Response to the Scrutiny Report

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In making a response to the *Report of the Scrutiny Committee into the Nondisclosure of Information Relating to the Negotiated Settlement with AFR Advocates*, I am conscious of the fact that the panel chose only to interview me, as Minister, and I made it clear in answering questions, whilst doing my best to respond on behalf on all members of the board, that certain views and perspectives given would inevitably be my own. I will return to this later when making comment on the format and content of the Hearing. Nevertheless it should be noted at the outset that this response, whilst discussed with and noted by members of my board is very much of necessity a *personal response* expressing my reactions to the observations and conclusions published by the Scrutiny Committee.

Firstly, I reiterate that the parliamentary process of scrutiny is one that I welcome and I believe locally will in time become the standard accepted best practice for analysing political decision making and appraising government of where procedures and practices can be improved and changed. Also I am pleased that the panel seems to recognise and support in its observations and conclusions the role undertaken by the Chief of Police in dealing with this matter. There was no failure on his part because he was 1) dealing with a long standing complex operational matter which predated his appointment, and 2) he was undertaking his mandated role both under law and as an officer delegated with budgetary responsibility by the Home Department in administering public monies with best value-for-money in mind. This is an important acknowledgment because media coverage of these issues has certainly been misleading in some cases.

However one of the main conclusions of the panel seems to be that the Home Department "... abrogated political oversight of the process by failing to support the Chief of Police in his negotiations by providing the necessary political safeguards". Moreover they suggest that the Department should have intervened "... at the point where the negotiation of the settlement ceased to be a matter to be resolved amongst individual parties and became a matter of spending public money on behalf of the individuals concerned." The fundamental problem with this, and something I made clear on several occasions during the hearing, is that the Home Department only became politically aware of the matter *after* the out-of-court settlement had been concluded. This played a major factor in our decision not to disclose sums covered by the confidential agreement because it would have involved going back on a negotiated settlement which had already been signed and agreed by all parties with all the implications this would entail, not just for the Department but for the States as a whole.

A better question then perhaps is *"When and how could we as the Home Department board have become politically involved with the negotiations before they were concluded?"* Unfortunately this was not a line of enquiry that the Panel chose to explore at the Hearing, which is odd given their criticism, and the lack of explanation of exactly how the Department might have gone about things better

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in their view. It was of course a question that did arise in my Board's deliberations on the matter. The only way we could have known about it prior to the settlement being concluded is if the Chief of Police or the previous Home Department Board had chosen to inform us. There were many matters, work streams and on-going projects that were passed on to us in the handover documents when the new board came into being in May of last year. This matter was not mentioned because the previous board had not been involved in what was an operational matter being dealt with by Chief of Police, and I understand would have remained as such had it potentially gone through the full judicial process.

Politically the board regularly remains officially distanced from operational matters because the Home Department is called upon as the appropriate authority when dealing with Police disciplinary issues as well as the complaints procedure. It was because of this, as explained by the Chief of Police during the Scrutiny hearing, that he himself did not inform the political board until after the negotiated settlement had been concluded. Moreover it had been concluded unexpectedly swiftly and at minimal cost to the States thanks to his actions. So it is illogical for Scrutiny to accuse the Home Department board of "... failing to support the Chief of Police in his negotiations by providing the necessary political safeguards" when he chose to take swift expedient action, at the moment the opportunity arose, within his authority and budgetary responsibility on a matter that may otherwise have dragged on further causing greater expense and unnecessary reputational damage for Guernsey.

Indeed prior to the time of the settlement as the matter was still potentially an operational one, it could have continued through the full judicial process in any case, had the parties not agreed otherwise. This process would not have involved the political Board either. The only time and manner in which the Board or perhaps a political representative thereof could have become involved would have been if the Chief of Police had contacted us during the negotiations on the day to inform us that AFR were willing to settle out-of-court, or to delay the negotiations whilst he consulted. We would have required a briefing in order to participate, and had political involvement been necessary at this stage even if only to be ready to intervene at the required moment I think it is highly unlikely such a good deal could have been achieved in the circumstances.

So it would have meant an additional risk of not achieving such a good value for money settlement. Nevertheless I accept that it may perhaps have made it possible to remove financial sums from any confidentiality clause or after the event to disclose such sums. The fact remains that the Board were not aware that the matter was settled until afterwards, and to blame the Chief of Police for not involving us when he was able to settle for such a minimal sum that was covered by States insurance arrangements and the associated costs within his delegated budget, seems exceedingly petty when he acted swiftly to agree. Furthermore States Departments regularly allow many of our public servants and statutory

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officials delegated authority within certain limits often much higher than these to deal with matters within their professional scope and competence. To require political engagement at such levels generally would make things much more expensive and time consuming, taking up time and energy elected representatives should be directing towards much more weightier policy matters for which *only they* are mandated to have responsibility.
Of course had AFR not been willing to settle for such a minimal sum, but had sought to negotiate above the level of existing budgets within the Chief of Police's delegated authority then he would have needed to gain additional authority at Board level for spending any extra funds required. It would have been potentially at that point that the Home Department Board would have been involved (indeed very likely T&R also if funding was not possible from Departmental budgets or existing insurance arrangements). As it was, the settlement was covered by insurance arrangements and the various minor associated costs over the last two years by the Police Force's own operational budget for such eventualities. There was thus no logical need for the Chief of Police to involve the political board at the time; he was operating (as he explained) under existing best practice locally in the public sector, common practice and experience elsewhere in such matters, including non-disclosure. So to conclude that there were "insufficient grounds" for non-disclosure and that the Board "abrogated political oversight" is disingenuous. Such statements do not relate in any case to the questions asked and matters investigated in the hearing which is demonstrated in the transcript.

The Scrutiny report criticises the Home Department for not making "clear what the overriding reason was for non-disclosure of the cost of the settlement". However I did seek to make clear that there was a compound combination of reasons, not least including the fact that the States Insurers (who had advised the Chief of Police in negotiating the settlement) were not happy with confidential and commercially sensitive information being made public. Thus only what has been paid from the Police budget (i.e. tax-payer's funds) has been made public. These small sums the Board was happy to publish and instructed the Chief of Police to do so as soon as was practicable. Even so it escapes me as to why there needs to be one "substantive, overriding reason" for a decision, and why a cumulative number of reasons in a legal case as complex and long standing as this one cannot add up to a greater opportunity for risk?

Furthermore, on matters such as this, regarding confidentiality and non-disclosure, a question we should be asking is *"Is it worth the extra cost in* ***all*** *circumstances?"* as inevitably there is a real risk, for example, that such information will influence and prejudice the levels at which agreements can be made. Such a precedent would also affect the States generally. It may well be that it is generally felt worthwhile costing the taxpayer more in all, or more likely certain circumstances. But this needs to be taken very seriously, as it affects the States as *recipient* in such cases also. It would have been irresponsible for us as a

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Home Department to affect a change in practice when the States has yet to debate such matters. We should not second guess the implications for other Departments and statutory bodies which may be affected. For example, perhaps it is worth the extra cost at settlement levels much higher than this, as the effect may be minor in comparison to large payouts, but at very low levels, such as this it may have far greater impact. Inevitably I believe a *protocol* or *code of practice* needs to be set by the States for public-sector-wide application.

In terms of the Report published by the Committee and the attached transcripts I will make only a few observations. It is very short, which is perhaps a good thing, but even a cursory read by an unbiased observer will note that the substance of the report seems to bear very little reference to the transcript of the hearing, let alone the terms of reference. 2.1.3 for example comments on matters which were clearly outside the terms of the review and certainly not investigated at the hearing. Conclusions made on this basis are not wise. The report also notes in a footnote that Deputy Heidi Soulsby was "also in attendance at the public hearing" to ensure a quorum of the Committee was present. Whilst I accept this, it would have been better and proper if this had been made clear at the hearing on the day; the transcript shows that this fact was not mentioned nor the reasons for Deputy Soulsby's presence at the time.

The transcript also records the fact that in his opening statement, the Chair of the Scrutiny Committee stated that I would not be allowed any "opening statement" but an opportunity for a "closing statement" would be given (40). This was helpful as up until that point neither my officers nor myself had been given much of an indication of how the hearing would be structured. However when at a certain point in the proceedings I asked for an adjournment in order to prepare to make such a final statement (1501) I was forthrightly told that I was not being asked to make one (1504) leaving me to believe that we had not reached that point. Yet only a moment later (1537) the Chairman abruptly closed the hearing without giving me this opportunity. Had I been given it there were several things I would have commented on including the unreasonable comments by the Chairman (1462) where he puts words in my mouth ("I think that is a no; there is nothing you would have done differently") This is absolutely not what I was saying (1442ff). Rather I stated that we would have preferred to have been operating within a clear set of guidelines or a protocol by which our actions and that of the Chief of Police could have been assessed. I also stated that we regret having to make seemingly unpopular decisions and do not enjoy being in such positions, but we did not do so lightly. I went on to say that my own view was that such a code of practice would most likely have supported the decision we came to. That is very different to what the Chairman inferred.

There are indeed many things in the transcript which illustrate why I believe this was not an appropriate process and why the conclusions seem detached from the content of the hearing itself. I do not intend to go over them all, but I will say that because many people may simply read the short report and conclusions and

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not the transcript of the hearing, it is quite dangerous to set a precedent such as this.

Finally, some reflections on the manner in which Scrutiny carried out its review. It stated that it would be 'swift' and as such this was the first of a new style of review into a Departmental matter. It also chose to limit its investigations totally to a hearing at which I, as Minister (supported by officers and staff) was solely questioned. Personally I welcome forthright, robust questioning and am not afraid of the concept of challenging senior politicians in order for them to justify decisions they have made. However the *confrontational* methodology chosen by Scrutiny somewhat smacks in the face of our current decision making process and *consensus* political structure. Notwithstanding the comments I have made above, had I alone been responsible for making decisions in this instance then perhaps the process adopted by Scrutiny could be justified. We do not currently operate an executive system such as this. Currently the Home Department Board made up of 5 elected members makes the decisions, and acted in this case by a majority. The Scrutiny hearing, perhaps modelled on the UK system, seemed very much set up as a *court-room drama* for the benefit of the media. As I have said, I am not afraid of facing environments such as this, if appropriate, but I found the style and method mismatched to the Guernsey political system. I am quite certain others feel similarly and some may even be reluctant to serve in senior positions as a result.

It was odd that Scrutiny chose to use this methodology because I do not think it helped them investigate the matter thoroughly, and I don't believe that their intention was to do otherwise. Neither do I believe as a result has it helped the States or the Home Department. Why were no other Board members questioned? At the very least, why was the one Board Member who in the event voted differently to the majority not questioned as to the reasons she felt the risks to disclose were worth taking. This would at least have given a more balanced appraisal of the process taken by the Board in its deliberations. Scrutiny could have carried out a review through written submissions, interviews, documents and Board minutes, but perhaps in their haste to undertake an "urgent business review" swiftly the Committee were unwise in not considering the implications of acting in this manner. A majority of my Board would not be against debating the Report in the States, however this would be another, different environment to the Scrutiny process and it would still have been better for Board members to have been involved earlier. Naturally such a debate may focus on the Scrutiny process itself and the means used in this instance, which may well be of benefit, but along with my Board, I feel that we have such major issues to deal with as a Department and as a government that spending additional valuable time on issues such as this could be deemed profligate if it means the real matters are left unattended. This may certainly have been a matter of media concern, but one of the problems of media driven issues is that they are often just 'snapshots'. Very soon attention moves on to

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other things which have greater sensational worth. This may make for good sales but it does not make for responsible politics.

To summarize, it seems to me therefore that the process chosen by the Scrutiny Committee was inappropriate, and therefore did not achieve the results promised; moreover this possibly sends out an unfortunate signal unless of course they are able to recognize these weaknesses and make amendments in future.

Jonathan P. Le Tocq
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