoon and could be expected to conclude that after a further day's disruption an emergency situation had been reached. If it made that decision it would declare a state of emergency, for however short a period, and the payment would be made.

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<sup>33</sup> Minutes of the PSD Board Meeting on 27 May 2009, Appendix 1, p 95.

He added therefore that the Board had three choices:-

- i to accept the recommendations of the EPA (or whatever body) and make the payment;
- ii Accept the recommendation but record that it was done so with reluctance, and make the payment; or
- iii reject the recommendation and refer the matter back to the EPA.

The Deputy Minister said it appeared logical to make the payment rather than to delay and wait for it to become an instruction from the EPA.

The Board concluded that although it had reservations about the process that had been followed, it accepted the recommendation and agreed that the payment of £4000 for one year be made to the Airport Fire Service employees. Although Deputy Spruce was absent at this point of the decision, it was nonetheless noted and recorded that he was opposed to the payment.

6.63 James Falla agreed with the Chief Minister to set up a press conference at the end of that day following the States meeting.

6.64 At 10.00hrs Deputy Brouard met with HM Comptroller. He questioned what power the EPA had and he was advised that the meeting the day before had not been a meeting of the EPA as such as it was not an emergency under the Law.

6.65 In the course of the morning an Agreement<sup>34</sup> was drawn up at St James Chambers and subsequently placed before the firefighters for signature. This indicated that the 'retention payment' as it was described did not:

form part of any basic salary or other entitlement in relation to the Fire Fighters' terms and conditions of employment. Any liability to tax or social security payment will be for the Fire Fighter to deal with directly with the relevant authority.

6.66 The Letter of Agreement dated 27 May 2009 was signed by Colin Le Ray, Ron Le Cras, Paul Ozanne and Kevin Rabey. This is in Appendix 1.

6.67 In the afternoon Nigel Lewis, Simon Elliott, Adrian Lewis and James Falla, who were meeting to discuss the contents of the document which had been signed, were informed by Terry Harnden that the IDT would now be stood down.

6.68 In mid-afternoon Nigel Lewis agreed with James Falla the terms of a press statement to be released to the media at the press conference following the States meeting and that it should be sent in advance to the Chief Minister's Blackberry. The press

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<sup>34</sup> Letter of Agreement dated 27 May 2009, Appendix 1, p 99.

release<sup>35</sup> was drafted by James Falla and approved by Nigel Lewis but was not seen prior to issue by Deputy Trott. Part of it reads as follows:

...Yesterday afternoon the States Emergency Powers Authority, consisting of seven members of the Policy Council with the Chief Minister as Chairman, sat and considered the proposal.

The Emergency Powers Authority meets when there are strategic threats to the island. In this case the prolonged closure of the airport would have had severe repercussions on not just the travelling public but also the economy.

By a majority of 6-1, the Members agreed with the proposal that the Public Services Department should make the payment so that discussions with the staff would re-open...

- 6.69 At 17.40hrs the Chief Minister read the press release to the States.
- 6.70 At 18.00hrs the Chief Minister; Deputy Flouquet; the Chief Executive; Nigel Lewis; James Falla; Adrian Lewis; Simon Elliott and HM Comptroller met in a courtroom with the PSRC. At this meeting Deputy Brouard asked what authority the EPA had to take control of something which was the mandated responsibility of PSRC. He said that an IDT had been arranged for the following day (Thursday 28 May) which could settle the matter once and for all and that the PSRC had been undermined.
- 6.71 Simon Elliott explained that he and Deputy Trott had been invited to meet the firefighters and that it had been made clear to the firefighters from the outset that he and Deputy Trott were not there to negotiate or discuss future pay arrangements. The firefighters had in turn made it clear that they had no intention of returning to work and that they would not comply with the Tribunal. He [Simon Elliott] had not in his entire working career seen such an extreme breakdown in industrial relations. He said that if anything was to move forward there had to be a fresh approach and this would have to involve a change in the negotiating personnel from the States' side.
- 6.72 HM Comptroller explained to the meeting that the body which had been sitting the previous evening had not constituted itself into the EPA; it was the full Panel membership of the EPA which was considering all the circumstances of the dispute. It had identified a developing Island-wide emergency situation and had acted accordingly in agreeing that PSD should make the payment to the firefighters.
- 6.73 Deputy Flouquet made clear that it had not been a case of PSD proposing the making of the payment. The EPA had concluded, in all the circumstances, that the Island was facing an emergency and that PSD should make the payment. He had conveyed this to his Board and at a special Board meeting it was agreed to proceed as directed or guided by the EPA.
- 6.74 At 19.00hrs the group moved to Court 6 for the press conference prior to which it learned that Deputy Brouard and his entire committee had decided to resign.

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<sup>35</sup> Press Release dated 27 August 2009, Appendix 1, p 101.

## THE AFTERMATH

6.75 Following the events of 26 May described above there was confusion about the status of the body that had met that afternoon. The Guernsey Press enquired of Nigel Lewis under what authority the EPA had met and posed other related questions. Deputy Lowe advised all Deputies of her intention to present a Requête. Deputy Flouquet wrote to Deputy Trott clarifying his understanding of what had occurred at the meeting and stating that the £4000 payment was not a proposal from PSD, which Deputy Trott accepted.

6.76 The Chief Executive and Nigel Lewis discussed the fact that the Bailiff had not been made aware of the EPA Panel meeting on 26 May. It transpired that he would normally have been invited by Crown Advocate Philip Nicol-Gent, the St James Chambers delegate on EPAG, but he was on leave. The Chief Officer of the Home Department had, however, in Mr Nicol-Gent's absence, contacted HM Procureur who arranged for HM Comptroller to attend and there was an assumption that in these circumstances there was no need to alert the Bailiff.

### **Correspondence relating to the EPA Panel meeting**

6.77 It was appreciated by the senior civil servants involved that at the core of the issue was the advice given by HM Comptroller. This differed from PSRC's understanding which was that PSD had no authority under its mandate to make the payment. Accordingly, Nigel Lewis requested HM Comptroller to put in writing the advice he had tendered orally at the EPA Panel meeting and also at the meeting with the PSRC. Additionally he asked PSRC officers to set out in writing any advice they had given to PSRC as to the ability of PSD to make a temporary payment detached from pay. These officers confirmed that no such advice had been given and that previous temporary payments to the firefighters had been PSRC and not PSD arrangements.

6.78 HM Comptroller's advice is set out in his letter<sup>36</sup> dated 2 June to Deputy Trott. His letter records the advice he gave in relation to the criteria for declaring a state of emergency, mandates (as to which see paras 3.10-3.13) and the issue of remuneration. He went on to reflect whether the advice he had given was correct. He concluded that it was, but in relation to the issue of remuneration he acknowledged the strength of the argument that the payment ought properly to be classified as remuneration. He expressed the view that the arguments were more finely balanced than he had appreciated at the time of the meeting.

6.79 The written advice once received was appended to a Q&A brief that was distributed to all Deputies by Deputy Trott. The Policy Council remained concerned about the lack of clarity in respect of the procedures of the operation of the EPA and sought further advice<sup>37</sup> from HM Comptroller. This was provided by letter dated 10 July<sup>38</sup> in which HM Comptroller set out a number of key points concerning the mandate, powers and constitution of the EPA. These are discussed further in paras 4.8 and 4.11.

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<sup>36</sup> Letter, HM Comptroller to Deputy Trott and others dated 2 June 2009, Appendix 1, p 109.

<sup>37</sup> Letter, Deputy Trott to HM Comptroller dated 12 June 2009, Appendix 1, p 113.

<sup>38</sup> Letter, HM Comptroller to Deputy Trott dated 10 July 2009, Appendix 1, p 117.

**Minutes of the meeting held on 26 May 2009**

6.80 A draft of the minutes of this meeting was prepared under the heading 'Policy Council – Emergency Powers Authority'. This reflected the description of similar meetings held in the previous twelve months. Deputy Trott invited HM Comptroller to offer his thoughts on the proper title.

6.81 HM Comptroller's reply is dated after the minutes had been issued and he commented, 'I note that they are headed 'Emergency Powers Authority Panel', which seems to me entirely appropriate'.

**Deduction of tax and social security payments**

6.82 The Letter of Agreement dated 27 May (Appendix 1) provided that, 'any liability to tax or social security payment will be for the Fire Fighter to deal with directly with the relevant authority'.

6.83 Adrian Lewis, as the Chief Officer of the PSD that was making the payment, was advised by Colin Le Ray that Payroll considered that the payment was liable to tax and social security contributions at source.

6.84 Adrian Lewis then wrote to Dale Holmes, Chief Officer of the TRD, seeking advice as to whether the payment could be made without deduction in line with the agreement. He explained that the legal advice given at the time was that the payment was akin to a commercial settlement fee as opposed to a payment for services rendered. He went on to say that this advice had been revisited by the legal adviser who now felt that tax and social security deductions could (sic) be made. He added that his Minister's view was that PSD should abide by the terms of the agreement until advised that to do so would be inconsistent with its duty as an employer.

6.85 TRD was of the view that the payment was clearly an emolument for the purposes of Income Tax and that it was liable to deduction at the time payment was made. In addition the Social Security Department was of the view that it fell within the scope of 'Earnings' under Social Security Law so that contributions were required from both employer and employee to be remitted on the employer's contribution schedule.

6.86 The position was explained to the firefighters by Airport Management and they accepted that tax and social security payments should be deducted at source and instruction was given to Payroll accordingly.

## CHAPTER 7

### ACTIONS AND OMISSIONS

- 7.1 Our terms of reference require us 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. We consider each in turn below in alphabetical order. It would, though, be wrong to focus on any organisation in particular or to consider any specific action or omission in isolation.

**The failure to deal with the underlying problem, which led to the industrial action by the firefighters, stems from the system of government which does not encourage either a corporate approach or collective responsibility. In our view there was a systemic failure to act in a corporate and strategic manner.**

#### AIRPORT FIRE SERVICE (AFS) AND UNITE THE UNION

- 7.2 The anger of the general public and, at one stage, the Guernsey Press with its headline 'Held to Ransom' was directed at the firefighters as the persons whose actions led directly to the cessation of flights with the consequent damage and inconvenience. The Tribunal is of the view that this anger was misdirected.
- 7.3 As is made clear in this Report (para 5.7), for Category 6 cover to be provided on a regular basis the airport depended on the firefighters consistently working **voluntary** overtime. There was no legally enforceable obligation on them to do so and they received no payment for being 'on-call', being paid only for the overtime worked. The operation of the airport therefore depended on their goodwill which was, for the most part, forthcoming. The firefighters recognised the unsatisfactory nature of the arrangement for their employers as well as for their own personal lives and, as detailed in Chapter 5 of this Report, had been in negotiation with PSRC to find a solution since 2007.
- 7.4 The firefighters have been criticised for their failure to go to arbitration as provided for in the February 2009 Agreement. Whilst this criticism is understandable, in fact the nature of the 'binding arbitration' referred to in that agreement was left undefined. It was unrealistic as a solution to the problem of cover without agreed evidence and clear identification of the specific issues which separated the parties. Further, it was unfortunate that the Agreement was signed by AFS representatives and not by the FTO.
- 7.5 The firefighters similarly made clear their intention not to attend any IDT or to restore full cover pending its deliberation. Whilst at first sight the threat of non-attendance may appear unreasonable and a potential breach of the 1993 Law, the lack of time for the parties to prepare and the absence of consultation on the terms of reference, would in all likelihood have meant that the Tribunal would not have been able to resolve the problem.

- 7.6 The anger and frustration felt by the firefighters which boiled over at the crucial meeting at the airport on 25 May, and which resulted in their reducing cover to Category Zero, may have been tempered if the meeting had not been called by the DIDO on the Bank Holiday Monday and if their FTO, Mr Le Cras, had been able to be present at the meeting.

## **AIRPORT MANAGEMENT**

- 7.7 Airport Management is dependent upon the AFS to provide Category 6 cover to enable the airport to operate fully but it has no direct control over the terms and conditions of employment of the firefighters. The 1990 document, setting out the firefighters' duties and responsibilities, was not enforceable against individuals and was not suited to the operational requirements of the airport in 2009.
- 7.8 Airport Management recognised the problem and brought it to the attention of PSD in 2005. Between 2007, when the problem became more pressing, and 2009, Airport Management participated in the discussions between the firefighters and PSRC; it also participated in the JWG and was in broad agreement with the firefighters as to the changes needed to their contractual obligations. However, it had to act through PSD and PSRC to deliver these and was, in the event, unable to achieve the objective of having enforceable obligations to provide cover when needed.

## **EMERGENCY POWERS AUTHORITY PANEL**

- 7.9 The group of people who met on the afternoon of 26 May comprised Ministers who were qualified to sit on the Emergency Powers Authority (who were also members of the Policy Council) and relevant officials. They all knew that they were there to discuss a crisis, namely the industrial action by the firefighters which had led to the closure of the airport.
- 7.10 Those persons who met on 26 May were entitled to act as they did. However, the account of their action was contradictory and confusing as minuted and as subsequently reported in the minutes of the PSD Board meeting, in the press release of 27 May, in Deputy Trott's statement to the States, in the Q&A material sent out to Deputies and in subsequent correspondence between Ministers and civil servants.
- 7.11 Whilst we appreciate the imperative to find a solution, this should not have been at the expense of clear process. The advantage of following a process which is clearly articulated, particularly in times of crisis, is that it helps to ensure that bodies act within their powers and that accountability, both financial and public, is transparent.
- 7.12 Nevertheless the action put in train by this group, on receiving the report from Deputy Trott and Mr Elliott of their meeting with the firefighters at the airport, resulted in Category 6 cover being restored and the re-opening of the airport.

## INDUSTRIAL DISPUTES OFFICERS (IDOs)

- 7.13 IDOs in Guernsey are statutory office-holders appointed under The Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993, as amended (see paras 4.2-4.6). They administer a statutory dispute settlement mechanism.
- 7.14 The role of an IDO is never easy, particularly where there is a history of personal mistrust as existed between the firefighters and PSRC. Even so, the decision to call a meeting on the Bank Holiday Monday, 25 May, in the absence of the Unite FTO, clearly added to the frustration on the part of the firefighters as to the way in which they felt they were being treated and contributed to an atmosphere in which it was unlikely that a settlement would be achieved.
- 7.15 It is questionable:
- whether it was realistic to expect parties to prepare for an Industrial Disputes Tribunal (IDT) at three days' notice;
  - whether such a Tribunal would have been able to operate on the terms of reference as drawn up by the DIDO and without agreed evidence and identification of the precise issues in dispute;
  - whether the IDT would have been able to provide a rapid answer;
  - whether it is reasonable to expect an IDT to operate under pressure of that nature.
- 7.16 None of these questions, in the event, require an answer because an IDT was not held nor was there arbitration as contemplated in the February Agreement. However, if either had taken place it is fanciful to expect, given the points in 7.15 above, that it could have provided solutions which would have led to the airport operating at Category 6.
- 7.17 We formed the view that the IDOs would benefit from greater professional training and support in relation to the exercise of their statutory powers. Their evidence to us showed, in our view, a misunderstanding of a number of aspects of their jurisdiction. We focus here on the areas of greatest relevance to this Inquiry. Their view that a 'dispute or difference' required a claim and rejection of that claim was heavily influenced by a one-page article which failed to take account of subsequent caselaw, in particular *Amec Civil Engineering v Secretary of State for Transport* [2005] 1 WLR 2339. This may have accounted for the pressure put on the firefighters on 25 May to make a pay claim which could then be referred to arbitration. We also consider that their approach of considering a range of factors before 'accepting' a 'dispute or difference', even where the statutory definition of an 'industrial dispute' is satisfied, carries the risk of failing to act in circumstances envisaged by the Law. The DIDO's letter of 10 February 2009 to the Chairman of the PSRC specifying the matters which she considered should properly form the subject matter of negotiations before she would find that a 'dispute' existed exemplifies that risk. Moreover, she did not seem, in that letter, to have considered whether there might have been a

'difference' for the purposes of the Law, although she indicated in oral evidence to us that, on reflection, this may have been the case.

## **POLICY COUNCIL**

- 7.18 At its request the Policy Council received reports from PSD on the state of negotiations with the firefighters and it was a standing item on its agenda.
- 7.19 Deputy Trott, as Chief Minister, received a number of requests and invitations from the firefighters themselves and from external sources to involve himself directly in the negotiations. He resisted these, emphasising that the matter fell within the mandate of the PSRC exclusively. Such contact as he did have with the parties was limited to keeping himself informed as Chair of the Policy Council, save that, on 12 May 2009, he wrote to the DIDO stating that the Policy Council would welcome the resolution of all outstanding issues without further delay and would therefore be supportive of an early reference by her to an Industrial Disputes Tribunal. A letter in such terms carries the risk of appearing to put pressure on an independent statutory officer.
- 7.20 Nonetheless the Tribunal is supportive of Deputy Trott's role in going to see the AFFs and chairing a meeting of the Emergency Powers Authority Panel. It is unfortunate however that in the press release and statement to the States on 27 May the meeting was inappropriately described as the States Emergency Powers Authority.
- 7.21 The Policy Council was well aware of the differences between PSD and PSRC and tried to resolve them. However the absence of a corporate approach to problem-solving significantly impeded this.

## **PUBLIC SERVICES DEPARTMENT (PSD)**

- 7.22 PSD is the Department which has line management responsibility for Airport Management and for the firefighters. It was alerted as long ago as 2005 that the lack of an ability to make individual firefighters responsible for providing cover was a weakness in the system.
- 7.23 Later, in 2007, it was informed that tensions were building up. From this point on PSD was engaged in assessing risk, identifying options and participating in discussions. In 2008 it commissioned a report from Professor Burchill to review the operational arrangements of the AFS in Guernsey, but when the report was delivered in December 2008 PSD failed to reach a concluded view on its merits and did not act on its recommendations.
- 7.24 In November 2008 PSD requested a risk analysis from Airport Management but this was narrow and limited to operational issues. No risk analysis of the wider repercussions of the airport closing was carried out.
- 7.25 PSD was clearly on notice of the problem and engaged in discussion with others in seeking to resolve it. In the later stages at least, it also kept the Policy Council informed. It tried to find a solution, but just as in the case of the Policy Council (see

para 7.21), was unable to do so in the absence of a corporate approach to problem-solving.

## **PUBLIC SECTOR REMUNERATION COMMITTEE (PSRC)**

- 7.26 For a number of years PSRC as an institution has operated a traditional approach to negotiating with the AFS. This appears not to be evidence-based and still less is evidence shared with its negotiating partners in accordance with a more modern partnership approach. PSRC was unduly concerned with the impact on other groups in the historic 'pecking order' which led to a 'one size fits all' mindset and in consequence an inability to see:
- the need for a different approach to deal with the specific problem (buying out the 1990 Agreement)
  - recruitment and retention difficulties.

A more modern partnership-based approach may have led to a different result.

- 7.27 There also seems to have been an over-reliance in relation to the AFFs on resolution through a third party decision imposed on the parties, without a sense of whether an issue was suitable for arbitration and with no attempt to agree data sets. This was combined with a belief that industrial action would cease once a referral to voluntary arbitration or an IDT was made. It was an inappropriate and unrealistic approach in these circumstances.

- 7.28 The politicians on PSRC were themselves involved in negotiations with the firefighters. Their involvement was actively sought and encouraged by the firefighters, who saw the politicians as the persons able to make decisions in respect of their claim. It also reflected a lack of trust and the breakdown of relationships between the AFS and PSRC officers. This caused a delay at a critical time in 2008 due to the General Election. It is questionable, however, whether it is desirable for politicians to engage directly in negotiation; rather it should be their role to decide policy with officers undertaking the operational role.

## **STATES DEPARTMENTS AND COMMITTEES**

- 7.29 The States Departments and Committees acted as if silo based. This is both a systemic and a cultural issue. Whilst information was passed between them, there was little evidence of their seeking a solution through a cross-cutting approach. Whilst every Department and Committee has its mandate and objectives, Ministers and Chief Officers should have been co-operating to find a solution to a problem affecting the Island as a whole. It is unlikely that a major problem - even before it reaches crisis point - will fall wholly within the remit of one Department or Committee. It should not have needed things to get to the point of the firefighters reducing cover to Category Zero to galvanise both Ministers and Chief Officers into decisive action.
- 7.30 However even if the States Departments had worked together more closely on this issue, their efforts to find a solution would have been hampered by the lack of HR

expertise and experience amongst Departments. The appointment of an HR & OD Head is a welcome start in remedying this.

### **ST JAMES CHAMBERS**

- 7.31 The Law Officers' involvement in the firefighters dispute is limited to their giving advice at the Emergency Powers Authority Panel meeting on 26 May in relation to three issues:
- the criteria for declaring a state of emergency;
  - the mandates of Departments and Committees;
  - whether or not the proposed payment to the firefighters was properly classifiable as remuneration  
and
  - drawing up the document implementing the May 2009 Agreement
- 7.32 In relation to the issue of whether the payment to the firefighters constituted remuneration it now appears to be accepted, particularly given the way the payment was implemented, that it probably is remuneration. This would not however have constituted a legal obstacle to the authorisation of the payment by PSD in the light of the advice given by HM Comptroller on mandates.
- 7.33 The document which committed the agreement to writing provided that the payment should be made without deduction of tax or social security payments. As we described in paras 6.82 - 6.86 this did not comply with the view of TRD and it is surprising that its advice was not sought prior to the agreement being drafted in these terms.

### **TREASURY AND RESOURCES DEPARTMENT (TRD)**

- 7.34 TRD became directly involved only in the aftermath of the events of 25-27 May when its advice was sought as to whether payments could properly be made to the firefighters without deduction of tax and social security payments.
- 7.35 We find it surprising, notwithstanding that budgets are delegated to departments, that in the case of a payment in such unusual circumstances TRD was neither involved nor consulted in advance.
- 7.36 The Director of Communications, who is on the complement of TRD, is authorised to prepare press releases on behalf of other departments. Press releases are subject to approval by officers in the relevant department, or possibly the Minister if the issue is sufficiently serious. The press release issued on 27 May was 'wrong'<sup>1</sup> and would have used 'slightly different language'<sup>2</sup> if Deputy Trott had seen it before it was issued. The reference in it to the 'States Emergency Powers Authority ...' was not corrected or clarified by anyone with knowledge of the facts when it was read out to the States and this contributed to the contradictory information in circulation.

<sup>1</sup> Evidence of Howard Roberts, Day 4, p 35C.

<sup>2</sup> Evidence of Deputy Trott, Day 5, p 81B.

## CHAPTER 8

### PUBLIC SECTOR PAY DETERMINATION

8.1 The mechanism for determining public sector pay in Guernsey has been the subject of three major reports in the past nine years.

- The Clark Report of 2001, which recommended an Independent Pay Review Body, modelled on the UK experience but specifically tailored to meet the needs of Guernsey.<sup>3</sup>
- The PSRC Report of 2006, which recommended that the pay and conditions of public sector workers in Guernsey should continue to be determined by a process of collective bargaining and that the employer's authority in that process should rest with the PSRC.<sup>4</sup>
- The Robinson Report of 2008, which recommended a new free-standing body, the Public Employment Board, with responsibility for the employment of all public sector workers, including civil servants. This body would incorporate the responsibilities of the PSRC.<sup>5</sup>

In addition the Burchill report, discussed in paras 5.17 and 5.18, addressed collective bargaining arrangements for AFFs specifically and recommended that collective bargaining for this group should be conducted directly with Airport Management.

8.2 Following the Robinson report, the Deputy Chief Executive worked with a sub-group of politicians (Deputies Trott, Flouquet and Mahy) exploring the concept of a States Employment Board which would combine the mandate of the Policy Council in respect of employment matters and HR and that of the PSRC in respect of collective bargaining.<sup>6</sup> This concept was the subject of a Consultation Paper issued by the Policy Council.<sup>7</sup> We have been provided with this Consultation Paper and the responses to it. We were told that further development of the concept of a States Employment Board has been put on hold pending our report.<sup>8</sup>

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<sup>3</sup> Professor Jon Clark, *Mechanisms for Determining Public Sector Pay in Guernsey: Report to States of Guernsey, Board of Industry*, April 2001.

<sup>4</sup> PSRC, *Mechanism for Determining Public Sector Pay in Guernsey* 15 August 2006. The PSRC also recommended that the PSRC should improve consultation with employing departments by adopting the measures set out in para 3.9 above. These recommendations were approved by the States on 26 October 2006.

<sup>5</sup> Dr. Graham Robinson, *Report of a Review of the Role of the States of Guernsey as an Employer, Mechanisms for Determining Public Sector Pay in Guernsey*, February 2008.

<sup>6</sup> Nigel Lewis, Witness Statement, para 11.

<sup>7</sup> *Consultation Paper: Creating a States Employment Board* (no date given; closing date for responses 19 June 2009).

<sup>8</sup> Above, note 4.

8.3 Our terms of reference did not require us to seek evidence from employing departments other than PSD, nor from unions in respect of public sector workers other than AFFs, although we received some more wide-ranging recommendations for which we are extremely grateful. Given the scope of our Inquiry, we do not consider it appropriate to make formal recommendations relating to the future arrangements for public sector pay determination, although we do recommend that the current arrangements should be replaced. However on the basis of the material submitted to us we have made some observations on a future route-map which we hope will be considered helpful. In making these observations we are mindful of the fact that Guernsey is an island with a relatively small public sector workforce (some 5000 in total)<sup>9</sup> and that industrial relations in the public sector have generally been good.

8.4 Our observations are as follows:

- We do not consider that the creation of a States Employment Board would be beneficial. We concur with those who have commented that this risks recreating the PSRC, with its attendant problems, in another form. In particular, it would continue the separation of pay determination from accountability for the delivery of services.
- We consider that decentralising every aspect of pay determination to employing departments would risk undue fragmentation.
- We consider that responsibility for pay determination should rest with the Policy Council. Ministers of the employing departments, who are accountable for service delivery, are represented on the Policy Council, together with the Treasury and Resources Department. The Policy Council thus affords wider representation, and the opportunity for greater input from individual departments into pay determination, than the PSRC.
- The current mandate of the Policy Council includes corporate human resource policy including terms and conditions of employment. This is wide enough to accommodate pay determination.
- We consider that the Policy Council should set the broad negotiating remit for each bargaining unit. In each case the remit should be guided by the need to recruit, retain and motivate sufficiently able and qualified staff to provide an appropriate level of service to the public. In setting negotiating remits, the Policy Council should have regard to the economic and labour market data which we recommend should be routinely compiled and circulated (see para 9.5).
- Operational responsibility for negotiations within the remit should rest exclusively with professional negotiators. The Head of HR and OD is currently the line manager of the Policy Council HR Unit staff and the officers who support the PSRC. We consider that the Head of HR and OD should line manage an appropriately qualified negotiating and HR team for the States,

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<sup>9</sup> Above, note 5, p 2.

whose members should undertake regular professional development. Negotiators should work closely with employing departments during the negotiation process.

- In the event that negotiators are unable to conclude an agreement with a bargaining unit, they should report this to the Policy Council which can consider whether it wishes to modify the negotiating remit.
- In relation to the basic annual uplift there should be a common anniversary date for all public sector workers.
- Employing departments should be free to engage in productivity bargaining and restructuring outside the annual pay round to achieve efficiency savings, pay modernisation and/or the reorganisation of service delivery. It would be open to departments to delegate this role to bodies within their area of responsibility which have independent budgets, such as Guernsey Airport. These negotiations, too, should be conducted by professionally qualified negotiators on the basis of procedural agreements issued by the Head of HR and OD. Employing departments should notify the Policy Council before embarking on such negotiations and seek Policy Council approval before signing off agreements reached.



## CHAPTER 9

### RECOMMENDATIONS

- 9.1 In this chapter we set out the lessons which we consider can be learned from the AFS dispute and our broader recommendations. These recommendations range from changes we believe should be made at workplace level to those at the highest level of the States.

#### A 'PARTNERSHIP' APPROACH TO INDUSTRIAL RELATIONS

- 9.2 Others have commented on the confrontational, positional style of collective bargaining in Guernsey. We agree. A 'partnership' approach involves a greater emphasis on joint working and problem-solving on the basis of shared (and, where practicable, jointly commissioned) data.
- 9.3 We heard the view expressed that managers who 'get too close' to the workforce can compromise the role of the States as employer. We disagree. Understanding another party's viewpoint and attempting to reach consensus does not mean making unacceptable concessions to reach agreement at all costs. Moreover, public sector managers and negotiators are accountable to the public whom they serve.

**We recommend the adoption of a 'partnership' approach to industrial relations, under principles to be developed by the Head of Human Resources and Organisational Development.**

#### STRUCTURED COLLECTIVE BARGAINING

- 9.4 Since the AFFs left the Public Service Employees' Joint Council, collective bargaining has been unstructured and ad hoc. We understand how this can happen in the case of a small group of workers. However, it has led to confusion and recrimination, with even the subject-matter in dispute being an issue of contention.

**We recommend that collective bargaining should be conducted on the basis of procedural agreements.**

These should set out, as a minimum:

- membership
- how and when issues can be raised
- responsibility for the agenda and written record of discussions

- dispute settlement machinery prior to recourse to the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993, as amended.

This does not prevent joint working parties being established to consider specific issues. However the relationship between such bodies and the general collective bargaining machinery should be explicitly addressed.

## **EVIDENCE-BASED PAY DETERMINATION**

- 9.5 Successive reports have commented on the absence of robust economic and labour market data as a basis for pay determination in the Guernsey public sector.

**We recommend that economic and labour market data should be routinely compiled and circulated by an independent body which has the confidence of all parties.**

Data relating to specific areas of employment, such as labour turnover at the airport, for example, should, if possible, be jointly commissioned and/or agreed with the union. Where the UK labour market serves as the comparator, robust data should be sought from the UK.

## **JOB EVALUATION**

- 9.6 We noted in para 7.26 the 'pecking order' approach which appears to characterise job grading and pay determination in the AFS and, by extension, the wider public sector. This approach is based on historical relativities which may not take account of changed skills and technologies.

**We recommend that public sector jobs should be weighted according to an objective, gender-neutral system of job evaluation.**

## **NEW ARRANGEMENTS FOR PUBLIC SECTOR PAY DETERMINATION**

- 9.7 **We recommend that the current institutional arrangements for public sector pay determination should be replaced.**

The current arrangements separate pay determination from service delivery and prevent employing departments from engaging in productivity bargaining and other changes to working practices that may facilitate service redesign or promote efficiencies. For the reasons we explain in para 8.3, we do not consider that we can make formal recommendations as to the form that future pay determination arrangements should take. However we have listed in para 8.4 some observations relating to this area which we hope will be regarded as constructive. These observations centre on giving responsibility for pay determination to the Policy Council.

## **CHANGES TO THE INDUSTRIAL DISPUTES AND CONDITIONS OF EMPLOYMENT (GUERNSEY) LAW, 1993, AS AMENDED ('the 1993 Law').**

9.8 We understand that the Commerce and Employment Department is intending to issue a Consultation Paper on reform of the 1993 Law. We do not seek to pre-empt that review, nor are we equipped to do so.

**However, there are specific aspects of the 1993 Law which we recommend should form part of any review.** These are as follows:

- (1) The definition of 'dispute or difference' as interpreted by the IDO.
- (2) Whether the IDO should have discretion to accept or reject a 'dispute or difference' which has been notified.
- (3) Whether requirements implied into the Law by the IDO:
  - (a) for a dispute or difference to be notified in writing;
  - (b) for notification to be by a party;
 are desirable and, if so, whether they should be made explicit in the legislation.
- (4) Whether the requirement for a dispute or difference to be referred to the IDT should be decoupled from the power for the IDO to offer services under section 3(1) of the Law.
- (5) Whether guidance should be issued to service users on the application of the Law.
- (6) Recruitment, instruction and training for this important, independent, statutory role.

## **LEGAL REGULATION OF INDUSTRIAL ACTION**

9.9 There is a misconception in some quarters that the 1993 Law prevents strikes. It does not. Moreover, such a prohibition would breach Guernsey's international obligations under International Labour Organisation Conventions 87 and 98 and the International Covenant on Economic, Social and Cultural Rights. It may also breach Article 11 of the European Convention on Human Rights.<sup>1</sup> We understand that industrial action in the public sector in Guernsey is a relatively rare occurrence. Nevertheless, when it occurs the effects can be immediate and traumatic. Uncertainties as to the legality of industrial action are unhelpful.

**We recommend that consideration be given to legislation to clarify the scope of lawful industrial action and the conditions under which it may be taken. Such legislation should have regard to the restrictions which may be legitimate and**

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<sup>1</sup> See *Enerji Yapi-Yol Sen v Turkey*, European Court of Human Rights, judgment of 21 April 2009.

**proportionate in essential services and to appropriate guarantees to safeguard the terms and conditions of workers in such services.**

## **COMMITMENT TO GOOD GOVERNANCE**

9.10 The UK Independent Commission on Good Governance in Public Services has established six principles of good governance which apply to all public bodies. These are as follows:

- Focusing on the organisation's purpose and on outcomes for citizens and service users;
- Performing effectively in clearly defined functions and roles;
- Promoting values for the whole organisation and demonstrating the values of good governance through behaviour;
- Taking informed, transparent decisions and managing risk;
- Developing the capacity and capability of the governing body to be effective;
- Engaging stakeholders and making accountability real.

**We recommend that the States of Guernsey should confirm its commitment to these principles, and should institute an education and training programme relating to these principles.**

## **RELATIONSHIPS BETWEEN DEPARTMENTS AND COMMITTEES**

9.11 Good governance means performing effectively in clearly defined functions and roles. This does not mean, however, that individual Departments and Committees should operate in isolation. Departments and Committees have overlapping mandates and many issues require cross-departmental contributions to resolve them.

**We recommend that there should be greater inter-Departmental co-operation and collaboration, with the Policy Council resolving difficulties where the priorities of Departments differ. Specifically, we recommend that:**

- (a) **cross-Departmental working should be part of the initial and ongoing training of officials;**
- (b) **where cross-Departmental projects have been identified, a cross-Departmental Board should meet at regular intervals (for example, every quarter or six months as appropriate) to monitor progress and identify any gaps or conflicts in approach;**
- (c) **any unresolved operational difficulties should be reported immediately to the Chief Officer Group;**

- (d) **the Chair of the Chief Officer Group should ensure that any policy issues requiring resolution are presented speedily to the Policy Council.**

#### **ADHERENCE TO PROCESS**

- 9.12 We understand the temptations of a 'results-orientated' approach to problem-solving, particularly in the heat of a crisis. However this is antipathetic to good governance. In the context of emergencies, in particular, adherence to procedures and clarity, both within and beyond government, as to the mandates that are being relied upon is crucial. Failure to adhere to defined procedures damages the Island both reputationally and financially.

**We recommend that there should be clear mandates and procedures for dealing with incipient emergencies and the procedure relied upon should be appropriately designated and understood.**

#### **CRISIS MANAGEMENT**

- 9.13 **We recommend that there should be an identifiable body with a mandate to deal with crises falling short of an emergency.**

We hope that the greater inter-Departmental co-operation and collaboration which we recommend in para 9.11 will help to avoid crises of the kind exemplified by the AFS dispute. However some crises cannot be avoided. The Emergency Powers Authority is mandated to deal with emergencies but the use of emergency powers should always be a last resort. In the absence of executive government, it is important that there should be a specific body which is mandated to deal with crises which fall short of an emergency. It is the lack of such an identifiable body, and the confusion about the basis on which the Emergency Powers Authority Panel acted, that has led to this Inquiry.

- 9.14 We consider that the Policy Council is well placed to deal with crises falling short of an emergency. Its role in this area should consist of advising and supporting the Department(s) or Committee(s) which have the executive powers to take ameliorating action. In the event that the Policy Council provides such advice or support, it should follow this with an account to the States of Deliberation at the earliest opportunity, either at an emergency meeting or at the next scheduled meeting as appropriate.
- 9.15 The composition of the Policy Council means that a wide range of interests is represented on it and the Emergency Powers Authority can quickly be convened if this proves necessary. Moreover, the role that we envisage is compatible with the Policy Council's existing mandate of co-ordinating non-operational matters in the event of an emergency and of requiring a Department or Committee to examine and report to it on any matter which falls within that Department or Committee's mandate. It would be possible to maintain that no new mandate is required for the Policy Council to deal with crises short of an emergency. However, we suggest that, in the light of the difficulties that have arisen in relation to the AFS and in the interests of good governance, it would be preferable to introduce a specific mandate which makes explicit and transparent the scope of the Policy Council's powers in this area.

## RISK MANAGEMENT

- 9.16 Risk management is intrinsic to good governance. We note that Guernsey has a community risk register and we were told that some individual Departments, such as Health and Social Services, have well-developed procedures covering specific activities. However this is not a universal practice; in particular, we saw no evidence of a risk assessment having been conducted in relation to the closure of the airport as a result of negotiations with the AFS breaking down.

**We recommend that every Department should conduct a risk assessment in relation to the activities for which it is responsible and should subject this risk assessment to regular review.**

## OPENNESS AND TRANSPARENCY

- 9.17 This Tribunal of Inquiry has afforded a degree of insight into the workings of States institutions, both through written and oral evidence, which we understand to be unusual. We hope that it will henceforth cease to be so. Open government is essential to a flourishing democracy. We hope that a lasting legacy of this Inquiry will be a culture of greater openness and transparency.

**We recommend that there should be a presumption that Reports commissioned from the public purse will be made publicly available unless there are specific grounds for doing otherwise.**

**APPENDIX 1**

<b>Document</b>	<b>Core Documents</b>	<b>Page</b>
1	AFS 1990 Duties and Responsibilities document dated 26 September 1990	69
2	Policy Council Mandate	73
3	Public Services Department Mandate	77
4	Public Sector Remuneration Committee Mandate	81
5	'August Agreement ' dated 7 August 2008	83
6	'February Agreement' dated 20 February 2009	85
7	Minutes of the Emergency Powers Authority Panel meeting on 26 May 2009	87
8	Minutes of PSD Board meeting on 27 May 2009	95
9	Letter of Agreement dated 27 May 2009	99
10	Press Release dated 27 May 2009	101
11	Extract from States meeting on 27 May 2009	103
12	Letter, HM Comptroller to Deputy Trott and others dated 2 June 2009 relating to advice on mandates	109
13	Letter, Deputy Trott to HM Comptroller dated 12 June 2009 relating to the operation of the Emergency Powers Authority	113
14	Letter, HM Comptroller to the Chief Minister dated 10 July 2009 relating to the operation of the Emergency Powers Authority	117



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26 September 1990

GUERNSEY AIRPORT FIRE SERVICE

The Guernsey Airport Fire Service is required to provide:

- \* Fire Cover
- \* Rescue Services
- \* First Aid

in respect of aircraft accidents.

It is also required to provide specialist equipment and manpower, when required, to the States Fire Brigade at the discretion of Air Traffic Control.

DUTIES AND RESPONSIBILITIES

## (a) FIRE STATION.

1. To maintain at all times sufficient manpower and equipment to respond immediately to any aircraft accident or emergency.
2. To respond immediately to any other emergency call within the airport.
3. To man the Watch Room as per Standing Orders and maintain radio links with vehicles away from Base.
4. To carry out routine daily inspections on fire vehicles to ensure they are in serviceable order.
5. To maintain fire extinguishing equipment and media to statutory requirements.
6. To receive training in airport and Island topography.
7. To carry out cleaning routines throughout all areas related to the Fire Station.
8. To show visiting parties around the Station and demonstrate equipment.

## (b) RUNWAYS AND TAXIWAYS.

1. At the request of Air Traffic Control:
  - (i) Check surfaces and clear/sweep if necessary (eg; bird strikes, broken runway lights, various debris).
  - (ii) Check runway lights and visual navigational aids.
  - (iii) Carry out water and snow depth checks.
  - (iv) Carry out braking action tests with the Runway Surface Friction Test Meter on airfield surfaces.

26 September 1990

- (v) Carry out Runway Visual Range Readings (RVRs) and record same as required.
- (vi) Carry out snow clearing duties (not by using appliances).
- (vii) Keep runways clear by:
  - (a) Bird scaring by means of discharging 12 bore cartridges, playing bird distress call tapes etc (maintain gun & cartridges).
  - (b) Dog catching and removal of any other animal (on any airfield area).
  - (c) Checking of unauthorised personnel (on any airfield area).
- 2. Provide radio escorts for contractors and other authorised parties when requested by Management or Air Traffic Control.

(c) **AIRCRAFT MANOEUVRING AREAS.**

- 1. Neutralise and washdown/clear fuel spillages.
- 2. Supply stand-by when required:
  - (i) for fuelling and defuelling operations on aircraft.
  - (ii) for "starting up" (usually military) and engine checks.
  - (iii) when acetylene welding and cutting equipment is being used in high risk areas.
- 3. Provide radio escort for contractors and other airport personnel.
- 4. Check that vehicles have authorisation (apron permits) to use aircraft manoeuvring areas.
- 5. Check personnel on aircraft manoeuvring areas for valid ID cards at the request of Management or ATC.
- 6. Assist ATC by relaying messages to pilots, etc.
- 7. Remove abandoned piqueting blocks.

(d) **MARSHALLING DUTIES.**

- 1. Marshall aircraft on to hard or soft standing at the request of ATC.
- 2. Chock and piquet aircraft at the request of, and in the presence of, pilots and where necessary escort aircrew or ask them to report to Flight Clearance.
- 3. Physically move aircraft on the instruction of ATC.
- 4. Give assistance to aircraft "bogged in".
- 5. Make and maintain piqueting ropes and chock ropes.

6. Collect night stopping aircraft registrations on 1st of each month and deliver to Flight Clearance.

(e) AIRPORT SECURITY.

1. Exercise the powers and responsibilities of a Special Constable.
2. Control all security aspects of activity within the apron areas and provide escort to and from aircraft for parties etc as required.
3. Check the working order of airport boundary gates (weekly).
4. Lock and unlock gates as required by Management each morning and evening.
5. Ensure security and safety and prevent trespass on the airfield.

(f) SPECIALIST DUTIES.

1. Provide manpower and specialist equipment to retrieve or clear aircraft damaged or unserviceable as a result of an accident or incident.
2. Carry out regular and necessary maintenance on all salvage equipment.
3. Wear and use Safety Breathing Apparatus and carry out daily, monthly, three monthly and six monthly checks. Take BA cylinders to, and pick up from, the States Fire Brigade when sufficient manpower is available.
4. Provide stand-by in the event of suspected bomb within the airport area.
5. To carry out training duties as required with specialist equipment.
6. To instruct the other emergency services in airport topography and radio transmission and emergency procedures.
7. To instruct other airport personnel in emergency procedures.

(g) MISCELLANEOUS.

1. Inspect, service and maintain hand fire extinguishers in all States owned buildings at the Airport.
2. Provide first aid service as required throughout the Airport and check First Aid Room facilities.
3. Supply water for various uses as required throughout the airfield.
4. Issue diesel/oil to Airport Fire Service vehicles.
5. Carry out inspection and maintenance procedures on all fire hydrants.

- 4 -

6. Inspect and maintain static water supplies within the airport boundaries and ferry in additional water when the need arises.
7. Check Fire Alarm Systems daily.
8. Lock and unlock boundary fence gates for contractors and other authorised personnel.
9. Carry out hose repairs for Guernsey and Alderney Airports.
10. Pump out Fuel Supplies soakaway and other airfield drains.
11. Be willing to respond at any time during the night for Mercy flights.
12. Routine Apron Patrols (frequency as required by Management and/or the CAFU).
13. Check, maintain and clean RVR cabins.

Although every effort has been made to produce a comprehensive list of duties and responsibilities, it is unlikely that the above list is exhaustive. It is therefore expected that employees will carry out such other duties appropriate to the Airport Fire Service as may reasonably be required by Management from time to time, subject to consultation and agreement concerning any major changes.

Signed.....  
AIRPORT DIRECTOR.

Signed.....  
AFS SHOP STEWARD.

Dated - 26 September 1990.

## **POLICY COUNCIL, DEPARTMENT AND COMMITTEE MANDATES**

### **POLICY COUNCIL**

Constituted with effect from 1<sup>st</sup> May, 2004 by Resolutions of the States of 31<sup>st</sup> October 2003, 26<sup>th</sup> April 2006, 28<sup>th</sup> February 2008 and 12<sup>th</sup> March 2008.

#### **CONSTITUTION**

The Chief Minister  
The Ministers of the ten Departments.

#### **MANDATE**

(a) To advise the States on matters relating to:-

- The Island's constitutional position including its relationships with the United Kingdom, European Union and other Crown Dependencies, international relations and matters relating to the Parishes and the other Islands of the Bailiwick;
- The formulation and implementation of economic, fiscal, human resource, environmental and social strategic and corporate policies to meet objectives agreed by the States;
- The coordination of the work of the States

and to be responsible for: -

#### ***Constitutional Affairs***

- (i) Representing the Island and negotiating on international matters;
- (ii) Considering international agreements in which the insular authorities have an interest or are invited to acquiesce and making appropriate recommendations thereon;

- (iii) The relationship between the States of Guernsey and States of Alderney;
- (iv) The provision, on behalf of the States, of hospitality to appropriate visiting persons and organizations;
- (v) The policy for the future provision of aid overseas;

***Strategic and Corporate policy***

- (vi) Promoting the development and review of the Government Business Plan through a process of direct consultation with States Members and consultation with Departments and Committees to ensure appropriate responses to strategic issues which confront the Island, including any population and migration measures considered necessary;
- (vii) The policy framework for the regulation of the financial services sector;
- (viii) Corporate human resource policy including terms and conditions of employment, compliance with legislation and good practice and to be responsible for: -
  - The provision of corporate human resource services and advice to Departments and Committees as appropriate;
  - Fulfilling the States role as employer of established staff;
  - The appointment of chief officers of Departments and Committees and other senior civil service appointments;
  - Sanctioning the recommendations of the Public Sector Remuneration Committee in respect of the salaries affecting the posts of Lieutenant Governor, Bailiff, Deputy Bailiff, Judge of the Royal Court, Law Officers of the Crown and Magistrates;
  - Determining the remuneration and conditions of service applicable to HM Greffier, HM Sheriff and HM Sergeant after consultation with HM Procureur;

- (ix) The provision of corporate research programmes and the maintenance of corporate statistics including responsibility for population data;

***Coordination of States activities***

- (x) The allocation of responsibilities and functions to departments and committees and the co-ordination of action to enable the implementation of the Government Business Plan, including action taken through the establishment of corporate and cross-departmental policy groups;
  - (xi) The coordination of non –operational matters in the event of an emergency, to preserve life and the well being of the community and the preservation of law and order;
  - (xii) Requiring a Department or Committee to examine and report to the States or to the Policy Council on any matter which falls within the mandate of such a Department or Committee;
  - (xiii) *[Repealed 26.4.2006]*
  - (xiv) Receiving and commenting as appropriate on all proposals and reports which are to be placed before the States by Departments and Committees (other than parliamentary Committees);
  - (xv) The preparation of the Agenda for meetings of the States of Deliberation and the States of Election;
  - (xvi) The prioritisation of the States' legislative programme;
  - (xvii) The Island Archives Service.
- (b) To examine and report to the States, or to require a Department or Committee (other than parliamentary Committees) to examine and report to the States, or to the Policy Council, on any matter which falls outside the mandate of any Department or Committee.
  - (c) *[Repealed 12.3.2008]*
  - (d) To exercise the powers and duties conferred on it by extant legislation.

- (e) To exercise the powers and duties conferred on it by extant States resolutions, including all those resolutions, or parts of resolutions, which relate to matters for the time being within the mandate of the Policy Council and which conferred functions upon the former: -
- Advisory and Finance Committee
  - Civil Service Board
  - Heritage Committee
  - Island Reception Committee
  - Overseas Aid Committee.
- (f) To be accountable to the States for the management and safeguarding of public funds and other resources entrusted to the Policy Council.

## PUBLIC SERVICES DEPARTMENT

Constituted with effect from 1<sup>st</sup> May, 2004 by Resolutions of the States of 31<sup>st</sup> October 2003, 26<sup>th</sup> April 2006 and 12<sup>th</sup> March 2008.

### CONSTITUTION

A Minister, who shall be a sitting member of the States.

Four members, who shall be sitting members of the States.

Up to 2 non-voting members nominated by the Department for election by the States, who shall not be sitting members of the States.

### MANDATE

(a) To advise the States on matters relating to:

- The management of publicly owned infrastructure and the provision of public services to meet the strategic and corporate objectives of the States including: -
  - Guernsey and Alderney airports;
  - St Peter Port and St Sampson's harbours;
  - The roads infrastructure;
  - The waste and drainage infrastructure;
  - The public water supply;
  - Alderney breakwater;
  - Maritime Affairs

and to be responsible for: -

- (i) The provision and administration of facilities and services in respect of the Guernsey and Alderney airports;
- (ii) The provision of facilities and services in respect of St Peter Port and St Sampson's harbours.
- (iii) The provision of Coast Guard services.
- (iv) The Guernsey Register of British ships and the surveying and licensing of local passenger and commercial vessels.

- (v) Monitoring compliance of all vessels within Bailiwick waters with international and local laws and control of shipping in Bailiwick waters.
  - (vi) Maritime safety, the investigation of marine accidents, provision of navigational aids and maritime safety information.
  - (vii) Liaison with the Guernsey branch of the Royal National Lifeboat Institution.
  - (viii) Pilotage Services.
  - (ix) The maintenance of the structure and wearing surfaces of the road network.
  - (x) The maintenance of the surfaces of green lanes.
  - (xi) Road cleaning.
  - (xii) The management, collection and disposal of surface waters that fall on and/or pass under the road network.
  - (xiii) The management, collection, treatment and disposal of solid and wastewater from household, industrial and commercial properties.
  - (xiv) The maintenance of Alderney breakwater.
  - (xv) The management of environmental emergencies, control of essential commodities and receivership of wrecks.
  - (xvi) The provision of corporate engineering and architectural services.
  - (xvii) *[Repealed 26.4.2006]*
  - (xviii) The provision and administration of a direct labour organisation (States Works).
- (b) To contribute to the achievement of strategic and corporate objectives, both departmentally and as part of the wider States organization, by:
- (i) developing and implementing policies and legislation as approved by the States, for the provision of services in accordance with this mandate; and

- (i) actively supporting and participating in cross-departmental working as part of the Government Business Plan process and ensuring that public resources are used to best advantage, through co-operative and flexible working practices.
- (c) To exercise the powers and duties conferred on it by extant legislation.
- (d) To exercise the powers and duties conferred on It by extant States resolutions, including all those resolutions, or parts of resolutions, which relate to matters for the time being within the mandate of the Public Services Department and which conferred functions upon the former: -
  - Advisory and Finance Committee
  - Board of Administration
  - Public Thoroughfares Committee
  - Water Board.
- (e) To be accountable to the States for the management and safeguarding of public funds and other resources entrusted to the Department.



## PUBLIC SECTOR REMUNERATION COMMITTEE

Constituted with effect from 1<sup>st</sup> May, 2004 by Resolutions of the States of 31<sup>st</sup> October 2003 and 26<sup>th</sup> April 2006.

### CONSTITUTION

A Chairman, who shall be a sitting member of the States.  
 Four members, who shall be sitting members of the States.  
 Up to 2 non-voting members nominated by the Committee for election by the States, who shall not be sitting members of the States.

### MANDATE

- (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.
  - (iii) Advising on the remuneration and conditions of service applicable to appointees of the States and employees of non-governmental organisations in which the States have an interest;
  - (iv) Reviewing the remuneration attaching to the posts of Lieutenant Governor, Bailiff, Deputy Bailiff, Law Officers of the Crown, Judges of the Royal Court and Magistrates and submitting to the Policy Council for sanction any adjustments which, in its opinion, are necessary;
  - (v) Making recommendations to the States concerning the pensions and other benefits to be paid to or in respect of members of the Public Servants' Pension Scheme and the Teachers' Superannuation Scheme;

- (b) To develop, present to the States for approval as appropriate, and implement policies on the above matters for the provision of services, introduction of legislation and other measures which contribute to the achievement of strategic and corporate objectives.
- (c) To exercise the powers and duties conferred on it by extant legislation.
- (d) To exercise the powers and duties conferred on it by extant States resolutions, including all those resolutions, or parts of resolutions, which relate to matters for the time being within the mandate of the Public Sector Remuneration Committee and which conferred functions upon the former Civil Service Board.
- (e) To be accountable to the States for the management and safeguarding of public funds and other resources entrusted to the Committee.

8. AUG. 2008 15:05

PUBLIC SERVICES DEPT ^  
BOARD OF ADMIN

NO. 244 P. 3

Our Ref: SAN/jrs/531

The Regional Industrial Organiser  
 Unite the Union  
 Transport House  
 Commercial Road  
 St Sampson  
 GY2 4QP

27th August 2008

Dear Mr Le Cras

**GUERNSEY AIRPORT FIREFIGHTERS**

I write further to our meeting on Monday, which was also attended by representatives of the Public Services Department and Policy Council, to confirm the proposed way forward.

**Review of Manning Arrangements**

This is something that the stewards and/or other watch representatives need to discuss with Airport Management over the next few months. Clearly the focus of those discussions needs to be on the ways in which minimum manning levels are maintained in the future. There may be a lot of issues to look at here including the total establishment of the service, the roster, the use of "slip" days, the creation of an appropriate roster for extra cover, the possible temporary use of UK Firefighters when circumstances are exceptional etc.

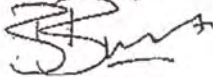
Once this process has been completed it will be necessary for the Public Sector Remuneration Committee and Unite to agree the appropriate rate for standby (providing, of course, a standby system is part of any agreed long-term solution).

**Interim Arrangements**

In return for a guarantee that minimum manning levels will be maintained by your members until 31 January 2009, each officer will receive a non-pensionable payment of £1,000.

I understand that your members have now accepted the above way forward so I will authorise implementation of the payment. As discussed the payment will be made in 6 equal monthly instalments (in the last full pay week of each month).

Yours sincerely



Deputy B Brehaut

Copy to: ☒ The Deputy Chief Executive, States of Guernsey  
☒ The Chief Officer, Public Services Department

Received Time 8. Aug. 15:13



**LETTER OF AGREEMENT  
BETWEEN**

Unite the Union representing the Firefighters and Crew Commanders at  
Guernsey Airport

AND

The States of Guernsey Public Services Department and  
Public Sector Remuneration Committee

1. This letter of agreement concerns the procedure for consultation, discussion, agreement and resolution of all operational personnel and associated pay and conditions related issues for the proper and necessary provision of Airport Fire Services at Guernsey Airport and the determination of these issues.
2. The Procedure shall consist of a forum, chaired by an independent facilitator provided through the offices of the Industrial Disputes Officer and acceptable to all parties. In the absence of an independent facilitator the meeting will be chaired by either of the parties. The following shall be entitled to attend meetings of the forum; representatives of Unite the Union, representatives from the Airport Fire Service, Airport Management and officers from both the Public Services Department and the Public Sector Remuneration Committee.
3. The proceedings of the forum shall remain confidential to its members except and until it is necessary for any or all to obtain the endorsement from the parties they represent.
4. The members shall enter the process with the express intention of concluding proceedings by no later than Saturday 9 May 2009. In the event of any issues remaining outstanding by that date or, at the facilitator's discretion an earlier date, then unless the facilitator believes there is a realistic possibility of agreement through an extension of the forum's proceedings they shall be submitted for resolution by binding arbitration.
5. Secretarial services shall be provided by the office of the Industrial Disputes Officer.
6. In recognition of acceptance of the above procedure and on the understanding that Firefighters and Crew Commanders will maintain minimum manning levels until 9 May 2009 the sum of £24,000 will be available for payment on a basis agreed between Unite and the Public Services Department.
7. The Public Services Department also agrees that it will not employ additional labour during this period except with the express agreement of Unite the Union.

Signed:

.....  
For and on behalf of Unite the Union

Signed:

.....  
For and on behalf of the Public Services Department

Signed:

.....  
For and on behalf of the Public Sector Remuneration Committee

This agreement is dated 20 February 2009



CONFIDENTIAL  
EMERGENCY POWERS AUTHORITY PANEL

Minutes of the Meeting held on 26 May 2009  
at Sir Charles Frossard House

**PRESENT:** Deputy L S Trott, Chief Minister  
Deputy B M Flouquet, Deputy Chief Minister  
Deputy A H Adam  
Deputy G H Mahy (entered during the course of the meeting)  
Deputy C S McNulty Bauer  
Deputy C N K Parkinson  
Deputy P R Sirétt

**ALSO PRESENT:** HM Comptroller,  
ND Lewis, Deputy Chief Executive  
  
P Whitfield, Chief Officer, Home Department  
J Buckland, Chief Officer, Commerce and Employment  
Department  
A Lewis, Chief Officer, Public Services Department  
S Elliott, Head of Human Resources and Organisational  
Development  
C Le Ray, Airport Director (entered during the course of the  
meeting)  
J Falla, Director of Communications  
C Veron, Emergency Planning Officer  
D R Guilbert, Executive Assistant, Policy Council

**AIRPORT FIREMEN**

The Chief Minister welcomed those present and invited the Deputy Chief Executive to brief the meeting.

The Deputy Chief Executive thanked everyone for attending at such short notice. He explained that although membership of the meeting consisted of the Panel Ministers entitled to serve on the Emergency Powers Authority in his view the current strike by the airport firemen did not at this point constitute an emergency in the full sense of the Law. Nevertheless the Chief Minister had agreed that a meeting was required to decide pragmatically what might be done and whether circumstances could develop whereby an 'emergency' would exist. Up until the present time, the matter had been dealt with by the Public Services Department and the Public Sector Remuneration Committee (PSRC). However, there was now a strategic threat requiring corporate solution as the Island's reputation was at stake. The Deputy Chief Executive drew comparisons with the status of the meeting and those meetings held in 2008 to address fuel supply issues and the steps taken by the Policy Council in its decision to purchase the tankships.

The Chief Officer, Public Services Department, informed Members that at 1.00 pm the previous day (25 May – Bank Holiday Monday) the Deputy Industrial Disputes Officer had convened a meeting between his Department, the PSRC and the firemen when she observed the cover at the airport had dropped below Category 6. The firemen were seeking a pay settlement of around 25/30% whereas the offer on the table was possibly between 5/10%. Because of this significant difference between the parties, the firemen had walked out of the meeting and had declared strike action, undertaking to provide cover for emergency flights only. Around three such flights had left the Island. Cover at the airport had been Category Zero since around 4.30 pm the previous day. The Deputy Industrial Officer had immediately referred the matter to an Industrial Tribunal.

The Chief Officer, Commerce and Employment Department, advised that the Deputy IDO was arranging for a Tribunal to meet on Thursday and Friday. He informed Members that his Department had received anecdotal feedback from a number of companies including some of the finance houses who had been advised by their off Island headquarters that they would consider relocating out of Guernsey if the strike continued much longer. A rough estimate of the cost to tourism was provided.

The Chief Officer, Public Services Department, added that allegedly Flybe had informed one of their sub-contractors that in view of the current situation, they would not consider renewing their contract with that company due to uncertainties of operating out of Guernsey.

*Deputy Mahy joined the meeting.*

Deputy McNulty Bauer said that representatives of three airlines had expressed their concerns to her that the current situation was losing their companies money.

*The Airport Director joined the meeting.*

Deputy Trott indicated that he had received a telephone call from Malcolm Hatt, the Managing Director of Aurigny expressing concern that the Company was losing money because of the situation, and several concerned calls from the finance sector and others. Deputy Trott went on to explain that the firemen through Ron Le Cras of Unite had requested the Guernsey Press to attend a meeting with them to put their side of the story. Mr Le Cras had invited him to attend to hear their views and, on the basis that he was neither empowered to negotiate nor had any desire to do so, agreed to attend the meeting, as an observer, along with the Head of Human Resources and Organisational Development. He had emphasised at the outset of the meeting that his role was to listen and take back messages – not to negotiate. That was a matter for the PSRC and PSD.

The Head of Human Resources and Organisational Development recalled that during the three-hour meeting the issues raised by the firemen related to their base pay, the manner in which negotiations had been handled and recruitment and retention. He agreed that there was a problem in relation to recruitment and selection. He pointed out that the firemen were adamant that a Tribunal would not solve the problem, and that they would not attend the Tribunal; they wanted their pay claim separated from the recruitment and retention issue and while the firemen were content with PSD management, they did not believe progress would be made with the current negotiator in place. They sought a fresh face.

The Head of Human Resources and Organisational Development confirmed that he had no objection to there being another PSRC negotiator. He indicated that the firemen, when asked what it would take to see them return to work, had responded by saying a special payment of £4,000 each, separate from their 2009 pay claim, and in return they would guarantee cover for one year during which time all outstanding issues could be resolved. The Head of Human Resources and Organisational Development further advised that any temporary payment had to be based on acceptable conditions; he felt that in many aspects the firemen had a reasonable case. In his view, for an industrial relations issue to have reached this stage, there had to be serious underlying reasons and said he would like to be able to investigate these in his capacity as Head of Human Resources rather than in his capacity as "Chief Officer, PSRC". In his view, the men were open and wished to resolve the issue.

Deputy Flouquet stated that it seemed to him that the firemen's claim the previous day had been for a minimum of £5,000 above their base pay with additions above this figure. The firemen had been intransigent at that meeting. The Deputy Industrial Disputes Officer had asked the PSRC if they would be prepared to offer a financial inducement until the Tribunal took place. The firemen had indicated that they did not want a Tribunal. Deputy Flouquet stressed that it was a different situation each time a meeting was held with the firemen; they had corrupted a previous agreement. The firemen were taking advantage of their strong negotiating position and the present situation represented a significant problem. He agreed that there should be an investigation into whether another body should replace PSRC. He believed an official pay claim had been made the previous day.

On the basis of his exposure to the issue Deputy Trott said that there appeared to be some evidence that the airport firemen's salaries may be too low to retain staff.

Deputy Adam pointed out that nursing staff are also subject to low pay. He felt that if the firemen receive their requested figure of £4,000 each, there should be a condition that they would be subject to a financial penalty if they broke the agreement. He supported Deputy Flouquet's cautious approach to the situation.

The Deputy Chief Executive said that one option that could be considered, and it was a drastic option, would be to formally terminate the men's contracts and then immediately offer them another contract, with a new pay deal, but importantly with the binding terms and conditions and new approach that PSD was seeking. However, he urged extreme caution in such an approach which could send signals to other public sector groups in such a way that could precipitate Island-wide industrial relations problems for example if harbour staff and others joined the firemen on strike. He recommended against this route.

Deputy Flouquet was of the view that if the firemen received their requested temporary payment of £4,000, they would want that built into their next pay claim.

The Deputy Chief Executive responded by emphasising the importance of finding a mechanism whereby over the next twelve months a lasting solution to the long running dispute which was satisfactory to all parties could be found. It was a matter of fact that the firemen were able to exact pressure due to the impact of prolonged closure of the airport - but there remained few alternative strategies to achieve a long lasting solution.

Deputy Mahy informed Members that the implementation of Agenda for Change at the HSSD had also necessitated a complete review of nursing staff jobs and levels of responsibility but this had not brought about an adverse reaction from other pay groups. He advised that the jobs of the airport firemen should be independently evaluated, linked to a no-strike agreement, and pointed out that the Town Fire Brigade are not allowed to strike, neither are the Police nor Prison Officers.

Deputy Parkinson said he had insufficient knowledge of all the relevant details to judge whether the airport firemen had a good cause. He had heard that Flybe were considering suing the firemen. He saw no reason why the men should not be given £4,000 each as a conditional temporary payment; it was important to ensure this situation could not happen again in future.

In response to a question from Deputy Sirett who asked whether the current problem was related to pay or retention issues, Deputy Trott indicated that the issue was fundamentally one about retention; staff were leaving for better paid jobs.

Deputy Parkinson queried whether, in that case, it was therefore a pay issue instead, to which Deputy Trott responded that it depended on whether one took Deputy Mahy's view or PSRC's view.

Deputy Adam pointed out that the airport fire service was virtually fully staffed. Deputy Sirett agreed with Deputy Parkinson, but pointed out that it appeared that the men had little respect for PSRC.

Deputy Flouquet confirmed that airport firemen were leaving for better paid jobs; he pointed out that the union would not permit external fire fighters to be brought in to the Island even to alleviate the current situation. UK contractors would not send staff while a dispute was in progress.

The Head of Human Resources and Organisational Development reiterated that the firemen would co-operate if paid the sum of £4,000 each as a temporary payment, with appropriate conditions attached.

In response to a question from the Deputy Chief Executive who asked whether the current meeting would be acting ultra vires if it agreed to support the provision of the suggested payment to the airport firemen, HM Comptroller advised that the mandate of the PSRC included "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". Whilst the States could amend committee mandates or override a committee which was not exercising a statutory function, that would take time. HM Comptroller referred to comments made earlier in the meeting by the Head of Human Resources and Organisational Development from which he understood that the financial element of the retention arrangements, under which the airport firemen had indicated that they would be prepared to co-operate with a full review and guarantee cover for 12 months, was not properly classifiable as remuneration. The Head of Human Resources and Organisational Development confirmed that this was his understanding of the position.

HM Comptroller further advised that the mandate of the Public Services Department included the operation of the airport, part of which was the maintenance of fire cover. The Department could undoubtedly use its budget to defray the cost of such cover. The only question was whether the PSRC's responsibility for collective bargaining in respect of remuneration totally precluded the Department from making any payment to the airport firemen beyond what had been agreed by the PSRC as remuneration.

HM Comptroller concluded that the Public Services Department's mandate could be interpreted as permitting the Department to make a payment on the basis that this was not classed as remuneration and in light of the Department's responsibility to do everything to keep the airport open and the very real danger that, without making the payment, the airport would not be open the following morning and for a period of uncertain duration.

Having heard HM Comptroller's advice and recognising the impact on the Island of continued closure of the Airport, Deputy Flouquet was prepared to recommend to his Board the proposal to pay a £4,000 temporary sum.

Deputy Trott reminded Members that Deputy Brouard, Chairman, PSRC, would soon be joining the meeting and asked Members for their views with regard to the proposed payment. With the exception of Deputy Flouquet who at that point abstained, Members were unanimous in their support for the proposal to recommend PSD to make a payment to the firemen of £4,000 each, subject to appropriate conditions being attached.

*The Chairman, PSRC and the Senior Negotiator, PSRC joined the meeting.*

Deputy Trott welcomed the visitors.

The Deputy Chief Executive explained that the Policy Council has an outward-facing role; it had noted the serious concerns expressed by the commercial sector with regard to the current situation at the airport and had concluded that there were real reputational issues at stake for the Island if the airport was to remain closed. As the Chairman was fully aware, the Chief Minister and the Head of Human Resources and Organisational Development had been invited to meet with the firemen to hear them address the Editor of the Guernsey Press and had done so. He explained, supported by the Head of Human Resources and Organisational Development, that in the circumstances, those present felt the most pragmatic way to proceed would be to grant the firemen's request and pay them £4,000 each as a temporary arrangement - separate from their 2009 pay claim, which in any event had yet to be submitted, for which they would guarantee full cover for the next year, during which period HR would undertake a review of their jobs. Finally, the firemen had indicated that they would not attend a Tribunal.

Deputy Brouard explained that PSRC had made an offer to the firemen some time ago that represented a 16% increase, when their roles had not changed, but this had been rejected. To accede to the firemen's request would be sending out the wrong message and would set a difficult precedent for the future. There was public pressure not to give in. An Industrial Tribunal was scheduled for Thursday that week. If the firemen's representatives did not attend the Tribunal, its decision would still be legally binding. The Deputy Chief Executive agreed that the firemen might not attend the Tribunal and said that whilst its decision would be legally binding, that would not necessarily prevent the firemen from continuing on strike.

The Senior Negotiator said that the situation that had been explained to his Chairman and himself appeared to be no different to the position reached at the previous day's meeting; the firemen wanted a 20% pay increase; a temporary pay agreement would not be seen by the firemen as such, and would cause difficulties in other pay sectors.

Deputy Adam agreed with the Senior Negotiator's view that acceding to the firemen's request for a 20% pay increase could well pave the way for similar pay increases across the public sector groups.

Deputy Brouard indicated that his Committee had already offered the airport firemen a 4.5% pay increase backed up by September 2008 RPI, which was 5.8%, and which equated to a £1,000 per salary increase and "on call" sums amounting to £2,000 per employee which equated to approximately 14 to 15%.

Deputy Trott stated that he and the Head of Human Resources and Organisational Development, at their meeting with the firemen, had received the strong impression that the men wished to resolve the matter. Nevertheless the men were unanimous that they would not attend the tribunal and industrial action would continue until a resolution was found.

The Senior Negotiator referred to the previous temporary agreement that had been reached with the firemen and felt that implementing another temporary arrangement would be a mistake. Noting that the firemen had requested another negotiator, he was of the view that this would continue to happen, whoever the negotiator was, until they got their way.

Deputy McNulty Bauer said she supported the proposal to accede to the firemen's request and indicated that the cost of £120,000 might be found from within her Departments' unspent balances on the basis that in certain circumstances C&B were empowered to make 'strategic' payments.

Deputy Adam indicated that he had been unaware how generous PSRC's offer of around £3,000 had been in comparison to their claim for £4,000, and suggested offering perhaps £3,500 each.

Deputy Brouard expressed concern indicating that the issue was not where the additional money to pay the firemen would come from, but that acceding to their request would invite similar claims from other pay groups. He did not think PSRC's offer of £3,000 each was unfair. He stressed that the wisest action would be for the Policy Council to fully back the PSRC. The problem was not recruitment and retention as stated by the firemen. The problem would not be solved by paying the men £4,000 each.

*The Chairman and Senior Negotiator, PSRC left the meeting*

The Chief Officer, Home Department, expressed concern at the way the PSRC was perceived to negotiate, but noted the Committee was in a difficult position. However, the Island's economic situation also had to be taken into account.

The Deputy Chief Executive said the current situation, if not resolved quickly, could lead to the loss of some of the Island's major financial institutions with an associated loss of confidence. What was facing the States was a potential economic disaster rather than an immediate 'Emergency' in terms of the Emergency Powers Law. One of the challenges that the Policy Council had faced over the last year was that the Policy Council Members from whom the EPA was drawn had met on a number of occasions relating to 'fuel oils' and had to consider what action to take to avoid creating an emergency and yet in the absence of a declared emergency they were unable to use the powers available in Law. His understanding was that the draconian powers under the Law were designed to meet extreme circumstances. Nevertheless, he felt that an emergency situation was developing, although not one that required a "martial-law" response.

HM Comptroller advised, by reference to the Emergency Powers Law that a state of emergency could be declared, by order, at any time "if it appears to the States of Guernsey Emergency Powers Authority ... that there have occurred, or are about to occur ... [inter alia] ... events of such a nature as to jeopardise the economic interest of the Bailiwick of Guernsey or any part thereof." Members would need to consider whether the current situation at the airport met this test:

Deputy Trott asked members whether they considered there was a case for convening the Emergency Powers Authority to declare a state of emergency in the current circumstances.

Deputies Flouquet and Parkinson responded in the negative. Deputy Trott felt that the attitude of the Guernsey Press might soften towards the firemen as the Guernsey Press Editor had met with them the previous day. If that proved to be the case, this might strengthen the firemen's resolve. Deputy Trott was of the view that an offer had to be made to the firemen.

Deputy Flouquet observed that there was a tipping point in every situation but in the current situation this point had not yet been reached where an emergency could be declared.

Deputy Parkinson concurred.

Deputy Trott observed that Members had concluded that an emergency did not exist at the present time.

In response to a question from Deputy Trott, Deputy Parkinson was of the view that intervention by the Emergency Powers Authority might precipitate the resignation of the PSRC. He felt that it was essential for Deputy Trott to speak with Deputy Brouard to establish if he would recommend his Committee to support the making of a payment by PSD and for the meeting to act with, or without, Deputy Brouard's agreement.

Deputy Flouquet left the meeting briefly to advise Deputy Brouard to remain available to meet the Chief Minister. Upon his return the Chief Minister established from Deputy Flouquet that notwithstanding his earlier decision to abstain, he now agreed to the proposal.

In revisiting the earlier vote in favour of supporting PSD making a one off payment, Deputy Adam said that although he still agreed with Deputy McNulty Bauer's assessment of the impact on commerce of the dispute – in the light of the PSRC representatives comments he had decided not to vote in favour.

Members agreed, by a majority of 6 to 1, (Deputy Adams dissenting), to support the Public Services Department offering the airport firemen the sum of £4,000 each as a ring-fenced, temporary arrangement, separate from their 2009 pay claim, to guarantee full cover for one year, pending a full review of their jobs under a different negotiating team.

Action: Chief Officer, Public Services Department/Head of Human Resources and Organisational Development

hymn test 14/7/09

Staff 1602 (1)

**CONFIDENTIAL****MINUTES OF A BOARD MEETING HELD ON 27 MAY 2009**  
**AT 9.00 AM IN THE ROYAL COURT LIBRARY**

**Present:** Deputy B M Flouquet, Minister  
Deputy S J Ogier, Deputy Minister  
Deputy T M Le Pelley  
W Walden, Alderney Representative  
Deputy A Spruce

**Also present:** A Lewis, Chief Officer

**AIRPORT FIREFIGHTERS**

The Minister opened the meeting by explaining that this was a follow-on from his conversation with Board Members the previous evening. He added that he had spoken to all Board Members except Deputy Spruce whose wife had explained that he was out at a Douzaine meeting. He continued by explaining that the previous afternoon a meeting had taken place of 7 Members of the Policy Council acting as the Emergency Powers Authority (EPA).

At that meeting the Chief Minister and Simon Elliott, the new Head of Human Resources, had reported on their attendance at a meeting with the Firefighters. The advice was that it had not been a negotiation but it had been ascertained that a one-year payment of £4,000 per man would secure the return to work of the Firefighters, a resumption of Category 6 cover, and that this would be guaranteed for 12 months while further talks continued about the employment contract. He added that the EPA had concluded, in all the circumstances, that the Public Services Department should pay this recruitment/retention payment on a temporary basis over the next 12 months.

Deputy Spruce expressed his firm view that this was entirely inappropriate and unwise. He reminded the Board of all the work that had been carried out over the last two years and most intensely in recent months, which had all proved to no avail due to the Firefighters and their Union Representative resolutely refusing to make any agreement and simply holding out for more money. What was happening now was that the States were simply caving in to the Firefighters' demands because they had withdrawn their labour. He said this completely undermined all the discussions that the PSRC had held and including those held with the support of the Public Services Department. He for one would be resigning from the PSRC and would be talking to his fellow Committee Members on the matter shortly. He said the Industrial Tribunal was scheduled for 28 May and that should have been allowed to run its course.

The Minister said it had been explained to him the previous day, that the Union and the Firefighters had made it very clear that they would not be attending the Tribunal, that industrial action would not stop as a result of the Industrial Tribunal being held and that they would give no assurance that they would return to work after the Tribunal had delivered its decision. It had been confirmed to him that if this happened the States would be powerless to

force the men back to work and so it had to be seen that whilst the Tribunal was a useful process it offered no guarantees that the Firefighters would return to work.

Deputy Spruce commented that real pressure had been building on the Firefighters and sooner or later they would have had to return to work. He said he had to leave to attend a meeting with the PSRC but wished to record that he was opposed to any payment to the Firefighters at this time other than one that had been properly negotiated through the correct channels.

The Minister said he wished to impart, on a strictly confidential basis, some information which had been brought to the attention of the EPA in relation to the disruption. This had come from a number of sources and was indicating that several significant businesses would be reconsidering their presence in Guernsey should the Airport disruption continue for a further day or more, and that such actions would almost certainly have a serious and long lasting detrimental impact on the economy. He also added that Commerce and Employment had already calculated that the Tourism and Hospitality sector was losing something in the region of £130,000 each half day while the disruption continued, however the general view was that the reputational damage the Island was suffering was far greater.

#### **Deputy Spruce left the meeting.**

Deputy Le Pelley said that the current negotiating process seemed to be something like a five-sided shape or wheel which as a result could never run smoothly. There were lots of different parties with input and views and so the system as currently operated was bound to struggle to find acceptable solutions to employer/employee relations matters.

Deputy Walden questioned whether the Emergency Powers Authority had the right to instruct that a payment be made. He said he was uncomfortable with the arrangement and unclear about the role or power of the EPA.

The Chief Officer explained that the States Members who constituted the panel from which the EPA was drawn had all met and had decided that the severity of the situation with the Airport being closed by industrial action, combined with the prospect of closure carrying on for an extended period, would have catastrophic economic implications for the Island. It had decided at its meeting the previous day that it could declare a state of emergency and thereby take such powers as were necessary to take action, including making payments in order to respond to that emergency. It had reservations however about the economic and reputational implications of the very act of declaring a state of emergency. As such, the full panel of EPA Members had met to consider the facts of the situation and had reached the decision to direct, or make a very strong recommendation, to the Public Services Department that it pay the Airport Firefighters £4,000 for the year to secure continued operations at the Airport and a dialogue to address the updating of the Contract and working arrangements. That strong recommendation/direction from the EPA, or whatever body it was sitting as, was before the Board for it to decide whether or not to accept and implement. If it chose not to implement it was almost certain that the Firefighters would resume industrial action and the Airport would again be closed. If this happened the odds were that the EPA would convene that afternoon and could be expected to conclude that after a further day's disruption an emergency situation had been reached. If it made that decision it would declare a state of emergency, for however short a period, and the payment would be made.

He added therefore that the Board had three choices:-

- i) to accept the recommendation of the EPA (or whatever body) and make the payment;
- ii) Accept the recommendation but record that it was done so with reluctance, and make the payment; or
- iii) reject the recommendation and refer the matter back to the EPA.

In response to a question from a Board Member, the Minister said that the EPA had received advice from HM Comptroller (HMC) who had confirmed that the Department could expend monies in the manner proposed by the EPA. HMC had explained that in a situation such as this a Department would consider how it should sensibly respond to a situation and this could, for example, involve spending money to bring in contract staff or taking steps as appropriate to tackle a problem in a rational manner. The Minister added that he understood that the cost of this payment to the Firefighters could be funded by the Treasury & Resources Department.

The Chief Officer responded that he was not convinced that such an assurance had been given. In considering this matter the Board would have to work on the basis that the cost would have to be met from Airport revenues although there would be nothing to prevent the Board approaching Treasury and Resources for the money.

The Minister added that it was clear that bringing in contract staff was not an option because they would refuse to come in to a dispute situation.

The Deputy Minister said it appeared logical to make the payment rather than delay and wait for it to become an instruction from the EPA.

The Board concluded that although it had reservations about the process which had been followed, it accepted the recommendation and agreed that the payment of £4,000 for one year be made to the Airport Fire Service employees. Although Deputy Spruce was absent at this point of the decision, it was nonetheless noted and recorded that he was opposed to the payment.

**Action: Chief Officer**





Guernsey Airport  
Administration Office  
La Villaze  
Forest, Guernsey  
GY8 0DS  
Tel +44 (0) 1481 237766  
Fax +44 (0) 1481 239595  
Email [airport@gov.gg](mailto:airport@gov.gg)  
[www.guernsey-airport.l.gov.gi](http://www.guernsey-airport.l.gov.gi)

Unite  
Transport House  
Commercial Road  
St Sampsons  
GY2 4QP

27<sup>th</sup> May 2009

Our ref: SM

Dear Sir

#### Airport Fire Fighters – Guernsey Airport

I refer to the meeting that took place yesterday between the Airport Fire Fighters ('the Fire Fighters'), representatives of Airport Management and the States of Guernsey acting by the Public Services Department (PSD).

The proposals in this letter were discussed at that meeting. These proposals have been approved by the Public Services Department Board at a meeting held by them this morning. I am therefore authorised by the Board to put forward the following offer to each Fire Fighter. It is intended, if the offer is acceptable, that Ron Le Cras, the Regional Organiser of Unite and Kevin Rabey and Paul Ozanne who have been authorised by each and every Fire Fighter, to sign this letter by way of acceptance of the offer on their behalf, will sign the letter and at which point it will become legally binding on each Fire Fighter and the States of Guernsey. It is then intended that a copy of this letter will be sent to each Fire Fighter, together with a form of personal acceptance, for each Fire Fighter to sign and return given that the provisions of this letter sets out binding personal obligations and understandings.

#### Payment

PSD will pay to each Fire Fighter a retention payment accruing at the rate of £4,000 (four thousand pounds) for the period of twelve months from date of the acceptance of this letter as set out below.

This payment will be paid pro rata by 52 equal weekly or 12 monthly payments dependent upon when the Fire Fighter is paid. A Fire Fighter who is paid weekly will therefore receive a weekly payment of £76.92 per week and a Fire Fighter who is paid monthly will be paid £333.33 per month. In each case the first payment will be made with the next pay packet.

If a Fire Fighter shall leave the Service within the period of 12 months, they will not be entitled to any balance of the £4,000 for the period after they have left the Service.

The payment is to accrue for each week or part of a week worked (and this is so whether a Fire Fighter is paid weekly or monthly).

The retention payment does not form part of any basic salary or other entitlement in relation to the Fire Fighters terms and conditions of employment. Any liability to tax or social security payment will be for the Fire Fighter to deal with directly with the relevant authority.

This payment does not form part of any settlement for the 2009 or 2010 pay negotiations.

#### Undertaking

In exchange for the retention payment each Fire Fighter agrees with PSD both collectively and by way of individual undertaking to guarantee Category 6 cover for Guernsey Airport at all times during the period of twelve months from the date of acceptance of this letter.

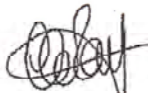
Each Fire Fighter therefore agrees in good faith to co-operate with the Airport Management and with each other in ensuring that there is adequate fire fighting personnel available at all times to maintain Category 6 cover it being recognised that unless Category 6 is maintained, certain types of aircraft will be unable to use the Airport which will cause disruption to airlines and members of the public using the Airport, and risk of damage to Guernsey's reputation. This duty of co-operation will in practice mean ensuring that there is adequate cover at all times including during holidays, sickness or other absences from work.

#### Purpose

The parties recognise that there are issues surrounding retention of workforce, pay and terms and conditions of employment that need to be identified and resolved, so as to obtain a long term and sustainable basis on these matters for the future. The retention payment will therefore allow the parties to work together in good faith to review these issues during the next twelve months to achieve this purpose.

The parties agree therefore that following this agreement they will each use every reasonable endeavour and effort to promptly identify and resolve the issues.

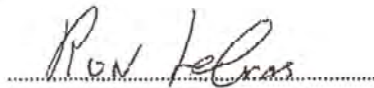
Yours faithfully



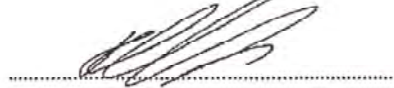
Colin Le Ray

Airport Manager

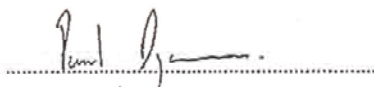
On behalf of each Fire Fighter at Guernsey Airport, who have authorised us to sign and accept the offer of the retention payment and give the undertaking on their behalf, we accept the terms of this letter of which this is an exact duplicate.



Ron Le Cras



Kevin Rabey.



Paul Ozanne



# POLICY COUNCIL

## THE STATES OF GUERNSEY

**PRESS RELEASE – WEDNESDAY 27 MAY 2009**

**FOR IMMEDIATE RELEASE**

Following meetings held yesterday and today, agreement has been reached with the Airport Fire Service to restore Category 6 cover at the Airport.

An arrangement has been reached between the Public Services Department, as the employer of the firefighters, and the staff, to restore cover for the next 12 months.

Under the terms of the agreement the firefighters will receive a 'recruitment and retention' payment, spread over the next 12 months. It will be in addition to their current salary, and will not be considered part of base pay.

Also agreed is that both sides will work towards concluding discussions over terms and conditions which has been ongoing for more than two years. The States will bring in new negotiators. The agreement has no bearing on discussions on the firefighters' pay claim for 2009, which has not yet been tabled.

Chief Minister Lyndon Trott and Simon Elliott, the States' new Head of HR and Organisational Development, attended a meeting with the crew of the Airport Fire Service yesterday. Negotiations with the firefighters did not take place at that meeting.

But as a result of that meeting, the Chief Minister agreed to take back a proposal and the staff agreed to call off their strike on a temporary basis and return to work.

Yesterday afternoon the States Emergency Powers Authority, consisting of seven members of the Policy Council with the Chief Minister as Chairman, sat and considered the proposal.

The Emergency Powers Authority meets when there are strategic threats to the island. In this case the prolonged closure of the airport would have had severe repercussions on not just the travelling public but also the economy.

By a majority of 6-1, the Members agreed with the proposal that the Public Services Department should make the payment so that discussions with the staff would re-open.

The Chairman of the Public Sector Remuneration Committee was present for part of the meeting.

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An Industrial Dispute Tribunal scheduled for tomorrow will not now be held.

**Issued by: James Falla, for Policy Council**

**Direct Tel: 717225**

**E-mail: [james.falla@gov.gg](mailto:james.falla@gov.gg)**

## EXTRACT FROM STATES MEETING HELD ON WEDNESDAY 27 MAY 2009

Speaker	Comments Made
Bailiff	Chief Minister I wonder whether you could give us a view as to where you think you stand. I understand from you only in the last few minutes there may be other matters that are going to take your attention and that of other members of the Assembly.
Chief Minister	Sir, not only in the last few minutes I made the position clear a little earlier and that was that my view was that we should end at 5.30 there has been a press conference called for 6 o'clock and prior to that the PSRC have asked for a briefing from the Public Services Department and others so it would be my preference Sir, for us to conclude now.
Bailiff	Yes, the Chief Minister had indicated to me about ¾ of an hour ago where might we stand it wasn't until very recently, until a couple of minutes ago that I realised there was a press conference scheduled for 6 o'clock.
Deputy B Brehaut	Sir, may I ask for a clarification on is it to inform States Members or members of the press and are members of this Chambers welcome at the press conference with regard to the resolution presumably of the Firemans' ongoing situation.
Bailiff	I don't know – and the Chief Minister is not obliged to answer that question we were in and still are in debate on the question of recycling. If he can assist you with that then fair enough but I can't ?????.
Chief Minister	Sir, a few moments ago, and literally about 3 minutes ago Deputy Lowe asked if I would be prepared to update this Assembly prior to that press conference on what I know so far. I would be very happy to do that Sir if that is the will of the Assembly.
Bailiff	I think it probably is. So I think what we are doing is adjourning debate on recycling until tomorrow morning, we also of course have to deal with a separate Billet d'Etat coming from Assembly and Constitution Committee so we wouldn't have completed all of the

Bailiff	business in front of the Assembly this evening therefore I think we will hear briefly from the Chief Minister. Chief Minister.
Chief Minister	<p>Thank you Sir. Sir, the background first of all. Collective bargaining often fails to meet the needs of the Employing Department. Now the Public Sector Remunerations Committee cannot as presently mandated by this Assembly be sufficiently flexible and responsive to the distinctive operational needs of specialised services. Why? Well it is because the PSRC is only mandated to determine one aspect of employee relations – pay. They are not mandated to consider the consequences of pay negotiations failing. However, the Emergency Powers Authority (the EPA) is. The EPA is mandated to take such steps as it may consider necessary or expedient to ensure the protection of the economic interests of the bailiwick. So what happened Sir, well the PSD had agreed a temporary 3 month payment to ensure cover of which the Public Sector Remunerations Committee had knowledge and which had expired. The PSD sought to extend that arrangement for a further year pending a full review of all human resources matters pertaining to the Airport Fire Service. Now Sir, the Emergency Powers Authority, by a large majority, supported the PSD in that approach and it is my understanding that during the course of our meeting today an agreement has been reached between the States and the Airport Firefighters and details will follow as part of the press conference.</p> <p>Thank you Sir.</p>
Bailiff	Deputy Brouard.
Deputy Brouard	May I make, ask the Chief Minister a few questions Sir?
Bailiff	<p>Well, let me just take this carefully, the question was whether the Chief Minister would make a statement, the Chief Minister has made a statement the rules of procedure do not say that questions can be asked following a statement, that would not preclude the Chief Minister from agreeing to answer a question but we cannot oblige him to do so. So Chief Minister, I'm conscious of two things one it may be the Members of the Assembly would like to know more however you are not obliged to answer any questions and I am mindful that you will be running up against the time of the press conference and what we certainly not going to do is to get into a debate on this subject as I think it would be probably inappropriate to do so. Chief Minister What do you say at this time????</p>

Chief Minister	I think what would be , I'm very happy to answer questions Sir, as long as they are questions that are appropriately answered by me. The problem that we may have is that questions from the Assembly may be more appropriately directed towards I would think most specifically the Minister of the Public Services Department and may I Sir whilst I am on my feet applaud him and his Department for the manner in which they have conducted affairs not only over the last 24/36 hours but indeed for many weeks preceding the developments of the last 48 hours. However, Sir, with that caveat, with that caveat, I would be very happy to take questions from the Chairman of the PSRC.
Bailiff	Well we are Chief Minister past half past five I haven't put a formal resolution that we continue but please Members of the States take it that we are continuing briefly but what is your cut-off point in terms of time Chief Minister.
Chief Minister	Sir, with respect my cut-off point was 5.30.
Bailiff	But you have now said you would answer a question perhaps I will allow therefore Deputy Brouard to answer a question given his permission in this but what we are not going to do is to get into a debate now. Deputy Brouard.
Deputy Brouard	Sir?? Thank you Chief Minister for allowing me to ask a question. The PSRC is mandated by this body not the Policy Council or the Emergency Powers Group to negotiate pay and conditions for all States employees. Can the Chief Minister please advise me that when the Emergency Powers Authority sat last night did they agree that there was a state of emergency and therefore their powers came into being in other words that they can make offers outside of the PSRC as my understanding from the Law Officers is that did not happen Sir, thank you.
Bailiff	Chief Minister
Chief Minister	Sir, I was very careful with the words I used the EPA by a large majority supported the PSD in their approach, which was to extend an existing agreement by enlarge, an existing agreement, an existing agreement that had been in force for many months preceding the EPAs consideration of matters last night.

Deputy Maindonald	<p>Sorry, sorry, I wish to make a point of order on this. I feel very, very frustrated listening to these comments were not being given complete answers, were not being given, and that is no disrespect to either side there isn't the opportunity to do this now I will be wishing to put a requete before the States, I am sorry to do this Members but were not going to be given the opportunity to raise any questions to have a debate. I believe that these matters need to be debated. You Sir, as Presiding Officer and the Law Officers ????? ??? are well aware that I tried to put a question before the Assembly this month I did so in good faith and on the basis that I had concerns about what was going on. On that basis if there are 6 other members who would be willing to sign this requete I will bring this matter forward for next month and we will have a debate on this issue. I think it is very, very unsatisfactory we had the same situation with the fuel tankers and I am not entirely clear on where this Emergency Powers kicks in and who decides in the absence of any declared emergency – it needs debate.</p>
Bailiff	<p>Yes. Thank you very much but what this does and I can fully understand the anxieties and expressions of concern from Members, but it does highlight why it is that when under the rules we allow a statement we then don't then get into unstructured debate. ?? matter how much we might like to know the answers this isn't unfortunately the time for them but as Deputy Maindonald has indicated there are ways and means in which we can find out exactly what was the position and that is in my view the best way to deal with it rather than risk a debate which we mustn't enter now because I wouldn't wish to think that it would then cause comments to be made which would be unproductive. So we are then going to now conclude proceedings I'm afraid and draw the line.</p>
Deputy Maindonald	<p>Sir, I was going to agree with you, ordinarily you wouldn't have that but as the Chief Minister agreed to accept a question I felt justified to raise a point of order.</p>
Bailiff	<p>I'm not criticising, I'm not criticising you one iota Deputy Maindonald from the way you dealt with it but we mustn't get in to now a succession of questions or statements.</p> <p>Deputy Lowe.</p>

Deputy Lowe	<p>Thank you Sir. As it was myself that actually wrote a note to Deputy Trott to ask for a statement because I believe this government should hear what's going on. I'm saddened for 2 reasons that (a) this Assembly has had to cease debate for the media. This Assembly as a part of this government is running the Island of this government and not running around to fall in place for the media who could wait for however long it takes for us to finish a debate when we only had another quarter of an hour to go Sir, and secondly that that same meeting that was taking place with the media was actually to inform the media before this chamber on a serious matter – this was not a tinkering with suddenly lets put forward a question because we've got our own little gripe. This is a serious matter that affected the whole island and outside of this island and we have been kept like mushrooms and we have not found out and yet if we go outside this chamber it is all over the internet that the Firemen were paid to go back to work and I find Sir, that that is not acceptable.</p>
Bailiff	Deputy Lowe – Chief Minister intervenes
Bailiff	Chief Minister I am presiding and I just wish to say this.
Chief Minister	Yes badly.
Bailiff	<p>Chief Minister I am not presiding badly, I'm trying to struggle with a difficult situation - will you please be quiet.</p> <p>Deputy Lowe quite rightly says that the Assembly would wish to know perhaps than having to listen to something arising from the media. I was left in the difficult situation that on the one hand I might have preferred to continue with the debate so that we could have concluded what we've been dealing with for a large chunk of today on the other hand I was conscious that members of the Assembly as Deputy Lowe had said would wish to have heard something first in advance of the media because that is the way things should be particularly when this Assembly is in session and therefore I was between a rock and a hard place but I preferred that this Assembly should hear something before there was a media press conference. That is why I took it and drew the line on debate knowing that we couldn't complete the business of this session today we were going to come back tomorrow come what may so I gave the matter some priority, you Chief Minister were willing to make a statement and we thank you for that I'm very, very conscious however that when I permitted matters to go on beyond half past five it was on the basis that we were not going to get into a general debate and that is where we must stand and that is why I have dealt with it in the way that I have and I do now wish to draw a line on it. I will allow you one final comment Chief Minister then we are going to adjourn.</p>

Chief Minister	<p>I made it clear Sir, at the start that it was important that questions were directed to the person who was best placed to answer them. Now during the course of the afternoon a press release has been issued those of us with blackberries have had the opportunity to read it others will have it waiting for them when they get home this evening. This is how it reads.</p> <p>The Chief Minister then reads the statement out.</p>
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*Q:csbiro/extractsfromstatesmeetings/2009/may/chief/minister'sspeechinstatesmeeting27May2009reaff*

Telephone: +44 (0) 1481 723355  
 Facsimile: +44 (0) 1481 725439  
 E-mail: law@gov.gg  
 Website: www.gov.gg/law



P.O. Box 96  
 St. James Chambers  
 St. Peter Port  
 Guernsey, GY1 4BY

## LAW OFFICERS OF THE CROWN

Our Ref: **hmc/cf/psr/committee**

Your Ref:

Deputy L Trott, Chief Minister  
 Deputy B Flouquet, Minister, Public Services Department  
 Deputy A Brouard, Chairman, Public Sector Remuneration Committee  
 Policy Council  
 Sir Charles Frossard House  
 La Charroterie  
 St Peter Port  
 GY1 1FH

2<sup>nd</sup> June 2009

Gentlemen,

I have been variously requested to advise in writing, and to confirm in writing advice which I gave orally in meetings on 26<sup>th</sup> and 27<sup>th</sup> May 2009, concerning the respective mandates of the Public Sector Remuneration Committee, Emergency Powers Authority and Public Services Department in the context of the airport fire service. In so doing, I believe it is appropriate to record the circumstances of my attendance at those two meetings, but most particularly the first.

On 26<sup>th</sup> May I was in my Chambers discussing completely different matters with HM Procureur when, at around 4:00 p.m., he took a phone call from the Chief Officer of the Home Department requesting attendance by one of the Law Officers at what HM Procureur described to me as a "shadow EPA meeting" to take place at Sir Charles Frossard House at 4:30 p.m. I found that description helpful in reminding me that, whilst it is clearly proper and appropriate that Members of the EPA Panel should meet to discuss and consider possible responses to a situation with potential to develop into an emergency, those Ministers could only exercise the draconian powers conferred by statute on the Emergency Powers Authority once formally constituted as such, and at a properly convened meeting in accordance with Rule 17 of the 'Constitution and Operation of States Departments and Committees' rules. The meeting was in fact attended by each of the Ministers on the EPA Panel, with a number of senior officers, who proceeded to brief those present. Thereafter the Deputy Chief Executive asked the panel members whether in their opinion a state of emergency existed at that time. I advised by reference to the Emergency Powers Law that a state of emergency can be declared, by order, if at any time "if appears to the States of Guernsey Emergency Powers Authority.....that there have occurred, or about to occur.....[inter alia].....events of such a nature as to jeopardise the economic interests of the Bailiwick of Guernsey or any part thereof". The opinion of the panel members was that it was not appropriate at that time to make an order declaring that a state of emergency existed. From that point onwards it was

clear that the panel members could not themselves take any executive action *qua* Emergency Powers Authority. I am not sure whether I expressly so indicated but believe this was well understood, and they did not purport to take any such action.

I was asked about the mandate of the Public Sector Remuneration Committee and said that this included responsibility for "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". However, in one of the briefings mentioned above, the Head of Human Resources had, I believed, stated that the financial incentive element of the retention arrangements under which the airport firemen had indicated that they would be prepared to co-operate with a full review and guarantee cover for twelve months, was not properly classifiable as 'remuneration'. I asked Mr Elliott if I had correctly understood what he had said, and this he confirmed. I was asked whether the mandate of the Public Services Department would allow that Department to put in place the arrangements which Mr Elliott had outlined. I was told at that point that if PSD could not do so, the airport would not be open the following morning. I said that PSD's mandate included the operation of the airport; part of that operation is of course the maintenance of fire service cover, and PSD can undoubtedly use its budget to defray the cost of such cover; and the only question in my mind would be as to whether the responsibility of PSRC for collective bargaining in respect of remuneration could be said to totally preclude PSD from making any payment to members of the airport fire service beyond what has been agreed in terms of their 'remuneration' by the PSRC. In light of Mr Elliott's stated and confirmed analysis, considering the PSD's duty to do everything reasonably possible to keep the airport open, and bearing in mind the very real danger that otherwise the airport would not be open from the following morning and for a period of uncertain duration, I advised that the PSD's mandate could be interpreted as permitting the Department to put in place the arrangements which Mr Elliott had outlined.

On Wednesday 27<sup>th</sup> May 2009, at the invitation of the Chairman of the PSRC, I attended a meeting at the Royal Court House between Members and officers of his Committee, the Chief Minister, the Public Services Department Minister, the Chief Executive and several other senior civil servants. At that meeting I confirmed the advice which I had given the previous day. On this occasion, I clearly recollect advising that the previous day's meeting had not been a formal meeting of the Emergency Powers Authority for the purposes of the Emergency Powers Law.

That is the advice which I gave orally on 26<sup>th</sup> and 27<sup>th</sup> May. I now turn to consider more briefly, with a benefit of a period for reflection, whether that advice was in fact correct.

With regard to the status of the meeting on 26<sup>th</sup> May, my attention has helpfully been drawn to the 2005 States Report recommending the establishment of the Emergency Powers Authority, and specifically to reference therein to a review of local arrangements for monitoring threats, which concluded as follows:

*"The Chief Minister should lead a political body that has the authority to introduce and exercise emergency powers and also has a day to day monitoring role..."*

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*Clearly the body will meet during times of emergency but it may also meet at such other times as the Chairman considers necessary to fulfil its monitoring role."*

Whilst, as indicated above, it seems to me entirely proper and sensible that as many as possible of the members of the EPA Panel should meet to discuss a situation which has the potential to develop into an emergency, I based my opinion that the 26<sup>th</sup> May meeting was not technically a formally convened meeting of the Emergency Powers Authority on Rule 17 of the Constitution and Operation of States Departments and Committees Rules. Having been reminded, however, of those passages in the 2005 Report, I believe it probably was within the contemplation of the States when establishing the EPA that the full panel, rather than the three people identified in accordance with Rule 17(1), might properly be described as the Emergency Powers Authority when meeting for that purpose. I may accordingly now advise in slightly different terms, but it is important to stress that the difference would not be one of substance. It is and always has been clear that the meeting on Tuesday 26<sup>th</sup> May did not have the power, and did not purport, to undertake any executive action. The panel members present could, and did, without formally exercising any powers, seek to identify ways in which other elements within government might properly exercise powers vested in them, in order to avoid a situation escalating to a level where the EPA might have no real option other than to declare a state of emergency.

I understand that the arrangements relayed by Mr Elliott on 26<sup>th</sup> May were approved by the PSD on the morning of 27<sup>th</sup> May and agreed with members of the airport fire service. As a matter of law, I am in no doubt at all that PSD had ostensible authority to bind the States in this matter, and that this agreement is accordingly binding on the States. As a matter of the States internal administration, I do hold to the opinion set out above concerning the PSD's mandate as a sustainable interpretation; though, on mature reflection, I see more clearly than I perhaps did on 26<sup>th</sup> or 27<sup>th</sup> May the force of the contrary argument, to the effect that, notwithstanding Mr Elliott's analysis, the financial element of the arrangement explained to the meeting on 26<sup>th</sup> May ought properly to be classified as 'remuneration', and the remuneration of States employees is a matter falling squarely and exclusively within the mandate of the Public Sector Remuneration Committee. The question could be argued either way, and of course I was always conscious of that, but I am now inclined to see the arguments on either side as rather more finely balanced than I had perhaps appreciated during the 26<sup>th</sup> May meeting.

Yours faithfully



H E Roberts Q C  
HM Comptroller



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HM Comptroller,  
St James Chambers,  
St Peter Port,  
GUERNSEY  
GY1 2PA

12<sup>th</sup> June 2009

Dear Sir,

#### **OPERATION OF THE EMERGENCY POWERS AUTHORITY**

Thank you for your letter of 2 June 2009 in which you set out, in some detail, the advice that you tendered to the meeting held on 26 May 2009 and repeated at a meeting attended by the PSRC on 27 May. This was critical advice which underpinned the decision to support the PSD in making special payments to Airport Firefighters.

As events of the last twelve months have demonstrated there is a need for widespread agreement and understanding of precisely how the States should apply measures designed to avert or address serious strategic threats when they arise. In this respect, while the advice in your letter is helpful, the Policy Council remains of the view that there is a disturbing lack of clarity as to roles and responsibilities and perhaps a lack of appropriate mechanisms, in the following circumstances where:

- events develop to the point where a potential emergency could occur;
- there is a strong case to take swift corporate action to avoid an emergency; but
- circumstances do not warrant the formal declaration of an emergency by the EPA under the law; however
- existing mechanisms and mandates are found wanting and any expectation that one or more Committees/Departments should meet and deliberate can be impractical when swift pragmatic action is required in a matter of hours.

Unless it is possible to establish how existing arrangements should be applied the States could find itself failing to respond swiftly to a developing situation. With this in mind the Policy Council seeks both clarity in respect of current procedures and your advice as to whether they should be changed by way of answers to a number of questions:

### **Constitution of the EPA in “active mode”**

The Policy Council is quite clear that once a formal declaration of a state of emergency has been made, the Authority (comprising Chief Minister, Home Department Minister and one other Minister drawn from the Panel of five) is able to take action supported by the powers conferred by the Law.

#### **What is less clear is:**

1. Is the maximum number of voting members of the EPA three? (This would seem to be the case).
2. If so, and in the event of an emergency requiring close co-operation with say two or three Departments not directly represented on the EPA – could the Authority “co-opt” Ministers?
3. In which case are such Ministers restricted to voicing an opinion or can they vote?
4. In the event that, say, the Airport was closed for a week and an emergency declared – could the EPA authorise payment to firefighters or some other group – even if such action was not supported by PSRC and/or PSD who might normally be mandated to address such matters?
5. Could the EPA direct a Department such as PSD to make such payments from its funds in such circumstances?

### **EPA in “passive mode”**

By reference to consideration within the 2005 States Report of arrangements for monitoring threats you conclude that

“it probably was within the contemplation of the States when establishing the EPA that the full panel, rather than the three people identified in accordance with Rule 17(1) might properly be described as the EPA when meeting for the latter purposes”.

The “probability” that this was in the mind of the States is helpful but not definitive. There was no specific resolution to this effect. Given the frequency with which the “extended EPA” has met over the last year and the justifiable focus on roles and responsibilities arising from events at the Airport, the Policy Council would be pleased to be advised as to whether:

1. There is a need to seek clarification of whether and how the States expects an extended EPA to operate in such circumstances and obtain an appropriate States Resolution.
2. To seek such a Resolution at the earliest opportunity or to await the outcome of any independent inquiry which might be expected to address this issue and,

3. In the meantime, in the interests of clarity, to restrict any further judgements about the need for action in a developing emergency to the three core Members of the EPA.

There are two other related matters on which I seek your guidance.

#### **Civil Contingencies Approach**

As you know in the 2005 States Report the Policy Council has already advised the States that the Emergency Powers (Bailiwick of Guernsey) Law 1965 no longer reflects the powers required to address the strategic threats of the twenty first century declared its intention to prepare new legislation reflecting the UK Civil Contingencies Act.

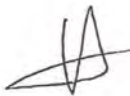
1. Are you able to advise on progress and indicate when EPAG and subsequently the Policy Council will be in a position to consider your Chamber's recommendations?
2. Subject to your response is there a case to devote extra (external?) resources to this task? If so, what might this cost?

#### **Minutes of the Meeting held on 26 May**

A draft of the above minutes will be sent to you shortly for comment prior to being placed before those present at the meeting for approval. They are currently headed Policy Council – Emergency Powers Authority which reflects the description of like meetings held over the past year. Against the background of this dialogue do you have any advice as to the proper title for the meeting?

I await your response with interest. Should you require any clarification of the Policy Council's questions please contact the Deputy Chief Executive.

Yours sincerely,



L.S. Trott  
Chief Minister



Telephone: +44 (0)1481 723355  
 Facsimile: +44 (0)1481 725439  
 E-mail: law@gov.gg  
 Website: www.gov.gg/law



P.O. Box 96  
 St. James Chambers  
 St. Peter Port  
 Guernsey, GY1 4BY

## LAW OFFICERS OF THE CROWN

Our Ref: HMC/lo/airport/fire

Your Ref:

The Chief Minister  
 Policy Council  
 Sir Charles Frossard House  
 St Peter Port  
 Guernsey  
 GY1 1FH

10<sup>th</sup> July 2009

Dear Sir

### Operation of the Emergency Powers Authority

I write to formalise and amplify my preliminary responses, emailed on 15<sup>th</sup> June to the Chief Executive's secretary, to your letter dated 12<sup>th</sup> June 2009. I apologise for the delay in so doing, and appreciate your forbearance given the circumstances.

Before addressing the specific questions raised in your letter I hope it may be considered helpful, rather than tedious repetition, to restate some key points concerning the mandate, powers and constitution of the Emergency Powers Authority:

The EPA's substantive mandate falls into two parts:

- **First:** To exercise the powers and duties conferred on it by extant States Resolutions and legislation including the Emergency Powers Law: Its powers and duties under the Emergency Powers Law are to make an order declaring that a State of Emergency exists if at any time it appears to the EPA that there have occurred, or are about to occur, events of a specified nature depriving the community of the essentials of life or jeopardising the economic interests of the Bailiwick or any part thereof, or if it appears to the EPA that there is a threat to security, public order or public health arising from an act of terrorism which has occurred, is occurring, or is threatened or about to occur. I emphasise that such catastrophic events or threats do not have to have actually happened or been made before the EPA can act under the Law; but in a not atypical situation of escalating concern the Law cannot formally be invoked until it is reasonably judged that the events or threat are/is "about to occur". In the context of the Law this is not perhaps surprising because, once a state of emergency has been declared, the EPA is authorised to make regulations (which have to be laid before the

States but can come into force in the interim) conferring powers and imposing duties on designated persons such as the EPA deems necessary for the specified purposes, and subject to very minimal restriction. Modifications to that regime can of course only be achieved through primary legislation.

- **Second:** To take such steps as it may consider necessary or expedient to ensure, in the event of a state of emergency arising under any circumstances, the preservation of supplies and services essentials to life, protection of the Bailiwick's economic interests, community wellbeing and security, public health, law and order, "and the carrying out of all executive and administrative acts of Government". Since this part of the EPA's mandate is expressed separately from its powers and duties under, *inter alia*, the Emergency Powers Law, an argument might well be advanced that the EPA is thereby mandated by Resolution of the States to take steps, at an earlier stage in a scenario of mounting concern than that at which catastrophic events or threats are "about to occur", in order that, in the event of the state of emergency arising, the various matters listed will be ensured. That is perhaps worth bearing in mind, as is the fact that this part of the EPA's mandate, not being prescribed by primary legislation, could be amended by resolution of the States. It is important to be clear, however, that, for example, the carrying out of all executive and administrative acts of government is an objective which the EPA is authorised to take steps to ensure, and not itself an action which the EPA is permitted to take even without declaring a state of emergency.

The **constitution of the Emergency Powers Authority** is strictly as set out on page 71 of the pink Mandates and Membership publication. It comprises only three persons of whom two are permanent (and substitutes are identified for each of those two) and one is *ad hoc*, "chosen by the Chief Minister having regard to the nature of the emergency" from the panel of five. The reference to "the nature of the emergency" suggests very strongly that, notwithstanding the language of the March 2005 States Report concerning "a political body [which].... also has a day to day monitoring role", the EPA as such (as opposed to the EPA panel of ministers) cannot formally exist in the absence of an actual or threatened emergency, or at the very least circumstances giving rise to concern that an emergency of a specific nature might occur. It is quite clear, however, that the EPA's constitution is set, and could be altered, by resolution of the States.

Finally, a **formal meeting of the Emergency Powers Authority** requires the appointment by the Chief Minister of its third member, prior notice to the Bailiff, and the presence of one of the Law Officers, the whole in accordance with rule 17 of the yellow Constitution and Operation publication; which again, of course, could be amended by Resolution of the States.

I turn now to your specific questions.

### Constitution of the EPA in active mode

1. The maximum number of voting members of the EPA is three. No provision is made for expanding that number where an emergency has, for example, cross-departmental implications.
2. In the event of an emergency requiring close co-operation with two or three departments it would certainly be possible to invite other Ministers – whether or not those are members of the EPA panel – to attend an EPA meeting; and it would also be permissible to invite representatives of the States of Alderney or the Chief Pleas of Sark to such a meeting. It should be noted that any such Minister or representative who has not already taken the prescribed oath (for example as a panel member) would be required to do so before the Bailiff before attending the meeting.
3. Such Ministers (or representatives) could of course voice an opinion, but would not be members of the EPA and would have no vote.
4. If a State of Emergency were declared, the EPA could make regulations conferring or imposing on any person designated therein such powers and duties as the EPA deemed necessary for, *inter alia*, maintaining means of transport or any other purposes essential to the economic interests of the community, and containing such incidental provisions as appeared necessary to the EPA for making the exercise of such powers effective. That could clearly include arrangements for making payments to fire fighters or some other group, whether or not supported by any Committee or Department of the States.
5. Such arrangements could indeed in those circumstances direct a Department such as PSD to make such payments.

### EPA in “passive mode”

I agree that the “probability” identified in my letter of 2<sup>nd</sup> June is not reflected in any Resolution of the States; and that what has been variously referred to as the EPA in “extended”, “passive” or “shadow” mode is not really a body which has any formal existence.

With reference to your numbered questions:

1. Whilst I am of the view that there is no obstacle in law to the Ministers of Departments whose mandates may be engaged in the context of any situation of concern meeting to discuss ways in which an emergency might be averted, it has to be recognised that:
  - (a) those ministers do not presently have any collective executive authority:

(b) even if they are careful to recognise that, and limit themselves to making recommendations to Departments, Committees or other agencies which are possessed of such executive authority, there is a risk that in doing that some States Members may perceive them to have acted in some way outwith the spirit of the States Resolutions concerning the mandates of States Departments and Committees.

(c) accordingly, although I cannot say that it is necessary as a matter of law, I can see the merit in seeking clarification as to whether and how the States of Deliberation expect an "extended EPA" to operate, and to obtain appropriate States Resolutions.

2. Whether to seek such Resolutions at the earliest opportunity, or to await the outcome of any inquiries which might be expected to give consideration to those issues, is largely a matter of political judgement. Ordinarily, if an inquiry into the best way to deal with a matter in the future is under way or anticipated, it would seem logical to await the outcome of that inquiry before putting proposals to the States; but it seems implicit in your having put the question that there is ongoing concern that an unanticipated developing potential emergency with far reaching consequences could arise at any time, and it may be unsatisfactory for the Ministers, senior officers and others who will have to deal with that situation to be vulnerable to criticism from States Members and others due to the lack of any such resolutions. If the level of that risk of criticism is such that Ministers and senior officers feel able to shoulder it, then awaiting the outcome of investigation would be my recommended course; but it is simply not my place to tell Ministers and senior officers what level of risk they ought to be prepared to shoulder.
3. In my humble opinion it would not be wise in the meantime to restrict judgements about the need for action to "the three core members of the EPA". If a State of Emergency is to be declared, that declaration and the measures adopted pursuant to it must be thus restricted; and it should be recognised that, short of such a declaration, under the present regime no executive functions are vested in the EPA; but in my view it makes perfectly good sense for relevant Ministers to discuss any such "need for action" situation and, though being mindful of the sort of risks discussed above, advise relevant Departments, Committees and other agencies of their joint opinions.

#### **Civil Contingencies approach**

The issue here is not with legislative drafting resources in St James Chambers. Following an EPAG meeting in March 2009 the Emergency Planning Officer was tasked to review the existing legislation, identifying the issues (planning; immediate action and recovery) and also considering definitions around emergencies and other situations of strategic concern, as well as arrangements for and the involvement of Alderney and Sark, prior to formulating specific

drafting instructions for St James' Chambers. The States Resolution directing the Emergency Powers Authority to bring forward proposals to replace the 1965 Law with new legislation on the lines of the UK Civil Contingencies Act thus remains under active development and I understand that a senior officer has now undertaken a comparison between UK and Guernsey legislation to assist in the progress of discussion. This will be the focus of an EPAG meeting in the near future, at which I am sure that any requirements for additional resources will be discussed.

**Minutes of Meeting held on 26<sup>th</sup> May**

These have of course now been produced and I note that they are headed "Emergency Powers Authority Panel", which seems to me entirely appropriate.

Yours faithfully



H E Roberts QC  
HM Comptroller



## APPENDIX 2

### Witnesses

Details of witnesses who gave oral evidence and/or written evidence to the Inquiry.

Deputy Barry Brehaut	Member of the States of Guernsey and past member of the Public Sector Remuneration Committee
Deputy Al Brouard	Past Chair of the Public Sector Remuneration Committee
Jonathan Buckland	Chief Officer, Commerce and Employment Department
Ron Le Cras	Regional Industrial Organiser, Unite the Union (referred to as the FTO)
Richard Digard	Editor, Guernsey Press
Simon Elliott	Head of Human Resources and Organisational Development and Chief Officer, Public Sector Remuneration Committee
James Falla	Director of Communications, Treasury and Resources Department
Deputy Bernard Flouquet	Minister, Public Services Department and Deputy Chief Minister
Michael Fooks	Industrial Disputes Officer
Terry Harnden	Senior Negotiator, Public Sector Remuneration Committee
Malcolm Hart	Managing Director, Aurigny Air Services Ltd.
Dale Holmes	Chief Officer, Treasury and Resources Department
Deputy Allister Langlois	Member of the States of Guernsey and Chairman, Public Sector Remuneration Committee
Adrian Lewis	Chief Officer, Public Services Department
Nigel Lewis	Deputy Chief Executive, States of Guernsey
Deputy Mary Lowe	Member of States of Guernsey and past member of the Emergency Powers Authority
Simon Macphail	Deputy Airport Director
Michael Mahy	Senior Employment Relations Advisory Officer (previously SIRAO)
Deputy Carla McNulty-Bauer	Minister, Employment and Commerce Department
Stephen Naftel	Chief Negotiator, Public Sector Remuneration Committee
Paul Ozanne	Watch representative, Airport Fire Service

Kevin Rabey	Watch representative, Airport Fire Service
Colin Le Ray	Airport Director
Andrew Redwood	Watch representative, Airport Fire Service
Howard Roberts	HM Procureur from 7 July 2009, formerly HM Comptroller
Deputy Anthony Spruce	Member of the Public Services Department and past Vice-Chair of Public Sector Remuneration Committee
Richard Taylor	Industrial Disputes Officer (Retired)
Jonathan Le Tocq	Former Member of the States of Guernsey and past Chair, Public Sector Remuneration Committee
Michele Tiffin	Deputy Industrial Disputes Officer
Deputy Lyndon Trott	Chief Minister and Member of the States of Guernsey
Catherine Veron	Emergency Planning Officer, Home Department

**APPENDIX 3****Inquiry Team**

David Hogg	Chairman
Gillian Morris	Member
John Lee	Member
Jon Barclay	Counsel to the Inquiry
Jo de Garis	Secretary to the Inquiry
Sophie Hawkins	Secretariat



**APPENDIX 4****La Gazette Officielle Notices**

- 1 Notice of Preliminary Hearing published on 5, 7 and 10 November 2009
- 2 Invitation to submit evidence published on 18 and 21 November 2009
- 3 Notification of Hearing dates published 11 and 12 December 2009
- 4 Notification of Hearing dates published 8 January 2010
- 5 Notification of Hearing dates published 15 January 2010
- 6 Invitation to make submissions relating to recommendations published 20 January 2010
- 7 Notification of Final Hearing and invitation to make closing submissions published on 4 and 5 February 2010
- 8 Invitation to make submissions relating to documentary material published 10 and 13 February 2010