



**XIII  
2013**

# **BILLET D'ÉTAT**

**WEDNESDAY 29th MAY 2013**

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2. States Assembly and Constitution Committee – States Members' Conduct Panel Findings of the Investigation Panel into Complaints against Deputy Michael Peter James Hadley, p. 974

# **BILLET D'ÉTAT**

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## **TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY**

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I hereby give notice pursuant to Rule (1)(4) of the Rules of Procedure of the States of Deliberation that the items contained in this Billet d'État which have been submitted for debate will be considered at the Meeting of the States of Deliberation already convened for **WEDNESDAY, the 29<sup>th</sup> MAY, 2013.**

**R. J. COLLAS**  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey  
21<sup>st</sup> May 2013

**TREASURY AND RESOURCES DEPARTMENT****NEW MEMBER**

The States are asked:-

I.- To elect a sitting Member of the States as a member of the Treasury and Resources Department to complete the unexpired portion of the term of office of Deputy G. M. Collins, who has resigned as a member of that Department, namely to serve until May 2016, in accordance with Rule 7 of the Rules relating to the Constitution and Operation of States Departments and Committees.

**(N.B. Paragraph 7(7) of the Rules relating to the Constitution and Operation of States Departments and Committees states:**

**“If a member elected by the States to a Department or a Committee tenders his resignation from that office in a letter to the Minister of the Department or Chairman of the Committee as the case may be, and does not include in that letter a request that the matter be debated by the States, his resignation shall automatically take effect on the election by the States of a new member of that Department or Committee in his place.”**

**In this case Deputy Collins has not asked that this matter be debated.)**

## STATES ASSEMBLY AND CONSTITUTION COMMITTEE

### STATES MEMBERS' CONDUCT PANEL: FINDINGS OF THE INVESTIGATION PANEL INTO COMPLAINTS AGAINST DEPUTY MICHAEL PETER JAMES HADLEY

The Presiding Officer  
The States of Deliberation  
The Royal Court House  
St. Peter Port

15<sup>th</sup> May, 2013

Dear Sir

#### **EXECUTIVE SUMMARY**

This report of the States Assembly and Constitution Committee lays before the States of Deliberation the findings of the Investigation Panel which was convened to consider allegations that Deputy M P J Hadley was in breach of the Code of Conduct for Members of the States of Deliberation. The Investigation Panel considered that the allegations against Deputy Hadley were substantiated and recommended that he be formally reprimanded. The single recommendation which concludes this States Report asks the States of Deliberation to decide whether they are of the opinion that Deputy Hadley should be formally reprimanded.

#### **REPORT**

1. Paragraph one of the Code of Conduct for Members of the States of Deliberation sets out the purpose of the Code. It states: "The purpose of the Code of Conduct is to assist elected Members of the States of Deliberation in the discharge of their obligations to the States, their constituents and the public. All Members are required to comply with the provisions of this code in all aspects of their public life..."
2. Paragraph 26 of the Code states: "Complaints, whether from Members [of the States of Deliberation] or from members of the public, alleging that the conduct of a Member is in breach of the Code of Conduct...must be addressed in writing to the Chairman of the Panel." The Chief Minister, on his behalf and that of nine other ministers and one deputy minister who were present at a meeting of the Policy Council held on 18<sup>th</sup> March, 2013, wrote to the Chairman of the Panel on

21<sup>st</sup> March, 2013 alleging that Deputy Hadley had breached paragraphs 18 and 19 of the Code by sending to all members of the States of Deliberation a report concerning the work, structure and practices of the Accident and Emergency Department at the Princess Elizabeth Hospital, which was written in 2011 by the College of Emergency Medicine at the behest of the Health and Social Services Department.

3. Paragraph 28 of the Code states: “If the Chairman of the Panel is satisfied that there is prima facie evidence to support the complaint he will ask the Member concerned to respond to the complaint and will then conduct an investigation. The Investigation Panel will comprise the Chairman and two other members of the Conduct Panel, one of whom shall be nominated by the Chairman, and the other being nominated by the Member under investigation.”
4. Paragraph 33 of the Code states: “Where the Panel finds that a complaint has been substantiated and it is of the opinion that the Member should be formally reprimanded, suspended, removed from a particular office or expelled...it shall report its findings to the States Assembly and Constitution Committee which, in turn, shall report to the States on the matter, with appropriate recommendations...”
5. Set out at appendix one to this report is a letter dated 30<sup>th</sup> April, 2013 from the Chairman of the Conduct Panel laying out the findings of the Investigation Panel, which conclude thus: “We are of the opinion that Deputy Hadley should be formally reprimanded. We accordingly report our findings to the States Assembly and Constitution Committee.”
6. The membership and investigations of the States Members’ Conduct Panel are wholly independent of elected Members of the States of Deliberation and States Departments and Committees. The States Assembly and Constitution Committee is of the view that the Panel’s independence is crucial to the integrity of the Code of Conduct itself. The Committee believes that it should deviate from the Panel’s recommendations only in highly exceptional circumstances. There are no such circumstances to justify doing so on this occasion.
7. On 7<sup>th</sup> May, 2013 Deputy Hadley sent the Committee his submission to the Investigation Panel with a request that it be appended to this States Report. The Committee was under no obligation to accede to Deputy Hadley’s request; indeed, normally submissions made to an Investigation Panel are not published in the Billet d’État containing the Panel’s findings. However, mindful of the nature of the Proposition attached to this States Report and the importance of openness and transparency in the discharge of parliamentary business, the Committee concluded that acceding to Deputy Hadley’s request would allow the States of Deliberation to make a more informed judgement of the matter before them – provided that the complainants did not object to their submission to the Conduct Panel also being appended to this States Report. On 13<sup>th</sup> May, 2013 the members of the Policy Council advised the Committee that they held no such objection and

sent the Committee their submission to the Chairman of the Conduct Panel. The Chief Minister's submission is set out at appendix two and Deputy Hadley's submission is set out at appendix three.

8. In due course the Committee will consider whether to propose reforms to the procedures relating to the Code of Conduct in order that complainants and Members about whom complaints have been made are afforded the right to have their submissions to the Conduct Panel and Investigation Panel appended to the Panel's findings when those findings are published by the Committee in a Billet d'État.

### **Recommendation**

9. The States Assembly and Constitution Committee recommends that Deputy M P J Hadley be formally reprimanded pursuant to the Code of Conduct for Members of the States of Deliberation.

Yours faithfully

M J Fallaize  
Chairman  
States Assembly and Constitution Committee

Other Members of the States Assembly and Constitution Committee are:

Deputy P L Gillson (Vice-Chairman)

Deputy E G Bebb

Deputy R Conder

Deputy A H Adam

**APPENDIX 1**

**States Conduct Panel**  
**Complaint against Deputy M P J Hadley by the Chief Minister and**  
**all ten Members of the Policy Council**

1. Deputy Hadley was first elected to the States with effect from 1<sup>st</sup> May 2008 and thereafter was elected as a member of the Health and Social Services Department (HSSD), a position from which he resigned at the end of January 2009. He was subsequently re-elected to that Department in June 2011 and served until May 2012, when he was re-elected to the States for a further term of four years.
2. In the summer of 2011, the College of Emergency Medicine (CEM) reported to HSSD on the current work, structure and practices of the Accident and Emergency Department, which review had been commissioned by HSSD and had been carried out by 2 senior members of that College ("the CEM report").
3. On 11<sup>th</sup> March 2013, Deputy Hadley contacted all his fellow States Members by email to enquire whether any members would consider signing a requête to force HSSD to implement changes to the A&E Department which, the Deputy alleged, had been required in the highly critical CEM report in 2011. This communication also contained the allegation that the current, unchanged arrangements put the lives of patients at risk. In response, one Deputy requested a copy of the CEM report which Deputy Hadley accordingly forwarded to all States Members.
4. By letter dated the 21<sup>st</sup> March 2013 the Chief Minister, on his behalf and that of all ten of the other members of the Policy Council, submitted a formal complaint in respect of Deputy Hadley's release to all States members of the CEM report, such action being described as a serious breach of confidentiality. The complainants allege that Deputy Hadley would have been fully aware of the need to respect the confidence of the CEM report, and indeed all such other reports regularly commissioned by the Department both of a general and particular nature. The complainants believe that by releasing the CEM report Deputy Hadley was in direct breach of Sections 18 and 19 of the States Members' Code of Conduct. The complainants further believe that such a breach of confidentiality creates a real danger that, not just the HSSD, but the States in general would find it difficult to undertake meaningful, independent reviews into essential services for the simple reason that those contributing would not feel free to express professional and individual opinions. The value of such reports would thus be diminished. Clearly, the fact that the whole of the Policy Council thought it appropriate to join in this complaint indicates the strength of their belief, whether correct or not, in the seriousness of the subject – matter of it.

5. Rule 18 of the Code of Conduct provides inter alia *"Members must bear in mind that confidential information which they receive in the course of their duties may only be used in connection with those duties..."*
6. Rule 18A provides – *"for the avoidance of doubt the 'confidential information' referred to in the previous paragraph includes, but is not limited to, Department and Committee minutes and other papers circulated to Members thereof. The content of such minutes and other papers is not to be disclosed to any third party other than by resolution of the Department or Committee concerned."*
7. By Rule 19 Members are reminded at all times to have regard to relevant legislation, for example relating to Human Rights or Data Protection, when dealing with confidential information and must be aware of the consequences of breaching confidentiality.
8. The Chairman of the Panel, being satisfied that there was prima facie evidence to support the complaint, in early April requested Deputy Hadley to nominate one member of an investigation Panel (as required by Rule 28) and further requested the Deputy to provide his written response to the allegations made against him, full details of which had been forwarded to him. The investigation Panel, comprising Advocate R Evans (Deputy Hadley's nomination), Mrs J Beauguard and the Chairman, received further oral submissions from Deputy Hadley on 22<sup>nd</sup> April (as also provided by Rule 28), in addition to the extensive written ones already received.
9. Deputy Hadley fully accepts that he had been made well and repeatedly aware, when a member of HSSD, of the confidential nature of papers provided for meetings of the Department, and not least the contents of Rule 18A. Further he accepts that he sent both emails (already referred to) of March 2013 together with an un-redacted copy of the CEM report to all States Members.
10. In that sense, therefore, there is no dispute that Deputy Hadley has breached Rule 18A of the Code of Conduct.
11. Deputy Hadley brought to our attention that the CEM report was widely circulated, based both on his own knowledge and arising from the number of persons whom the CEM reviewers consulted in preparing their report initially and in its final format, and the number of health professionals to whom HSSD sent copies. He believes the overall total might well have exceeded 100. To the best of the Deputy's recollection, the circulated document had no health warning as to its confidential nature. In those circumstances, Deputy Hadley would argue, HSSD themselves could not have had too high a regard for the confidential nature of the document nor, more importantly, for safeguarding its further general dissemination. It was excessive, therefore, to complain about his actions in March 2013. This is a view with which we have some sympathy.



12. However, the major basis of Deputy Hadley's defence, which he argues passionately, is that notwithstanding the duties of confidentiality imposed upon him as a Member of HSSD, not least by virtue of Rule 18A, he has a greater and wider duty to the members of the public in general in Guernsey. In the terms of Rule 3 – "*The primary duty of Members is to act in the public interest.*" His fears about the operation of the Accident and Emergency Department are based upon the CEM report which, he alleges, shows that lives are at risk. This duty, as he sees it, to alert the public to these issues outweighs any duty of confidentiality imposed upon him either generally under Rule 18 or specifically under Rule 18A. Thus the complaint of breach of confidentiality is not made out.
13. The Deputy specifically addresses two other matters, namely what he perceived as the continuing inherent dangers in the way the A&E Department is run ("lives at risk"), and secondly, the vast unnecessary cost incurred by the taxpayer and individual patients in the operation of the Department. Whilst the way the A&E Department is run is clearly at the heart of Deputy Hadley's concerns, it is not a matter upon which we have the expertise, the powers or the mandate to explore. Similarly with the question of costs – whatever may or may not be the force of the Deputy's arguments we have no remit to comment on them and refrain from doing so.
14. We return to what is certainly within our remit, namely the central issue raised by this complaint – the extent of the duty of confidentiality imposed upon political members of a States Department.
15. The purpose of Rule 18 seems to be aimed directly at the possible use by States Members generally of confidential information which comes to them in that capacity for their own personal benefit, or that of family, friends, colleagues or organisations with which they are associated. In appropriate circumstances this rule does not restrict the 'whistleblower'. In other words, as Deputy Hadley would contend, Members are not to be prevented by this Rule from exercising, in appropriate circumstances, their primary duty to act in the public interest (Rule 3).
16. Rule 18A is of a different nature. It expressly relates to members of States Departments/Committees, and to the confidential nature of all documents circulated to them. It prohibits disclosure to others without Board/Committee resolution.
17. This Rule was introduced by the States in September 2009 following a report by the States Assembly and Constitution Committee, which stated that the question of the confidential nature or otherwise of minutes and other papers circulated to members of a Department/Committee had been raised by Members. The States agreed that a new rule should be specifically introduced to clarify the matter. Not only was Deputy Hadley a member of the States at that time (though not a member of HSSD as he had resigned in January of that year), he had also recently been the subject of a complaint by political and civil members of HSSD

which had been upheld by an investigation panel and debated in the States (see Billet d'Etat XIV 15<sup>th</sup> May 2009). Furthermore, Deputy Hadley fully acknowledges his awareness of this Rule.

18. Essentially, it seems to us, it is not a matter of control but one of trust. It is vital that those who repose confidence or confidences in others, particularly those holding positions of responsibility, can expect their trust to be respected. We believe that if the States consider, as they do by virtue of Rule 18A, that members of Departments must respect the confidential nature of papers which they receive in that capacity then that trust must be rigorously respected. If a Member does not wish to be bound by such restriction, he or she should not join a Department. This Panel would repeat and emphasise what was said by its predecessor when dealing with the earlier complaint against Deputy Hadley – *“Membership of a Department must require some disciplined responsibility.”*
19. That is not to say that we think there can be no circumstances when a member of a Department may have a higher duty than that imposed by Rule 18A. In rare circumstances there might well be. But all other reasonable and realistic avenues of redress should at least be explored first. Thus, in this case, we were interested in ascertaining what other action(s) Deputy Hadley had taken with regard to his concerns about the A&E Department during the previous ten months or so since leaving HSSD.
20. That action, he informed us, amounted to discussions with the former and new Minister, and members, of HSSD, the Chief Minister and some senior civil servants. All these actions he described as reasonable and proportionate but to no avail. What Deputy Hadley singularly failed to do was to make any or any effective use of the parliamentary tools readily available to him, namely the formal asking of questions of the Minister, whether oral, written or both – mounting a campaign of questioning if necessary to do so. Instead in March 2013, as it appears to us somewhat on the spur of the moment (by his own admission), Deputy Hadley decided to approach other States Members with the idea of presenting a requête with regard to the A&E Department (as it happens we understand that no political support was forthcoming). It seems to us by the very terms of his email of the 11<sup>th</sup> March that it was inevitable that a colleague might request a copy of the CEM report, and with equal inevitability by providing a copy of that report to all States Members it would be disseminated further. As was the case. This lack of reflection on Deputy Hadley's part meant that the ends he sought, whatever their merits, did not justify the means employed.
21. We conclude, on examination, that Deputy Hadley's justification for his release of the CEM report neither persuades us that a breach of the code (18A) has not been committed nor does it provide much by way of mitigation. We repeat that we are only concerned with the particular provisions of the Code of Conduct which the States themselves have enacted; and that within the statutory parameters of our functions and duties, we cannot and do not make any

comment on the validity or otherwise of Deputy Hadley's arguments or on the operation of the A&E Department. Nor do we make any comment on whether it was necessary for all members of the Policy Council to complain.

22. Having found this complaint by the members of the Policy Council substantiated, our powers of disposal are contained in Rule 32 and 33. A caution we do not consider to be appropriate, not least in view of the fact that an Investigation Panel in 2009 upheld a previous complaint against Deputy Hadley (to which we have already referred) which in due course had to be resolved by the States themselves cautioning the Deputy.
23. We are of the opinion that Deputy Hadley should be formally reprimanded. We accordingly report our findings to the States Assembly and Constitution Committee.

Signed by Advocate R A R Evans

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Signed by Mrs J M Beaugeard

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Signed by Mr A C K Day

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**APPENDIX 2**

The Chairman  
 States Members Code of Conduct Panel  
 C/o Bailiff's Chambers  
 Royal Court House  
 St Peter Port  
 GUERNSEY  
 GY1 2PB

21<sup>st</sup> March 2013

Dear Sir

**COMPLAINT REGARDING BREACH OF CONFIDENTIALITY BY DEPUTY  
 M P J HADLEY**

I write to submit a formal complaint in accordance with the requirements of the Code of Conduct for Members of the States of Deliberation in respect of a serious breach of confidentiality on the part of Deputy Michael Hadley following his decision to release to all States Members the full text of a confidential and sensitive report commissioned by the Health and Social Services Department.

I do so on my own behalf and on behalf of the nine Ministers and one Deputy Minister listed below who were present at a Policy Council meeting held on the 18<sup>th</sup> March 2013 when this matter was discussed. I can, if you wish, provide a copy of this letter signed by all the Ministers concerned.

The facts of the matter are as follows:

1. During his time as a member of the Board of HSSD in 2011 Deputy Hadley received a confidential report commissioned by the Department from external independent experts entitled College of Emergency Medicine Visit to Princess Elizabeth Hospital, Guernsey, June 2011.
2. Deputy Hadley and his fellow Board members on HSSD at the time would have been fully aware of the need to respect the confidence of this report and indeed other such reports regularly commissioned by the Department on the operation of various aspects of the portfolio of services the Department delivers in general and services within the Princess Elizabeth Hospital in particular.
3. On the 11<sup>th</sup> March 2013 Deputy Hadley sent the attached e-mail to all States Members referring to the report in his possession alleging that lives were at risk and stating that "no meaningful action has been taken". He then invited expressions of interest in States Members joining him in signing a Requête "to

force the Department to implement the changes required by the College of Emergency Medicine two years ago and Capital (sic) last year”.

(The undersigned are advised that the College of Emergency Medicine report does not state in any of its contents that patients lives are at risk and consequently this represents a dangerous and misleading statement and furthermore the suggestion that no meaningful action has been taken is also wholly untrue).

4. On the 13<sup>th</sup> March 2013 Deputy Hadley wrote to all States Members (e-mail attached) saying “Dear Colleague, I have been asked by one of you for a copy of the report that I received as a Board member and therefore attch (sic) this”.

The report sent to members is the original report and not a redacted version.

5. The importance of respecting the confidentiality of this and other reports had been made clear to Deputy Hadley, while a member of HSSD and on a number of occasions subsequently.

Notwithstanding this clear advice, Deputy Hadley decided to forward the confidential report to all States Members and furthermore he did so without seeking the consent of any person identified in the report (or who may be readily identifiable) which is potentially a breach of the Data Protection (Bailiwick of Guernsey) Law, 2001. In accordance with its obligations under the Law the HSSD has formally notified the Data Protection Commissioner of this potential breach.

In this connection I am not attaching a copy of the College of Medicine report as I am conscious that to do so may itself represent a data protection breach although I appreciate that the Panel has the right to call for appropriate reports to assist them in their deliberations. In this respect if you do require a copy of the report, whether a full or redacted version I would ask that you approach the Minister of the HSSD.

6. In the days following the release of the report to States Members the Guernsey Evening Press published a series of articles which indicated that they had obtained a copy of the report. The undersigned have no evidence that Deputy Hadley had released to the media nor can it say that any particular Deputy or Deputies have done so but believes that in all probability Deputy Hadley’s release of the report to forty six other States Members may well have facilitated this exposure.

The undersigned believe that by releasing the confidential report Deputy Hadley is in direct breach of Section 18 and 19 of the Code of Conduct dealing with confidential information. Furthermore, we believe that unless this is dealt with swiftly and appropriately there is the real danger that the Department in particular and the States in general would find it difficult to undertake meaningful independent reviews into essential services simply because those contributing will no longer be confident that

they are free to express professional and individual opinions about a particular service for fear that their personal comments will become widely known. In those circumstances the value of such reports diminishes considerably.

The undersigned would wish to make the point that Deputy Hadley is not a newly and inexperienced States Members unfamiliar with the Code.

In all these circumstances, I would be grateful if the Code of Conduct Panel will review this complaint and in this respect, while it is fully appreciated that it is for the Panel to determine whether, how and when the matter is dealt with, given the nature of the issue we believe it would be helpful if the complaint could be addressed at the earliest opportunity.

Yours faithfully

Deputy Peter Harwood  
Chief Minister for and on behalf of:

Deputy J P Le Tocq, Deputy Chief Minister & Minister, Home Department  
Deputy R Domaille, Minister, Environment Department  
Deputy M H Dorey, Minister, Health & Social Services Department  
Deputy D B Jones, Minister, Housing Department  
Deputy A H Langlois, Minister, Social Security Department  
Deputy P A Luxon, Minister, Public Services Department  
Deputy R W Sillars, Minister, Education Department  
Deputy St. Pier, Minister, Treasury & Resources Department  
Deputy K A Stewart, Minister, Commerce & Employment Department  
Deputy D Inglis, Deputy Minister, Culture and Leisure Department

**APPENDIX 3**

**Deputy Mike Hadley**  
Member of the States of Deliberation

La Rocque  
La Bouvée  
St Martin  
GY46BQ

Telephone 232717  
Mobile 07911 715760  
Email [mikehadley@cwgsy.net](mailto:mikehadley@cwgsy.net)

7<sup>th</sup> April 2013

Mr A C K Day

Chairman  
States Members Conduct Panel  
Bailiff's Chambers  
The Royal Court House

Dear Sir

I would like to nominate Dame Mary Perkins as a member of the panel.

### **CONFIDENTIALITY**

I am accused of a breach of confidentiality by circulating a confidential report.

The report of the College of Emergency Medicine ( June 2011) was distributed in September 2011 by e mail to a number of health professionals, including consultant medical staff of HSSD, nurses employed by HSSD, the Children's Service, the Medical Officer of Health, the Corporate Management Team, and the Medical Specialist Group. They in turn were asked in the e-mail from the Assistant Director Strategy, Policy and Engagement and Chief Pharmacist to forward the report to "interested staff/colleagues" without any requirement or indeed suggestion, that onward distribution was subject to any obligation of confidentiality. It was also distributed to the political board of the HSSD of which I was a member. It is possible, indeed likely, that several hundred people saw this report. Such a wide and essentially open-ended distribution is hardly compatible with the contention now being made that the report was to be treated in confidence.

I also question whether what is stated in the report can be viewed as 'confidential' in the first place. Something which is not confidential to start off with, cannot suddenly become so by the say-so of some person. In any event, a duty of confidentiality can only arise where that duty is owed to someone. The authors of the report make no claim to any confidentiality. The report also does not suggest that any person interviewed by the authors was promised any confidentiality and to the best of my knowledge no-one other

than possibly the HSSD and the PCCL have any objection to the report being released. HSSD's own very wide circulation and distribution of the report is incompatible with the suggestion that it is confidential. If either HSSD or PCCL are now claiming that the report which deals with the provision of state funded services to the public of the Island is confidential, then in my view they are at best making a mistake or at worst, are misguided and acting in their own interests in attempting to withhold crucial information from the public. The fact that there are clearly people who feel uncomfortable with the report cannot itself make the report confidential.

I therefore dispute that the distribution of the report by me was a breach of the Code of Conduct for States Members. However, even if it was a breach (which I deny), I dispute that it was a serious breach as alleged by the Chief Minister. Indeed, it appears to me that the suggestion of a breach of confidentiality is being made by persons who would prefer to maintain the status quo and to keep the report and its serious findings as well as the abject failure to act on those findings, out of the public domain.

### **PATIENTS LIVES AT RISK**

The Policy Council is advised (presumably by the staff at HSSD) that the report does not state in any of its contents that patient's lives are at risk.

The report (made by acknowledged experts in this field after a thorough investigation conducted by them) says: "The issue of medical cover for parts of the hospital other than the ED at night concerned the reviewers greatly. Similarly the lack of both a policy and necessary resource to address unexpected peaks in demand and rare events indicate a lack of resilience within the system of Out of Hours emergency care. It is our opinion that the recommendation to replace the OOH primary care doctor with a second EM doctor is the only safe way to address these dual concerns."

If experts conclude that their recommendation is the 'only safe way' to address their concerns, it follows logically that the current system is at times unsafe and consequently that lives are at risk.

The contract between HSSD and PCCL pays for a resident doctor and a second on-call or after-hours doctor. The report makes clear that during the day it is difficult to call the second doctor. At night the second on call doctor is a GP (who does not hold A&E qualifications nor have emergency experience) who is covering night calls and visits to patients at home. The report makes clear that this is unsafe as the GP may have little or no A & E experience even if they are in the hospital.

After the report was released PPCL advertised for GPs to be on call. Rather than responding to the recommendations the advertisement said, "Experience in A & E would be beneficial but is not essential." Subsequently a GP was appointed to work in A& E who had just returned to practice after several years away from clinical practice. This doctor could not put up a drip for a patient such was the lack of skill. This led to a clinical incident report. However the Medical Officer of Health, who is responsible for clinical risk in the hospital, had no knowledge of this when I spoke to him yesterday.



Recently the second on call A & E doctor was also on call for the police (for which a fee of £1,000 a day is paid). Because the doctor apparently considered a police call more urgent after also being called from his surgery by A&E, A & E was left with only one doctor when in a crisis situation.

The report makes clear that the current arrangements are unsatisfactory and unsafe. The staff in A & E have continually raised their concerns including writing a number of 'clinical incident' reports but these have not been acted upon. The report says:

"The reviewers were concerned that almost all the ED staff reported a lack of due diligence in respect of incident reporting, investigation, analysis and subsequent action taken. Although an incident report structure is in place the efferent arm of such a system appeared not to deliver credible and timely actions."

These clinical incidents reports go to PCCL rather than the HSSD and staff have been reprimanded by PCCL for putting 'clinical incidents' in to HSSD . As I mentioned earlier it is still the case today that the Medical Officer of Health is not made aware of clinical incidents.

In the UK the standards of medical care in A & E departments have developed over recent years so since 2008 there has been a College of Emergency Medicine. Only 4 Doctors out of the 13 who staff the PEH A&E are Members of the College. A & E departments in the UK are invariably led by Consultants and are supported by Associate Specialists in Emergency Medicine. It is no longer regarded as appropriate for an A & E department to be run by GPs who have not had the required training.

In Jersey the HSSD employs 5 Consultants in Emergency Medicine, 3 Associate specialists in Emergency Medicine, and 2.5 Staff Grade Doctors trained in Emergency Medicine.

There is an additional risk relating to the resuscitation of newborn babies. Many of the doctors in the A & E department do not believe that their skills are sufficiently adequate to deal with the resuscitation of newborn "blue" babies. The hospital relies on the ability of midwives to deal with this situation and also relies on the chance that there will be a paediatrician at hand. At times when there is not a pediatrician then the A & E or on-call doctor is summoned – irrespective of whether or not that doctor has the required neonatal qualifications or experience. Even if the occurrence of such an emergency only happens a couple of times a year this is a continuing risk until the A & E department is staffed all of the time by fully trained A & E doctors.

The College of Emergency Medicine say in their report that the financial payments to the PCCL prevent the recruitment, retention and development of Emergency Nurse Practitioners.

I am criticized for saying that 'no meaningful action has been taken' The Minister for HSSD recently told me that it was not possible to develop the service because they could not afford to pay the GPs more money. This could mean that little is changed until 2018 when the current contract runs out.

It is now two years since the College report :-

The staffing of the department has not changed as recommended in the report.

The second on-call doctor is still only accessed indirectly through a practice manager despite the report highlighting this as a material risk.

No consultant has been appointed and no associate specialist doctors have been appointed.

No changes have been made in the way clinical incidents are reported.

No further training of nurses has been carried out as recommended in the report.

The only change that has been made is in relation to triage, which was introduced on the initiative of the nursing staff.

Whenever a patient enters an A & E department in a crisis situation such as a heart attack or stroke then they run a lottery as to the qualifications and the experience of the single doctor on duty in A&E – this undoubtedly places their life at risk – especially after hours or on Saturday morning when the A&E doctor is the only doctor on duty in the hospital (the second on call doctor is not permanently in the hospital). Usually they are seen by experienced and appropriately trained doctors and experienced nurses but at times there is no doctor in the A & E department at all and at times GPs working in the department are not adequately trained in emergency medicine.

The contract between HSD and PCCL says: “PCCL will ensure that the A & E and E24 hour doctors conform as a minimum to standards of generally accepted medical and surgical practices and standards prevailing in the UK at all times.”

I believe that the PCCL are not complying with this clause. I am concerned that HSSD do not appear to be trying to enforce this contractual obligation.

PCCL run the A & E department in a manner which has been severely criticised, and which at times is unsafe, putting patient’s lives at unnecessary risk. They appear to prioritise financial incentives before patient care.

## **FINANCIAL ISSUES**

The Primary Care Company Ltd are paid by the HSSD £850,000 plus an enhanced payment of about £150,000 to provide doctors for A & E. As the department can easily be run 24 hours of the day every day of the year by 6 or 7 doctors who are paid £100,000 a year there is clearly enough money from the State to pay for the service. However this sum of money only pays for the doctor’s presence at the hospital. They charge the patient or the MSG (or both) for every procedure that they carry out. They see 42 patients a day on average who are charged £52.35 in the day, £104.70 from 6.00

-11.00 and £157.05 from 11.00pm - 8.00am. There is an additional charge for any procedure carried out e.g. if a patient needs stitches (which could often be done by a nurse) the patient gets an additional charge of £118. The Medical Specialist Group pay approximately £50,000 for seeing or admitting patients in the hospital at night.

Thus the situation is that a GP is present at A & E and they are fully paid for that. Then if they see a patient at night (after 11.00pm) they charge a consultation fee of £157. If the patient needs suturing an additional charge of £118 is made. More than half of patients receive a charge for some procedure. Because the charges to patients are made by the individual surgery it is not known how much profit the GPs make out of the service.

Thus to have a doctor present in the hospital raises £1,000,000 and the charge to patients is about £1,270,000 for consultation only. Considering the complaints that I have received as a States Deputy when patients have had bills for several hundred pounds it is not unreasonable to guess that the extra charges take the payment to well in excess of £3,000,000. The true figure may well be much higher.

The cost of employing doctors in A & E is around £700,000 therefore PCCL make a profit of around £2.3 million. If the full recommendations of the College of Emergency Medicine were to be implemented then we would have a safe service and the profit of PCCL Ltd would reduce as far as I can estimate to around £2,000,000. This profit is shared amongst the 40 GP partners on the Island 30 of whom do not work in the department at all, i.e. £50,000 per partner.

The report makes clear that this method of charging is a barrier to the improvement of the service. The A & E nurses do not receive the additional training that they should have to enhance their skills and career prospects. Put simply the GPs do not want nurses to stitch wounds when they can do it and charge for it.

The Capita report makes clear that large savings could be made if HSSD ran the service, employing three consultants and six A & E specialists, and still HSSD could save £337,000 a year. In fact if HSSD made the same charges that GPs currently make, the savings would be very much greater to the people of Guernsey. I believe that Capita did not fully understand the financial model.

Thus the Island could have a safe A & E service, fully complying with the recommendations of the College of Emergency Medicine, and save the Island a large sum of money.

## **REFERAL TO THE CODE OF CONDUCT PANEL**

I believe that my referral to you is a mistake because the Policy Council have chosen to ignore the most important section of the code :

“The primary duty of Members is to act in the public interest. In so doing Members have a duty on all occasions to act in accordance with their oaths, and in accordance with the public trust placed in them.”

Following the enquiry into the Mid-Staffordshire Hospitals it was recommended that organisations should take steps to ensure that they are open, accountable, and supportive of whistleblowers, rather than supportive of a culture of silence. The starting point must be a clear commitment from organisational leadership that the reporting of bad practice is taken seriously, with reassurance that any reprisal against the person raising the concern will not be tolerated.

I received a copy of the report as a member of the political board of the Health and Social Services Department. I expected that the management who had commissioned the report would act on the report as a matter of urgency. I had been aware of many of the criticisms in the report for ten years but now we had a report where a doctor and surgeon – experts in the field – were saying that aspects of the service were unsafe.

Being realistic I knew that there would have to be discussions with the Primary Care Company Ltd who held the contract for the Accident and Emergency Department but assumed that some discussions would already have taken place as the GPs who own Primary Care Company Ltd had had a copy of the draft report for some months.

We were initially told that the contract could be terminated with 6 months notice but the PCCL disputed this. It then transpired that HSSD did not even have a copy of the contract and had to obtain one from PCCL.

At a later stage we were told that PCCL was unwilling to make the substantial changes required and would operate the service as it was until 2018. Management would take the stand that they had to comply with the report.

After the election I continued to question the Minister, Deputy Adam, as to progress with the report and have also spoken at some lengths to the new Minister and other members of the board.

I offered to meet the Chief Officer of HSSD with Deputy Dorey to discuss my concerns about the A & E department but a meeting was never arranged.

I had a meeting with the Chief Minister Deputy Harwood to discuss the A & E department.

I had a meeting with the Deputy Chief Executive.

I tried to meet the Chief Executive but he was too busy.

**All of these reasoned and proportionate initiatives have been to no avail.**

I have asked Deputy Adam at a policy Council meeting to publish the report. I have asked for it to be published in the States.

All of these initiatives were to try and put some pressure on the department to implement the recommendations of the College to make the service safer.

Finally it has become my judgment that my primary duty as a Deputy to act in the public interest overrides any reservations about breaking other aspects of the Code (to the extent it is contended that I have). I am also of the view that HSSD have failed abjectly in their duties to the public of Guernsey, not only by failing to act on the unequivocal and clear report commissioned by them in the first instance, but also by then trying to use the Code to prevent their own failings from being brought to the attention of the public. The Code cannot and should not be permitted to be manipulated in such a way.

In response to the report being issued the management of HSSD have acted with amazing speed. This speed has regrettably not been to improve the service but instead to cover up their lack of progress.

The Minister, led by the nose by his civil servants, has trotted out platitudes:

“Nowhere in the report does it say the service is unsafe or lives are at risk.”

“All of the A & E doctors are now trained in Emergency Medicine.”

These statements are just not true and you only have to read the report to realise that.

The current staffing model **lacks resilience**.

The use of GP partners increases **variability**.

The issues of payment to GPs **are a barrier to the development, recruitment and retention of Emergency Nurse Practitioners**.

As soon as Deputy Dorey was elected as Minister I urged him to go to the A & E department and talk in private to the staff. He did not consider this was his most urgent priority. I also am told that the management of HSSD had not visited the department until I raised the issue. When they did visit the department they were surprised at the pressure in the department and had been unaware that there was no second on call doctor on Saturday mornings.

The management always react to criticism by trying to imply that it is the front line staff who are being criticised.

I have spoken to many of the hard working doctors, nurses and technical staff over the years and the picture emerges of a distant, uncaring management.

I have said many times that the HSSD management is very poor at the recruitment and retention of staff. It is not only the fault of the HSSD but is compounded by a very poor Human Resources Department. I have made my views about the poor performance of this department to the Chief Executive of the States at a meeting with fellow Deputies.

Many in England think that the NHS is at crisis point. It is there because of poor management and understaffing which increases the pressure on front line staff. These issues are exacerbated by a shortage of money.

We have all of the ingredients here for a failure of Health Care in Guernsey. Poor management in parts of the civil service and a shortage of nurses leads to pressure which has caused some to leave, compounding the problem, so that wards are closed and operations cancelled. Some of this is driven by unrealistic expectations by the Financial Transformation Program, which has cut off funds and stopped new service developments.

Against this background of a shortage of money the Minister, Deputy Dorey, is now saying that HSSD cannot afford to make the changes required because PPCL would need additional payments.

It is in the public interest to know that PCCL can well afford to make the changes needed to increase patient safety and that while they refuse the people of Guernsey are put at an unnecessary risk.

The public has a right to know that the PCCL is making a large profit from its patients while not complying with strong recommendations to improve patient care.

They also need to be aware of the management failings of HSSD in not taking any meaningful action to rectify the situation over the past two years.

Yours faithfully

Mike Hadley

The States are asked to decide:-

II. After consideration of the Report dated 15<sup>th</sup> May, 2013, of the States Assembly and Constitution Committee, that Deputy M P J Hadley be and hereby is formally reprimanded pursuant to the Code of Conduct for Members of the States of Deliberation.

